AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

7-9-91
Vol. 56 No. 131

federal register

Tuesday
July 9, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

7-9-91
Vol. 56 No. 131
Pages 31043-31304

federal register

Tuesday
July 9, 1991

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS-91-004]

Soybean Promotion and Research Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Soybean Promotion, Research, and Consumer Information Act (Act), approved November 28, 1990, as subtitle E of title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 authorizes the establishment of a national, industry-funded soybean promotion and research program. On December 26, 1990, the Agricultural Marketing Service (AMS) published an invitation to submit proposals for a Soybean Promotion and Research Order. AMS received an industry proposal which was published for public comment at 56 FR 7597 in the February 25, 1991, issue of the **Federal Register**. A public meeting was held on March 6, 1991, to facilitate a better understanding of the proposed Order and to solicit comments on that proposal.

After evaluating written comments, the transcript from the public meeting, and other available material, the proposed Order, with modifications, as described herein, is made final.

EFFECTIVE DATES: This final rule is effective July 9, 1991, except that § 1220.223 will be effective September 1, 1991.

ADDRESSES: Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service; U.S. Department of Agriculture, room 2624–S; P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; AMS, USDA, room 2624–S; P.O. Box 96456; Washington, DC 20090–6456 (Telephone: 202/382–1115).

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Invitation to submit proposals published December 26, 1990 (55 FR 53000).

Proposed Rule—Procedures for Nominations of Soybean Producers for Appointment to the Initial United Soybean Board published February 25, 1991 (56 FR 7594).

Proposed Rule—Soybean Promotion and Research Order published February 25, 1991 (56 FR 7597).

Final Rule—Procedures for Nominations of Soybean Producers for Appointment to the Initial United Soybean Board published April 18, 1991 (56 FR 15809).

Regulatory Impact Analysis

This final rule was reviewed in accordance with Executive Order No. 12291 and Departmental Regulation No. 1512–1 and has been classified as a "non-major" rule because it does not meet the criteria for a major rule as stated in the Order.

This action was also reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The most recent available census of agricultural producers indicates that there are 439,093 soybean producers in the United States, an estimated 431,710 of whom would be classified as small businesses under the criteria established by the Small Business Administration (13 CFR 121.2). The Order requires each soybean producer to pay an assessment of one-half of one percent of the market value of soybeans sold. In addition, an estimated 10,000 first purchasers of soybeans are required to collect and remit the assessments. Although the assessments are expected to total approximately $50–$60 million dollars annually, the economic impact of a one-half of one percent of market value assessment on each individual producer, including small producers, will not be significant. The Order also imposes a reporting and recordkeeping burden on first purchasers of soybeans and on producers marketing soybeans and soybean products of their own production. This burden should average less than 5 hours per year, so its economic impact will not be significant. In addition, the promotion and research program funded by the assessments is expected to benefit the producers and first purchasers by expanding and maintaining new and existing domestic and foreign markets and uses for soybeans and soybean products. Therefore, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) the forms, reporting, and recordkeeping included in this final rule were approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093, except for Board member nominee information sheets that were previously assigned OMB No. 0581–0001. This final rule sets forth the provisions of an Order establishing a nationwide, producer-funded program for soybean promotion and research. Information collection requirements as required by this action and necessary for the implementation of this Order include:

(1) A report by each person marketing soybeans, or products made from soybeans, of that person's own production, or responsible for collecting assessments from soybean producers. The estimated number of respondents for this report is 10,000, some submitting quarterly and some submitting monthly, with an estimated average reporting burden of one hour per response;

(2) A refund application form for persons who desire a refund from their assessments. The estimated number of respondents for this form is 30,000, some submitting quarterly and some submitting monthly, with an estimated average reporting burden of 0.08 hours per response;

(3) A referendum ballot to be submitted once every five years to indicate whether producers favor continuance of the Order. The estimated number of respondents for this form is 100,000, each submitting one response every five years, with an estimated average reporting burden of 0.10 hours per response;

(4) A certification of nonproducer status by which certain producers would

be exempt from paying assessments. The estimated number of respondents for this form is 2,000, each submitting one response per year, with an estimated average reporting burden of 0.03 hours per response;

(5) A verification of compliance with the definition of Qualified State Soybean Board by which a State Soybean Board would attest to its eligibility to nominate producer members to the United Soybean Board. The estimated number of respondents for this form is 29 in the first year and one in each year following. Each respondent will submit one response per year, with an estimated average reporting burden of 0.5 hours per response;

(6) A nomination form by which Qualified State Soybean Boards would nominate producers for membership on the United Soybean Board. The estimated number of respondents for this form is 29, each submitting one response per year, with an estimated average reporting burden of 0.5 hours per response;

(7) A membership background information sheet for Board members. The estimated number of respondents for this form is 130 during the first year of the Order and 45 annually after that. Each respondent will submit one response per year, with an estimated average reporting burden of 0.5 hours per response;

(8) A letter requesting certification as a Qualified State Soybean Board which would allow the State Board to receive credits for assessments collected and conduct promotion and research activities. The estimated number of respondents for this form is 29, each submitting one response per year, with an estimated average reporting burden of 0.5 hours per response; and

(9) A requirement to maintain records sufficient to verify reports submitted under the Order. The estimated number of recordkeepers necessary to comply with this requirement is 10,000, each of whom will have an estimated annual burden of 0.11 hours.

Background

The Soybean Promotion, Research, and Consumer Information Act (subtitle E of title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 Pub. L. 101–624) approved November 28, 1990, authorizes the Secretary of Agriculture to establish a national soybean promotion and research program. The program will be funded by an assessment of one-half percent of the net market price of soybeans bought or otherwise acquired by the first purchaser from the producer.

The Act provides for submission of proposals for a soybean promotion and research order by industry organizations or any interested persons. The Act requires that such order provide for the establishment of a United Soybean Board. The Board is to be comprised of soybean producers nominated by State Soybean Boards for appointment by the Secretary to the Board.

The Agricultural Marketing Service issued an invitation to submit proposals for an order in the December 26, 1990 issue of the **Federal Register**. The Agency also issued for comment a proposed rule, "Procedures for Nominations of Soybean Producers for Appointment to the Initial United Soybean Board," in the February 25, 1991, issue of the **Federal Register**. A final rule was published on April 18, 1991.

In response to the invitation to submit proposals for an Order, one proposed Order was received from the American Soybean Association. As provided in the Act, on February 25, 1991, AMS published the proposed Order for comment. Additionally, on March 6, 1991, a public meeting was held to provide an opportunity for a full discussion on the proposal and to facilitate a better understanding of the proposed rule and to solicit comments.

The U.S. Department of Agriculture (USDA) received 46 written comments concerning the proposed Soybean Promotion and Research Order from individual producers, U.S. Congressmen, universities, soybean producer associations, general farm organizations, and other interested parties. Thirty-four of the comments were filed on time and 12 comments were filed after the comment period closed. The late comments generally expressed the same views as the timely comments which are responded to herein. The commenters generally supported the proposed Order with certain qualifications. Two comments were received which opposed the issuance of a Soybean Promotion and Research Order.

The substantive changes suggested by commenters are discussed below, together with a description of changes made by USDA upon review of the proposed Order. Also, other minor changes of a nonsubstantial nature are made by USDA for purposes of clarity and accuracy. For the reader's convenience, the discussion is organized by topic headings of the proposed Order.

Definitions

Section 1220.110 *National Nonprofit Producer-Governed Organization* is now § 1220.114. Many comments were filed in opposition to the definition of "national nonprofit producer-governed organization" in the proposed Order. The commenters felt the definition was too restrictive and would exclude legitimate farm organizations having a Board of directors that includes persons who are not soybean producers, but that are nevertheless representative of a large number of soybean producers. This recommended change has merit and is consistent with the Act. Accordingly, we have revised the definition to clarify that a general farm organization that represents the interest of soybean producers along with producers of other agricultural commodities on a national basis and that has persons other than soybean producers on its Board of directors is eligible to enter into contracts with the Board for the administration of a program area.

Section 1220.110 *First Purchaser.* Several commenters suggested deleting (b) which defines the Commodity Credit Corporation as a first purchaser when soybeans are pledged as collateral for a loan issued under any Federal price support program. The commenters said that including the Commodity Credit Corporation as a first purchaser would be burdensome and would create considerable duplication of work. This definition is consistent with the Act. Accordingly, this suggestion is not adopted in this final rule.

Section 1220.112 *Fiscal Period* is now § 1220.111. Several commenters asked that the fiscal period be defined as the soybean marketing year, which is September 1 through August 31. The proposed Order stated that the fiscal period may be any annual period determined by the Board. While this suggestion may have merit, we believe it is appropriate for the Board with approval of the Secretary, to determine the fiscal period that will be used in connection with the activities under this part. Accordingly, this suggestion is not adopted in this final rule.

Section 1220.121 *Promotion.* One commenter suggested amending the definition of "promotion" by including "strategic communications or public relations." While it is not absolutely clear, it appears that the definition in the proposed Order, which is identical to the term "promotion" found in the Act, is broad enough to encompass the activities suggested by the commenter. In any event, it is the Act that governs the range and type of activities which are authorized and we believe that the Order's definition should mirror that found in the Act. Accordingly, this comment is not adopted.

Section 1220.125 *Research.* The word "domestic" is deleted so that the definition conforms to the definition in the Act. This is not intended to suggest that a particular plan or project designed to identify and analyze barriers to domestic sales of soybeans and soybean products would not be permissible.

United Soybean Board

Section 1220.201 *Establishment and Membership.* Numerous commenters recommended a change in the base years used to determine unit representation on the initial Board. The proposed Order submitted by industry utilized the years 1984–1988 as the basis for average annual soybean production to determine representation on the Board. The commenters contend that soybean producers, soybean representative groups, and members of Congress intended to use production numbers in those years to establish Board membership which would reflect then-existing representation on the voluntary American Soybean Development Foundation Board. Utilization of average annual production numbers for the years 1984–1988 would result in 62 producer members rather than the proposed Order's 60 members. As a basis for using 1984–1988 data, the commenters refer to the Conference Report, the provisions of section 1969(n)(1) of the Act, and to delays in passing the Farm Bill, as well as to subsequent developments affecting production. The Act, however, specifically states that average annual soybean production applicable to a crop year is to be determined by using the average of the five previous crops of soybeans, excluding the crop having the highest production and the crop having the lowest production. In accordance with the Act's provisions, the Department utilized the most recent final statistics published by its National Agricultural Statistics Service for five previous crops of soybeans. The years 1985–1989 were used. Consequently, membership distribution for the initial United Soybean Board is based on the average production for the years 1985–1989.

Regarding § 1220.201(e)(6) of the proposed rule one commenter asked that the reference to the limitation of four members from any one unit to the Board be eliminated. This limitation however, reflects the requirements of the Act. Nonetheless, this provision is unnecessary because the formula for determining the number of Board members for each unit is adequately addressed by this section of the Order. Accordingly, we have deleted the reference because it is unnecessary.

Section 1220.205 *Nominee's Appointment to Serve.* We have changed the title to read "Nominee's Agreement to Serve" to correct a typographical error in the proposed Order. Additionally, during the public meeting, one commenter expressed confusion over the requirement that "all nominees to the Board disclose any relationship with any soybean promotion entity or with any organization that is being considered for a contractual relationship with the Board. "This section is intended to require disclosure by nominees to avoid any potential conflicts of interest. It should not be construed as implying that a potential nominee is disqualified simply by his/her active participation in soybean programs.

Section 1220.207 *Alternate Directors.* We have changed the title of this section to read "Alternate Members" instead of "Alternate Directors" as was proposed. Discussion during the public meeting centered on whether it was necessary for all States to have alternate members or whether it would be reasonable to have alternate members only in those States with one member. Several written comments regarding alternate members were also received. Timing of the nomination of alternate members was also discussed at the public meeting, and written comments on this issue were received. Comments were mixed on whether nominations for alternate members should be concurrent with nominations to the Board or if they should be submitted separately after the Board was appointed. A majority of the comments received favored simultaneous submission.

Testimony during the public meeting by proponents of the Order indicated that they included the provision for alternate members to ensure that every unit would always be adequately represented. They were primarily concerned that if the representative from a single-member unit was not present at a meeting, the producers within that unit would not be represented. Furthermore, if a roll-call vote was requested, that unit's representative percentage of production or contribution would not be voted.

We have carefully reviewed the record and we believe that the appointment of one alternate member for each unit allotted a single Board member would adequately address the concerns of the commenters. Experience with other Boards indicates that in units with two or more members, at least one member will represent the unit at most meetings. Further, in the event of a roll-call vote, members are able to vote their unit's entire share of production or contribution as long as one member is present at the meeting. The selection and appointment of nominees whether they be members or alternate members is costly and time-consuming. We have concluded that amending the proposed Order to allow one alternate member for each single-member unit, adequately addresses the commenters' concerns while keeping cost and time spent on processing nominees' paperwork at a reasonable level.

The majority of commenters addressing the issue of alternate members also recommended that nominees for members and alternate members be solicited simultaneously. We believe the recommended procedure is efficient and is therefore adopted. However, in the interest of establishing the initial Board as soon as possible, this procedure may not be possible until after the initial Board is appointed.

Section 1220.208 *Petition for Removal of Member.* We have changed the heading to "Removal." Some commenters requested deletion of the authority of the Soybean Promotion Coordinating Committee (Committee) to petition the Secretary to remove, for cause, a member of the Board or Committee. We have determined that anyone can petition the Secretary; therefore, this provision is unnecessary. Section 1220.208(a) is amended and section (b) is deleted to change the language to reflect that any person can petition the Secretary to remove a member and the decision to remove a member rests solely with the Secretary.

Section 1220.209 *Procedure.* Considerable discussion during the public meeting focused on the interpretation of this section regarding additional votes in a roll-call vote. The proposed Order seems to indicate that under a roll-call vote, votes are allotted on a straight percentage basis. For example, a unit with 3.2 percent of production would be allotted 3.2 votes. The Act specifically states that, during the first fiscal year of the Board, each unit shall be allotted one vote for each percentage, or portion of a percentage, of the total production of soybeans in the United States which was produced in the unit, on the average, during each of the three immediately preceding crop years. In subsequent fiscal years, the votes will be allocated in a similar manner based on the unit's percentage of the annual assessments remitted to the Board (minus refunds). Accordingly, § 1220.209(b)(2)(i) is amended to be consistent with the Act. For example, a

unit with 3.2 percent of production will be allotted four votes. Section 1220.209(b)(2)(iv) is also amended to add at the end of the sentence "(with the vote of each unit determined by a simple majority of all votes cast by members in that unit)." This is added for clarity and conformity with the Act.

Section 1220.209(b)(3)(c) is amended to include voting by facsimile, which is considered a vote in writing.

One commenter recommended that § 1220.209(b)(3)(c) be deleted. He felt that if a matter is important enough for a vote by the Board, a meeting should be convened. There is precedent on other Boards under USDA oversight for voting as prescribed in the proposed Order. Furthermore, the Board may, at the end of the 3-year period beginning on the effective date of the order, recommend to the Secretary changes in the voting procedures. Therefore, this suggestion is not adopted.

Section 1220.212 *Duties.* Regarding § 1220.212(f), one commenter suggested that the Order clearly state that the budget requirement applies only to Board funds and not to funds retained by Qualified State Soybean Boards. While neither the Act nor the Order specifies that Qualified State Soybean Board budgets must be approved by the Board or the Secretary, each Qualified State Soybean Board should, at a minimum, provide the Board with an annual report at the end of each year describing how funds were expended. It is the Board's responsibility, acting on behalf of the Secretary, to ensure coordination as well as efficient and appropriate use of all funds collected pursuant to the Act. While this section does not specifically require the submission of Qualified State Soybean Board budgets to the Board, some overall industry review and coordination of budgets and programs could serve to avoid duplication and inefficient use of producer funds generated under the Act. Accordingly, this suggestion is not adopted.

One commenter suggested that the sentence beginning with "Provided" in § 1220.212(h) be removed. The commenter refers to the Conference Committee's rejection of mandatory contracting. The Conference Report's rejection of mandatory contracting applies to contracting for performance of administrative functions. Section 1220.212(h) applies to contracting for plans and projects. The limitation in the sentence beginning with "Provided" means that one organization is to administer all projects within a particular area; i.e., promotion, research, consumer information, or industry information. This provision assures a coordinated approach to contracting and implementing the statutory directive in section 1969(j)(2) to contract with a single entity for all plans and projects in each of the four areas previously mentioned. The Board's flexibility to contract for these projects is clear in the revised definition of "national nonprofit producer-governed organization."

The commenter also suggested that § 1220.212(n), concerning Board coordination of programs, be eliminated. The commenter believes the paragraph is ambiguous and may give broad power to the Board in dictating State programs. We believe the Act and its legislative history make it clear that the Board is charged with avoiding wasteful duplication of efforts by encouraging Board members to take an active role in the writing of the Board's budget and developing its plans and projects. The Board members are encouraged to report their knowledge of ongoing or prospective soybean projects in their States. USDA believes paragraph § 1220.212(n) is consistent with the Act and its legislative history. Therefore, this suggestion is not adopted.

Soybean Program Coordinating Committee

Section 1220.213 *Establishment and Membership.* Comments were received from several individuals and organizations concerning establishment of the Committee. The commenters generally felt that the Committee would create duplication and undermine the representative authority of the Board and its ability to properly and impartially supervise the activities of the Cooperator Organization. One commenter also suggested that the Committee membership consist of 10 Board members and "up to 5 producers selected by the Board from nominees submitted to the Board by the Cooperator Organization or any organization that contracts with the Board." The Order does not establish the Committee; instead, it provides authority for the Board to determine, with the approval of the Secretary, whether a Committee will be established. This reflects the provisions of the Act. The Act, however, is specific regarding composition of the committee if it is established. Therefore, if a Committee is established its composition will remain as specified. Based on the foregoing discussion no substantive change has been made in § 1220.213 as a result of the comments.

Expenses and Assessments

Section 1220.222 *Expenses.* A great deal of discussion during the public meeting focused on credit to Qualified State Soybean Boards of up to 5 percent of Board assessments to offset the collection and compliance costs related to such assessments and the fees or expenses paid by the Qualified State Soybean Boards to first purchasers or State agencies according to State law. Proponents of the Order interpret the Act as defining the allowable credits to offset State compliance and collection costs as not being administrative costs and therefore not subject to the Board's 5 percent administrative cap. In section 1969(m), the Act states that the Order shall provide that the Board may provide a credit to each Qualified State Soybean Board of an amount not to exceed one-half of any fees paid to State governmental agencies or first purchasers for collection of the assessments if the payment of such fees by the Qualified State Soybean Board is required by State law enacted before the date of enactment of this Act, except that the Board may not provide credit to any Qualified State Soybean Board of an amount that exceeds 2.5 percent of the amount of assessments collected and remitted to the Board. USDA has determined that the credit of up to 2.5 percent to those Qualified State Soybean Boards where a collection fee is required by State law is not subject to the 5 percent administrative cap. USDA has concluded and the proponents agree, that all other collection and compliance costs paid by the Board are properly classified as administrative expenses and are subject to the 5 percent limitation. Accordingly, the Board, with the approval of the Secretary, may provide credit to Qualified State Soybean Boards permitting them to retain a portion of the funds that would otherwise go to the Board to offset collection and compliance costs, but this credit must be included within the Board's 5 percent administrative expense cap. This section has been modified to conform to the Act's limitations.

Two commenters asserted that first purchasers should be compensated for costs associated with collecting and remitting assessments. The Act requires that persons designated as first purchasers under the Order collect and remit the required assessments. No authority is contained in the Act for reimbursement of costs incurred by such persons. The pertinent Order provisions are intended to minimize any burden imposed on first purchasers. Such costs should be minimal, and it is expected that the implementing regulations will be developed with this in mind. Accordingly, this proposed modification is not adopted.

Section 1220.223 *Assessments.* The language in the first sentence of § 1220.223(a) (1) and (2) was changed to conform more closely to the statutory provisions which define "first purchaser" and "commerce."

Regarding § 1220.223(a)(5)(i), one commenter suggested that first purchasers of soybeans purchasing soybeans from producers in more than one State should be permitted to file one report indicating the State-by-State information and submit one payment to one Board. The commenter objected to "double reporting" or reporting to two or more Qualified State Soybean Boards. This suggestion has a great deal of merit. A procedure which provides for a single Qualified State Soybean Board to accept all assessments collected by first purchasers in a State would help minimize the reporting burden for first purchasers. In addition, such a procedure would simplify enforcement for Qualified State Soybean Boards and reduce enforcement costs. For example, the failure of a first purchaser to remit assessments would become a problem to be addressed by a single Qualified State Soybean Board rather than multiple Qualified State Soybean Boards. The receiving Qualified State Soybean Board would have full authority and responsibility for collecting from first purchasers all assessments collected by first purchasers in the State. Benefits to first purchasers and to Qualified State Soybean Boards would more than offset the additional burden associated with reconciling State of origin assessments between the various Qualified State Soybean Boards and/or the Board each reporting period. Section 1220.223(a)(5)(i) is therefore amended to require first purchasers to remit assessments to the Qualified State Soybean Board in which the first purchaser is located. If no Qualified State Soybean Board exists in the State where the first purchaser is located, assessments are remitted to the Board. First purchasers must report assessments collected by State of origin.

Regarding § 1220.223(a)(5)(ii)(B), one commenter suggested that assessments collected by the Commodity Credit Corporation from loan proceeds not be refunded upon redemption of the soybeans from loan. The commenter suggested that a provision be made for the soybean purchaser to account for this assessment on the receipt given to the farmer. The procedure described in the Order is presently used in States that have refund provisions in their individual State laws. Accordingly, no change is made herein. One commenter noted that the proposed Order would allow a person requesting refunds on soybeans under a Commodity Credit Corporation loan to receive a double refund. To eliminate the possibility of double refunds on soybeans pledged as collateral for loans issued by the Commodity Credit Corporation, the following language is added to the end of § 1220.223(a)(5)(ii)(B): "provided, that a refund of such assessment has not been paid to the producer."

One commenter recommended a quarterly remittance of funds to the Qualified State Soybean Board or the Board by the first purchaser. The commenter also recommended that the due date for remittance of funds be 60 days after the end of each quarter. There are 26 State soybean research and promotion programs created pursuant to State laws. Of these, 16 provide for either monthly or quarterly remittance of assessments. The Order attempts to minimize the intrusion of its provisions on existing State laws; however, the remaining 10 States may need to change their remittance procedures. An exception occurs when soybeans are used by producers as seed stock and are assessed on an annual basis. There appears to be no reason to alter this practice. Therefore, § 1220.223(c)(1) is amended by adding the following language at the end of the paragraph: "unless the Board and Secretary have specifically authorized otherwise."

Several comments were received regarding § 1220.223 (d) and (e). The commenters had varied suggestions about the language in the section which seemed to indicate general confusion regarding the section. For this reason, we did not adopt the suggestions. However, we have modified the Order to ensure that credits are provided in accordance with the provisions of the Act. Precise procedures will be established by the Board, with the approval of the Secretary, in rules and regulations.

Comments were also received regarding calculation of assessments and remittance of such assessments where contracts are involved. The issues raised in many of these comments were very technical. We have concluded that these issues can best be addressed in implementing rules and regulations promulgated by the Secretary following appropriate recommendations from the Board.

Section 1220.227 *Procedure for Obtaining a Refund of Assessments Paid After the Conduct of the Continuance Referendum.* § 1220.227(d)(4) addresses the subject of how the Board or the Qualified State Soybean Board is to handle refund requests if the escrow account is inadequate to pay all requests in full. However, it does not address what happens if there should be a surplus in an escrow account after all legitimate refund requests have been paid. To correct this oversight and in conformance with the Act, we have renumbered paragraph (5) as (6) and added a new paragraph (5) as follows: "(5) Should requests for refunds of assessments during the period established in paragraph (d) (1), (2), or (3) of this section be less than the level of funds available for the payment of such requests, the amount remaining after all refunds are paid shall be divided equally between the Board and the Qualified State Soybean Board subject to the provisions of § 1220.228(a)(1)(vi), and § 1220.228(b)(6)."

Section 1220.228 *Qualified State Soybean Boards.* One commenter objected to the language requiring Qualified State Soybean Boards, if they elect to be qualified, to agree to the provisions outlined in the section. The commenter believes this provision gives the Board broad powers for overseeing and eliminating Qualified State Soybean Board projects. All assessments collected pursuant to the Act are subject to the provisions of the Act. The Board is an instrumentality of USDA established by regulations issued by the Secretary pursuant to an Act of Congress. Board members are appointed by the Secretary and USDA oversees the program's activities and operations to assure conformity with the Act's provisions. We believe it is the responsibility of the Board to certify a State Soybean Board to be the Qualified State Soybean Board responsible for collecting funds on behalf of the Board. A State Soybean Board may elect not to be certified. Accordingly, this suggestion is not adopted.

Section 1220.230 *Promotion, Research, Consumer Information, and Industry Information.* One commenter was concerned that the language of the proposed Order regarding plans and projects is more limiting than that of the Act. We have amended § 1220.230(a) to add a new paragraph (3) as follows: "(3) Such other activities as are authorized by the Act and this subpart." This addition makes it clear that the Board is authorized to carry out the provisions of section 1969 (c)(10) and (j)(4) of the Act, that it communicates at least annually with producers, and that it may contract with Qualified State Soybean Boards to do so. Section 1220.230(c) is also

amended by adding at the end of the last sentence, "and the Secretary."

Reports, Books, and Records

Section 1220.243 *Confidential Treatment.* During the public meeting, there was discussion regarding the apparent inconsistency between the Act and the proposed Order concerning access to books and records required to be maintained by persons subject to the Order. We do not believe there is inconsistency between the Act and the proposed treatment of confidential information. The proposed Order would deny Board members access of books and records. The language of the proposed Order is intended to prevent Board members, who are also producers, from obtaining a competitive advantage by having access to information deemed confidential under the Act which might include production data of individual producers or confidential information relative to first purchasers. In our view this provision is appropriate and consistent with the Act.

Miscellaneous

Section 1220.254 *Patents, Copyrights, Inventions, and Publications.* Regarding § 1220.254(a), individuals and several universities objected to the language of the Order which specifies that any patents, copyrights, inventions, or publications developed through the use of Board funds shall be the property of the U.S. Government as represented by the Board. We disagree with the thrust of these comments and believe that the provisions of this section are consistent with applicable law and policy. Furthermore, § 1220.254(b) provides that where projects are jointly funded by the Board and by other entities or other organizations, then ownership and royalty rights shall be determined by agreement between the Board and the other parties contributing funds to the project. Under this provision, therefore, the Board may enter into agreements allowing ownership to reside with the contracting parties while retaining for the Board certain rights such as licensing interests and a share of royalties. We believe these issues are best resolved through negotiation between the Board and those parties with whom contracts are established. Such agreements are subject to approval by the Secretary.

One comment was received regarding allowable costs associated with research projects, such as indirect costs, equipment, and salaries to universities and also educational and information programs specifically for soybean producers. The commenter expressed concern that although the proposed Order does not restrict the types of project costs that can be paid with assessment funds, steps were necessary to discourage the Board from establishing rules restricting these types of costs. USDA is responsible for supervising and overseeing Board operations and activities to ensure that funds collected from producers are expended only for authorized purposes. The Board is responsible for developing, evaluating, and entering into contracts and agreements and also for establishing policy regarding allocation of funds consistent with the authorizing legislation. We have concluded that the Board, with the approval of the Secretary, should establish its own policies in this area.

Other Issues

One commenter requested that the Order repeat the preemption language in the Act section 1974(a)(3) and clearly indicate that Qualified State Soybean Boards can keep ¼ of 1 percent of the net market price. We believe this assurance is contained in several sections of the Order and does not need to be repeated. This suggestion is not adopted.

Two commenters at the public meeting urged that voting by mail be permissible in referenda. The Act at section 1970(c)(3) specifies that "provision shall be made for absentee mail ballots to be provided on request. Absentee mail ballots shall be furnished by the Secretary on requests made in person, by mail, or by telephone." This procedure will be more clearly spelled out when the USDA publishes a proposed rule on Procedures for Conduct of Referendum, which will provide for a comment period before a final rule is published. One commenter asked that the Secretary consider setting a date at least for the continuance referendum either in the Order or sometime in the near future. The Act requires that a referendum be held no sooner than 18 months and no later than 36 months after issuance of the Order. A specific date would be difficult to set at this time. USDA believes that the Order must be in effect and rules and regulations in place before a decision can be reached on a referendum date. USDA will publish a date as soon as practical.

Two commenters objected to the recordkeeping burden for first purchasers as reported in the Order. We believe that first purchasers in their normal course of business already maintain records and in those States where assessments are collected pursuant to State law, they already maintain the records required pursuant to the Order. Therefore, little additional recordkeeping is imposed as a result of the Order. Every effort has been and will continue to be made to minimize the burden imposed herein. We believe the Board will work with industry to ensure that the recordkeeping burden is kept to a minimum.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effect date of this section until 30 days after publication in the **Federal Register.**In order to carry out the statutory timetable for implementation of the Order, and in order to implement the Order in a timely fashion consistent with collection of assessments nationwide on the 1991 soybean crop, it is necessary that the final Order be effective on the date of publication in the **Federal Register,** except that provisions in § 1220.223 (Assessments) will become effective on September 1, 1991.

This will allow the Board the opportunity to meet under the Order and to carry out necessary implementation functions including the development of necessary implementing regulations for recommendations to the Secretary to be promulgated before the collection of assessments begins.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

For the reason set forth in the preamble, 7 CFR part 1220 is amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH AND CONSUMER INFORMATION

1. The authority for part 1220 is revised to read as follows:

Authority: Title XIX, Pub. L. No. 101-624, 104 Stat. 3359, 3881 (7 U.S.C. 6301-6311).

2. Subpart A is added to read as follows:

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Subpart A—Soybean Promotion and Research Order

Definitions

§ 1220.101 Act.

The term *Act* means the Soybean Promotion, Research, and Consumer Information Act, subtitle E of title XIX, of the Food, Agriculture, Conservation and Trade Act of 1990, Public Law No. 101–624, and any amendments thereto.

§ 1220.102 Board.

The term *Board* means the United Soybean Board established under § 1220.201 of this subpart.

§ 1220.103 Commerce.

The term *commerce* means interstate, foreign, or intrastate commerce.

§ 1220.104 Committee.

The term *Committee* means the Soybean Program Coordinating Committee established under § 1220.213 of this subpart.

§ 1220.105 Consumer information.

The term *consumer information* means information that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of soybeans or soybean products.

§ 1220.106 Continuance referendum.

The term *continuance referendum* shall mean that initial referendum required to be conducted pursuant to section 1970(a) of the Act to determine if a majority of producers support the continued operation of this subpart.

§ 1220.107 Cooperator organization.

The term *Cooperator Organization* means the American Soybean Association, or any successor organization to the American Soybean Association, which conducts foreign market development activities on behalf of soybean producers.

§ 1220.108 Department.

Department means the United States Department of Agriculture.

§ 1220.109 Eligible organization.

The term *eligible organization* means any organization which has been certified by the Secretary pursuant to § 1220.203 of this subpart as being eligible to submit nominations for initial membership on the Board.

§ 1220.110 First purchaser.

The term *first purchaser* means—

(a) except as provided in paragraph (b) of this section, any person buying or otherwise acquiring from a producer soybeans produced by such producer; or

(b) in any case in which soybeans are pledged as collateral for a loan issued under any Federal price support loan program, the Commodity Credit Corporation.

§ 1220.111 Fiscal period.

The term *fiscal period* means the calendar year or such other annual period as the Board may determine with the approval of the Secretary.

§ 1220.112 Industry information.

The term *industry information* means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the soybean industry, and activities to enhance the image of the soybean industry.

§ 1220.113 Marketing.

The term *marketing* means the sale or other disposition of soybeans or soybean products in any channel of commerce.

§ 1220.114 National nonprofit producer-governed organization.

The term *national nonprofit producer-governed organization* means an organization that—

(a) Is a nonprofit organization pursuant to section 501(c) (3), (5) or (6) of the Internal Revenue Code (26 U.S.C. 501(c) (3), (5) and (6)); and

(b) Is governed by a Board of directors of agricultural producers representing soybean producers on a national basis;

§ 1220.115 Net market price.

The term *net market price* means—

(a) except as provided in paragraph (b) of this section, the sales price, or other value received by a producer for soybeans after adjustments for any premium or discount based on grading or quality factors, as determined by the Secretary; or

(b) for soybeans pledged as collateral for a loan issued under any price support loan program, administered by the Commodity Credit Corporation, the principal amount of the loan.

§ 1220.116 Part and subpart.

Part means the Soybean Promotion and Research Order and all rules and regulations issued pursuant to the Act

and the Order, and the Order itself shall be a "Subpart" of such part.

§ 1220.117 Plans and projects.

Plans and Projects means promotion, research, consumer information, and industry information plans, studies, or projects pursuant to § 1220.230.

§ 1220.118 Person.

The term *person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1220.119 Producer.

The term *producer* means any person engaged in the growing of soybeans in the United States who owns, or who shares the ownership and risk of loss of, such soybeans.

§ 1220.120 Producer poll.

The term *producer poll* shall mean polls of producers conducted pursuant to section 1969(1)(2)(F)(iii) of the Act to determine if producers support the conduct of a referendum on the continuance of authority to pay producers refunds.

§ 1220.121 Promotion.

The term *promotion* means any action, including paid advertising, technical assistance, and trade servicing activities, to enhance the image or desirability of soybeans or soybean products in domestic and foreign markets, and any activity designed to communicate to consumers, importers, processors, wholesalers, retailers, government officials, or other information relating to the positive attributes of soybeans or soybean products or the benefits of importation, use, or distribution of soybeans and soybean products.

§ 1220.122 Qualified State Soybean Board.

The term *Qualified State Soybean Board* means a State soybean promotion entity that is authorized by State law and elects to be the Qualified State Soybean Board for the State in which it operates pursuant to § 1220.228(a)(1). If no such entity exists in a State, the term *Qualified State Soybean Board* means a soybean producer-governed entity—

(a) That is organized and operating within a State;

(b) That receives voluntary contributions and conducts soybean promotion, research, consumer information, or industry information programs; and

(c) That meets the criteria, established by the Board and approved by the Secretary, relating to the qualifications of such entity to perform its duties under this part as determined by the Board, and is certified by the Board under § 1220.228(a)(2), with the approval of the Secretary.

§ 1220.123 Referendum.

The term *Referendum* means a referendum, other than referenda defined in § 1220.106 and § 1220.124, to be conducted by the Secretary pursuant to the Act whereby producers shall be given the opportunity to vote to determine whether the continuance of this subpart is favored by a majority of producers voting.

§ 1220.124 Refund referendum.

The term *refund referendum* shall mean referenda conducted pursuant to section 1969(1)(2)(F)(iv) of the Act relating to continuance of authority for producers to receive refunds of assessments.

§ 1220.125 Research.

The term *research* means any type of study to advance the image, desirability, marketability, production, product development, quality, or functional or nutritional value of soybeans or soybean products, including any research activity designed to identify and analyze barriers to export sales of soybeans and soybean products.

§ 1220.126 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has been delegated, the authority to act in the Secretary's stead.

§ 1220.127 Soybean products.

The term *soybean products* means products produced in whole or in part from soybeans or soybean byproducts.

§ 1220.128 Soybeans.

The term *soybeans* means all varieties of Glycine max or Glycine soja.

§ 1220.129 State and United States.

The terms *State* and *United States* include the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1220.130 Unit.

The term *unit* shall mean each State, or group of States, which is represented on the Board.

United Soybean Board

§ 1220.201 Establishment and membership.

(a) There is hereby established a United Soybean Board of 60 members. For purposes of nominating and appointing producers to the Board, the United States shall be divided into 31 geographic units and the number of Board members from each unit, subject to paragraphs (d), (e), and (f) of this section, shall be as follows:

Unit	No. of directors
Illinois	4
Iowa	4
Minnesota	3
Indiana	3
Missouri	3
Ohio	3
Arkansas	3
Nebraska	3
Mississippi	2
Kansas	2
Louisiana	2
South Dakota	2
Tennessee	2
North Carolina	2
Kentucky	2
Michigan	2
Georgia	2
South Carolina	2
Virginia	2
Alabama	1
North Dakota	1
Wisconsin	1
Maryland	1
Delaware	1
Texas	1
Pennsylvania	1
Oklahoma	1
Florida	1
New Jersey	1
Eastern Region (New York, Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, District of Columbia, Puerto Rico)	1
Western Region (Montana Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, Alaska)	1

(b) The Board shall be composed of soybean producers appointed by the Secretary from nominations submitted pursuant to § 1220.203. A soybean producer may only be nominated by the unit in which that soybean producer is a resident or producer.

(c) At the end of each three (3) year period, the Board shall review the geographic distribution of soybean production volume throughout the United States and may recommend to the Secretary a modification of paragraph (e) of this section, to best reflect the geographic distribution of soybean production volume in the United States. The Secretary may amend this subpart to make the changes recommended by the Board in levels of productions used to determine per unit representation. A unit may not, as a result of any modifications under this subsection, lose Board seats to which it is entitled at the time this subpart is initially issued unless its average annual production, as determined under paragraph (e)(6) of this section, declines

below the levels required for representation, as specified in paragraphs (e) (1) through (5) of this section.

(d) At the end of each three (3) year period, the Secretary shall review the volume of production (minus the volume of production for which refunds have been paid) of each unit provided representation under paragraph (a) of this section, and shall adjust the boundaries of any unit and the number of Board members from each such unit to conform with the criteria set out in paragraphs (e) (1) through (5) of this section.

(e) The following formula will be used to determine the number of directors for each unit who shall serve on the Board:

(1)(i) Except as provided in paragraph (e)(1)(ii) of this section, each State will be considered as a separate unit.

(ii) States which do not have annual average soybean production equal to or greater than three million (3,000,000) bushels shall be grouped, to the extent practicable, into geographically contiguous units each of which, to the extent practicable, have a combined annual soybean production level which is equal to or greater than three million (3,000,000) bushels and each such unit shall be entitled to at least one representative on the Board.

(2) Each unit that has an annual average soybean production of less than fifteen million (15,000,000) bushels shall be entitled to one representative on the Board.

(3) Each unit which has an annual average soybean production of fifteen million (15,000,000) or more bushels but less than seventy million (70,000,000) bushels shall be entitled to two (2) representatives on the Board.

(4) Each unit which has an annual average soybean production of seventy million (70,000,000) or more bushels but less than two hundred million (200,000,000) bushels shall be entitled to three (3) representatives on the Board.

(5) Each unit which has an annual average soybean production of two hundred million (200,000,000) bushels or more shall be entitled to four (4) representatives on the Board.

(6) For the purposes of this section, average annual soybean production shall be determined by using the average of the production for the State or unit over the five previous years, excluding the year in which production was the highest and the year in which production was the lowest.

(f) The Secretary shall appoint three additional producers to serve as members of the initial Board for a single term of 3 years. Such producers shall be appointed from the following States to ensure that such States have representation based on the relative contribution made by such States to the national soybean promotion and research effort:

Kansas
Mississippi
Wisconsin

(g) In determining the volume of soybeans produced in the United States, the Board and the Secretary shall utilize the information received by the Board pursuant to § 1220.241 and data published by the Department.

§ 1220.202 Term of office.

(a) The members of the Board shall serve for terms of 3 years, except that the members appointed to the initial Board shall serve, proportionately, for terms of 1, 2, and 3 years.

(b) Each member shall continue to serve until a successor is appointed by the Secretary and has accepted the position.

(c) No member shall serve more than three consecutive 3-year terms in such capacity.

§ 1220.203 Nominations.

All nominations for appointments to the Board under § 1220.204 shall be made in the following manner:

(a) After the issuance of this subpart by the Secretary, nominations shall be obtained by the Secretary as specified in paragraphs (a), (b), and (c) of this section from Qualified State Soybean Boards or for initial Board nominations, eligible organizations deemed qualified to nominate pursuant to paragraph (f) of the section. A Qualified State Soybean Board, or for initial Board nominations, an eligible organization shall only submit nominations for positions on the Board representing the unit, as established under § 1220.201, in which such Qualified State Soybean Board operates.

(b) If the Secretary determines that a unit is not represented by a Qualified State Soybean Board or for initial Board nominations, an eligible organization, then the Secretary may solicit nominations from organizations which represent producers in that unit and from producers residing in that unit. A caucus may be held in such units for the purpose of collectively submitting nominations to the Secretary.

(c) Where there is more than one State comprising a unit, the Secretary shall take into consideration the nominations submitted by Qualified State Soybean Boards or for initial Board nominations, eligible organizations, within the unit. A caucus may be held in such units for the purpose of collectively submitting nominations to the Secretary. The Secretary shall consider the proportional levels of production in each State comprising the unit when appointing members to the Board representing that unit.

(d) At least two nominations shall be submitted for each position to be filled.

(e) Nominations may be submitted in order of preference and for the initial Board, in order of preference for staggered terms. Should the Secretary reject any nomination submitted and there are insufficient nominations submitted from which appointments can be made, the Secretary may request additional nominations under paragraph (a) or (b) of this section, whichever provision is applicable for such unit.

(f) Any organization authorized pursuant to State law to collect assessments from producers may notify the Secretary of the organization's intent to nominate members to the initial Board for the State or unit, as established under § 1220.201, in which such organization operates and is authorized by State law. Such eligibility shall be based only upon the criteria established pursuant to § 1220.228(a)(1). There shall only be one organization authorized per State pursuant to this section to submit nominations to the initial Board. If no such entity exists in a State, any organization meeting those requirements of § 1220.228(a)(2) may request eligibility to submit nominations.

§ 1220.204 Appointment.

From the nominations made pursuant to § 1220.203, the Secretary shall appoint the members of the Board on the basis of representation provided for in § 1220.201.

§ 1220.205 Nominee's agreement to serve.

Any producer nominated to serve on the Board shall file with the Secretary at the time of nomination a written agreement to:

(a) Serve on the Board if appointed; and

(b) Agree to disclose any relationship with any soybean promotion entity or with any organization that has or is being considered for a contractual relationship with the Board.

§ 1220.206 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall request nominations for a successor pursuant to § 1220.203, and such successor shall be appointed pursuant to § 1220.204.

§ 1220.207 Alternate members.

(a) The Secretary shall solicit, pursuant to the procedures of § 1220.203, nominations for alternate members of the Board.

(b) The Secretary shall appoint one alternate member of the Board for each unit which has only one member pursuant to § 1220.204 and § 1220.205.

(c) Alternate members of the Board may attend meetings of the Board as a voting member upon the following circumstances:

(1) A member of the Board for the unit which the alternate member represents is absent; and

(2) Such member, or in the case of incapacitation or death of the member, a relative, has contacted the appropriate officer of the Board to inform such officer of such absence;

(d) An alternate member of the Board, when attending Board meetings in an official capacity, shall have the rights, duties and obligations of a Board member.

§ 1220.208 Removal.

If the Secretary determines that any person appointed under this part fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Secretary shall remove the person from office. A person appointed or certified under this part or any employee of the Board or Committee may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1220.209 Procedure.

(a) At a properly convened meeting of the Board, a majority of the members shall constitute a quorum.

(b)(1) Except for roll call votes, each member of the Board will be entitled to one vote on any matter put to the Board and the motion will carry if supported by a simple majority of those voting.

(2)(i) If a member requests a roll call vote, except as provided in paragraph (b)(2)(ii) of this section, each unit as established under § 1220.201, shall cast one vote for each percent, or portion of a percent, of the average total amount of assessments remitted to the Board that was remitted from the unit (minus refunds) during each of the three previous fiscal years of the Board under § 1220.223.

(ii)(A) During the first fiscal year of the Board, the percentage used to determine the votes given to a unit will be based on annual average soybean production of the three previous years. If a unit is represented by more than one member, each member representing the unit shall receive an equal percentage of the votes allocated to the unit.

(B) During the second and third year this subpart is in effect, the percentage used to determine the votes given to a unit will be based upon averaging the unit's percentage of annual assessments remitted to the Board (minus refunds).

(iii) Should a member representing a unit not be present, then the other members representing such unit shall vote, on an equal basis if there is more than one member representing the unit present, the number of votes which the absent member would have been entitled to vote.

(iv) A motion will carry on a roll call vote if approved by both a simple majority of all votes cast and a simple majority of all units voting (with the vote of each unit determined by a simple majority of all votes cast by members in that unit).

(3) A member may not cast votes by proxy.

(c) In lieu of a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action upon the concurring votes of a majority of its members, or if a roll call vote is requested, a simple majority of all votes cast and a simple majority of all units voting by mail, telephone, facsimile, or telegraph, but any such action by telephone shall be confirmed promptly in writing. In the event that such action is taken, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a regular or special meeting of the Board.

(d) On or after the end of the three-year period beginning on the effective date of this subpart, the Board may recommend to the Secretary changes in the voting procedures of the Board described in paragraph (b) of this section.

§ 1220.210 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their responsibilities under this subpart.

§ 1220.211 Powers of the Board.

The Board shall have the following powers:

(a) To receive and evaluate, or on its own initiative develop, and budget for plans or projects for promotion, research, consumer information, and industry information and to make recommendations to the Secretary regarding such proposals;

(b) To administer the provisions of this subpart in accordance with its terms and provisions;

(c) To make rules to effectuate the terms and provisions of this subpart;

(d) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(e) To disseminate information to producers or producer organizations through programs or by direct contact utilizing the public postage system or other systems;

(f) To assign responsibilities relating to budget and program development to the Committee as provided in § 1220.219.

(g) To select committees and subcommittees of Board members, and to adopt such rules for the conduct of its business as it may deem advisable;

(h) To contract with Qualified State Soybean Boards to implement plans or projects;

(i) To recommend to the Secretary amendments to this subpart; and

(j) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1220.223 in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank which is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

§ 1220.212 Duties.

The Board shall have the following duties:

(a) To meet not less than four times annually, or more often if required for the Board to carry out its responsibilities pursuant to this subpart.

(b) To organize and select from among its members a chairperson, vice chairperson, a treasurer and such other officers as may be necessary.

(c) To appoint from its members an executive committee and to delegate to the committee authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board.

(d) To employ or contract for such persons to perform administrative functions as it may deem necessary and define the duties and determine the compensation of each.

(e) To develop and submit to the Secretary for approval, promotion,

research, consumer information, and industry information plans or projects.

(f) To prepare, and submit to the Secretary for approval, budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of promotion, research, consumer information, and industry information plans or projects, and also including a description of the proposed promotion, research, consumer information, and industry information programs contemplated therein.

(g) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it.

(h) With the approval of the Secretary, to enter into contracts or agreements with appropriate parties, including national nonprofit producer-governed organizations, for the development and conduct of activities authorized under § 1220.230 of this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to § 1220.223. Provided, that the Board shall contract with only one national nonprofit producer-governed organization to administer all projects within a program area.

Any such contract or agreement shall provide that:

(1) The contractor shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective only upon approval of the Secretary; and

(3) The contracting party shall keep complete and accurate records of all of its transactions and make periodic reports to the Board of activities conducted pursuant to a contract and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Board and Secretary may audit the records of the contracting party periodically.

(i) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended.

(j) To establish escrow accounts for the payment of refunds requested pursuant to § 1220.226 and § 1220.227 for the periods established below, and to deposit into such escrow accounts ten percent (10%) of the total amount of assessments collected from units in which a Qualified State Soybean Board does not operate for the applicable period if required by the Secretary:

(1) Period 1—Beginning with the date the results of the continuance referendum are released and ending on the date the results of the producer poll are released;

(2) Period 2—Beginning on the day after the results of the producer poll are released and ending on the date the results of the refund referendum are released.

(3) Period 3—Beginning on the day after the results of the refund referendum are released and ending on the last day refunds of assessments are authorized to be paid: Provided, That a separate escrow account shall be established for each fiscal year elapsing during Period 3.

(k) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may require and to submit a copy of each such audit to the Secretary.

(l) To give the Secretary the same notice of meetings of the Board and committees as is given to members in order that the Secretary, or a representative of the Secretary, may attend such meetings.

(m) To submit to the Secretary such information pursuant to this subpart as may be requested.

(n) To encourage the coordination of programs of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for soybean and soybean products produced in the United States.

Soybean Program Coordinating Committee

§ 1220.213 Establishment and membership.

(a) The Board may establish, with the approval of the Secretary, a Soybean Program Coordinating Committee to assist in the administration of this subpart. The Committee shall consist of 15 members. The Committee shall be composed of 10 Board members elected by the Board and 5 producers elected by the Cooperator Organization.

(b) Board representation on the Committee shall consist of the Chairperson and Treasurer of the Board, and eight additional members duly elected by the Board to serve on the Committee. The eight representatives to the Committee elected by the Board shall, to the extent practicable, reflect the geographic and unit distribution of soybean production.

(c) Cooperator Organization representation on the Committee shall consist of five members elected by the Cooperator Organization Board of Directors. The Cooperator Organization shall submit to the Secretary the names of the representatives elected by the Cooperator Organization to serve on the Committee, the manner in which such election was held, and verify that such representatives are producers. The prospective Cooperator Organization representatives shall file with the Secretary a written agreement to serve on the Committee and to disclose any relationship with any soybean entity or with any organization that has or is being considered for a contractual relationship with the Board. When the Secretary is satisfied that the above conditions are met, the Secretary shall certify such representatives as eligible to serve on the Committee.

§ 1220.214 Term of office.

(a) The members of the Committee shall serve for a term of 1 year.

(b) No member shall serve more than six consecutive terms.

§ 1220.215 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Committee, the Board or the Cooperator Organization, depending upon which organization is represented by the vacancy, shall submit the name of a successor for the position in the manner utilized to appoint representatives pursuant to § 1220.213 above.

§ 1220.216 Procedure.

(a) Attendance of at least 12 members of the Committee shall constitute a quorum at a properly convened meeting of the Committee. Any action of the Committee shall require the concurring votes of at least two-thirds (⅔) of the members present. The Committee shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Committee emergency action must be taken before a meeting can be called, the Committee may take action upon the concurring votes of no less than twelve of its members by mail, telephone, facsimile, or telegraph. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action

had been taken at a properly convened meeting of the Committee.

(c) A member may not cast votes by proxy.

§ 1220.217 Compensation and reimbursement.

The members of the Committee shall serve without compensation but shall be reimbursed by the Board for necessary and reasonable expenses incurred by them in the performance of their responsibilities under this subpart.

§ 1220.218 Officers of the Committee.

The following persons shall serve as officers of the Committee:

(a) The Chairperson of the Board shall be Chairperson of the Committee.

(b) The Committee shall elect or appoint such other officers as it may deem necessary.

§ 1220.219 Powers of the Committee.

If established by the Board, the Committee may have the following powers:

(a) To receive and evaluate, or on its own initiative, develop and budget for plans or projects to promote the use of soybeans and soybean products as well as plans or projects for promotion, research, consumer information, and industry information and to make recommendations to the Board regarding such proposals; and

(b) To select committees and subcommittees of Committee members, and to adopt such rules for the conduct of its business as it may deem advisable.

§ 1220.220 Duties of the Committee.

If established by the Board, the Committee may have the following duties:

(a) To meet and to organize;

(b) To prepare and submit to the Board for approval, budgets on a fiscal period basis of proposed costs of promotion, research, consumer information, and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information, and industry information programs contemplated therein;

(c) To give the Secretary the same notice of meetings of the Committee and its subcommittees as is given to members in order that the Secretary, or the Secretary's representative, may attend such meetings;

(d) To submit to the Board and to the Secretary such information pursuant to this subpart as may be requested; and

(e) To encourage the coordination of programs of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products.

Expenses and Assessments

§ 1220.222 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve) as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. However, during any fiscal year, expenses incurred by the Board for administrative staff costs and their benefits shall not exceed 1 percent of the projected level of assessments, net of projected refunds, of the Board for that fiscal year. Such expenses shall be paid from assessments received pursuant to § 1220.223. The administrative expenses of the Board, including the cost of administrative staff, shall not exceed 5 percent of the projected level of assessments, net of projected refunds, of the Board for that fiscal year.

(b) The Board shall reimburse the Secretary, from assessments received pursuant to § 1220.223, for administrative costs incurred after an Order has been submitted to the Department pursuant to section 1968(b) of the Act; Provided, that the Board shall only be required to reimburse the Secretary for one-half (50%) of the costs incurred by the Secretary to conduct the refund referendum relating to continuation of authority to pay refunds.

(c)(1) The Board may, with the approval of the Secretary, authorize a credit to Qualified State Soybean Boards of up to 5 percent of the amount to be remitted to the Board pursuant to § 1220.223 and § 1220.228 of this subpart to offset collection and compliance costs relating to such assessments and for fees paid to State governmental agencies or first purchasers for collection of the assessments where the payment of such fees by the Qualified State Soybean Board is required by State law enacted prior to November 28, 1990.

(2) The portion of the credit authorized in paragraph (c)(1) of this section which compensates Qualified State Soybean Boards for fees paid to State governmental agencies or first purchasers for collection of the assessments where the payment of such fees by the Qualified State Soybean Board is required by State law enacted prior to November 28, 1990:

(i) Shall not exceed one-half of such fees paid to State governmental agencies or first purchasers, and;

(ii) Shall not exceed 2.5 percent of the amount of assessments collected and remitted to the Board.

(3) Except for that portion of the credit issued pursuant to paragraph (c)(2) of this section, credits authorized by paragraph (c)(1) of this section will be included as part of the Board's administrative expenses.

§ 1220.223 Assessments.

(a)(1) Except as prescribed by regulations approved by the Secretary, each first purchaser of soybeans shall collect an assessment from the producer, and each producer shall pay such assessment to the first purchaser, at the rate of one-half of one percent (0.5%) of the net market price of the soybeans purchased. Each first purchaser shall remit such assessment to the Board or to a Qualified State Soybean Board, as provided in paragraph (a)(5) of this section.

(2) Any producer marketing processed soybeans or soybean products of that producer's own production, shall remit to a Qualified State Soybean Board or to the Board, as provided in paragraph (a)(5) of this section, an assessment on such soybeans or soybean products at a rate of one-half of one percent (0.5%) of the net market price of the soybeans involved or the equivalent thereof.

(3) In determining the assessment due from each producer under paragraph (a)(1) or (a)(2) of this section, a producer who is contributing to a Qualified State Soybean Board shall receive a credit from the Board for contributions to such Qualified State Soybean Board on any soybeans assessed under this section in an amount not to exceed one-quarter of one percent of the net market price of the soybeans assessed.

(4) In order for a producer to receive the credit provided for in paragraph (a)(3) of this section, the Qualified State Soybean Board or the first purchaser must establish to the satisfaction of the Board that the producer has contributed to a Qualified State Soybean Board.

(5)(i) If the soybeans, for which an assessment is paid, were grown in a State other than the State which is the situs of the first purchaser, the first purchaser that collects the assessment shall remit the assessment and information as to the State of origin of the soybeans to the Qualified State Soybean Board operating in the State in which the first purchaser is located. The Qualified State Soybean Board operating in the State in which the first purchaser is located shall remit such

assessments to the Qualified State Soybean Board operating in the State in which the soybeans were grown. If no such Qualified State Soybean Board exists in such State, then the assessments shall be remitted to the Board. The Board, with the approval of the Secretary, may authorize Qualified State Soybean Boards to propose modifications to the foregoing "State of Origin" rule to ensure effective coordination of assessment collections between Qualified State Soybean Boards.

(ii)(A) If a producer pledges soybeans grown by that producer as collateral for a loan issued by the Commodity Credit Corporation, the Commodity Credit Corporation shall deduct the assessment due pursuant to paragraph (a)(1) of this section, based upon the established loan rate, prior to the loan proceeds being disbursed to the producer. The Commodity Credit Corporation shall remit the assessment to the Qualified State Soybean Board in the State in which the soybeans were pledged. Should no Qualified State Soybean Board exist in such State, then such assessment shall be paid to the Board.

(B) Should a producer repay a loan upon which soybeans were pledged, and for which an assessment had been remitted by the Commodity Credit Corporation, the Commodity Credit Corporation shall notify the Qualified State Soybean Board which had received the assessment, or the Board if no Qualified State Soybean Board exists in such State, that the producer has repaid all or a portion of the loan on which the soybeans were previously assessed. The Qualified State Soybean Board, or the Board if no Qualified State Soybean Board exists in such State, shall reimburse to the producer an amount equal to the level of assessment collected and remitted by the Commodity Credit Corporation at loan origination, provided that a refund of such assessment has not been paid to the producer.

(C) Should a producer market soybeans which have been subject to reimbursement pursuant to paragraph (a)(5)(ii)(B) of this section, the first purchaser shall collect and remit the assessment due pursuant to paragraph (a)(1) of this section, or the producer shall remit the assessment pursuant to paragraph (a)(2) of this section.

(iii) Qualified State Soybean Boards and the Board shall coordinate assessment collection procedures to ensure that producers marketing soybeans are required to pay only one assessment per bushel of soybeans and collections are adjusted among States on a mutually agreeable basis.

(b) The collection of assessments pursuant to paragraph (a) of this section, shall commence on and after the date assessments are required to be paid and shall continue until terminated by the Secretary. If the Board is not constituted on the date the first assessments are to be collected, the Secretary shall have the authority to receive the assessments on behalf of the Board, and to hold such assessments until the Board is constituted, then remit such assessments to the Board.

(c)(1) Each person responsible for the collection of assessments under paragraph (a) of this section, shall collect and remit the assessments to the Board or a Qualified State Soybean Board on a monthly basis or as required by State law, but no less than quarterly, unless the Board, with the approval of the Secretary, has specifically authorized otherwise.

(2) Any unpaid assessments due the Board or a Qualified State Soybean Board from a person responsible for remitting assessments to the Board or a Qualified State Soybean Board pursuant to paragraph (a) of this section, shall be increased two percent (2%) each month beginning with the day following the date such assessments were due under this subpart. Any remaining amount due shall be increased at the same rate on the corresponding day of each month thereafter until paid.

(3) The amounts payable pursuant to this section shall be computed monthly on unpaid assessments and shall include any unpaid late charges previously applied pursuant to this section.

(4) For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board or a Qualified State Soybean Board when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(d) Prior to the continuance referendum, the Board, pursuant to procedures approved by the Secretary, shall ensure that each Qualified State Soybean Board is provided credit in accordance with the provisions of section 1969(n)(1) and subject to section 1969(n)(3) of the Act.

(e) Following the continuance referendum, the Board, pursuant to procedures approved by the Secretary, shall ensure annually that each Qualified State Soybean Board is provided credit in accordance with the provisions of section 1969(n)(2) and subject to section 1969(n)(3) of the Act.

§ 1220.224 Refund of assessments paid prior to continuance referendum.

(a) Any producer who, prior to the date of the continuance referendum, pays an assessment to the Board, or who contributes an assessment prior to the continuance referendum to a Qualified State Soybean Board, under authority of the Act and this subpart, and who is not in favor of supporting the promotion and research program as provided for in this Part, shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof satisfactory to the Board, or the Qualified State Soybean Board to which the producer paid the assessment for which a refund is sought, that such producer paid the assessment.

(b) Contributions by a producer to a Qualified State Soybean Board for which the producer has received credit pursuant to § 1220.223(a)(3) shall not be refunded pursuant to this subpart unless:

(1) The Qualified State Soybean Board is authorized or required to pay refunds; and

(2) The producer has requested a refund from the Qualified State Soybean Board in compliance with that State's procedure for refund or, in the absence of State procedures for refunds, in compliance with the procedures for refunds described in § 1220.225.

§ 1220.225 Procedure for obtaining a refund of assessments paid prior to continuance referendum.

(a) Any producer requesting a refund of an assessment paid prior to the continuance referendum shall mail a request for a refund to the Qualified State Soybean Board in the State in which the soybeans were grown or if there is no Qualified State Soybean Board in the State in which the soybeans were grown to the Board.

(b)(1) Any producer requesting a refund of an assessment paid prior to the date of the continuance referendum who resides in a State in which a Qualified State Soybean Board operates shall submit such request in accordance with the State law or regulations authorizing the payment of refunds in that State.

(2) Any producer requesting a refund of an assessment paid prior to the date of the continuance referendum who resides in a State which has a Qualified State Soybean Board which is not authorized by State law, or a State which does not have a Qualified State Soybean Board operating in such State, shall submit such request in accordance with the procedure provided in paragraph (c) of this section.

(c) Each producer who pays an assessment pursuant to this subpart during the period prior to the continuance referendum may obtain a refund of such assessments only by following the procedures prescribed by State law or regulations in the State in which the producer resides. If a Qualified State Soybean Board does not exist in such State, or the Qualified State Soybean Board in such State is not established by State law, then such producer must follow the procedures prescribed in this subsection and any regulations prescribed by the Board and approved by the Secretary.

(1) Any producer requesting a refund of an assessment paid prior to the date of the continuance referendum shall mail a request for a refund to a Qualified State Soybean Board or the Board within 90 days from the date the assessments were due from such producer or that time period provided by State law. The request shall show—

(i) The producers name and address;

(ii) First purchaser's name and address;

(iii) Number of bushels of soybeans, or its equivalent on which a refund is requested;

(iv) Net market value of each bushel of soybeans upon which a refund is requested;

(v) Total amount of refund requested;

(vi) Date or inclusive dates on which assessments were paid;

(vii) Certification that the producer did not collect the assessment from another producer; and

(viii) The producer's signature or properly witnessed mark.

(2) The invoice or accounting given to the producer by the first purchaser or a copy thereof, or such other evidence deemed satisfactory by the Board or Qualified State Soybean Board shall accompany the producer's refund request.

(3) The Board shall pay refund requests within 60 days of the date of receipt of a proper request for refund.

§ 1220.226 Refund of assessments paid after the conduct of the continuance referendum.

(a) Any producer who pays an assessment to the Board after the date the results of the continuance referendum are released, or who contributes an assessment to a Qualified State Soybean Board after the date the results of the continuance referendum are released, under authority of the Act and this subpart, and who is not in favor of supporting the promotion and research program as provided for in this part shall have the right to demand and receive from the Board or the Qualified State Soybean Board subject to paragraph (b) of this section, a refund of such assessment, or a pro rata share thereof, upon submission of proof satisfactory to the Board, or the Qualified State Soybean Board to which the producer paid the assessment for which a refund is sought, that such producer paid the assessment.

(b) Contributions by a producer to a Qualified State Soybean Board for which the producer has received credit pursuant to § 1220.223(a)(3) of this subpart shall not be refunded pursuant to this subpart unless—

(1) the Qualified State Soybean Board is authorized or required to pay refunds; and

(2) the producer has requested a refund from the Qualified State Soybean Board in compliance with that State's procedure for refund or, in the absence of State procedures for refunds, in compliance with the procedures for refunds described in § 1220.227.

§ 1220.227 Procedure for obtaining a refund of assessments paid after the conduct of the continuance referendum.

(a) Any producer requesting a refund of an assessment paid after the date the results of the continuance referendum are released shall mail a request for a refund to the Qualified State Soybean Board in the State in which the soybeans were grown or, if there is no Qualified State Soybean Board in the State in which the producer is located, to the Board.

(b)(1) Any request for a refund by a producer who resides in a State in which a Qualified State Soybean Board operates shall be submitted in accordance with the State law or regulations authorizing the payment of refunds in that State.

(2) Any request for a refund from a producer who resides in a State which has a Qualified State Soybean Board which is not authorized by State law, or a State which does not have a Qualified State Soybean Board operating in such State shall be submitted in accordance with the procedure provided in paragraph (c) this section.

(c) Each producer who pays an assessment pursuant to the Act and this subpart after the date the results of the continuance referendum are released may obtain a refund of such assessment only by following the procedures prescribed by State law or resolution in the State in which the producer resides. If no Qualified State Soybean Board exists in that State, or the Qualified State Soybean Board in such State is not established by State law, then such producer must follow the procedures prescribed in this section and any regulations prescribed by the Board and approved by the Secretary.

(1) Any producer requesting a refund of an assessment paid after the date of the results of the continuance referendum are released shall mail a request for a refund to a Qualified State Soybean Board or the Board within 90 days from the date the assessments were due from such producer or that time period required by State law or regulation. The refund request shall show—

(i) The producers name and address;

(ii) First purchaser's name and address;

(iii) Number of bushels of soybeans, or its equivalent on which a refund is requested;

(iv) Net market value of each bushel of soybeans upon which a refund is requested;

(v) Total amount of refund requested;

(vi) Date or inclusive dates on which assessments were paid;

(vii) Certification that the producer did not collect the assessment from another producer; and

(viii) The producer's signature or properly witnessed mark.

(2) The invoice or accounting given to the producer by the first purchaser or a copy thereof, or such other evidence deemed satisfactory by the Board or the Qualified State Soybean Board shall accompany the producer's refund request.

(d) Payment of refunds of assessments paid after the results of the continuance referendum are released.

The Board shall pay requests for refunds of assessments paid after the date the results of the continuance referendum are released pursuant to the following provisions:

(1) At the end of fiscal year of the Board in which the results of the producers poll are released, the Board, or the Qualified State Soybean Boards, shall pay refunds to producers of assessments paid during the period beginning on the date the results of the continuance referendum are released and ending on the date the results of the producers poll are released from the escrow accounts established pursuant to § 1220.212 or § 1220.228.

(2) If the Secretary determines that a refund referendum shall be conducted, at the end of the fiscal year in which the results of the refund referendum are released, the Board, or the Qualified State Soybean Board, shall pay requested refunds to producers of assessments paid following the date the results of the producers poll are released through the period ending on the date the results of the refund referendum are

released from escrow accounts established pursuant to § 1220.212 or § 1220.228.

(3) If the Secretary determines that, as a result of the refund referendum, authority exists to continue to pay refunds to producers of assessments paid following the refund referendum, at the end of the fiscal year in which the results of the refund referendum are released, and each succeeding fiscal year during which authority to pay refunds exists, the Board, or the Qualified State Soybean Board shall pay refunds requested of assessments paid following the date the results of the refund referendum are released during that fiscal year.

(4) Should requests for refunds of assessments during the period established in paragraph (d) (1), (2), or (3) of this section, exceed the level of funds available for the payment of such requests, the Board, or the Qualified State Soybean Board, shall pro rate the amount of such funds from the escrow account of the Board for such unit, or by the Qualified State Soybean Board.

(5) Should requests for refunds of assessments during the period established in paragraph (d) (1), (2), or (3) of this section, be less than the level of funds available for the payment of such requests, the amount remaining after all refunds are paid shall be divided equally between the Board and the Qualified State Soybean Board subject to the provisions of § 1220.228(a)(1)(vi), and § 1220.228(b)(6).

(6) Such refunds shall be paid within 120 days of the end of the applicable fiscal year.

§ 1220.228 Qualified State Soybean Boards.

(a)(1) Any soybean promotion entity that is authorized by State statute to collect assessments required by State law from soybean producers may notify the Board of its election to be the Qualified State Soybean Board for the State in which it operates so that producers may receive credit pursuant to § 1220.223(a)(3) for contributions to such organization. Only one such entity may make such election or be qualified pursuant to paragraph (a)(2) of this section. Such entity, upon making such election, agrees to the following:

(i) To conduct activities as defined in § 1220.230 that are intended to strengthen the soybean industry's position in the marketplace;

(ii) Provide a report describing the manner in which assessments are collected and the procedure utilized to ensure that assessments due are paid;

(iii) Collect assessments paid on soybeans marketed within the State and establish procedures for ensuring compliance with this subpart with regard to the payment of such assessments;

(iv) Remit to the Board each assessment paid and remitted to it, minus authorized credits issued pursuant to § 1220.222(c) and credits issued to producers pursuant to § 1220.223(a)(3), and other required deductions by the last day of the month following the month in which the assessment was remitted to it unless the Board determines a different date for remittance of assessments;

(v)(A) If the entity is authorized or required to pay refunds to producers, any requests from producers for refunds for contributions to it by the producer following the termination of authority to pay refunds, will be honored by forwarding to the Board that portion of such refunds equal to the amount of credit received by the producer for contributions to it pursuant to § 1220.223(a)(3);

(B) If required by the Secretary, to pay refunds of assessments paid following the date of the continuance referendum pursuant to §§ 1220.226 and 1220.227.

(vi) Establish escrow accounts for the payment of refunds requested pursuant to §§ 1220.226 and 1220.227 for the periods established below and to deposit into such escrow accounts ten percent (10%) of the total amount of assessments collected for the applicable period if required by the secretary:

(A) Period 1—Beginning with the date the results of the continuance referendum are released and ending on the date the results of the producers poll are released;

(B) Period 2—Beginning on the day after the results of the producers poll are released and ending on the date the results of the refund referendum are released;

(C) Period 3—Beginning on the day after the results of the refund referendum are released and ending on the last day refunds of assessments are authorized to be paid, provided that a separate escrow account shall be established for each fiscal year elapsing during Period 3. Interest from the escrow accounts shall accrue to the Qualified State Soybean Board to be used for authorized activities.

(vii) Furnish the Board with an annual report by a certified public accountant or an authorized State agency of all funds remitted to such Board pursuant to this subpart; and

(viii) Not use funds it collects pursuant to this subpart to fund plans or projects which make use of any unfair or deceptive acts or practices with respect to the quality, value or use of any product that competes with soybeans or soybean products; and

(ix)(A) Except as otherwise provided in paragraph (a)(1)(ix)(B) of this section, funds collected or received by the Qualified State Soybean Board under this subpart shall not be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State government, or any political subdivision thereof.

(B) The prohibition in paragraph (a)(1)(ix)(A) of this section, shall not apply to—

(*1*) the communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research, consumer information, and industry information under the Order;

(*2*) any action designed to market soybeans or soybean products directly to a foreign government or political subdivision thereof; or

(*3*) the development and recommendation of amendments to this subpart.

(*2*) If no entity elects to serve as a Qualified State Soybean Board within a State pursuant to paragraph (a)(1) of this section, any State soybean promotion entity that is organized and operating within a State, and receives assessments or contributions from producers and conducts soybean or soybean product promotion, research, consumer information, or industry information programs, may apply for certification as the Qualified State Soybean Board for such State so that producers may receive credit pursuant to § 1220.223(a)(3) for contributions to such organizations. All provisions of this subpart applicable to Qualified State Soybean Boards will be applicable to such entity. The Board shall review such applications for certification and shall make a determination as to the certification of each applicant.

(b) In order for the State soybean entity to be certified by the Board pursuant to paragraph (a)(2) of this section, as a Qualified State Soybean Board, the entity must:

(1) Conduct activities as defined in § 1220.230 that are intended to strengthen the soybean industry's position in the marketplace;

(2) Submit to the Board a report describing the manner in which assessments are collected and the procedure utilized to ensure that assessments due are paid;

(3) Certify to the Board that such State entity will collect assessments paid on soybeans marketed within the State and establish procedures for ensuring

compliance with this subpart with regard to the payment of such assessments;

(4) Certify to the Board that such organization will remit to the Board each assessment paid and remitted to it, minus credits issued pursuant to § 1220.222(c) and authorized credits issued to producers pursuant to § 1220.223(a)(3), and other required deductions by the last day of the month following the month in which the assessment was remitted to it unless the Board determines a different date for remittance of assessments;

(5)(i) If the entity is authorized or required to pay refunds to producers, certify to the Board that any requests from producers for refunds for contributions to it by the producer following the termination of authority to pay refunds, will be honored by forwarding to the Board that portion of such refunds equal to the amount of credit received by the producer for contributions to it pursuant to § 1220.223(a)(3);

(ii) If required by the Secretary to pay refunds of assessments paid following the date of the continuance referendum pursuant to §§ 1220.226 and 1220.227.

(6) Certify to the Board that the entity will establish escrow accounts for the payment of refunds requested pursuant to §§ 1220.226 and 1220.227 for the periods established below and to deposit into such escrow accounts ten percent (10%) of the total amount of assessments collected for the applicable period if required by the Secretary:

(i) Period 1—Beginning with the date the results of the continuance referendum are released and ending on the date the results of the producers poll are released;

(ii) Period 2—Beginning on the day after the results of the producers poll are released and ending on the date the results of the refund referendum are released;

(iii) Period 3—Beginning on the day after the results of the refund referendum are released and ending on the last day refunds of assessments are authorized to be paid, Provided that a separate escrow account shall be established for each fiscal year elapsing during Period 3. Interest from escrow accounts shall accrue to the Qualified State Soybean Board to be used for authorized activities.

(7) Certify to the Board that it will furnish the Board with an annual report by a certified public accountant or an authorized State agency of all funds remitted to such Board pursuant to this subpart; and

(8) Not use funds it collects pursuant to this subpart to fund plans or projects which make use of any unfair or deceptive acts or practices with respect to the quality, value or use of any product that competes with soybeans or soybean products; and

(9)(i) Except as otherwise provided in paragraph (b)(9)(ii) of this section, funds collected or received by the Qualified State Soybean Board under this subpart shall not be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State government, or any political subdivision thereof.

(ii) The prohibition in paragraph (b)(9)(i) of this section, shall not apply to—

(A) the communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research, consumer information, and industry information under this subpart;

(B) any action designed to market soybeans or soybean products directly to a foreign government or political subdivision thereof; or

(C) the development and recommendation of amendments to this subpart.

(c) Notwithstanding any other provisions of this subpart, and provided that activities of a Qualified State Soybean Board are authorized under the Act and this subpart, the Board shall not have the authority to:

(1) Establish guidelines, regulations, or rules which would restrict or infringe upon a Qualified State Soybean Board's authority to determine administrative or program expenditure allocations or administrative or program implementation; and

(2) Direct Qualified State Soybean Boards to participate or not participate in program activities or implementation.

(d) The Board shall establish procedures, after an opportunity for public comment and subject to approval of the Secretary, which provide Qualified State Soybean Boards with a right to present information to the Board prior to any determinations relating to nonparticipation as a Qualified State Soybean Board following initial election or determination as a Qualified State Soybean Board.

§ 1220.229 Influencing governmental action.

(a) Except as otherwise provided in paragraph (b) of this section, funds collected or received by the Board under this subpart shall not be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State government, or any political subdivision thereof.

(b) The prohibition in paragraph (a) of this section shall not apply to—

(1) the development and recommendation of amendments to this subpart;

(2) the communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research, consumer information, and industry information under this subpart; or

(3) any action designed to market soybeans or soybean products directly to a foreign government or political subdivision thereof.

§ 1220.230 Promotion, research, consumer information, and industry information.

(a) The Board shall receive and evaluate, or on its own initiative, develop and submit to the Secretary for approval any plans or projects authorized in this subpart. Such plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate promotion, research, consumer information, and industry information activities with respect to soybean and soybean products;

(2) The establishment and conduct of research, and studies with respect to the sale, distribution, marketing and utilization of soybean and soybean products and the creation of new products thereof, to the end that marketing and utilization of soybean and soybean products may be encouraged, expanded, improved or made more acceptable; and

(3) Such other activities as are authorized by the Act and this subpart.

(b) Each plan or project described in paragraph (a) of this section, shall be periodically reviewed or evaluated by the Board to ensure that each such plan or project contributes to an effective program of promotion, research, consumer information, and industry information. If it is found by the Board that any such plan or project does not further the purposes of the Act, then the Board shall terminate such plan or project.

(c) No such plans or projects shall make use of unfair or deceptive acts or practices with respect to the quality, value or use of any competing product. In carrying out any plan or project funded by the Board described in paragraph (a) of this section, no preference shall be given to a brand or trade name of any soybean product without the approval of the Board and the Secretary.

Reports, Books, and Records

§ 1220.241 Reports.

Each producer marketing processed soybeans or soybean products of that producer's own production and each first purchaser responsible for the collection of assessments under § 1220.223 shall be required to report to the Board periodically such information as may be required by the regulations recommended by the Board and approved by the Secretary. Such information may include but not be limited to the following:

(a) The number of bushels of soybeans purchased, initially transferred, or which, in any other manner, is subject to the collection of assessment;

(b) The amount of assessments remitted;

(c) The basis, if necessary, to show why the remittance is less than one-half percent (0.5%) of the net market price per bushel of soybeans purchased multiplied by the number of bushels purchased; and

(d) The date any assessment was paid.

§ 1220.242 Books and records.

(a) Except as provided in paragraph (b) of this section, each person who is subject to this subpart shall maintain and make available for inspection by the Board or Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued under this part, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

(b) Any producer who plants less than 25 acres of soybeans annually and does not market such soybeans shall not be required to maintain books or records pursuant to this subpart.

§ 1220.243 Confidential treatment.

Except as otherwise provided in the Act, financial or commercial information that is obtained under the Act and this subpart and that is privileged and confidential shall be kept confidential by all persons, including employees and former employees of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and employees and all former officers and employees of contracting agencies having access to such information, and shall not be available to Board members or any other producers. Only those persons having a specific need for such information in order to effectively administer the provisions of this part shall have access to such information.

Miscellaneous

§ 1220.251 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property, owned, in the possession of or under the control of the Board, including any unpaid claims or property not delivered or any other claims existing at the time of such termination.

(b) The trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to § 1220.212(h);

(3) From time to time account for all receipts and disbursements; and

(4) Deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct, and upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information, or industry information plans or projects authorized pursuant to this subpart.

§ 1220.252 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

§ 1220.253 Personal liability.

No member, employee or agent of the Board, including employees, agents or board members of Qualified State Soybean Boards, acting pursuant to authority provided in this subpart, shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission, of such member or employee, except for acts of dishonesty or willful misconduct.

§ 1220.254 Patents, copyrights, inventions, and publications.

(a) Any patents, copyrights, inventions, or publications developed through the use of funds remitted to the Board under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Upon termination of this subpart, § 1220.251 shall apply to determine disposition of all such property.

(b) Notwithstanding the provisions of paragraph (a) of this section, if patents, copyrights, inventions, or publications are developed by the use of funds remitted to the Board under this subpart. Should patents, copyrights, inventions or publications be developed through the use of funds remitted to the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions, or publications shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, invention or publication.

§ 1220.255 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board, or by any Qualified State Soybean Board recognized, or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1220.256 Separability.

If any provision of this subpart is declared invalid or the applicability

thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart of the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1220.257 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511, is OMB number 0581–0093, except Board member nominee information sheets are assigned OMB number 0505–0001.

Done at Washington, DC, July 3, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 91–16219 Filed 7–3–91; 3:55 pm]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 245a

[INS No. 1432–91]

One-Year Extension of Deadline for Filing Applications for Adjustment From Temporary to Permanent Residence for Legalized Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements section 245A of the Immigration and Nationality Act (INA), as amended by the Immigration Act of 1990 (IMMACT), by providing for a one-year extension of the deadline for filing applications for permanent residence under the Legalization Program and, as provided by IMMACT, amending the fee schedule to charge a late-filing fee of $40.00 in addition to the original $80.00 fee for filing Form I–698. This rule also provides for the sua sponte reopening and re-adjudicating without fee of those applications which were previously denied for late filing. In addition, this rule amends regulations providing for the issuance of an Order to Show Cause and Warrant of Arrest if the United States Attorney declines to prosecute a case involving fraud or willful misrepresentation or concealment of a material fact.

DATES: This interim rule is effective July 9, 1991. Written comments must be received on or before August 8, 1991.

ADDRESSES: Please submit written comments, in triplicate, to Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, room 5304, 425 I Street NW., Washington, DC 20536. Please include INS number 1432–91 on the mailing envelope to ensure proper handling.

FOR FURTHER INFORMATION CONTACT: Janet M. Charney, Deputy Assistant Commissioner, Legalization Program, Immigration and Naturalization Service, room 5250, 425 I Street NW., Washington, DC 20536, telephone (202) 514–5309.

SUPPLEMENTARY INFORMATION: On November 29, 1990, section 245A of the Immigration and Nationality Act was amended to provide for a one-year extension of the deadline for filing applications for adjustment from temporary to permanent resident status for legalized aliens.

This rule also provides for the sua sponte reopening and re-adjudication of those applications which were denied for late filing, as they are now considered to have been timely filed. Related amendments are being made to 8 CFR 103.7 to provide for a fee of $120.00 (also filed with Form I–698, Application to Adjust Status from Temporary to Permanent Resident) from those who missed the original one-year filing deadline and filed their application on or after the date this rule is published in the **Federal Register**. This fee represents the original Form I–698 filing fee of $80.00 plus additional administrative costs incurred by the government in the administration of late applications. Additionally, as throughout the Legislation Program, a "family cap" fee is provided. The maximum amount payable by a family (husband, wife and any minor children) shall be three hundred and sixty dollars ($360.00). Since this rule affects persons who are currently ineligible to file applications for permanent residence as they have exceeded the thirty-one month deadline, the interim rule is being issued to allow Service Centers to accept applications which are filed within forty-three months of approval for temporary residence, and would now be considered timely filed, while allowing for public comment.

This rule also amends 8 CFR 245a.1(e) by removing the provision of issuing an Order to Show Cause and Notice of Hearing (Form I–221) and Warrant for Arrest of Alien (Form I–200) if the United States Attorney declines to prosecute a case involving fraud or willful misrepresentation or concealment of a material fact, knowingly providing a false writing or document in making an application, knowingly making a false statement or representation, or engaging in any other activity prohibited by section 245A(c)(6) of the Act. This provision was also contained in 8 CFR 245a.2(t)(4), which was removed by an amendment in the **Federal Register**, 53 FR 23381, dated June 22, 1988. Not removing this provision in § 245a.1(e) at that time was an oversight and is being accomplished now to bring the regulations into conformity with the earlier amendment.

Compliance with 5 U.S.C. 553 as to notice of proposed rule making is unnecessary because this rule relates to agency management.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget, under the Paperwork Reduction Act, and clearance numbers are provided in 8 CFR 299.5.

List of Subjects

8 CFR Part 103

Aliens, Availability of service records, Delegation of authority, Fees.

8 CFR Part 245a

Administrative practice and procedure, Aliens.

Accordingly, title 8, chapter I of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 522a; 8 U.S.C. 1101, 1103, 1201, 1304; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 101–649.

2. Section 103.7, paragraph (b)(1) is amended by revising the entry for Form I–698 to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–698. For filing application for adjustment from temporary resident status to that of lawful permanent resident under section 245A(b)(1) of the Act, as amended—to be remitted in the form of a cashier's check, certified bank check or money order. For applicants filing within thirty-one months from the date of adjustment to temporary resident status, a fee of eighty dollars ($80.00) for each application is required at the time of filing with the Immigration and Naturalization Service. The maximum amount payable by a family (husband, wife, and any minor children (under 18 years of age living at home)) shall be two hundred and forty dollars—($240.00). For applicants filing after thirty-one months from the date of approval of temporary resident status, who file their applications on or after July 9, 1991, a fee of $120.00 (a maximum of $360.00 per family) is required. The adjustment date is the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later.

* * * * *

PART 245A—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUB. L. 99–603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUB. L. 100–204, SECTION 902

3. The authority citation for part 245A is revised to read as follows:

Authority: Pub. L. 99–603, 100 Stat. 3359, 8 U.S.C. 1101, 1103, 1255a, 1255a note; Pub. L. 100–204, 101 Stat. 1331; Pub. L. 100–649.

§ 245a.1 [Amended]

4. In § 245a.1, paragraph (e) is amended by removing the last sentence in the paragraph beginning with the phrase "If prosecution is declined * * *"

§ 245a.2 [Amended]

5. In § 245a.2, paragraph (u)(1)(iv) is amended by removing the term "thirty-one (31)" and inserting the term "forty-three (43)" in its place.

§ 245a.3 [Amended]

6. In § 245a.3, paragraph (a)(2) is amended by removing the number "30" and inserting the number "43" in its place.

7. In § 245a.3, a new paragraph (a)(3) is added to read as follows:

§ 245a.3 Application for adjustment from temporary to permanent resident status.

(a) * * *

(3) The Service Center Director shall sua sponte reopen and reconsider without fee any application which was previously denied for late filing. No additional fee will be required for those applications which are filed during the twelve month extension period but prior to July 9, 1991.

* * * * *

§ 245a.3 [Amended]

8. In § 245a.3, paragraph (b)(1) is amended by removing the number "30" and inserting the number "43" in its place.

9. In § 245a.3, paragraph (c)(3) is amended by removing the number "30" and inserting the number "43" in its place.

10. In § 245a.3, paragraph (d)(6) is amended by removing the number "30" and inserting the number "43" in its place.

Dated: June 4, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91–16211 Filed 7–8–91; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563 and 584

[No. 91–385]

RIN 1550–AA33

Qualified Thrift Lender Test

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision ("OTS") is issuing its final qualified thrift lender ("QTL") regulation. This rule implements revisions to the QTL test made by the Financial Institutions Reform, Recovery and Enforcement Act of 1989. Accordingly, it imposes a 70% QTL test, revises the list of assets that savings associations may use as qualified thrift investments, and revises the definition of "portfolio assets" which comprise the denominator of the QTL ratio. Provisions governing the penalties for failure of the QTL test have previously been incorporated into the OTS's rules.

EFFECTIVE DATE: July 9, 1991.

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SUPPLEMENTARY INFORMATION:

I. Background

The OTS is today issuing a final rule amending its QTL regulations. These amendments implement certain statutory changes resulting from the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183 ("FIRREA").[1] FIRREA modified the QTL test originally established by the Competitive Equality Banking Act of 1987, Public Law No. 100–86, 101 Stat. 552. ("CEBA") in four principal respects: (1) It increased from 60 to 70 percent the threshold ratio, that is, the "actual thrift investment percentage" or "ATIP," needed to meet the QTL test; (2) it redefined the "qualified thrift investments" or "QTI" that may be counted to meet the test; (3) it redefined the asset base or denominator—called "portfolio assets"—upon which the QTL ratio is based; and (4) it increased the severity of the penalties that result from failing the QTL test.

Today's final rule implements the first three of these modifications as well as other revisions required by FIRREA. The rule sets forth a new QTL test that requires a savings association to maintain 70 percent of its portfolio assets in qualified thrift investments in order to retain QTL status. It redefines the components of the numerator (qualified thrift investments) and the denominator (portfolio assets) of the QTL ratio. It implements the statutory provisions revising the computation period, establishing a requirement for consistent accounting principles, and governing requalification following a QTL failure. The examples contained in an appendix to this final rule provide further guidance to assist thrifts in calculating the QTL ratio.

The statutory provisions that are implemented by today's rule will take

[1] Section 303 of FIRREA amends section 10(m) of the Home Owners' Loan Act ("HOLA"). The amendments to the HOLA made by section 303 will take effect on July 1, 1991. Upon their effective date, they will be codified at 12 U.S.C. 1467a(m). References in this document to section 10(m) mean section 10(m) of the HOLA as amended by FIRREA. The FIRREA QTL provisions are cited by references to the appropriate pages in the Statutes at Large.

effect on July 1, 1991. Savings associations are subject to the new statutory requirements as of that date. It is important to note, however, that savings associations need not meet the 70% QTL test immediately on July 1, 1991. As explained more fully below, the statute establishes a two-year measuring cycle, so that savings associations may first fail the new, 70% test 104 weeks after its inception, or the week ending June 27, 1993.

The penalties that result from failing to maintain the minimum QTL ratio took effect August 10, 1990, and have previously been incorporated into the QTL regulations.[2]

This final rule will relocate the QTL regulations from subchapter F, part 584 to part 563 of subchapter D of the OTS's regulations, except that the provisions addressing QTL penalties for holding companies will remain in part 584, subchapter F.

A. The FIRREA Revisions to the QTL Test

FIRREA substantially modified the QTL test first enacted in CEBA. The QTL test requires savings associations to maintain a statutorily prescribed percentage of their assets in housing-related investments, defined as "qualified thrift investments." This percentage is known as the actual thrift investment percentage; it is a ratio whose numerator is QTI and whose denominator is "portfolio assets." The term portfolio assets is statutorily defined to mean a savings association's total assets less goodwill and other intangible assets, the thrift's business property, and a limited amount of liquid assets.

While retaining the conceptual approach of the CEBA QTL test, FIRREA redefined the QTL ratio's numerator (QTI), and denominator (portfolio assets), and increased the ATIP from 60 to 70 percent. In redefining QTI, FIRREA significantly limited the types of assets available to meet the QTL test and divided them into two "baskets," one available in unlimited amounts and the other limited to an amount equal to 15 percent of portfolio assets.

The unlimited basket contains only housing-related assets, while the 15 percent baskets contains both housing and consumer loan assets and assets associated somewhat more broadly with community purposes. The latter category includes loans and investments in community-related assets such as churches, hospitals, and small businesses in credit-needy areas, as well as certain low-cost housing, or "starter-home," loans.

In addition, the statute identified certain assets to be used only by Puerto Rican and Virgin Island thrifts to meet the QTL test.

FIRREA significantly altered the time period over which a thrift's ATIP is measured, requiring that a savings association maintain its ATIP as a daily or weekly average over a two-year period. It required thrifts to use "consistent accounting" in determining their ATIPs, thereby requiring all assets included in the numerator also to be included in the denominator. Finally, it restricted to one the number of times a thrift could requalify as a QTL after failing the test.

B. Description of the Proposal

On April 26, 1991, the OTS published in the **Federal Register** a notice of proposed rulemaking describing amendments to the qualified thrift lender regulations. 56 FR 19318 (April 26, 1991). The public comment period on the proposal closed on May 28, 1991.

In accordance with the statute, the proposed rule required savings associations to maintain a 70 percent ratio of qualified thrift investments to portfolio assets. The proposal required thrifts to maintain weekly ATIPs (although a daily ATIP requirement was reserved for special cases); to average them over a two-year period beginning on July 1, 1991, *i.e.*, a rolling or moving 104-week period; and to report the 104-week average on the quarterly thrift financial report ("TFR").

A thrift would fail the new test any time its reported average ATIP measured over the 104-week period fell below the required 70 percent. Similarly, a thrift would requalify as a QTL the first time its reported average ATIP rose to 70 percent or above. As FIRREA requires, the proposal restricted requalification to a single occurrence. If a savings association fails a second time, no additional requalification is permissible.

In redefining the QTL test, FIRREA listed specific items allowed as QTI. The proposed rule closely followed the statutory definition. In determining QTI, the proposal also followed the statute by requiring a thrift to consolidate with its subsidiaries in only two instances: First, if the thrift used a subsidiary's QTI toward meeting its ATIP; second, if loans originated by a subsidiary and subsequently sold within 90 days were counted by the thrift in determining its ATIP. Absent these two conditions, the proposal permitted a thrift to choose whether to consolidate any or all of its subsidiaries.[3]

II. Summary of Comments

A. General Summary

The OTS received a total of 34 letters of comment from 32 different sources. Those who submitted comments included 18 state and federal savings associations and federal savings banks; 4 state savings banks; 4 law firms; 4 thrift trade associations; 1 home builders trade association; and the Federal Home Loan Bank of New York.

Generally, the commenters expressed concern over savings institutions' ability to meet the heightened requirements of the new test while remaining competitive in the rapidly evolving financial services market. Some comment letters focused on specific provisions of the rule and the statute, urging certain clarifications and adjustments.

B. Specific Issues Discussion

1. Burdens of New QTL Test

Although most commenters generally favored the proposed rule, including 5 who supported its immediate adoption, a number of commenters expressed unease about the impact on the thrift industry of the heightened QTL requirements. Many of these commenters pressed for specific changes to the rule that can only be accommodated by legislative amendment to the statute.

Several commenters predicted that the new QTL test would cause many thrifts to fall out of QTL compliance. The penalties imposed as a result of the failure would have a negative effect upon the ability of the industry to grow and to contribute to the development of the home lending business. One commenter objected to the one-time limit imposed on the previously unlimited chances to requalify.

Five commenters stated that the requirement of weekly averaging is overly burdensome. Although the weekly averaging method is preferable to daily averaging, these commenters

[2] The FIRREA amendments also reduced the transition period for state-chartered savings banks by two years and repealed the five-year waiting period for requalification following QTL test failure. These changes, as well as the FIRREA penalty provisions, were incorporated without elaboration into the current QTL rule when the Office's regulations were recodified after FIRREA. See 54 FR 49411, 49419 (Nov. 30, 1989); 12 CFR 584.6 (1991).

[3] Similarly, if a thrift invested in a service corporation that derives 80% of its annual gross revenues from housing-related activities, the thrift could either consolidate that service corporation (assuming that the thrift controlled the service corporation) or the thrift could include its investment in the service corporation as QTI, subject to the 15% of portfolio assets limitation.

advocated adoption of a monthly averaging method, as was done under the old test. One commenter expressed interest in having the option to perform daily averaging.

One savings association expressed dissatisfaction with the 50% cap on mortgage loans originated and sold within 90 days and counted in the 15% basket, advocating that the 50% cap and the 15% basket limitation be raised in order to further the stated legislative intent to encourage savings institutions to participate in the business of residential mortgage lending. Two commenters said that the 5% cap on consumer loans was overly restrictive and should be increased to at least 10%.

Seven commenters argued that the liquid assets portion of the QTL calculation threatens the safety of the entire thrift industry. Section 10(m)(4)(B) of the HOLA permits a thrift to deduct liquid assets from portfolio assets but in an amount not exceeding 10% of total assets. Reflecting the views of other commenters, one thrift president characterized this limitation as "amazingly shortsighted and imprudent" given the increasing volatility of financial markets. The restriction on the amount of liquid assets that can count toward satisfaction of the QTL test, these commenters assert, penalizes the prudent financial portfolio manager at a time when greater emphasis should be placed on an institution's liquidity.

The relief from the restrictions and hardships described by these commenters is beyond the scope of the rulemaking process because the provisions they cite are contained in the express language of FIRREA.[4] FIRREA itself imposes the higher QTL test, requires daily or weekly—not monthly—averaging of the ATIP, establishes the penalties for failing, and restricts to one the previously unlimited number of opportunities to requalify. The statute restricts the amount and type of liquid assets that can be included in portfolio assets and caps the amount of both mortgages originated and sold within 90 days and consumer loans that can be credited toward the QTI. OTS is therefore unable to modify its proposal as these commenters have urged. Nonetheless, as provided in the proposal, OTS has reserved the authority of the Regional Director to permit or impose daily averaging of the QTL data.

2. Obligations of Deposit Insurance Agencies as "Covered Assets"

Five commenters—two savings associations and three Federal savings banks—urged OTS to include in QTI both the total amount of the value of any asset held by a savings association and guaranteed by the Federal Desposit Insurance Corporation ("FDIC"), the former Federal Savings and Loan Insurance Corporation ("FSLIC"), the FSLIC Resolution Fund, or the Resolution Trust Corporation and the value of the guarantee itself. Under the CEBA QTL test, OTS and its predecessor the Federal Home Loan Bank Board ("FHLBB") had interpreted a similar provision to allow the inclusion in QTI of only the amount of the guarantee, as accounted for under Generally Accepted Accounting Principles, unless the underlying asset was itself a QTI. In that case, the value of the underlying asset would also count as a QTI.

The OTS has determined to continue this policy regarding covered assets for two reasons. First, inclusion of a covered asset in QTI regardless of whether it would otherwise count as QTI departs from the Congressional intent to define QTI conservatively. Second, the position advocated by the commenters could in some circumstances result in double-counting. An example illustrates the current policy.

If a thrift held purchased mortgage servicing rights subject to FSLIC capital loss coverage, the dollar amount of the FSLIC guarantee may, under the current rule, be counted as a QTI for five or ten years, depending upon the date of the issuance of the guarantee. See 12 CFR 563.51 (f)(1)(iv), (f)(1)(v). Because purchased mortgage servicing rights are not included as QTI under section 10(m)(4)(C) of HOLA, the value of the servicing rights cannot be included in the numerator of the QTL ratio under the new rule, even though the value of the FSLIC guarantee may be counted.

In contrast, if the covered asset were domestic residential real estate owned ("REO"), then a FSLIC or FDIC guarantee associated with that REO would be a QTI, as would the REO. In some instances, the value of the REO may exceed the value of the guarantee. In those cases, the thrift may include only the greater value in the calculation of its QTI. To permit otherwise in these circumstances would allow the thrift to get double credit for the asset and its guarantee.

The OTS notes, however, that many savings associations that participated in transactions in which FSLIC guarantees were created sought and received waivers of the QTL Test. These waivers typically excused compliance with the QTL test for specific periods of time. Because the statute continues explicitly to authorize the Director to provide such waivers, OTS need not rescind them. In fact, it is OTS policy to honor such waivers of the QTL test.

3. Mortgage Loans Made and Sold Within 90 Days

Two Federal savings banks commented on the QTL treatment of home mortgage loans originated and sold within 90 days as QTI. One commenter suggested that the total amount of such loans, rather than only 50%, should count as QTI and that the 15% limit on the inclusion of certain QTI should be increased. Both of these suggestions address statutory requirements, and any change to the final rule would require legislative action.

The second comment requested clarification as to how a thrift would calculate the eligible loan amounts given the weekly averaging requirement. The commenter suggested that OTS allow a thrift to include, in the weekly average, 50% of the dollar amount of loans sold within 90 days of origination in the preceding quarter. The OTS believes this comment has merit and has therefore determined to accept the commenter's suggestion as a reasonable method of determining the dollar amount of such loans on a quarterly basis.

4. Securities Related to Mortgage Lending

Several commenters expressed the view that investments in the stock of the Federal Home Loan Banks ("FHLB"), the Federal National Mortgage Association ("Fannie Mae"), and the Federal Home Loan Mortgage Corporation ("Freddie Mac") should be included as a QTI. These commenters reason that these corporate entities all share the same goal of facilitating home mortgage lending.

Another commenter, working from the definition of community service facilities in § 563.51(b) of the proposed regulation, suggested that a security backed by or representing an interest in

[4] A number of commenters sought OTS support for efforts to obtain legislative relief from the statute's requirements. A few commenters sought OTS endorsement of specific bills recently introduced by members of Congress that would amend section 10(m) of the HOLA to address concerns raised by the commenters. These commenters advocated various amendments including lowering the ATIP to 50% of portfolio assets; making extensive additions to the list of assets that would be included as QTI; raising the statutory caps to include more consumer loans, community service loans, and mortgage loans originated and sold within 90 days in the QTI calculation; and deducting a greater percentage of liquid assets from portfolio assets.

loans for the acquisition, construction, or improvement of community service facilities should be included as QTI. The commenter advocated the explicit inclusion of such securities as a logical extension of the legislative intent to promote the extension of credit to these sectors of the community.

While the reasoning of these commenters may have merit, OTS has concluded that it may add to the statutorily prescribed list of QTI only in very limited circumstances. See 56 FR 19,320–21 (proposal discussion of the inclusion in QTI of certain REO). The OTS declines to extend the definition of QTI to include them at this time.

5. 80% Revenue Test for Investment in Subsidiaries

Two commenters, a law firm and a Federal savings bank, requested clarification regarding the inclusion in QTI of a thrift's investment in a service corporation that derives 80% of its annual gross revenues from activities directly related to the business of home lending and construction. The law firm inquired whether the service corporation's ownership of Freddie Mac stock would be considered an activity directly related to home lending.

The activities of both Freddie Mac and Fannie Mae strengthen the secondary mortgage market, helping to make new ; funds available for mortgage lending. In this way they contribute significantly to the availability of housing credit. Accordingly, the OTS finds that their activities are sufficiently "directly related to purchasing, refinancing, constructing, improving or repairing domestic residential real estate" such that income derived from Freddie Mac or Fannie Mae stock held by a subsidiary may be counted toward determining whether the subsidiary meets the 80% annual gross revenue test.

Alternatively, the commenter suggested that Freddie Mac stock itself might qualify under the mortgage-backed securities provision in the statutory definition of QTI. OTS declines to interpret the definition of QTI to include Freddie Mac stock. The ownership interest in Freddie Mac represented by shares of its stock is, in the OTS's view, different from, and not included within, the usual meaning of the term "mortgage-backed security."

The Federal savings bank commented that it would be impossible to determine whether a service corporation meets the 80% of revenues test on a weekly basis in a cost effective manner. The commenter suggested, therefore, that the OTS allow the thrift to include the investment in the service corporation if it derived 80% of its annual gross revenues from qualifying activities for the 4-quarter period immediately preceding the quarter in which the calculation is made. The OTS agrees that such a method is both practical and necessary and has incorporated it in the final rule.

6. Treatment of Savings Associations in Puerto Rico and the Virgin Islands

Three commenters expressed concern regarding the proposal's treatment of thrifts headquartered in Puerto Rico. As the commenters pointed out, the proposal would allow those thrifts that were QTLs on June 30, 1991, to be deemed QTL-qualifiers during the initial 104-week period of the new test beginning July 1, 1991. These Puerto Rican thrifts, however, have not been subject to the penalties for the loss of QTL status until the onset of the new test. Thus, the commenters argue that the proposal would unfairly penalize Puerto Rican thrifts by denying them the 2-year presumption of qualification.

These comments have merit. Congress has accorded special treatment to both Puerto Rican and Virgin Island thrifts, recognizing the unique difficulties they may encounter in meeting the QTL test. While these thrifts will no longer be exempt from the penalties, OTS has decided not to base initial determination of these thrifts' compliance with the new test on the old test. Instead, because Puerto Rican and Virgin Island thrifts were not subject to the QTL penalties on June 30, 1991, they will be deemed to be QTLs on July 1, 1991, and for the next 104-week period. The language of the final rule reflects this change in approach. In all other respects, except as expressly provided by the regulations, Puerto Rican and Virgin Island thrifts are subject to the same rules as other thrifts.

Commenters also requested clarification as to how OTS intends to apply the special rules defining QTI for Puerto Rican and Virgin Island thrifts. The Proposal left unclear whether § 563.51(f)(3), providing such thrifts with additional qualifying investments, would be subject to the 15% of Portfolio assets limitation. The items contained in § 563.51(f)(3), which applies only to the Puerto Rican and Virgin Island thrifts, in part parallel or duplicate those in § 563.51(f)(1)(vi), which is applicable to all thrifts and which is subject to the 15% limitation. The statute does not specifically subject the subsection (f)(3) assets to a 15% limitation, nor does it specifically permit inclusion to an unlimited extent. The legislative history does not offer guidance on this narrow issue. The OTS is therefore free to interpret these provisions in the manner that best effectuates their purpose.

In the final rule, OTS recognizes the overarching Congressional intent to treat Puerto Rican and Virgin Island thrifts according to certain special rules in connection with the QTL test. The final rule provides that these assets are includable without limit. The OTS notes, however, that Puerto Rican and Virgin Island thrifts may not double-count those investments that are includable under both the special rule and the standard rule for all thrifts.

7. Definitions Requiring Further Clarification

A number of the comment letters sought clarification of defined terms or guidance on calculating the components of the QTL ratio.

a. *"Community Service Facilities."* Several commenters asked for expanded definitions of institutions listed as community service facilities. The definitions of church, school, nursing home, and hospital in the final rule include facilities providing substantially similar services. OTS does not believe that a more expansive list of such facilities is warranted in the regulation but may, from time to time, provide informal guidance on such questions. In further defining the term small business, the OTS may consider guidance obtained from the Small Business Administration.

b. *"Starter Homes."* FIRREA contained very specific language defining starter homes for purposes of the QTL test. Starter homes are those with a purchase price not greater than 60 percent of the median value of comparable newly constructed 1- to 4-family residences within the local community in which such real estate is located. The proposal indicated that OTS would rely on the statutory definition and add the requirement that associations could only double-count loans to fund such homes if the homes were in the association's CRA community. The OTS planned to provide supervisory guidance on how associations could prove the property securing their loans met these standards.

One commenter detailed its search for the specific data required to meet the definition of starter home, and concluded that the data were not available for its association's community. Other commenters argued that OTS should publish a specific list of housing value limits for starter homes for each community.

The OTS acknowledges that the specific data described in the statute is

not available and has concluded as a result that it will be necessary to permit savings associations to use other data that provides similar information.

c. *"Credit-needy areas."* Two commenters asked for a more explicit definition of credit-needy areas. In addition, one of these argued that a designation by the U.S. Bureau of Census and the Federal Financial Institutions Examination Council ("FFIEC") as a low-moderate income county was not an expansive enough definition of a credit-needy area for the purposes of lending to health care or educational institutions.

The OTS proposes to use the low-to-moderate income definition as a proxy for credit-needy area, and allow institutions to request designation of further credit-needy areas. The OTS will issue supervisory guidance on delineating additional credit-needy areas.

8. Calculation of the ATIP

Five commenters question whether the ATIP should be calculated on a weighted average by summing the weekly components of the ATIP into one ratio for the period, instead of a straight average of the weekly ratios by summing the ratios for the period and dividing by the number of weeks.

The use of the two methods yield only a minimal difference in the resulting ratio. Either method will derive a higher average percentage under different Circumstances. Over a 104-week period the advantage of using one method over the other is negligible. The OTS will require the use of the straight average: thrifts will sum their weekly percentages and divide by the number of weeks in the period.

9. Consolidation of Subsidiaries

The comments were generally supportive of the proposal to allow thrifts to choose whether to consolidate a subsidiary that derives 80% of its revenues from residential lending or simply to count the investment in that subsidiary towards QTI, subject to the 15% cap. A few commenters sought clarification about whether a thrift may make decisions to consolidate or not on a month-to-month or even a week-to-week basis. As stated in the proposed rule, FIRREA allows savings associations to choose whether to consolidate a qualifying subsidiary. The final regulation and the statute specifically set forth the circumstances under which a thrift can consolidate its subsidiary. This final rule does not further restrict that choice.

10. Residential REO

Many commenters favored the proposed rule's inclusion of residential REO in the definition of QTI. One savings association requested clarification, asking whether the term REO would be extended to properties that are subject to ground rent or a ground lease. The OTS will not extend the rule to include such properties at this time.

Another commenter suggested that the reasoning of the OTS to include REO in QTI, articulated in the preamble to the proposed rule, should be extended to include in QTI other assets that result from home lending, such as fees, advances, and interest receivable. The OTS will not consider such an extension of the preamble's reasoning regarding REO.

III. Description of the Final Rule

The final QTL rule does not differ greatly from the proposal. The description below focuses on the areas in which changes have been made to the final rule and areas that require further explanation or clarification. Readers are referred to the preamble discussion in the proposed rule for additional discussion of provisions that have not been revised before incorporation into the final rule.

A. Section 563.50—Qualified Thrift Lender Status

This section sets forth the QTL test beginning July 1, 1991, and remains mostly unchanged from the proposal. Section 563.50 now identifies, however, the exact date on which the first 104-week period ends, June 27, 1993, for ease of reference. Thus, a thrift can lose its QTL status at any time after June 27, 1993, when its ATIP, averaged over the immediately preceding 104-week period, falls below 70 percent on the quarterly TFR submitted to OTS. Similarly, under § 563.50(e), a thrift can requalify only when its ATIP, averaged over the immediately preceding 104-week period, reaches or exceeds 70 percent on the next quarterly TFR. Paragraph (a) also clarifies that, during the initial 104-week period, thrifts not subject to QTL penalties on June 30, 1991, are deemed to have QTL status.

Paragraph (b) of proposed § 563.50 has been deleted because it duplicated information contained in paragraph (a). The remaining paragraphs have been redesignated (b) through (i).

1. Consistent Accounting Requirement

Section 563.50(c) of the final rule has been amended to clarify that, when a thrift has control over any subsidiary according to generally accepted accounting principles, it may choose whether to consolidate that subsidiary in calculating its ATIP. The thrift must consolidate a subsidiary only when the thrift wants to include the subsidiary's qualifying investments as part of the thrift's QTI. In addition, a thrift may exercise this option with regard to each subsidiary it controls on a case-by-case basis. If a thrift does not consolidate a subsidiary, the thrift's investment in the subsidiary will be included in the thrift's portfolio assets, and may also, depending upon the activities conducted by the subsidiary, be included in the thrift's QTI.

2. Special Phase-in Schedule

Paragraph (h) has been amended to clarify that those Federal savings associations subject to the special phase-in schedule must strive for full compliance by October 1, 1995, in increments representing one-quarter of the difference between the association's ATIP on August 9, 1989, and 70 percent.

B. Section 563.51—Definitions

1. Community Service Facilities

In the proposed §§ 563.51(b), "community service facilities" were defined as churches, schools, and hospitals within a community. The OTS has added the phrase "facilities serving similar functions" to the definition of "community service facilities" in Paragraph (b) in order to clarify that the regulation does not provide an exhaustive list of qualifying facilities. Community service facilities may also include, for example, nursing homes, hospices, and clinics, as these also provide medical care to the community. The final rule does not define this term more explicitly; however, OTS may review the definitions used by other government agencies for possible standards for establishing an institution as a hospital, church, or other community service facility for QTL purposes

2. Credit-Needy Area

As previously discussed in the Summary of Comments and Responses, the definition of credit-needy area for QTL purposes has been amended to clarify that the OTS intends initially to rely on the low-to-moderate income data available by county from the U.S. Bureau of Census and the FFIEC. In addition, a thrift may request the OTS to designate or recognize other credit-needy areas based on documentation provided by the thrift. The OTS plans to issue supervisory guidance on the

identification of additional credit-needy areas in the future.

3. Portfolio Assets

Paragraph (e), defining portfolio assets, has been amended to refer thrifts to the regulatory definition of "intangible assets" in § 567.1(m) of this title. Section 567.1 of the capital standards sets forth a commonly used definition of intangible assets that is consistent with the Comptroller of the Currency's definition of the term. See 54 FR 46845, 46859 (Nov. 8, 1989) (preamble to OTS's risk-based capital standards).

4. Qualified Thrift Investments

While the preamble to the proposed rule indicated that domestic residential housing would include nursing homes, those are more properly included as community service facilities. Domestic residential housing may nonetheless include retirement homes providing housing, but not regular medical care, for the elderly.

The final rule also does not alter OTS's policy of allowing a thrift to include loan participations as qualifying investments. Thus, if a loan is a QTL, a thrift may count any partial interest in that loan as QTL.

Paragraph (f)(1)(v) of the definition of qualified thrift investments has been changed to include both "direct and indirect" obligations of the FDIC, the FSLIC, and the Resolution Trust Corporation issued in accordance with agreements with those agencies, consistent with the preceding paragraph (f)(1)(iv). Paragraph (f)(1)(iv) addresses the obligations of the FDIC or FSLIC arising out of agreements entered prior to July 1, 1989, for the 10-year period after the date of issuance, whereas paragraph (f)(l)(v) applies to agreements entered on or after July 1, 1989, for the 5-year period beginning on the date of issuance of the obligation.

While only the statutory authority for paragraph (f)(1)(iv) expressly provides for the inclusion of both direct and indirect obligations, OTS has been unable to discern any Congressional intent to distinguish between these provisions on that basis. The omission appears to have been a technical oversight.

Section 563.51(1)(vi)(B), allowing the inclusion of the dollar amount of a thrift's investments in certain service corporations, has been amended to include debt investments. The proposal, like FIRREA, referred only to equity investments such as capital stock. Inclusion of a thrift's debt investment in a service corporation is consistent with OTS's previous interpretation of what constitutes an investment in a service corporation. See 12 CFR 545.74.

Throughout the definition of QTI, the terms "acquisition" and "acquire" have been changed to "purchase" in order to avoid any confusion with so-called "ADC" loans.

The final rule clarifies the special rule for QTI for thrifts headquartered and operating in Puerto Rico and the Virgin Islands. FIRREA allows those thrifts to include additional amounts of certain types of loans. Those investments included under this special rule are the aggregate amount of loans for personal, family, educational, or household purposes for residents or domiciliaries of Puerto Rico and the Virgin Islands; the entire amount of loans for community service facilities and for small business similarly located; and twice the aggregate amount of loans for residential housing, the value of which is below the median value of newly constructed housing in Puerto Rico and the Virgin Islands. Under the final rule, these thrifts can include these amounts as QTI without reference to the 15% limit on similar investments in the general QTL rule applicable to all thrifts.

5. Qualifying Real Estate Owned

The proposal limited a thrift's ability to count REO to domestic residential housing acquired as a result of foreclosure or acquired by deed in lieu of foreclosure with respect to loans that would otherwise constitute QTI. The final rule, however, recognize that REO may also be acquired as a result of foreclosure on other types of loans that also would otherwise be QTI, for example, loans for community service facilities. As a result, the final rule uses the term "qualifying REO," which is defined as that REO resulting from QTI.

6. Total Assets

Consistent with § 563.51(f)(1)(vi)(B) of the final rule, discussed above, the definition of "total assets" has been amended to reflect that a thrift's investment in a subsidiary may include a debt component.

C. Section 563.52—Penalties

The OTS has made only a technical change to this section of the final rule from the proposal, which for the most part recodified penalties that have been in effect since August 9, 1990. Section 563.52(a)(4) has been amended to clarify that a non-QTL institution that remains a thrift must comply with the statutory and regulatory provisions concerning dividends applicable to both national banks and thrifts. This technical change merely makes the dividend restriction expressly consistent with the other penalties.

D. Appendix A to §§ 563.50 through 563.52—Examples Illustrating the Operation of the New QTL Test

As set forth in the final rule, these examples are intended solely as an aid to understanding the new QTL test. They are not exhaustive and should not be used as a substitute for the final rule or the QTL worksheet provided by OTS. These examples have been modified to reflect the changes to the final rule.

Administrative Procedure Act

The Director hereby adopts these regulations as final rules effective upon publication in the **Federal Register**, without the usual 30-day delay of effectiveness provided for in the Administrative Procedure Act, 5 U.S.C. 553. The Director has determined that good cause exists for this waiver. The new QTL test imposed by FIRREA takes effect on July 1, 1991, and is self implementing. Nonetheless, OTS has sought to clarify the statutory rule for the thrift industry by regulations. Since thrifts must begin their weekly averaging on July 1, 1991, OTS is concerned that a final rule be in place at that time.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

The Director of the OTS has determined that this regulation does not constitute a "major rule;" therefore, a regulatory impact analysis is not required.

List of Subjects

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 584

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends parts 563 and 584, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 313 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 267 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

Subpart B—Operation and Structure

2. Sections 563.50, 563.51, 563.52, and appendix A to §§ 563.50 through 563.52 are added to subpart B to read as follows:

§ 563.50 Qualified thrift lender status.

(a) Beginning July 1, 1991, a savings association that was not subject to penalties for failure to maintain qualified thrift lender ("QTL") status as of June 30, 1991, as determined under the QTL regulations in this chapter in effect on that date, shall be deemed to be a qualified thrift lender. The savings association shall continue to be a qualified thrift lender so long as the association's actual thrift investment percentage ("ATIP") over each 104-week period thereafter continues to equal or exceed 70 percent. For purposes of this paragraph, the savings association's compliance with the QTL test for the immediately preceding 104-week period shall be reviewed at the end of each calendar quarter and will be confirmed during the course of supervisory examinations; *Provided,* That between July 1, 1991 and June 27, 1993, the association shall report its cumulative ATIP on a quarterly basis for the time elapsed since July 1, 1991.

(b) Beginning June 27, 1993, an association shall cease to be a qualified thrift lender when its ATIP, as measured by weekly averages of the association's qualified thrift investments and portfolio assets over the immediately preceding 104-week period and as reported in the quarterly Thrift Financial Report, falls below 70 percent.

(c) Consistent accounting required. In determining the amount of a savings association's qualified thrift investments and portfolio assets in order to calculate its ATIP, consistent accounting principles shall be used. Consistent accounting principles include, but are not limited to, the requirement that a savings association consolidate a subsidiary's assets in determining the association's portfolio assets, if the savings association includes any of that subsidiary's assets in computing its qualified thrift investments.

(d) De novo savings associations. For purposes of paragraph (a) of this section, a *de novo* association shall begin its 104-week QTL measuring cycle, maintaining weekly averages of its qualified thrift investments and portfolio assets, at the beginning of the quarter following the date on which its charter was granted.

(e) Requalification. An association may requalify as a qualified thrift lender only once by meeting and maintaining an ATIP, as measured by weekly averages of its qualified thrift investments and portfolio assets over the immediately preceding 104-week period, as reported in the quarterly Thrift Financial Report, greater than or equal to 70 percent.

(f) Exceptions. Notwithstanding paragraph (a) of this section, the Director of the Office of Thrift Supervision may grant such temporary and limited exceptions from the minimum ATIP requirement contained in paragraph (a) of this section as the Director deems necessary if:

(1) The Director determines that extraordinary circumstances exist; for example, when the effects of high interest rates reduce mortgage demand to such a degree that an insufficient opportunity exists for a savings association to meet such investment requirements; or

(2) The Director determines that:

(i) The grant of any such exception will significantly facilitate an acquisition under sections 13(c) or 13(k) of the Federal Deposit Insurance Act, as amended;

(ii) The acquired association will comply with the transition requirements of paragraph (g) of this section, as if the date of the exemption were the starting date for the transition period described in such paragraph; and

(iii) The exemption will not have an undue adverse effect on competing savings associations in the relevant market and will further the purpose of the qualified thrift lender test.

(g) Special phase-in for certain Federal savings associations. Any Federal savings association in existence as a Federal savings association on August 9, 1989, that was chartered as a savings bank or a cooperative bank under State law before October 15, 1982, or whose principal assets were acquired from such a State savings bank or cooperative bank chartered before October 15, 1982, shall be deemed to have QTL status until October 1, 1995, *provided,* That:

(1) After August 9, 1989, the association's actual thrift investment percentage does not decrease below its actual thrift investment percentage on July 15, 1989, calculated pursuant to § 563.51(e) of this subpart; and

(2) After calculating the difference between the association's actual thrift investment on August 9, 1989, and 70 percent, the association must increase its ATIP in 25% increments as set forth in the following schedule until full compliance is achieved on October 1, 1995—

	Percent
From July 1, 1991 through Sept. 30, 1992	25
From Oct. 1, 1992 through Mar. 31, 1994	50
From April 1, 1994 through Sept. 30, 1995	75
From Oct. 1, 1995 and thereafter	100

§ 563.51 Definitions.

For purposes of determining whether a savings association constitutes a qualified thrift lender after July 1, 1991, the following terms are defined:

(a) *Actual thrift investment percentage* ("ATIP") means the percentage derived by dividing the amount of a savings association's qualified thrift investments by the association's portfolio assets.

(b) *Community service facilities* means churches or other places of worship, schools, nursing homes, hospitals, and facilities serving similar functions within a community.

(c) *Credit-needy area* means a geographic region or neighborhood that has been identified by the Director, as a geographic area or neighborhood in which the credit needs of low and moderate income residents are not being adequately met at the time the relevant loan is made.

(d) *Domestic residential housing* means real estate comprising one or more homes or other dwelling units as defined in part 541 of this chapter. The term "domestic" refers to units within the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands.

(e) *Portfolio assets* means the total assets of the savings association minus the sum of: Goodwill and other intangible assets (as defined in 12 CFR 567.1(m)); the value of property used by the association to conduct its business; and the association's liquid assets of the type maintained pursuant to section 6 of

the Home Owners' Loan Act, in an amount not exceeding 10 percent of the savings association's total assets.

(f)(1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, *qualified thrift investments* ("QTI") means, with respect to any savings association, the sum of:

(i) The aggregate amount of loans held by the savings association, including qualifying real estate owned as a result of such loans as defined in paragraph (g) of this section, that were made to purchase, refinance, construct, improve, or repair domestic residential housing or manufactured housing (as defined in § 545.45(a)(1) of this chapter);

(ii) Home-equity loans;

(iii) Securities backed by or representing an interest in mortgages on domestic residential housing or manufactured housing;

(iv) Direct or indirect obligations of the Federal Deposit Insurance Corporation ("FDIC") or the Federal Savings and Loan Insurance Corporation ("FSLIC") issued in accordance with the terms of agreements entered into prior to July 1, 1989, for the 10-year period beginning on the date of issuance of such obligations;

(v) Direct or indirect obligations of the FDIC, the FSLIC, the FSLIC Resolution Fund, and the Resolution Trust Corporation ("RTC") issued in accordance with the terms of agreements entered into on or after July 1, 1989, for the 5-year period beginning on the date of issuance of such obligations; and

(vi) An aggregate amount, not to exceed 15 percent of such association's portfolio assets, of the following assets:

(A) Fifty (50) percent of the dollar amount of the domestic residential housing mortgage loans originated by the savings association and sold within 90 days of origination;

(B) Investments, both debt and equity, in the capital stock or obligations of, and any other security issued by, any service corporation or operating subsidiary, if such service corporation or operating subsidiary derives at least 80 percent of its annual gross revenues from activities directly related to purchasing, refinancing, constructing, improving, or repairing domestic residential housing or manufactured housing;

(C) Two hundred (200) percent of the dollar amount of loans and investments to purchase, construct, or develop "starter homes" or starter home developments, *Provided,* That not more than 25 percent of this amount may consist of commercial properties related to the starter home development and providing services to residents of the development;

(D) Two hundred (200) percent of the dollar amount of—

(*1*) Loans for the purchase, construction, development, or improvement of domestic residential housing and community service facilities located within a "credit-needy area;" and

(*2*) Loans for any other purpose to any small businesses located within such credit-needy areas;

(E) Loans for the purchase, construction, development, or improvement of community service facilities other than those qualifying under paragraph (f)(1)(vi)(D) of this section; and

(F) Loans for personal, family, household, or education purposes, provided that the dollar amount treated as QTI under this subsection may not exceed 5 percent of the savings association's portfolio assets.

(2) The term "qualified thrift investments" does not include the following:

(i) That portion of any loan or investment, except for home equity loans, that is used for any purpose other than those expressly qualifying under paragraph (f)(1) of this section;

(ii) Goodwill; or

(iii) Any other intangible asset.

(3) For savings associations headquartered and operating primarily in Puerto Rico or the Virgin Islands, the term "qualified thrift investments" for each territory includes, in addition to the items specified in the general definition contained in paragraphs (f)(1) and (f)(2) of this section, the entire amount of the following investments:

(i) The aggregate amount of loans for personal, family, educational, or household purposes made to persons residing in or domiciled in Puerto Rico or the Virgin Islands;

(ii) The aggregate amount of loans for the purchase, construction, development, or improvement of—

(A) Community service facilities located within Puerto Rico or the Virgin Islands; and

(B) Loans to small businesses located within Puerto Rico or the Virgin Islands; and

(iii) Two hundred (200) percent of the aggregate amount of loans related to the purchase, construction, development, or improvement of residential housing located within Puerto Rico or the Virgin Islands, the value of which (at the time of acquisition or upon completion) is below the median value of newly constructed residential housing in Puerto Rico or the Virgin Islands, as applicable.

(4) Savings associations headquartered and operating primarily in Puerto Rico may include as QTI only those investments described in paragraphs (f)(3)(i) through (f)(3)(iii) of this section located in Puerto Rico, while associations headquartered and operating primarily in the Virgin Islands may include as QTI only those investments described in paragraphs (f)(3)(i) through (f)(3)(iii) of this section located in the Virgin Islands.

(g) *Qualifying real estate owned* ("qualifying REO"), for purposes of §§ 563.50 and 563.51 of this subpart, means any real property acquired as a result of foreclosure or acquired by deed in lieu of foreclosure with respect to loans that would otherwise constitute qualified thrift investments under this section.

(h) *Starter homes* means 1-to-4 family residences the purchase price of which is, or is guaranteed to be, not greater than 60 percent of the median value of comparable newly constructed 1-to-4 family residences within the local community, as determined pursuant to § 563e.3 of this subchapter.

(i) For purposes of §§ 563.50 and 563.51 of this subpart only, *total assets* means total assets as would be required to be reported for consolidated entities on period-end reports filed with the Office of Thrift Supervision in accordance with generally accepted accounting principles:

(1) Minus the assets of any subsidiary that the association elects not to consolidate in calculating its ATIP;

(2) Plus the association's investment, both debt and equity, in the subsidiaries described in paragraph (i)(1) of this section.

§ 563.52 Penalties.

(a) On the date a savings association fails the QTL test, the savings association immediately shall either become one or more national banks, or be subject to the following restrictions:

(1) *Activities.* The savings association shall not make any new investments (including an investment in a subsidiary) or engage, directly or indirectly, in any other new activity unless that investment or activity would be permissible for both a national bank and a savings association.

(2) *Branching.* The savings association shall not establish any new branch office at any location at which a national bank located in the savings association's home State may not establish a branch office. For purposes of this paragraph, a savings association's home State is the State in which the savings association's total

deposits were largest on the date on which the savings association ceased to be a QTL.

(3) *Advances.* The savings association shall not be eligible to obtain new advances, except for those special liquidity advances described in section 10(h) of the Federal Home Loan Bank Act, from any Federal Home Loan Bank. A non-QTL savings association must obtain approval from the OTS to request such an advance from the appropriate Federal Home Loan Bank.

(4) *Dividends.* The savings association shall be subject to all statutes and regulations governing the payment of dividends by a national bank in the same manner and to the same extent as if the savings association were a national bank, in addition to all statutes and regulations governing such payment by a savings association.

(b) Holding Company Regulation. If any savings association that is a subsidiary of a savings and loan holding company fails to regain its QTL status within one year of the date of failure, the holding company shall be subject to the penalty provided in § 584.6 of this chapter.

(c) Additional Restrictions Effective After 3 Years. Three years from the date that a savings association ceases to be a QTL, it shall be subject to the following additional restrictions:

(1) *Activities.* The savings association shall not retain any investment, including an investment in any subsidiary, or engage in any activity, directly or indirectly, unless that investment or activity would be permissible for it both as a national bank and as a savings association.

(2) *Advances.* The savings association shall repay any outstanding advances from any Federal Home Loan Bank as promptly as can be prudently done consistent with the safe and sound operation of the savings association.

(d) Requalification. If, at any time after requalification as provided for in § 563.50(e) of this part, a savings association (or any savings association that acquired all or substantially of its assets from that savings association) ceases to be a QTL, it shall, upon reporting such failure, be subject to all the penalties contained in paragraphs (a) through (c) of this section as if all the periods described in such provisions had expired.

(f) *Exemptions.* (1) *For specialized savings association serving transient military personnel.* The penalties contained in this section shall not apply to a savings association subsidiary of a savings and loan holding company if:

(i) The savings and loan holding company is a reciprocal interinsurance exchange that acquired control of the savings association before January 1, 1984; and

(ii) At least 90 percent of the customers of the savings and loan holding company and its subsidiaries and affiliates are active or former officers in the United States military services or the widows, widowers, divorced spouses, or current or former dependents of such officers.

(2) *For certain Federal savings associations.* The penalties contained in this section shall not apply to a Federal savings association in existence as a Federal savings association on August 9, 1989, that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law or that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law.

Appendix A to §§ 563.50 Through 563.52—Examples Illustrating the Operation of the New QTL Test

The following examples are intended to aid in understanding the operation of the new QTL regulations in §§ 563.50 through 563.52 of this subpart. These examples are not definitive or conclusive, and they are not a substitute for the QTL worksheet provided by OTS.

The first three examples use the same set of basic facts: savings association ABC ("ABC") has $100,000 in total assets and is a subsidiary of a savings and loan holding company. The fourth example involves a Federally-chartered savings association that is subject to the transition rule at 12 CFR 563.50(g).

Example 1—The Computation Period

ABC meets the QTL test in effect on June 30, 1991, as set forth at 12 CFR 563.84, when that test expires. Therefore, on July 1, 1991, ABC is deemed a QTL until June 27, 1993, the completion of the initial two-year measuring cycle. As of July 1, 1991, ABC will be required to maintain weekly averages of its QTI and portfolio assets on which to base its weekly ATIP.

Thereafter, at the end of each calendar quarter, ABC will report its ATI on the quarterly TFR. The quarterly ATIP will consist of an average of ABC's ATIPs for the preceding weeks. Until June 27, 1993, the quarterly ATIP will be an average of the weekly ATIPs since July 1, 1991. Thus, for the quarter ending December 31, 1991, ABC's quarterly ATIP will be the average of its weekly ATIPs for the immediately preceding 24 weeks.

Beginning June 27, 1993, and every quarter thereafter, the quarterly ATIP will be an average of the weekly ATIP for the immediately preceding 104 weeks. Accordingly, for the calendar quarter ending March 31, 1994, ABC would compute its quarterly ATIP by averaging its weekly ATIPs for the immediately preceding 104 weeks. If, beginning June 27, 1993, and at any time thereafter, ABC's quarterly reported ATIP falls below 70 percent, the association has failed the QTL test.

Example 2—Requalification

Based on example 1 of this appendix, if ABC's quarterly ATIP, as reported on its December 31, 1993 TFR, is 69.9 percent, ABC loses its status as a QTL.[1] The statutory penalties would immediately be imposed. See 12 CFR 563.52. ABC can requalify if a subsequent quarterly ATIP, calculated as an average of its weekly ATIPs for the immediately preceding 104 weeks, equals or exceeds 70 percent. In the interim, ABC remains subject to the immediate statutory penalties, and the clock is running for the additional penalties imposed after one and three years. 12 CFR 563.52, 584.6.

Assuming that ABC requalifies before June 25, 1994, with a quarterly ATIP over the previous 104 weeks of 70 percent or above, ABC must thereafter maintain its ATIP at or above the required level or lose its QTL status permanently. As of the pre-June 25, 1994 requalification, the penalties for the previous failure would be lifted, and the additional penalties, including the penalty on its holding company, are not triggered because ABC was out of compliance for less than a year. If ABC subsequently fails its quarterly QTL test, then all penalties take effect. Thus, for example, ABC would be required to repay all its Federal Home Loan Bank Advances as soon as prudently possible, consistent with the safe and sound operation of the association. ABC's holding company would also be required to register as and be deemed a bank holding company. 12 CFR 563.52.

Example 3—Calculating the ATIP

Assume that ABC's $100,000 in total assets are distributed in the following manner:

(1) *Total Assets:*

Loans for domestic residential housing and manufactured housing and residential mortgage backed securities	$30,000
Home equity loans	10,000
Investment in a service corporation deriving 80% of its gross annual revenues from housing	5,000
Starter home loan	5,000
Loan to build a school in a credit needy area	5,000
Personal loan	5,000
Cash	10,000
Purchased mortgage servicing rights ("PMSR")	15,000
Value of ABC's property used to conduct its business	5,000
Investment in Federal Home Loan Bank	10,000

(2) *Portfolio Assets:*

Total Assets	$100,000
PMSR's (an intangible asset)	15,000

[1] The QTL regulations in §§ 563.50 through 563.52 of this subpart do not provide for rounding up.

The value of ABS's business property	5,000
Cash, i.e., liquidity (no more than 10% of total assets)	10,000
Portfolio Assets	$70,000

(3) *Qualified Thrift Investments.*
(a) QTI includable at full value:

Qualifying home loans and mortgage backed securities	$30,000
Home equity loans	10,000
Subtotal	$40,000

(b) QTI limited to 15% of Portfolio Assets (15%×$70,000=$10,500):

Investment in service corporation [1]	$5,000
Investment in loans for starter home	5,000×2
Loan to build school in credit needy area	5,000×2
$5,000 personal loan limited to 5% of portfolio assets ($70,000×5%= $3,500)	3,500
Subtotal prior to imposition of 15% cap	$28,500

(c) Total QTI:

Cap on QTI limited to 15% of portfolio assets	$10,500
Previous subtotal of assets includable in entirety	40,000
Total QTI	$50,500

[1] ABC decided to use the investment as QTI. If this investment constitutes 51 percent ownership, or if ABC has actual control over the service corporation, then ABC could have consolidated the service corporation's assets.

(4) *ATIP.*

$$\frac{\$50,500}{\$70,700} = 72\%$$

Example 4—The Special Phase-in for Certain Federal Savings Associations

Institution XYZ is a Federal savings association that was originally chartered as a State savings bank in 1980. In 1988, XYZ converted to a Federal savings association charter. As a result, XYZ shall be deemed to have QTI status through September 30, 1995, so long as it complies with certain transitional requirements.

The association's ATIP cannot fall below its ATIP (as defined in 12 CFR 563.51(a)) on July 15, 1989. In addition, XYZ must compute the difference between its ATIP on August 9, 1989, and 70 percent. Thereafter, XYZ's ATIP must increase in 25 percent increments until it reaches 70 percent by October 1, 1995. Thus, assuming XYZ's ATIP was 50 percent on July 15, 1989, the association's subsequent ATIP could not fall below 50 percent.

On August 9, 1989, if its ATIP remained at 50 percent, then its ATIP would have to increase to 55 percent by July 1, 1991 (70%−50%=20%; 20%×25%=5%; 50%+5%=55%). Similarly, beginning October 1, 1992, XYZ's ATIP would have to reach and remain at 60 percent. From April 1, 1994 through September 30, 1995, XYZ's ATIP would have to be 65 percent, and beginning October 1, 1995, the association would be required to maintain a 70 percent ATIP to comply with the test.

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

3. The authority citation for part 584 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended; (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468).

4. Section 584.6 is revised to read as follows:

§ 584.6 Penalty for loss of qualified thrift lender status.

Any company that controls a savings association that is subject to the penalties of § 563.52 of this chapter shall, within one year of the date on which the savings association ceased to be a QTL, register as and be deemed to be a bank holding company subject to all of the provisions of the Bank Holding Company Act of 1956, section 8 of the Federal Deposit Insurance Act, and other statutes applicable to bank holding companies, in the same manner and to the same extent as if the company were a bank holding company and the savings association were a bank, as those terms are defined in the Bank Holding Company Act of 1956.

Dated: June 25, 1991.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 91-16234 Filed 7-5-91; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-47-AD; Amdt. 39-7060; AD 91-14-19]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 146 series airplanes, which requires a detailed visual inspection to detect cracks and corrosion in the left and right main landing gear (MLG) door rear hinge bracket assemblies, and repair of corrosion or replacement of bracket, if necessary. This amendment is prompted by reports of cracked and corroded rear hinge bracket assemblies discovered on in-service airplanes. This condition, if not corrected, could result in the MLG door becoming detached in flight.

DATES: Effective August 13, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 13, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all British Aerospace Model BAe 146 series airplanes, which requires a detailed visual inspection to detect cracks and corrosion in the left and right main landing gear (MLG) door rear hinge bracket assemblies, and repair of corrosion or replacement of bracket, if necessary, was published in the **Federal Register** on March 27, 1991 (56 FR 12689).

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

The commenter supported the rule.

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

It is estimated that 74 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,070.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13— [Amended]

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

91-14-19. British Aerospace: Amendment 39-7060. Docket No. 91-NM-47-AD.

Applicability: All Model BAe 146 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent detachment of the landing gear (MLG) door in flight, accomplish the following:

A. Prior to the accumulation of 6,000 landings or within 30 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the left and right MLG door rear hinge bracket assemblies, in accordance with British Aerospace Alert Service Bulletin 32-A119, dated November 14, 1990.

1. If cracks are found, prior to further flight, replace the rear hinge bracket assembly with a serviceable part having the same part number, in accordance with the service bulletin.

2. If corrosion is found, prior to further flight, remove corrosion and repair in accordance with the Structural Repair Manual 51-73-00 and figure 1, section A-A.

a. If corrosion removed measures less than 0.150 inch, within 300 landings following repair, replace the rear hinge bracket assembly with a serviceable part having the same part number, in accordance with the service bulletin.

b. If corrosion removed measures 0.150 inch or more, prior to further flight, replace the rear hinge bracket assembly with a serviceable part having the same part number, in accordance with the service bulletin.

3. After repair, or if no corrosion is found, reseal bonding lead tags in accordance with Aircraft Maintenance Manual 20-10-01, Method 3.

B. Within 10 days after accomplishing the inspection required by paragraph A. of this AD, submit a written report of all findings to British Aerospace in accordance with paragraph 1.C.(5) of British Aerospace Alert Service Bulletin 32-A119, dated November 14, 1990. Information collection requirements contained in this regulation have 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 2120-0056.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

E. The inspection and replacement requirements shall be done in accordance with British Aerospace Alert Service Bulletin 32-A119, dated November 14, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment becomes effective August 13, 1991.

Issued in Renton, Washington, on June 18, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-16079 Filed 7-8-91; 8:45 am]

BILLING CODE 4910-13-00-M

14 CFR Part 39

[Docket No. 91-NM-42-AD; Amdt. 39-7059; AD 91-14-18]

Airworthiness Directives; British Aerospace Viscount Models 744, 745D, and 810 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Viscount Models 744, 745D, and 810 series airplanes, which requires repetitive eddy current inspections to detect corrosion along the total length of the top surface of the wing spar upper boom, and repair, if necessary. This amendment is prompted by a report of corrosion found between the upper surface of the wing spar upper boom and the underside of the wing upper skins. This condition, if not corrected, could result in reduced structural integrity of the wings.

DATES: Effective August 13, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 13, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new

airworthiness directive, applicable to all British Aerospace Models 744, 745D, and 810 series airplanes, which requires repetitive eddy current inspections to detect corrosion along the total length of the top surface of the wing spar upper boom, and repair, if necessary, was published in the **Federal Register** on March 27, 1991 (56 FR 12687).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

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

It is estimated that 29 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,975.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

91-14-18. British Aerospace: Amendment 39-7059. Docket No. 91-NM-42-AD.

Applicability: All Viscount Models 744, 745D, and 810 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the wings, accomplish the following:

A. Within 180 days after the effective date of this AD, and thereafter at intervals not to exceed 180 days, perform an eddy current inspection to detect corrosion along the total length of the top surface of the left and right wing spar upper boom in accordance with British Aerospace Preliminary Technical Leaflet (PTL) No. 321, Issue 1, dated January 13, 1989, or PTL No. 190, Issue 1, dated January 13, 1989, as appropriate.

B. If corrosion is found, prior to further flight, repair in accordance with PTL No. 321, Issue 1, dated January 13, 1989, or PTL No. 190, Issue 1, dated January 13, 1989, as appropriate; or in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

E. The inspections and repair requirements shall be done in accordance with British Aerospace Preliminary Technical Leaflet (PTL) No. 321, Issue 1, dated January 13, 1989, or PTL No. 190, Issue 1, dated January 13, 1989, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC. This amendment becomes effective August 13, 1991.

Issued in Renton, Washington, on June 18, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-16078 Filed 7-8-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-35-AD; Amdt. 39-7058; AD 91-14-17]

Airworthiness Directives; SAAB-Scania Models SF-340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain SAAB-Scania Models SF-340A and SAAB 340B series airplanes, which requires replacement of a wire in the autopilot electrical system. This amendment is prompted by reports indicating that a possibility exists for a wire overload occurring in the event of a short circuit in the autopilot system. This condition, if not corrected, could result in an electrical fire and smoke in the cockpit.

DATES: Effective August 13, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 13, 1991.

ADDRESSES: The applicable service information may be obtained from SAAB-Scania AB, Product Support, S-581.88, Linköping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain SAAB-Scania Models SF-340A and SAAB 340B series airplanes, which requires replacement of a wire in the autopilot electrical system, was published in the **Federal Register** on March 22, 1991 (56 FR 12132).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the change previously described. The FAA has determined that this change will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that 56 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The required parts will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $15,400.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

91-14-17. Saab-Scania: Amendment 39-7058. Docket No. 91-NM-35-AD.

Applicability: Model SF-340A series airplanes, Serial Numbers 079 through 159; and Model SAAB 340B series airplanes, Serial Numbers 160 through 199; certificated in any category.

Compliance: Required within 180 days after the effective day of this AD, unless previously accomplished.

To prevent an electrical fire and smoke in the cockpit, accomplish the following:

A. Replace the FD 574-24 wire from terminal block 301VT BH:C to connector 203VU P33:A1 in the autopilot electrical system with a 20 AWG size wire, in accordance with SAAB Service Bulletin 340-34-068, dated November 9, 1990.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Avionics Inspector, who may concur or comment then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. The replacement requirements shall be done in accordance with SAAB Service Bulletin 340-34-068, dated November 9, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB-Scania AB, Product Support, S-581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment becomes effective August 13, 1991.

Issued in Renton, Washington, on June 18, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certificate Service.

[FR Doc. 91-16080 Filed 7-8-91; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

RIN 2700-AA18

Space Shuttle

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1214 by revising subpart 1214.6, "Mementos Aboard Space Shuttle Flights," to clarify policy on carrying mementos aboard Space Shuttle flights and use of both official flight kits and personal preference kits. The provisions for both the official flight kits and the personal preference kits have been modified to be more specific as to type and quantity of items to be flown.

EFFECTIVE DATE: July 9, 1991.

ADDRESSES: Office of Space Flight, Code MC, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Robert L. Tucker, 202/453-2347.

SUPPLEMENTARY INFORMATION: This revised rule clarifies NASA policy on carrying mementos aboard Space Shuttle flights. The use of items flown in either kit for economic gain is prohibited. These restrictions apply to all organizations and persons whose mementos are flown aboard the Space Shuttle.

Since this action is internal and administrative in nature and does not affect the existing regulations, notice and public comment are not required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1214

Security measures, Space shuttle, Space transportation and exploration.

PART 1214—SPACE SHUTTLE

For reasons set forth in the preamble, 14 CFR part 1214 is amended as follows:

1. The authority citation for 14 CFR part 1214, subpart 1214.6, continues to read as follows:

Authority: Pub. L. 85-568, 72 Stat. 426 (42 U.S.C. 2473(c)).

2. Subpart 1214.6 is revised to read as follows:

Subpart 1214.6—Mementos Aboard Space Shuttle Flights

Sec.
1214.600 Scope.
1214.601 Definitions.
1214.602 Policy.
1214.603 Official Flight Kit (OFK).
1214.604 Personal Preference Kit (PPK).
1214.605 Preflight packing and storing.
1214.606 Postflight disposition.
1214.607 Media and public inquiries.
1214.608 Safety requirements.
1214.609 Loss or theft.
1214.610 Violations.

Subpart 1214.6—Mementos Aboard Space Shuttle Flights

§ 1214.600 Scope.

This subpart establishes policy, procedures, and responsibilities for selecting, approving, packing, storing, and disposing of mementos carried on Space Shuttle flights.

§ 1214.601 Definitions.

(a) *Mementos.* Flags, patches, insignia, medallions, minor graphics, and similar items of little commercial value, especially suited for display by the individuals or groups to whom they have been presented.

(b) *Official Flight Kit (OFK).* A container, approximately 0.057 cubic meters (2 cubic feet) in size, reserved for carrying official mementos of NASA and other organizations aboard Space Shuttle flights. No personal items will be carried in the OFK.

(c) *Personal Preference Kit (PPK).* A container, approximately 12.82 centimeters × 20.51 centimeters × 5.13 centimeters (5" × 8" × 2") in size, separately assigned to each individual accompanying a Space Shuttle flight for carrying personal mementos during the flight.

§ 1214.602 Policy.

(a) *Premise.* Mementos are welcome aboard Space Shuttle flights. However, they are flown as a courtesy—not as an entitlement. The Associate Administrator for Space Flight is free to make exceptions to this accommodation without explanation. Moreover, mementos are ballast not payload. They can be reduced or eliminated (by the Deputy Director, Space Shuttle Program, Johnson Space Center) for weight, volume, or other technical reasons without reference to higher authority.

(b) *Constraints.* Mementos to be carried on Space Shuttle flights must be approved by the Associate Administrator for Space Flight and are stowed only in an OFK or a PPK. Mementos will not be carried within payload containers, including Get-Away Specials, or in any other container or locker aboard the Space Shuttle, other than within the designated OFK or PPK.

(c) *Economic Gain.* Items carried in an OFK or a PPK will not be sold, transferred for sale, used or transferred for personal gain, or used or transferred for any commercial or fund-raising purpose. Items such as philatelic materials and coins that, by their nature, lend themselves to exploitation by the recipients, or create problems with respect to good taste; or that are large, bulky, or heavy items (in the context of the OFK's size, as indicated in § 1214.601(b) of this part) will not be approved for flight.

§ 1214.603 Official Flight Kit (OFK).

(a) *Purpose.* The OFK on a particular flight enables NASA, developers of NASA sponsored payloads, NASA's external payload customers, other Federal agencies, researchers, aerospace contractors, and counterpart institutions of friendly foreign countries to utilize mementos as awards and commendations or preserve them in museums or archives. The courtesy is also extended to other organizations outside the aerospace community, such as state and local governments, the academic community, and independent business entities. In the latter case, it is customary to fly only one item for the requesting organization to be used for display purposes.

(b) *Limitations.* In addition to § 1214.602(c) of this part, U.S. national flags will not be flown as mementos except by U.S. Government sponsors.

(c) *Approval of Contents.* At least 60 days prior to the launch of a Space Shuttle flight, an authorized representative of each organization desiring mementos to be carried on the flight in the OFK must submit a letter or request describing the item(s) to be flown and the intended purpose or distribution. Letters should be directed to the cognizant NASA office as follows:

(1) Space Shuttle customers/users of any nature, to the Director of Transportation Services, Code MC, NASA Headquarters, Washington, DC 20546.

(2) Foreign organizations/individuals, and Department of Defense organizations/individuals (both other than as a Space Shuttle customer) and other Federal agencies to the Associate Administrator of External Relations, Code X, NASA Headquarters, Washington, DC 20546. Upon receipt of all requests, the cognizant offices will review and forward data to the Associate Director, Code AC, Johnson Space Center, Houston, TX 77058.

(3) All others (aerospace companies, state and local governments, the academic community, and non-space-related businesses) may send requests directly to the Associate Director, Code AC, Johnson Space Center, Houston, TX 77058. In the event OFK requests, on a particular flight, exceed OFK capability, priority consideration may be given to those entities having payloads on that flight. The listing of the proposed OFK contents for each flight is prepared at the Johnson Space Center and forwarded to the Associate Administrator for Space Flight approximately 30 days prior to launch for approval.

§ 1214.604 Personal Preference Kit (PPK).

(a) *Purpose.* The PPK enables persons accompanying Space Shuttle flights to carry personal items for use as mementos. Only those individuals actually accompanying such flights (astronaut crew members, payload specialists, and space flight participants) may request authorization to carry personal items as mementos. These items must be carried in individually assigned PPK's.

(B) *Limitations.* The contents of a PPK must be limited to 20 separate items, with a total weight of 0.682 kilograms (1.5 pounds). Each item is allocated for a different recipient and distributed accordingly. The volume of a PPK must be contained in a 12.82 centimeters × 20.51 centimeters × 5.13 centimeters (5" × 8" × 2") bag provided by NASA. Increases in these limitations will be authorized only by the Associate Administrator for Space Flight.

(c) *Approval of Contents.* At least 60 days before the scheduled launch of a Space Shuttle flight, each person assigned to the flight who desires to carry items in a PPK must submit a proposed list of items and their recipients to the Associate Director, Johnson Space Center. The Associate Director will review the requests for compliance with this subpart and submit the crew members' PPK lists through supervisory channels to the Associate Administrator for Space Flight for approval. A signed copy of the Associate Administrator for Space Flight's approval will be returned to the Director, Johnson Space Center, for appropriate distribution.

§ 1214.605 Preflight packing and storing.

(a) Items intended for inclusion in OFK's or PPK's must arrive at the Johnson Space Center, Code AC, at least 45 days prior to the flight on which they are scheduled in order for them to be listed on the cargo manifest, packaged,

weighed, and stowed aboard the Orbiter. Items must arrive at the Johnson Space Center prior to the 45-day limit even if the Associate Administrator for Space Flight's approval is still pending. Items not approved by the Associate Administrator for Space Flight will be returned to the requesting individual/organization.

(b) The Associate Director, Johnson Space Center, is responsible for the following:

(1) Securing the items while awaiting the launch on which they are manifested.

(2) Packaging, weighing, and stowing the items according to the manifests approved by the Associate Administrator for Space Flight.

§ 1214.606 Postflight disposition.

The Associate Director, Johnson Space Center, will:

(a) Receive and inventory all items flown in the OFK and PPK's following each Shuttle flight.

(b) Return the contents of the PPK's to the persons who submitted them.

(c) Return all other flown items to the submitting organizations with an appropriate letter of certification.

(d) Retain and secure mementos flown by the Agency for future use.

§ 1214.607 Media and public inquiries.

(a) *Official Flight Kit.* Information on the contents of OFK's will be routinely released to the media and to the public upon their request, but only after the contents have been approved by the Associate Administrator for Space Flight.

(b) *Personal Preference Kit.* Information on the contents of PPK's will be routinely released to the media and to the public upon their request immediately following postflight inventory.

(c) *Responsibility for Release of Information.* The Director of Public Affairs, Johnson Space Center, is responsible for the prompt release of information on OFK and PPK contents.

§ 1214.608 Safety requirements.

The contents of OFK's and PPK's must meet the requirements set forth in NASA Handbook 1700.7, "Safety Policy and Requirements for Payloads Using the Space Transportation System (STS)."

§ 1214.609 Loss or theft.

(a) *Responsibility.* The National Aeronautics and Space Administration will not be responsible for the loss or theft of, or damage to, items carried in OFK's or PPK's.

(b) *Report of Loss or Theft.* Any person who learns that an item contained in an OFK or a PPK is missing shall immediately report the loss to the Johnson Space Center Security Office and the NASA Inspector General.

§ 1214.610 Violations.

Any item carried in violation of the requirements of this subpart shall become the property of the U.S. Government, subject to applicable Federal laws and regulations, and the violator may be subject to disciplinary action, including being permanently prohibited from use of, or, if an individual, from flying aboard the Space Shuttle or any other manned spacecraft of the National Aeronautics and Space Administration.

Dated: June 27, 1991.

Richard H. Truly,

Administrator.

[FR Doc. 91-16240 Filed 7-8-91; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520, 522, and 524

Animal Drugs, Feeds, and Related Products; Glycobiarsol Tablets, Mafenide Acetate and Nitrofurazone Aerosol Powder, and Diatrizoate Meglumine Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of three new animal drug applications (NADA's) held by Sterling Drug Inc. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of these NADA's.

EFFECTIVE DATE: July 19, 1991.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of NADA's 31-709, 93-985, and 100-403 held by Sterling Drug Inc., 90 Park Ave., New York, NY 10016. NADA 31-709 provides for the use of glycobiarsol tablets in eliminating whipworms from dogs. NADA 93-985 provides for the use of mafenide acetate and nitrofurazone aerosol powder to treat wound infections and pyogenic dermatitis caused by certain bacteria in dogs. NADA 100-403 provides for the use of diatrizoate meglumine injection in dogs and cats as an aid to radiographic delineation of internal structures. This final rule removes §§ 520.1065, 522.562, and 524.1301 (21 CFR 520.1065, 522.562, 524.1301), which reflect approval of these NADA's.

List of Subjects in 21 CFR Parts 520, 522, and 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520, 522, and 524 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.1065 [Removed]

2. Section 520.1065 *Glycobiarsol tablets* is removed.

PART 552—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.562 [Removed]

4. Section 522.562 *Diatrizoate meglumine injection* is removed.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

5. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 524.1301 [Removed]

6. Section 524.1301 *Mafenide acetate and nitrofurazone aerosol powder* is removed.

Dated: July 2, 1991.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 91–16281 Filed 7–8–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, 6, 7, 9, 19, 24, 53, 70, 252

[T.D. ATF–312]

Technical Amendments

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This Treasury decision makes technical amendments and conforming changes to chapter I of title 27, Code of Federal Regulations (CFR) to provide clarity and uniformity.

EFFECTIVE DATE: July 9, 1991.

FOR FURTHER INFORMATION CONTACT: Di-Anne B. Fletcher, Revenue Programs Division, 650 Massachusetts Avenue NW., Washington, DC 20226. (202) 566–7626.

SUPPLEMENTARY INFORMATION: The Bureau of Alcohol, Tobacco and Firearms administers regulations published in chapter I of title 27 Code of Federal Regulations. These regulations are updated April 1 of each year to incorporate new or revised regulations that were published by ATF in the **Federal Register** during the preceding year. Upon reviewing title 27 for the annual revision ATF and the CFR Unit of the Office of the Federal Register identified several amendments and conforming changes that are needed to provide uniformity in chapter I of title 27, Code of Federal Regulations.

Throughout part 24 conforming changes that were identified after publication of T.D. ATF–299 (55 FR 24974) have been made to improve clarity of the regulations, also typographical errors which occurred during the printing process have been corrected. These amendments and changes do not make any substantive regulation changes and are only intended to improve the clarity of title 27.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets.

Administrative Procedure Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting

The principal author of this document is Di-Anne B. Fletcher, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural area, Wine.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, tax-paid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 53

Administrative practice and procedure, Arms and munitions, Authority delegations, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed forces, Authority delegations, Beer, Claims, Excise taxes, Exports, Fishing vessels, Foreign trade zones, Liquors, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

Authority and Issuance

Title 27, Code of Federal Regulations is amended as follows:

PART 4— LABELING AND ADVERTISING OF WINE

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

Authority: 27 U.S.C. 205.

§ 4.21 [Amended]

2. Section 4.21(f)(1)(i) is amended by removing the phrase "Subpart T, part 240," and adding the phrase "part 24,".

§ 4.25 [Amended]

3. Section 4.25a(a)(1)(v) is amended by removing the word "of" at the end of the sentence and adding the word "or".

§ 4.32 [Amended]

4. Section 4.32(a) is amended by removing the colon immediately following the word "stated".

5. Section 4.32 is amended by removing paragraph (f).

§ 4.34 [Amended]

6. Section 4.34(a) is amended by removing the word "destinctive" in the second sentence and adding the word "distinctive" and by removing the phrase "part 240" in the fifth sentence and adding the phrase "part 24".

§ 4.33 [Amended]

7. Section 4.38(b) is amended by removing the phrase "187 millimeter" and adding the phrase "187 milliliter" in the first sentence of subparagraphs (1) and (2).

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

8. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

§ 5.32 [Amended]

9. Section 5.32 is amended by removing paragraph (d).

PART 6—"TIED-HOUSE"

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

Authority: 49 Stat. 981, as amended (27 U.S.C. 205); 44 U.S.C. 3504(h).

11. Part 6 is amended by revising the undesignated center heading immediately following section 6.27 to read as follows:

* * * * *

§ 6.27 Proprietary interest.

* * * * *

Interest in Retail Property

* * * * *

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

12. The authority citation for part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

§ 7.22 [Amended]

13. Section 7.22 is amended by removing paragraph (c).

PART 9—AMERICAN VITICULTURAL AREAS

14. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

PART 19—DISTILLED SPIRITS PLANTS

15–16. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–6, 5008, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5221–5223, 5231, 5232, 5235, 5236, 5241–5242, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.906 [Amended]

17. Section 19.906(a) is amended by removing the authority cite immediately following the paragraph.

PART 24—WINE

18. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a), 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

19. The table of contents for part 24 is amended by revising the undesignated center heading immediately following § 24.294 and the heading of § 24.295 to read as follows;

* * * * *

Sec.

Return of Unmerchantable Wine to Bond

24.295 Return of unmerchantable wine to bond.

* * * * *

20. Section 24.10 is amended by revising the definitions for "Amelioration", "Chaptalization", "Fruit wine", "Juice", "Must", and "Wine" to read as follows:

§ 24.10 Meaning of terms.

* * * * *

Amelioration. The addition to juice or natural wine before, during, or after fermentation, of either water or pure dry sugar, or a combination of water and sugar to adjust the acid level.

* * * * *

Chaptalization (Brix adjustment). The addition of sugar or concentrated juice of the same kind of fruit to juice before or during fermentation to develop alcohol by fermentation.

* * * * *

Fruit wine. Wine made from the juice of sound, ripe fruit (other than grapes). Fruit wine also includes wine made from berries or wine made from a combination of grapes and other fruit (including berries).

* * * * *

Juice. The unfermented juice (concentrated or unconcentrated) of grapes, other fruit (including berries) and authorized agricultural products exclusive of pulp, skins, or seeds.

* * * * *

Must. Unfermented juice or any mixture of juice, pulp, skins, and seeds prepared from grapes or other fruit (including berries).

* * * * *

Wine. When used without qualification, the term includes every kind (class and type) of product produced on bonded wine premises from grapes, other fruit (including berries), or other suitable agricultural products and containing not more than 24 percent of alcohol by volume. The term includes all imitation, other than standard, or artificial wine and compounds sold as wine. A wine product containing less than one-half of one percent alcohol by volume is not taxable as wine when removed from the bonded wine premises.

* * * * *

§ 24.25 [Amended]

21. Section 24.25(a)(3) is amended by redesignating the second sentence as a new paragraph (a)(4).

22. Section 24.82 is amended by revising the first sentence to read as follows:

§ 24.82 Samples.

Except for vinegar and salted wine as defined in § 24.215, the proprietor shall submit under separate cover at the time of filing any nonbeverage wine formula a 750 mL sample of the base wine used and a 750 mL sample of the finished wine or wine product. * * *

* * * * *

§ 24.125 [Amended]

23. Section 24.125(a) is amended by removing "§ 24.145" and adding "§ 24.140" in the second sentence.

24–25. Section 24.131 is amended by revising the section heading and the first sentence to read as follows:

§ 24.131 Change in building construction and use of premises.

Where a change is to be made to buildings located on wine premises, or in the use of any portion of the wine premises, which affects the accuracy of the application, the proprietor shall, before making such change in construction or use, submit a notice to the regional director (compliance) through the area supervisor. * * *

* * * * *

26. Section 24.148 is revised to read as follows:

§ 24.148 Penal sums of bonds.

The penal sums of bonds prescribed in this part are as follows:

Bond	Basis	Penal sum minimum/maximum
(a) Wine Bond. ATF F 5120.36	(1) Not less than the tax on all wine or spirits possessed, in transit, or unaccounted for at any one time.	$1,000/$50,000
	Where such liability exceeds $250,000.	/$100,000
	(2) Where the unpaid tax amounts to more than $500, not less than the amount of tax which, at any one time, has been determined but not paid.	$500/$250,000
(b) Wine vinegar plant bond.* ATF F 5510.2	Not less than the tax on all wine on hand, in transit, or unaccounted for at any one time.	$1,000/$100,000

* The proprietor of a bonded wine premises who operates an adjacent or contiguous wine vinegar plant with a Wine Bond which does not cover the operation may file a consent of surety to extend the terms of the Wine Bond in lieu of filing a wine vinegar plant bond.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended (26 U.S.C. 5354, 5362))

27–28. Section 24.167 is amended by revising the first sentence of paragraph (b)(1) and paragraph (b)(4) to read as follows:

§ 24.167 Tanks.

* * * * *

(b) * * *

(1) An accurate means of measuring the contents of each tank will be provided by the proprietor. * * *

* * * * *

(4) If a tank or its means of measuring is changed as to location or position subsequent to original calibration, the tank may not be used until recalibrated; and

* * * * *

29. Section 24.176 is revised to read as follows:

§ 24.176 Crushing and fermentation.

(a) *Natural wine production.* Water may be used to flush equipment during the crushing process or to facilitate fermentation but the density of the juice may not be reduced below 22 degrees Brix. However, if the juice is already less than 23 degrees Brix, the use of water to flush equipment or facilitate fermentation is limited to a juice density reduction of no more than one degree Brix. At the start of fermentation no material may be added except water, sugar, concentrated fruit juice from the same kind of fruit, malo-lactic bacteria, yeast or yeast cultures grown in juice of the same kind of fruit, and yeast foods, sterilizing agents, precipitating agents or other approved fermentation adjuncts. Water may be used to rehydrate yeast to a maximum to two gallons of water for each pound of yeast; however, except for an operation involving the preparation of a yeast culture starter and must mixture for later use in initiating fermentation, the maximum volume increase of the juice after the addition of rehydrated yeast is limited to 0.5 percent. After fermentation natural wines may be blended with each other only if produced from the same kind of fruit.

(b) *Determination of wine produced.* Upon completion of alcoholic fermentation, the volume of wine will be accurately determined, recorded, and reported on ATF F 5120.17, Monthly Report of Wine Cellar Operation, as wine produced. Any wine or juice remaining in fermentation tanks at the end of the month will be recorded and reported on ATF F 5120.17.

30. Section 24.177 is amended by revising the first, second, third and sixth sentence to read as follows:

§ 24.177 Chaptalization (Brix adjustment).

In producing natural grape wine from juice having a low sugar content, pure dry sugar or concentrated grape juice may be added before or during fermentation to develop alcohol. In producing natural fruit wine from juice having a low sugar content, sugar, or concentrated juice of the same kind of fruit may be added before or during fermentation to develop alcohol. The quantity of sugar or concentrated juice added may not raise the original density of the juice above 25 degrees Brix. * * * However, if fruit juice or fruit wine is ameliorated after chaptalization and liquid sugar or invert sugar syrup is used to chaptalize the fruit juice, the volume of water contained in the liquid sugar or invert sugar syrup will be included as ameliorating material.

* * * * *

31. Section 24.179(d) is amended by revising the last sentence to read as follows:

§ 24.179 Sweetening.

* * * * *

(d) * * * Specially sweetened natural wines may be blended with each other, or with natural wine or heavy bodied blending wine (including juice or concentrated fruit juice to which wine spirits have been added), in the further production of specially sweetened natural wine only if the wines (or juice) so blended are made from the same kind of fruit.

* * * * *

§ 24.181 [Amended]

32. Section 24.181 is amended by removing the second sentence.

33–34. Sections 24.182 (a) and (c) are revised to read as follows:

§ 24.182 Use of acid to correct natural deficiencies.

(a) Acids of the kinds occurring in grapes or other fruit (including berries) may be added within the limitations of § 24.246 to juice or wine in order to correct natural deficiencies; however, no acid may be added to juice or wine which is ameliorated to correct natural deficiencies.

* * * * *

(c) *Fruit wine.* Only citric acid may be added to citrus fruit, juice or wine, only malic acid may be added to apples, apple juice or wine, and only citric acid or malic acid may be added to other fruit (including berries) or to juice or wine derived from other fruit (including berries) to correct natural deficiencies to 9.0 grams per liter of finished wine; however, if the wine contains 8.0 or more grams of total solids per 100 milliliters of wine, acids may be added to correct natural deficiencies to the extent that the finished wine does not contain more than 11.0 grams per liter of fixed acid (calculated as malic acid for apples and citric acid for other fruit (including berries).

* * * * *

35. Section 24.190 is amended by revising the third and fifth sentences and adding a new sentence after the fifth sentence to read as follows:

§ 24.190 General.

* * * The use of carbon dioxide, nitrogen gas, or a combination of both, is permitted to maintain counterpressure

during the transfer and bottling of sparkling wine. * * * Sparkling wine, artificially carbonated wine, and any wine used as a base in the production of sparkling wine or artificially carbonated wine, may not have an alcohol content in excess of 14 percent by volume. However, wine containing more than 14 percent of alcohol by volume may be used in preparing a dosage for finishing sparkling wine or artificially carbonated wine.

* * * * *

36. Section 24.215(b) is revised to read as follows:

§ 24.215 Wine or wine products not for beverage use.

* * * * *

(b) *Salted wine.* Salted wine is a wine or wine product not for beverage use produced in accordance with the provisions of this section and having not less than 1.5 grams of salt per 100 milliliter of wine. (12.5 pounds of salt/100 gallons of wine.)

* * * * *

37. Section 24.255 is amended by revising the third and sixth sentences to read as follows:

§ 24.255 General.

* * * In the case of natural still wine, wine spirits may be added in any State only to wine produced by fermentation on bonded wine premises located within the same State. * * * Wooden storage tanks used for the addition of spirits may be used for the baking of wine.

* * * * *

38. Section 24.227 is amended by revising the fourth sentence to read as follows:

§ 24.227 Transfer of spirits by pipeline for immediate use.

* * * Where the proprietor has placed wine in a spirits addition tank and has determined the quantity of spirits to be added, the spirits may be transferred.

* * * * *

§ 24.228 (Amended)

39. Section 24.228 is amended by removing the word "wine" from the section heading.

§ 24.240 General.

40. Section 24.240 is amended by removing "§ 24.266" and adding "§ 24.166" and removing "§ 24.267" and adding "§ 24.167" in the first sentence.

41. Section 24.246(b) is amended by revising the list at the end of the paragraph to read as follows:

§ 24.246 Materials authorized for treatment of wine and juice.

* * * * *

MATERIALS AUTHORIZED FOR TREATMENT OF WINE AND JUICE

Materials and use	Reference or limitation
Acacia (gum arabic): To clarify and to stabilize wine	The amount used shall not exceed 2 lbs/1000 gals. (0.24 g/L of wine. 21 CFR 184.1330 (GRAS) *See footnote below.
Activated carbon:	
To assist precipitation during fermentation	27 CFR 24.176. GRAS per FDA advisory opinion dated 1/26/79.
To clarify and to purify wine	The amount used to clarify and purify wine shall be included in the total amount of activated carbon used to remove excessive color in wine. 27 CFR 24.241 and 24.242 (GRAS).
To remove color in wine and/or juice from which the wine was produced	The amount used to treat the wine, including the juice from which the wine was produced, shall not exceed 25 lbs/1000 gal. (3.0 g/L). If the amount necessary exceeds this limit, a notice is required pursuant to 27 CFR 24.242 (GRAS).
Albumen (egg white): Fining agent for wine	May be prepared in a light brine 1 oz. (28.35 grams) potassium chloride, 2 lbs (907.2 grams) egg white, 1 gal. (3.785 L) of water. Usage not to exceed 1.5 gals. of solution per 1,000 gals. of wine. (GRAS).
Alumino-silicates (hydrated) e.g., Bentonite (Wyoming clay) and Kaolin: To clarify and to stabilize wine or juice.	21 CFR §§ 182.2727, 182.2729, 184.1155 (GRAS) and 186.1256. GRAS per FDA advisory opinion dated July 26, 1985.
Ammonium carbonate: Yeast nutrient to facilitate fermentation in wine	The natural fixed acids shall not be reduced below 5 g/L. The amount used shall not exceed 2 lbs/1000 gals. (0.24 g/L). 21 CFR 184.1137 (GRAS).
Ammonium phosphate (*mono-* and *di*basic): Yeast nutrient in wine production and to start secondary fermentation in the production of sparkling wines.	The amount used shall not exceed 8 lbs. per 1000 gals. (0.96 g/L) of wine. 21 CFR 184.1141 (GRAS).
Ascorbic acid *iso*-ascorbic acid (erythorbic acid): To prevent oxidation of color and flavor components of juice and wine.	May be added to grapes, other fruit (including berries), and other primary wine making materials, or to the juice of such materials, or to the wine, within limitations which do not alter the class or type of the wine. 21 CFR 182.3013 and 182.3041 (GRAS).
Calcium carbonate (with or without calcium salts of tartaric and malic acids): To reduce the excess natural acids in high acid wine	The natural or fixed acids shall not be reduced below 5 g/L. 21 CFR 184.1069, 184.1099, and 184.1191. (GRAS).
A fining agent for cold stabilization	The amount used shall not exceed 30 lbs/1000 gals. (3.59 g/L) of wine.
Calcium sulfate (gypsum): To lower pH in sherry wine	The sulfate content of the finished wine shall not exceed 2.0 g/L, expressed as potassium sulfate. 27 CFR 24.214. 21 CFR 184.1230 (GRAS).
Carbon dioxide (including food grade dry ice): To stabilize * * * and to preserve wine.	27 CFR 24.245. 21 CFR 184.1240 (GRAS).
Casein, potassium salt of casein: To clarify wine	GRAS per FDA opinions of 02/23/60 and 08/25/61. 27 CFR 24.243.
Citric acid:	
To correct natural acid deficiencies in wine	27 CFR 24.182 and 24.192. 21 CFR 182.1033 (GRAS).
To stabilize wine other than citrus wine	The amount of citric acid shall not exceed 5.8 lbs/1000 gals. (0.7 g/L). 27 CFR 24.244. 21 CFR 182.1033 (GRAS).
Copper sulfate: To remove hydrogen sulfide and/or mercaptans from wine	The quantity of copper sulfate added (calculated as copper) shall not exceed 0.5 part copper per million parts of wine (0.5 mg/L) with the residual level of copper not to be in excess of 0.2 part per million (0.2 mg/L). 21 CFR 184.1261 (GRAS).
Defoaming agents (polyoxyethylene 40 monostearate, silicon dioxide, dimethylpoly-siloxane, sorbitan monostearate, glyceryl mono-oleate and glyceryl dioleate): To control foaming, fermentation adjunct.	Defoaming agents which are 100% active may be used in amounts not exceeding 0.15 lbs/1000 gals. (0.018 g/L of wine. Defoaming agents which are 30% active may be used in amounts not exceeding 0.5 lbs/1000 gals. (0.06 g/L) of wine. Silicon dioxide shall be completely removed by filtration. The amount of silicon remaining in the wine shall not exceed 10 parts per million. 21 CFR 173.340 and 184.1505.

MATERIALS AUTHORIZED FOR TREATMENT OF WINE AND JUICE—Continued

Materials and use	Reference or limitation
Enzymatic activity: Use (none)	The enzyme preparation used shall be prepared from nontoxic and nonpathogenic microorganisms in accordance with good manufacturing practice and be approved for use in food by either FDA regulation or by FDA advisory opinion.
Carbohydrase (*alpha*-Amylase): To convert starches to fermentable carbohydrates	The amylase enzyme activity shall be derived from *Aspergillus niger, Aspergillus oryzae, Bacillus subtilis*, or barley malt per FDA advisory opinion of 8/18/83 or from *Rhizopus oryzae* per 21 CFR 173.130 or from *Bacillus licheniformis* per 21 CFR 184.1027.
Carbohydrase (*beta*-Amylase): To convert starches to fermentable carbohydrates	The amylase enzyme activity shall be derived from barley malt per FDA advisory opinion dated 8/18/83.
Carbohydrase (Glucoamylase, Amylogluco-sidase): To convert starches to fermentable carbohydrates.	The amylase enzyme activity shall be derived from *Aspergillus niger* or *Aspergillus oryzae* per FDA advisory opinion dated 8/18/83 or from *Rhizopus oryzae* per 21 CFR 173.130 or from *Rhizopus niveus* per 21 CFR 173.110.
Catalase: To clarify and to stabilize wine	The enzyme activity used shall be derived from *Aspergillus niger* or bovine liver per FDA advisory opinion dated 8/18/83 (GRAS).
Cellulase: To clarify and to stabilize wine and to facilitate separation of the juice from the fruit.	The enzyme activity used shall be derived from *Aspergillus niger* per FDA advisory opinion dated 8/18/83 (GRAS).
Glucose oxidase: To clarify and to stabilize wine	The enzyme activity used shall be derived from *Aspergillus niger* per FDA advisory opinion of 8/18/83 (GRAS).
Pectinase: To clarify and to stabilize wine and to facilitate separation of juice from the fruit.	The enzyme activity used shall be derived from *Aspergillus niger* per FDA advisory opinion dated 8/18/83 (GRAS).
Protease (general): To reduce or to remove heat labile proteins	The enzyne activity used shall be derived from *Aspergillus niger* or *Bacillus subtilis* per FDA advisory opinion dated 08/18/83 or from *Bacillus licheniformis* per 21 CFR 184.1027 (GRAS).
Protease (Bromelin): To reduce or to remove heat labile proteins	The enzyme activity used shall be derived from *Ananus comosus* or *Ananus bracteatus* (*L*) per FDA advisory opinion dated 08/18/83 (GRAS).
Protease (Ficin): To reduce or to remove heat labile proteins	The enzyme activity used shall be derived from *Ficus spp.* per FDA advisory opinion dated 08/18/83 (GRAS).
Protease (Papain): To reduce or to remove heat labile proteins	The enzyme activity used shall be deived from *Carica papaya* (*L*) per 21 CFR 184.1585 (GRAS).
Protease (Pepsin): To reduce or to remove heat labile proteins	The enzyme actvity used shall be derived from porcine or bovine stomachs per FDA advisory opinion dated 08/18/83 (GRAS).
Protease (Trypsin): To reduce or to remove heat labile proteins	The enzyme activity used shall be derived from porcine or bovine pancreas per FDA advisory opinion dated 08/18/83 (GRAS).
Ethyl maltol: To stabilize wine	Use authorized at a maximum level of 100mg/L in all standard wines except natural wine produced from *Vitis vinifera* grapes. FDA advisory opinion dated 12/1/86.
Ferrocyanide compounds (sequestered complexes): To remove trace metal from wine and to remove objectionable levels of sulfide and mercaptans from wine.	No insoluble or soluble residue in excess of 1 part per million shall remain in the finished wine and the basic character of the wine shall not be changed by such treatment. GRAS per FDA advisory opinion of 06/22/82.
Ferrous sulfate: To clarify and to stabilize wine	The amount used shall not exeed 3 ozs./1000 gals. (0.022 g/L) of wine. 21 CFR 184.1315 (GRAS).
Fumaric acid:	
To correct natural acid deficiencies in grape wine	The fumaric acid content of the finished wine shall not exceed 25 lbs/1000 gals (3.0 g/L). 27 CFR 24.182 and 24.192. 21 CFR 172.350.
To stabilize wine	The fumaric acid content of the finished wine shall not exceed 25 lbs/1000 gals (3.0 g/L). 27 CFR 24.244. 21 CFR 172.350.
Gelatin (food grade): To clarify juice or wine	(GRAS).
Granular cork: To smooth wine	The amount used shall not exceed 10 lbs/1000 gals. of wine (1.2 g/L). GRAS per FDA advisory opinion dated 02/25/85.
Hydrogen peroxide: To remove color from the juice of red and black grapes	The amount used shall not exceed 500 parts per million. The use of hydrogen peroxide is limited to oxidizing color pigment in the juice of red and black grapes. 21 CFR 182.1366 (GRAS).
Isinglass: To clarify wine	GRAS per FDA advisory opinion dated 02/25/85.
Lactic acid: To correct natural acid deficiencies in grape wine	27 CFR 24.182 and 24.192.
	21 CFR 184.1061 (GRAS).
Malic acid: To correct natural acid deficiencies in juice or wine	27 CFR 24.182 and 24.192. 21 CFR 184.1069 (GRAS).
Malo-lactic bacteria: To stabilize grape wine	Malo-lactic bacteria of the type *Leuconostoc oenos* may be used in treating wine. GRAS per FDA advisory opinion dated 02/25/85.
Maltol: To stabilize wine	Use authorized at a maximum level of 250 mg/L in all standard wine except natural wine produced from *Vitis vinifera* grapes. FDA advisory opinion dated 12/1/86.
Nitrogen gas: To maintain pressure during filtering and bottling or canning of wine and to prevent oxidation of wine.	21 CFR 184.1540 (GRAS).
Oak chips or particles, uncharred and untreated: To smooth wine	21 CFR 172.510.
Oxygen and compressed air: In baking or maturing wine and aeration of sherry	May be used provided it does not cause changes in the wine other than those occurring during the usual storage in wooden cooperage over a period of time.
Polyvinyl-polypyr-rolidone (PVPP): To clarify and to stabilize wine	The amount used shall not exceed 6.7 lbs/1000 gals. (0.8 g/L) of wine and shall be removed during filtration. PVPP may be used in a continuous or batch process. 21 CFR 173.50.
Potassium bitartrate: To stabilize grape wine	The amount used shall not exceed 35 lbs/1000 gals. (4.19 g/L) of grape wine. 21 CFR 184.1077 (GRAS).
Potassium carbonate and/or potassium bicarbonate: To reduce excess natural acidity in wine.	The natural or fixed acids shall not be reduced below 5 parts per thousand (5 g/L). 21 CFR 184.1619 and 184.1613 (GRAS).
Potassium citrate: pH control agent and sequestrant in treatment of citrus wines	The amount of potassium citrate shall not exceed 25 lbs/1000 gals. (3.0 g/L) of finished wine. 27 CFR 24.182. 21 CFR 182.1625 and 182.6625 (GRAS).
Potassium meta-bisulfite: To sterilize and to preserve wine	The sulfur dioxide content of the finished wine shall not exceed the limitations prescribed in 27 CFR 4.22. 21 CFR 182.3637 (GRAS).
Silica gel (colloidal silicon dioxide): To clarify wine	Use shall not exceed the equivalent of 20 lbs. colloidal silicon dioxide at a 30% concentration per 1000 gals. of wine. (2.4 g/L). Silicon dioxide shall be completely removed by filtration. (GRAS).

MATERIALS AUTHORIZED FOR TREATMENT OF WINE AND JUICE—Continued

Materials and use	Reference or limitation
Sorbic acid and potassium salt of sorbic acid: To sterilize and to preserve wine; to inhibit mold growth and secondary fermentation.	The finished wine shall contain not more than 300 milligrams of sorbic acid per liter of wine. 21 CFR 182.3089 and 182.3640 (GRAS).
Soy flour (defatted): Yeast nutrient to facilitate fermentation of wine	The amount used shall not exceed 2 lbs/1000 gals. (0.24 g/L) of wine. (GRAS).
Sulfur dioxide: To sterilize and to preserve wine	The sulfur dioxide content of the finished wine shall not exceed the limitations prescribed in 27 CFR 4.22(b)(1). 21 CFR 182.3862 (GRAS).
Tannin:	
To adjust tannin content in apple juice or in apple wine	The residual amount of tannin shall not exceed 3.0 g/L, calculated as gallic acid equivalents (GAE). GRAS per FDA advisory opinions dated 4/6/59 and 3/29/60. Total tannin shall not be increased by more than 150 milligrams/liter by the addition of tannic acid (polygalloylglucose).
To clarify or to adjust tannin content of juice or wine (other than apple)	The residual amount of tannin, calculated in gallic acid equivalents, shall not exceed 0.8 g/L in white wine and 3.0 g/L in red wine. Only tannin which does not impart color may be used in the cellar treatment of juice or wine. GRAS per FDA advisory opinions dated 4/6/59 and 3/29/60. Total tannin shall not be increased by more than 150 milligrams/liter by the addition of tannic acid (polygalloylglucose).
Tartaric acid. To correct natural acid deficiencies in grape juice or grape wine	Use as prescribed in 27 CFR 24.182 and 24.192. 21 CFR 184.1099 (GRAS).
Thiamine hydrochloride: Yeast nutrient to facilitate fermentation of wine	The amount used shall not exceed 0.005 lb/1000 gals. (0.6 mg/L) of wine or juice. 21 CFR 184.1875 (GRAS).
Yeast, autolyzed: Yeast nutrient to facilitate fermentation in the production of grape or fruit wine.	21 CFR 172.896 and 184.1983. GRAS per FDA advisory opinion of 10/06/59.
Yeast, cell wall/membranes of autolyzed yeast: To facilitate fermentation of juice/wine.	The amount used shall not exceed 3 lbs/1000 gals. (0.36 g/L) of wine or juice (GRAS).

* GRAS—An acronym for "generally recognized as safe." The term means that the treating material has an FDA listing in Title 21, Code of Federal Regulations, Part 182 or Part 184, or is considered to be generally recognized as safe by advisory opinion issued by the U.S. Food and Drug Administration.
** AOAC—Association of Official Analytical Chemists.
*** To stabilize—To prevent or to retard unwanted alteration of chemical and/or physical properties.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387))

42. Section 24.248 is amended by revising the list at the end of the introductory paragraph to read as follows:

§ 24.248 Processes authorized for the treatment of wine, juice, and distilling material.

* * * * *

PROCESSES AUTHORIZED FOR THE TREATMENT OF WINE, JUICE, AND DISTILLING MATERIAL

Processes	Use	Reference or limitation
Elimination of sulfur dioxide by physical process.	To reduce the sulfur dioxide content of juice	Use of a physical process to remove sulfur dioxide from juice must not alter the basic character of the juice so treated
Ion exchange.	Various applications in the treatment of juice or wine:	Anion, cation, and non-ionic resins, except those anionic resins in the mineral acid state, may be used in batch or continuous column processes as total or partial treatment of wine, provided that with regard to juice or finished wine;
		1. Such treatment does not alter the fruit character of the juice or wine.
		2. The treatment does not reduce the color of the juice or wine to less than that normally contained in such juice or wine.
		3. Treatment does not increase inorganic anions in the juice or wine by more than 10 mg/L.
		4. The treatment does not reduce the metallic cation concentration in the juice or wine to less than 300 mg/L.
		5. The treatment does not reduce natural or fixed acid in grape wine below 4 g/L for red table wines, 3 g/L for white table wines, 2.5 g/L for all other grape wines, 4 g/L for wine other than grape wine.
		6. Treatment does not reduce the pH of the juice or wine to less than pH 3.0 nor increase the pH to more than pH 4.5.
		7. The resins used have not imparted to the juice or wine any material or characteristic (incidental to the resin treatment) which may be prohibited under any other section of the regulations in this part. The winemaker may employ conditioning and/or regenerating agents consisting of water, fruit acids common to the wine or juice being treated, and inorganic acids, salts and/or bases provided the conditioned or regenerated resin is rinsed with water until the resin and container are essentially free from unreacted (excess) conditioning or regenerating agents prior to the introduction of the juice or wine. 21 CFR 173.25.
Reverse osmosis [1]	To reduce the ethyl alcohol content of wine	Permeable membranes which are selective for molecules not greater than 500 molecular weight with transmembrane pressures of 200 psi and greater. The addition of water other than that originally present prior to processing will render standard wine "other than standard." Use shall not alter vinous character.

PROCESSES AUTHORIZED FOR THE TREATMENT OF WINE, JUICE, AND DISTILLING MATERIAL—Continued

Processes	Use	Reference or limitation
Thermal gradient processing	To separate wine into low alcohol and high alcohol wine fractions.	The fractions derived from such processing shall retain vinous character. Such treatment shall not increase the alcohol content of the high alcohol fraction to more than 24 percent by volume. The addition of water other than that originally present in the wine prior to processing, will render standard wine "other than standard."
Thin-film evaporation under reduced pressure [1].	To separate wine into a low alcohol wine fraction and into a higher alcohol distillate.	Use shall not alter vinous character. Water separated with alcohol during processing may be recovered by refluxing in a closed continuous system and returned to the wine. The addition of water other than that originally present in the wine prior to processing, will render standard wine "other than standard."
Ultrafiltration	To remove proteinaceous material from wine; to reduce harsh tannic material from white wine produced from white skinned grapes; to remove pink color from blanc de noir wine; to separate red wine into low color and high color wine fractions for blending purposes.	Permeable membranes which are selective for molecules greater than 500 and less than 25,000 molecular weight with transmembrane pressures which do not exceed 100 psi. Use shall not alter vinous character. 21 CFR 175.300, 177.1520, 177.1550, 177.1630, 177.2440, 177.2600, and 177.2910.

[1] This process must be done on distilled spirits plant premises. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387)).

§ 24.257 [Amended]

43. Section 24.257(b) is amended by revising "§ 24.315" and adding "§ 24.314."

44–46. Section 24.259 is amended by revising paragraph (a), introductory text, the first sentence of paragraph (a)(4), and paragraph (b) to read as follows:

§ 24.259 Marks.

(a) *Required marks.* Each container larger than four liters or each case used to remove wine for consumption or sale will be durably marked to show the following information:

* * * * *

(4) The net contents of each container larger than four liters or each case in wine gallons, or for containers larger than four liters or cases filled according to metric measure, the contents in liters. * * *

* * * * *

(b) *Application of marks.* Required marks may be cut, printed, or otherwise legibly and durably marked upon the container larger than four liters or the case or placed on a label or tag securely affixed to the case or container larger than four liters. * * *

* * * * * *

47. Section 24.260 is amended by revising the first, fifth and seventh sentences to read as follows:

§ 24.260 Serial numbers or filling date.

Each container larger than four liters or each case used for removing wine for consumption or sale will be marked with a serial number or filling date at the time of filling or when such containers or cases are prepared for removal.* * * The proprietor may mark containers larger than four liters or the cases with the filling date in lieu of using a serial number or use both a serial number and the filling date.* * * Where United States or foreign wine is recased, the cases will be marked with the date of recasing, preceded by the letter "R", in lieu of serial number or filling date.

* * * * *

§ 24.266 [Amended]

48. Section 24.266(a) is amended by removing "§ 24.314" and adding "§ 24.313" wherever it appears.

49. Section 24.273(a) is amended by revising the first sentence to read as follows:

§ 24.273 Exception to filing semi-monthly tax returns.

(a) Any propietor who has paid wine excise taxes during the previous calendar year in an amount less than $500, or any proprietor of a newly established bonded wine premises who expects to pay less than $500 in wine excise taxes before the end of the calendar year, may file the Excise Tax Return, ATF F 500.24, and remittance, if any, within 30 days after the end of the calendar year instead of semi-monthly as required by § 24.271. * * *

* * * * *

§ 24.281 [Amended]

50. Section 24.281 is amended by removing "(to accompany the shipment, if by truck)" and adding "(by the close of the next business day)" in the third sentence.

§ 24.293 [Amended]

51. Section 24.293(b) is amended by adding "7510" after "5367" in the authority citation.

52. The center heading before § 24.295 is revised to read as follows:

* * * * *

Return of Unmerchantable Wine to Bond

* * * * *

§ 24.295 [Amended]

53. Section 24.295 heading is amended by removing the word "taxpaid" and adding the word "unmerchantable".

54. Section 24.295(b) is amended by removing the word "amount" and adding "quantity" in the first sentence.

55. Section 24.295(c) is amended by removing "§ 24.311" and adding "§ 24.312" in the first sentence.

§ 24.301 [Amended]

56. Section 24.301(c) is amended by removing the word "chaptalization".

57. Section 24.302(f) is revised to read as follows:

§ 24.302 Effervescent wine record.

* * * * *

(f) The quantity of any finishing dosage used (See § 24.192);

* * * * *

58–59. Section 24.304(a) is amended by revising the second and fourth sentences and adding a sentence after the fifth sentence to read as follows:

§ 24.304 Chaptalization (Brix adjustment) and amelioration record.

(a) * * * Records will be maintained for each kind of wine produced (grape, apple, strawberry, etc.). * * * All quantities will be recorded in wine gallons, and, where sugar is used, the quantity will be determined either by measuring the increase in volume or, for pure dry sugar by considering that each 13.5 pounds results in a volumetric increase of one gallon. * * * If fruit juice other than grape is chaptalized and this juice or wine is ameliorated, the quantity of pure dry sugar added for

chaptalization is not considered ameliorating material; however, if liquid sugar or invert sugar syrup is used, the quantity of water in such sugar is included as ameliorating material. * * *

* * * * *

60. Section 24.306 is amended by revising the second sentence to read as follows:

§ 24.306 Distilling material or vinegar stock record.

* * * The proprietor shall keep a record of each type of material from which the distilling material or vinegar stock was fermented (e.g., grape, apple, strawberry).

61. Section 24.308(c) is revised to read as follows:

§ 24.308 Bottled or packed wine record.

* * * * *

(c) The fill tests and alcohol tests required by § 24.255 for each lot of wine bottled or packed, or for each bottling or packing line operated each day, showing the date, type of test, item tested and the test results.

* * * * *

62. Section 24.309(f) is revised to read as follows:

§ 24.309 Bottled or packed wine record.

* * * * *

(f) The number containers larger than four liters and cases;

* * * * *

63. Section 24.310 is amended by revising the fifth sentence to read as follows:

§ 24.310 Taxpaid wine record.

* * * The volume of wine removed taxpaid will be summarized daily by tax class in wine gallons to the nearest tenth gallon.

* * * * *

64–65. Sections 24.311 (a)(6) and (b)(4) are revised to read as follows:

§ 24.311 Taxpaid wine record.

(a) * * *

(6) The volume of wine received in liters and gallons.

(b) * * *

(4) The volume of wine shipped in liters or gallons.

* * * * *

§ 24.312 [Amended]

66. Section 24.312 heading is amended by removing the word "Taxpaid" and adding the word "Unmerchantable".

67. Section 24.316 is amended by revising the fourth sentence to read as follows:

§ 24.316 Spirits record.

* * * The proof gallons (recorded to the nearest tenth of a proof gallon) of spirits received, used, removed from bonded wine premises, and on hand will be summarized and the account balanced at the end of each month and reported on ATF F 5120.17.

* * * * *

§ 24.320 [Amended]

68. Section 24.320 is amended by removing "§ 24.320" and adding "§ 24.319" in the third sentence.

PART 53—MANUFACTURERS EXCISE TAXES—FIREARMS AND AMMUNITION

69. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 4181, 4182, 4216–4219, 4221–4223, 4225, 6001, 6011, 6020, 6021, 6061, 6071, 6081, 6091, 6101–6104, 6109, 6151, 6155, 6161, 6301–6303, 6311, 6402, 6404, 6418.

70. Section 53.11 is amended by revising the definitions for "calendar quarter" and "chapter 32" to read as follows:

§ 53.11 Meaning of terms.

* * * * *

Calendar quarter. A period of 3 calendar months ending on March 31, June 30, September 30, or December 31. * * *

Chapter 32. For purposes of this part chapter 32 means section 4181, chapter 32, of the Internal Revenue Code of 1986, as amended.

* * * * *

§ 53.91 [Amended]

71. Section 53.91(e) is amended by removing the word "ration" and adding "ratio" in the second sentence.

72–73. Section 53.96 is amended by revising the first sentence of paragraph (a) and redesignating the second sentence of paragraph (a)(3) as paragraph (a)(4) to read as follows:

§ 53.96 Construction sale price; special rule for arm's length sales.

(a) *In general.* Section 4216(b)(2) of the Code provides a special rule under which a manufacturer shall determine a constructive sale price for this sale of taxable articles at retail, and to retail dealers, under certain conditions. * * *

* * * * *

74. Section 53.97(a) is amended by revising the first sentence to read as follows:

§ 53.97 Constructive sale price; affiliated corporations.

(a) *In general.* Sections 4216(b) (3) and (4) of the Code establish procedures for determining a constructive sale price under section 4216(b)(1)(C) of the Code for sales between corporations that are members of the same "affiliated group", as that term is defined in section 1504(a) of the Code. * * *

* * * * *

§ 53.97 [Amended]

75. Section 53.97(c)(3) is amended by redesignating the second sentence as a new paragraph (c)(4).

76. Newly redesignated § 53.97(c)(4)(ii) is amended by redesignating the second and third sentence as a new paragraph (c)(4)(iii).

77. Section 53.97(d) is amended by revising the equation in the Example at the end of the section to read as follows:

* * * * *

$$\$15.00 - (\$15.00 \times \frac{\$16.00 - \$12.00)}{\$16.00} = \$11.25$$

* * * * *

78. Section 53.100 is amended by revising the first sentence in the undesignated paragraph after paragraph (b)(2)(ii) to read as follows:

§ 53.100 Exclusion of the local advertising charges from sale price.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

The participation by the manufacturer of the article in the planning, development, or placement of the advertising is immaterial provided the advertising is in fact initiated or obtained by one or more persons in the chain of distribution of the article. * * *

* * * * *

79. Section 53.101(c) is amended by revising the introductory text of Example (1) to read as follows:

§ 53.101 Limitation on aggregate of exclusions and price readjustments.

* * * * *

(c) * * *

Example (1). During the first and second calendar quarters of the year, a manufacturer makes sales of articles taxable under section 4181 to his distributors. The total charges for such sales, exclusive of the tax, transportation charges, delivery charges, or other charges which are excludable, pursuant to section 4216(a) of the Code, in computing taxable price, are as follows:

* * * * *

§ 53.102 [Amended]

80. Section 53.102(b) is amended by removing the word "Readjustment" and adding the word "Readjustments" in the heading.

81. Section 53.102(b)(2) is amended by removing the word "determinations" and adding the word "redetermination" in the second sentence.

§ 53.103 [Amended]

82. Section 53.103 is amended by removing the word "and" and adding the word "an" in the second sentence.

§ 53.111 [Amended]

83. Section 53.111 is amended by removing the word "by" and adding the word "on" in the section heading.

84. Section 53.111(a)(2) is amended by removing the word "manufacturer" and adding the word "manufacture" in the heading.

85. Section 53.111(a)(3) is amended by removing the word "manufacturer" and adding the word "manufacture" in the first sentence.

86. Section 53.113 is amended by revising the second sentence to read as follows:

§ 53.113 Events subsequent to taxable use of article.

* * * * *

* * * If a manufacturer, producer, or importer of an article incurs liability for tax on his use thereof, and thereafter sells or leases the article in a transaction which otherwise would be subject to tax, liability for tax is not incurred on such sale or lease. * * *

87. Section 53.114 is amended by revising the last sentence to read as follows:

§ 53.114 Use in further manufacture.

* * * An article that is consumed in the manufacturing process other than in testing, so that it is not a physical part of the manufactured article, is not used as material in the manufacture or production of or as a component part of, such other article.

88. Section 53.115(a) is amended by revising the second sentence to read as follows:

§ 53.115 Computation of tax.

(a) * * * For additional provisions applicable in computing the tax in the case of the use of an article by a manufacturer and producer who purchased the article free of tax under section 4221(a)(1) of the Code for use by him in further manufacture, see section 4223(b) of the Code and the regulations thereunder (§ 53.143).

* * * * *

89. Section 53.115(c)(3) is amended by removing the word "the" and adding the word "this".

90. Section 53.141(d) is amended by adding a new sentence to the end of the paragraph to read as follows:

§ 53.141 Exceptions to the requirement for registration.

* * * * *

(d) * * * The article also may be sold tax free for such use even though neither the manufacturer nor the purchaser is so registered if the provisions of paragraph (d) of § 53.134 are satisfied.

§ 53.156 [Amended]

91. Section 53.156(d) is amended by removing the number "6" and adding the number "26" in the last sentence.

92. Section 53.157(b)(2), introductory text, is revised to read as follows:

§ 53.157 Use of lockbox depositaries.

* * * * *

(b) * * *

(2) A person will be considered to have complied with the requirements of paragraph (b)(1) of this section for a semimonthly period if—

* * * * *

§ 53.172 Credit or refund of manufacturers tax under Chapter 32.

93–95. Section 53.172 is amended by revising paragraphs (a)(3)(ii)(A) and (a)(3)(ii)(B) and the last sentence of paragraph (a)(3)(ii)(C) to read as follows:

(a) * * *

(3) * * *

(ii) * * *

(A) Conditions to be met. If tax under chapter 32 of the Code is paid in respect of an article and the Director determines that the article is not subject to tax under chapter 32, the term "ultimate purchaser", as used in paragraph (a)(2) of this section, includes any wholesaler, jobber, distributor, or retailer who, on the 15th day after the date of the determination holds for sale any such article with respect to which tax has been paid, if the claim for credit or refund of the overpayment in respect of the articles held for sale by wholesaler, jobber, distributor, or retailer is filed on or before the date on which the person who paid the tax is required to file a return for the period ending with the first calendar quarter which begins more than 60 days after the date of the determination by the Director.

(B) Supporting statement. A claim for credit or refund of an overpayment of tax in respect of an article as to which a wholesaler, jobber, distributor, or retailer is the ultimate purchaser, as provided in this paragraph (a)(3)(ii), must be supported by a statement that the person filing the claim has a statement, by each wholesaler, jobber, distributor, or retailer whose articles are covered by the claim, showing total inventory, by model number and quantity, of all such articles purchased tax-paid and held for sale as of 12:01 a.m. of the 15th day after the date of the determination by the Director that the article is not subject to tax under chapter 32 of the Code.

(C) * * * An article in transit at the first moment of the 15th day after the date of the determination is regarded as being held by the person to whom it was shipped, except that if title to the article does not pass until delivered to the person the article is deemed to be held by the shipper.

* * * * *

96. Section 53.173 is amended by revising the third sentence in the undesignated paragraph following paragraph (b) to read as follows:

§ 53.173 Price readjustments causing overpayments of manufacturers of tax.

* * * For provisions relating to the evidence required in support of a claim for credit or refund, see 27 CFR 70.123 (Procedure and Administration), § 53.172(a)(2) and § 53.176. * * *

97. Section 53.181(b) is amended by revising the first sentence to read as follows:

§ 53.181 Further manufacture included.

* * * * *

(b) * * * A payment of tax under chapter 32 of the Code on the sale of any article, directly or indirectly, by the manufacturer of the article to a subsequent manufacturer will be considered to be an overpayment under section 6416(b)(3)(A) of the Code if the article is used by the subsequent manufacturer as material in the

manufacture or production of, or as a component part of, a second article manufactured or produced by the subsequent manufacturer which is taxable under chapter 32 of the Code
* * *.

98. Section 53.182(b)(1) is amended by revising the heading to read as follows:

§ 53.182 Supporting evidence required in case of tax-paid articles used for further manufacture.

* * * * *

(b) Evidence required to be in possession of claimant.—

(1) Certificate of ultimate purchaser of second article.

* * * * *

PART 70—PROCEDURE AND ADMINISTRATION

99. The authority citation for part 70 continues to read as follows:

Authority: 5 U.S.C. 301; 26 U.S.C. 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5741, 6301, 7601–7606, 7608, 7622, 7623, 7653, 7805.

§ 70.41 [Amended]

100. Section 70.41(c) is amended by removing the word "regional director (compliance)" and adding the word "SAC" in the first sentence.

101. Section 70.41(f) is amended by removing the word "regional directors" and adding the word "SAC" in the third sentence.

PART 252—EXPORTATION OF LIQUORS

102. The authority citation for part 252 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5054, 5051, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805; 27 U.S.C. 203, 205; 44 U.S.C. 3504(h).

§ 252.99 [Amended]

103. Section 252.99 is amended by removing "252.99 Reduction in Proof" from the table of contents.

Dated: May 6, 1991.

Daniel R. Black,

Acting Director.

Dated: June 11, 1991.

John P. Simpson,

Acting Assistant Secretary, (Enforcement).

[FR Doc. 91–15562 Filed 7–8–91; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Chapter I

Freedom of Information and Privacy Acts; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: On May 29, 1991 (56 FR 24133) the Department of Defense published a final rule transferring parts 284 and 285 from subchapter M to subchapter O. Part 284 was erroneously identified. This part does not exist, therefore, should be removed from the notice.

EFFECTIVE DATE: May 29, 1991.

FOR FURTHER INFORMATION CONTACT: L. M. Bynum, Correspondence and Directives Directorate, Washington Headquarters Services, Pentagon, Washington, DC 20301–1155.

SUPPLEMENTARY INFORMATION: Accordingly, under the authority of 5 U.S.C. 552 and 552a, title 32, chapter I, of the Code of Federal Regulations is amended as follows:

Subchapter M is amended by removing part 284.

Dated: July 2, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–16188 Filed 7–8–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–91–01]

Special Local Regulations; Nautica Powerboat Classic, Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Nautica Powerboat Classic (formerly Miller Nautica Powerboat Classic). This event will be held on the Cuyahoga River, Cleveland, OH, on the 17th and 18th of August 1991, from 10 a.m. (e.d.s.t.) until 6 p.m. (e.d.s.t.), each day. These regulations are needed to provide for the safety of life and property on navigable waters from one hour prior to until one hour after the completion of the event.

EFFECTIVE DATES: These regulations will become effective from 9 a.m. (e.d.s.t.) until 7 p.m. (e.d.s.t.), each day, on the 17th and 18th of August 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199–2060 (216) 522–4420.

SUPPLEMENTARY INFORMATION: On March 15, 1991, the Coast Guard published a Notice of Proposed Rule Making in the **Federal Register** for these regulations (56 FR 11135). Interested persons were requested to submit comments and nine comments were received.

Drafting Information:

The drafters of these regulations are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Comments

Of the nine comments received, six were from The Olde River Yacht Club, Channel Park Marina, and four of its members. Their comments expressed concern for not being able to enter or depart Lake Erie via the Old River. However, vessel traffic will be able to transit into or out of Lake Erie via the Old River, but should exercise caution when transiting at or near the mouth of the Old River. In the Notice of Proposed Rule Making, the regulated area was vaguely defined as: "That portion of the Cuyahoga River, Cleveland, OH, from the mouth of the Old River, southeastward to the Bascule Bridge (north of the Detroit Superior Bridge) Cuyahoga River, Cleveland, OH." We have more precisely defined "the mouth of the Old River" in the "Regulated Area:" section of this Temporary Rule because of the above comments received. The three remaining comments received were from The Commodore's Club Marina and two recreational boaters, all of whom oppose a blanket river closure. In order to provide for the safety of life and property, it is necessary to secure and regulate the area for the duration of this event. Because of the nature of this event and its location, a "pocket" or "passageway" cannot safely be provided during the actual races. However, during breaks and as time permits, recreational vessels may be allowed to transit the regulated area, but only with the prior approval of

the Coast Guard Patrol Commander, and when so directed by that officer.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Temporary § 100.35–T0901 is added to read as follows:

§ 100.35 T0901 Nautica Powerboat Classic, Cuyahoga River, Cleveland, OH.

(a) *Regulated Area:* That portion of the Cuyahoga River, Cleveland, OH, from a north-south line at position 41 degrees 29 minutes 54 seconds North, 081 degrees 42 minutes 29 seconds West (eastern end of the mouth of the Old River) to position 41 degrees 29 minutes 59 seconds North, 081 degrees 42 minutes 29 seconds West (northern end of the mouth of the Cuyahoga River), then southeastward to the Bascule Bridge (north of the Detroit Superior Bridge), Cuyahoga River, Cleveland, OH.

(b) *Special Local Regulations.* (1) The Coast Guard will be regulating vessel navigation and anchorage in the above area from 9 a.m. (e.d.s.t.) until 7 p.m. (e.d.s.t.), each day, on the 17th and 18th of August 1991. However, racing shall be suspended and race course buoys shall be removed to provide for the passage of commercial vessels. Recreational vessel traffic will periodically be permitted to transit through the regulated area between heats and during breaks, but only with the prior approval of the Coast Guard Patrol Commander. Marinas located down river will be given as much advance notice as possible. Vessel traffic should exercise caution when transiting at or near the mouth of the Old River.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: June 21, 1991.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 91–16103 Filed 7–8–91; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD1 91–080]

Safety Zone Regulations; Coney Island Channel, Brooklyn, NY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in Coney Island Channel, New York. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with an airshow. Entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation is effective on 6 and 7 July 1991 from 11 a.m. to 2:30 p.m. local time on those days.

FOR FURTHER INFORMATION CONTACT: MST1 S Whinham of Captain of the Port, New York (212) 668–7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG C.W. Jennings, project officer, Captain of the Port New York, and LT R.E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with an airshow. This regulation is effective on 6 and 7 June 1991 from 11 a.m. to 2:30 p.m. local time on those days. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 33 CFR 160.5.

2. A new § 165.T1080 is added to read as follows:

§ 165.T1080 Safety zone: Coney Island, Brooklyn, New York.

(a) *Location.* The following area is a Safety Zone: That portion of the waters

of Coney Island Channel bound by a line drawn from Sheepshead Bay Buoy "7" (LLNR 31685), thence southwest to Approach Buoy "1" (LLNR 31655), thence due west to Coney Island Channel Buoy "11" (LLNR 32640), thence due north to Norton Point on Coney Island.

(b) *Effective date.* This regulation is effective on 6 and 7 July 1991 from 11 a.m. to 2:30 p.m. local time on those days.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: July 2, 1991.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91-16102 Filed 7-8-91; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-512; RM-7435]

Radio Broadcasting Services; Bar Harbor and Skowhegan, MA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 300C3 for Channel 300A at Skowhegan, Maine, and modifies the construction permit for Station WHQO, to specify the higher class channel, in response to a petition filed by Dark Communications, Inc. See 55 FR 47345, November 13, 1990. To accommodate Channel 300C3 at Skowhegan, we shall substitute Channel 299B1 for vacant Channel 299B at Bar Harbor, Maine. Canadian concurrence has been obtained for the allotment of Channel 300C3 at Skowhegan at coordinates 44-42-46 and 69-43-36 and for Channel 299B1 at Bar Harbor at coordinates 44-23-12 and 68-12-42. With this action, this proceeding is terminated.

DATES: Effective August 15, 1991; the window period for filing applications for Channel 299B1 at Bar Harbor, Maine, will open on August 16, 1991, and close on September 16, 1991.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-512, adopted June 20, 1991, and released July 1, 1991. 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, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036 (202) 452-1422.

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 under Maine, is amended by removing Channel 300A and adding Channel 300C3 at Skowhegan and by removing Channel 299B and adding Channel 299B1 at Bar Harbor.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-16180 Filed 7-8-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-408; RM-7211]

Radio Broadcasting Services; Lake City and Wabasha, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 273A, Station KQLW (formerly KWMB-FM), from Wabasha, Minnesota to Lake City, Minnesota pursuant to Sections 1.420 (g) and (i) of the Commission's Rules, substitutes Channel 273C3 for Channel 273A at Lake City, and modifies the permit of Radio Instad Minnesota, Inc., permittee of Station KQLW, to specify operation on Channel 273C3. The coordinates for Channel 273C3 at Lake City are 44-17-00 and 92-25-00 with a site restriction 21.9 kilometers (13.6 miles) southeast of the community. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 15, 1991.

FOR FURTHER INFORMATION CONTACT: Belford V. Lawson, III, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-408, adopted June 19, 1991, and released July 1, 1991. 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, Downtown Copy Center (202) 452-1422, 1714 21st Street, NW., Washington DC 20036.

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 under Minnesota is amended by removing Channel 273A at Wabasha and adding Channel 273C3 at Lake City.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-16181 Filed 7-8-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 192, 193, 195, and 199

[Docket Nos. PS-114, 190-3, 192-66, 193-7, 195-46, 199-1]

RIN 2137-AB77

Amendment of an Operator's Plans or Procedures

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Final rule.

SUMMARY: RSPA is making changes in the procedures and policy by which its Office of Pipeline Safety (OPS) addresses alleged deficiencies in operators' required plans and procedures. OPS administers a statutory process for amending plans and procedures it finds to be inadequate to achieve safe operations. Until now, this process has required that pipeline operators amend plans and procedures that OPS finds inadequate, but has not subjected operators to other enforcement sanctions. As of the

effective date of this action, operators will be subject to all enforcement sanctions under the Natural Gas Pipeline Safety Act of 1968, as amended, and the Hazardous Liquid Pipeline Safety Act of 1979, as amended, for failure to maintain all plans and procedures in accordance with applicable requirements. This action is necessary to assure that operators' plans and procedures are adequate to achieve safe operations.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon, Assistant Director for Regulation, Office of Pipeline Safety, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366–1640.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 13 of the Natural Gas Pipeline Safety Act of 1968 (NGPSA) (49 U.S.C. App. 1680), as amended, and section 210 of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) (49 U.S.C. App. 2009), as amended, OPS administers a statutory process for amending operators' plans it finds to be inadequate.

On November 6, 1989, OPS published in the **Federal Register** (54 FR 46684–46685), Docket No. 114, Notice No. 1) a notice of proposed rulemaking to make changes in the procedures and policy by which it addresses deficiencies in operators' plans and procedures. Because the statutory process was implemented in parts 193 and 195 only, OPS proposed to make the procedures and policy in those parts applicable to operators' plans and procedures under parts 192 and 199 as well. To accomplish this, OPS proposed to move the current procedures found in 49 CFR 195.402(b) and 193.2017(b) (with appropriate modification) to a new 49 CFR 190.9, which would be applicable to all plans and procedures in parts 192, 193, 195, and 199. OPS also proposed to strengthen its enforcement of the adequacy of these plans and procedures by subjecting operators to the assessment of civil penalties (and criminal penalties if a violation is committed knowingly and willfully), and any other appropriate sanction. Both civil penalty and criminal sanctions are available under either the NGPSA (49 U.S.C. App. 1671 *et seq.*) or the HLPSA (49 U.S.C. App. 2001 *et seq.*). OPS's enforcement of the adequacy of written plans and procedures had previously been restricted to requiring that pipeline operators amend their plans and procedures. Comments to the notice of proposed rulemaking were due on or before December 6, 1989.

Comments Received

OPS received 19 comments: one from a state agency, three from trade associations, seven from utilities, and eight from pipeline companies. Four commenters supported the proposal.

Three commenters, who suggested changes, asked that an operator be given the opportunity to present evidence of its ongoing program to correct any alleged inadequacies in its plans and procedures before the Director of OPS, (Director) makes a determination concerning adequacy. RSPA is making no changes to the proposed rule based on this comment. If an operator has corrected, or is in the process of correcting, the alleged inadequacies in its plans or procedures when it receives a notice of amendment, the operator need only include this information in its written comments, or present it at a hearing conducted at the operator's request. The final rule states that only after considering all material presented in writing or at the hearing may the Director determine the adequacy of the operator's plans and take further action. Nevertheless, the correction of inadequate plans or procedures subsequent to an OPS inspection does not preclude the Director from making a determination that the original plans were inadequate. The information concerning the operator's correction efforts will be considered by the Director in determining what further action, if any, is necessary to assure the safe operation of the pipeline facility.

These three commenters also questioned the deletion of the phrase "new information" from the proposed revision of 49 CFR 190.211, concerning the issues operators intend to raise when requesting a hearing. RSPA is making no changes based on this comment. The proposed revision reads: "The issues may relate to the allegations in the notice, the proposed corrective action, or the proposed civil penalty amount." Because any "new information" must relate to the allegations in the notice, the proposed corrective action, or the proposed civil penalty amount, including "new information" as a specific category is unnecessary. Operators will not be precluded from providing OPS with additional information at the time a hearing is requested.

Nine commenters considered the proposed rulemaking to be unnecessary. One stated that it would result in changing operator's "user-friendly" procedural manuals into highly technical documents containing legal jargon, thereby destroying the usefulness of these manuals. RSPA disagrees. Merely strengthening OPS's enforcement of an operator's written plans and procedures should not lead to an elimination of the user-friendly format. Until now, OPS's enforcement of the adequacy of written plans and procedures has been restricted to the amendment process. Restricting enforcement to the amendment process has had the effect of limiting the enforcement tools available to the Department in addressing the quality and effectiveness of operators' plans and procedures, which are the foundation of sound operations. Consequently, RSPA must have the widest latitude to assure that operators develop plans and procedures that comply with applicable safety requirements, and that operators comply with the plans.

Several commenters stated that an operator should be subject to a civil penalty only if it refuses to adjust deficient plans or procedures. RSPA is making no changes to its proposed rule based on this comment. Subjecting operators to civil penalties should provide them with greater incentive to assure that their plans and procedures are adequate to provide safe operations of their systems and to minimize hazards in emergencies. The fact that we can always find something wrong, as one commenter argued, does not convince us that civil penalties are unnecessary; in fact, we reach the opposite conclusion. Moreover, if a civil penalty is proposed, an operator's due process protections will remain substantially the same as those afforded operators under the amendment process, including prior notice and an opportunity for an informal hearing before final agency action is taken. An operator is not automatically assessed a civil penalty pending a hearing, as one commenter feared; a civil penalty is only proposed pending a hearing or other response option chosen by the operator.

One commenter requested that a paragraph be added to the amendment procedures requiring that OPS neither issue a notice of amendment nor undertake enforcement action if the operator, after a routine inspection and at the request of the Region Chief, revises its plans and procedures as requested. RSPA is not adding this paragraph. One of the stated purposes of the present regulatory action is to expand the enforcement tools available to OPS in addressing the quality and effectiveness of an operator's plans and procedures; the commenter's suggested paragraph would actually limit those

tools because even the prior amendment procedures contained in 49 CFR 195.402(b) did not contain the requested restriction. There certainly would be less incentive for an operator to assure the quality and effectiveness of its plans and procedures before an inspection if it knew that no notice of amendment would be issued and no other enforcement action would be taken.

RSPA disagrees with one commenter's argument that subjecting operators to civil penalties promotes form over substance because an operator's actual operating procedure may comply with the regulations whereas its procedural manual may contain errors or omissions. Safe operation of a pipeline is dependent upon adequate and accurate manuals whose provisions are adhered to by the operator's employees and contractor personnel. Allowing inadequate or inaccurate manuals to be operator's guides would not further safe industry practices.

RSPA also disagrees with the comment that the proposal is not in keeping with the intent of performance-type regulations. RSPA has not added to the regulations specific requirements that must be included in an operator's plans and procedures. More detailed procedures are addressed in a different proceeding (Docket No. PS 113; 54 FR 46685 (Nov. 6, 1989)). It is not necessary, however, that substantive rules in the latter proceeding become effective before the procedural rules in this one, as one commenter requested. Strengthening OPS's enforcement of the adequacy of all plans and procedures should not be delayed until specified changes in some procedures are finalized.

One commenter also claimed to be unaware of any accidents that could be attributed to deficient manuals. RSPA, however, is aware of deficiencies in operating procedures which could have contributed to accidents. For example, on December 24, 1988, Shell Pipe Line Company experienced a failure on its Ozark Pipeline System. OPS's review of Shell's written manuals conducted during its investigation of the failure disclosed deficiencies relating to procedures during abnormal operations required by 49 CFR 195.402(d). These deficiencies may have contributed to the failure.

The one state agency commenting argued that moving 49 CFR 193.2017(b) to part 190 would remove that state's authority to require amendments of plans and procedures because it had not adopted part 190. RSPA does not agree that moving the procedures to part 190 would remove the state's authority since that authority is based on statute.

Section 13 of the Natural Gas Pipeline Safety Act and section 210 of the Hazardous Liquid Pipeline Safety Act provide that if the Secretary or appropriate state agency with responsibility for enforcement of compliance with the standards finds that an operator's inspection and maintenance plan is inadequate to achieve safe operation of pipeline facilities, the Secretary or state agency, after notice and opportunity for a hearing, has the authority to require that such plan be revised. Thus, the statute confers this authority. However, this authority may not be clearly expressed in state regulatory schemes except in part 193 as adopted by the state. The provisions contained in part 190 are only applicable to RSPA's enforcement proceedings, are not generally adopted by states and, therefore, would not be useful to the states. Therefore, RSPA will leave this expression of authority to mandate amendment in part 193 and is revising parts 192, 195, and 199 to clarify this authority in those areas.

Since the language in 49 CFR 193.2017(b) is being left in the regulations, RSPA is modifying that section to clarify which state agencies have the authority.

Finally, one commenter argued that if adopted, the proposed rulemaking should be incorporated under 49 CFR part 190, subpart B—Enforcement, rather than subpart A—General. The proposed 49 CFR 190.9 was contained in the general subpart; RSPA agrees that adding the proposed revision to the enforcement subpart is appropriate. The stated purpose and scope of subpart A is to prescribe the procedures, such as service of documents and subpoenas, that are applicable to enforcement proceedings under subpart B. The section added by this final rule subjects operators to enforcement sanctions and should be included in subpart B. Accordingly, in the final rule, we are adding this section to subpart B of part 190 by creating a new § 190.237.

Miscellaneous

We are making minor language changes to the proposed rule for clarity and to reflect that the amendment is added to subpart B of part 190 instead of subpart A. Also, to reflect the delegation of authority from the Administrator of RSPA to the Director of OPS, RSPA is adding the latter change to § 190.203(d) in two places.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Effective Date

This rule is effective August 8, 1991.

Impact Assessment

RSPA has analyzed this rule and has determined that it is not a "major rule," within the meaning of Executive Order 12291. It will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. We have also determined that this rule is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034–11045 (Feb. 26, 1979)). Because the rule contains no substantive revisions that could be expected to require significant changes in operator procedures or compliance burdens, and because the economic impact will be minimal, a full regulatory evaluation is not required.

Accordingly, I certify, pursuant to 5 U.S.C. 605 regarding the Regulatory Flexibility Act, that this action will not have a significant economic impact on a substantial number of small entities.

RSPA has analyzed this action in accordance with the principles and criteria of Executive Order 12612 (52 FR 41685 (Oct. 26, 1987)) and has determined that it does not have sufficient Federalism implications to warrant preparing a Federalism Assessment.

List of Subjects

49 CFR Part 190

Enforcement, Operations and maintenance procedures, Pipeline safety.

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 193

Pipeline safety, Plans and procedures, Procedural manual.

49 CFR Part 195

Operations and maintenance Procedures, Pipeline safety, Procedural manual.

49 CFR Part 199

Drug testing, Pipeline safety, Reporting and recordkeeping requirements, Safety, Transportation.

In consideration of the foregoing, title 49, Code of Federal Regulations, parts 190, 192, 193, 195, and 199 are amended as follows:

PART 190—[AMENDED]

1. The authority citation for part 190 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1677, 1679a, 1679b, 1680, 1681, 1804, 2002, 2006, 2007, 2008, 2009, and 2010; 49 CFR 1.53.

2. In § 190.203, paragraph (d) is revised to read as follows:

§ 190.203 Inspections.

* * * * *

(d) To the extent necessary to carry out his responsibilities under the HLPSA, HMTA, or the NGPSA, the Administrator, RSPA, or the Director, OPS, may require testing of portions of pipeline facilities subject to those Acts that have been involved in, or affected by, an accident. However, before exercising this authority, the Administrator, RSPA, or the Director, OPS, shall make every effort to negotiate a mutually acceptable plan with the owner of those facilities and, where appropriate, the National Transportation Safety Board for performing the testing.

* * * * *

3. In § 190.211, paragraph (a) is revised to read as follows:

§ 190.211 Hearing.

(a) A request for a hearing provided for in this part must be accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations in the notice, the proposed corrective action (including a proposed amendment, a proposed compliance order, or a proposed hazardous facility order), or the proposed civil penalty amount. A respondent's failure to specify an issue may result in waiver of his right to raise that issue at the hearing. The respondent's request must also indicate whether or not he will be represented by counsel at the hearing.

* * * * *

4. In § 190.233, paragraph (a) is revised to read as follows:

§ 190.233 Hazardous facility orders.

(a) Except as provided by paragraph (b) of this section, if the Director, OPS, finds, after reasonable notice and opportunity for hearing in accordance with paragraph (c) of this section and § 190.211(a), a particular pipeline facility to be hazardous to life or property, he shall issue an order pursuant to this section requiring the owner or operator of the facility to take corrective action. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action, as appropriate.

* * * * *

5. Section 190.237 is added to read as follows:

§ 190.237 Amendment of plans or procedures.

(a) A Region Chief, OPS, begins a proceeding to determine whether an operator's plans or procedures required under parts 192, 193, 195 and 199 of this subchapter are inadequate to assure safe operation of a pipeline facility by issuing a notice of amendment. The notice shall provide an opportunity for a hearing under § 190.211 of this part and shall specify the alleged inadequacies and the proposed action for revision of the plans or procedures. The notice shall allow the operator 30 days after receipt of the notice to submit written comments or request a hearing. After considering all material presented in writing or at the hearing, the Director, OPS, shall determine whether the plans or procedures are inadequate as alleged and order the required amendment if they are inadequate, or withdraw the notice if they are not. In determining the adequacy of an operator's plans and procedures, the Director, OPS, shall consider:

(1) Relevant available pipeline safety data;

(2) Whether the plans or procedures are appropriate for the particular type of pipeline transportation or facility, and for the location of the facility;

(3) The reasonableness of the plans or procedures; and

(4) The extent to which the plans or procedures contribute to public safety.

(b) The amendment of an operator's plans or procedures prescribed in paragraph (a) of this section is in addition to, and may be used in conjunction with, the appropriate enforcement actions prescribed in this subpart.

PART 192—[AMENDED]

8. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 1672 and 1804; 49 CFR 1.53.

9. Section 192.603 is amended by adding a new paragraph (c) to read as follows:

§ 192.603 General provisions.

* * * * *

(c) The Administrator or the State Agency that has submitted a current certification under section 5(a) of the Natural Gas Pipeline Safety Act with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

PART 193—[AMENDED]

10. The authority citation for part 193 continues to read as follows:

Authority: 49 App. U.S.C. 1671 *et seq.*; and 49 CFR 1.53.

11. Section 193.2017(b) is revised to read as follows:

§ 193.2017 Plans and procedures.

* * * * *

(b) The Administrator or the State Agency that has submitted a current certification under section 5(a) of the Natural Gas Pipeline Safety Act with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

PART 195—[AMENDED]

12. The authority citation for part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2002; and 49 CFR 1.53.

13. Section 195.402(b) is revised to read as follows:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(b) The Administrator or the State Agency that has submitted a current certification under section 205(a) of the Hazardous Liquid Pipeline Safety Act with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

* * * * *

PART 199—[AMENDED]

14. The authority citation for part 199 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, 2002, and 2040; 49 CFR 1.53.

15. Section 199.7 is amended by revising paragraph (b) to read as follows:

§ 199.7 Anti-drug plan.

* * * * *

(b) The Administrator or the State Agency that has submitted a current certification under section 5(a) of the Natural Gas Pipeline Safety Act or section 205(a) of the Hazardous Liquid Pipeline Safety Act with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

* * * * *

Issued in Washington, DC on July 1, 1991.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 91-16068 Filed 7-8-91; 8:45 am

BILLING CODE 4910-60-M

Proposed Rules

Federal Register
Vol. 56, No. 131
Tuesday, July 9, 1991

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 TRANSPORTATION

Office of the Secretary

14 CFR Parts 207, 208, 212, 294, 298, and 380

[Docket 40336]

RIN 2105-AA41

Liberalization of Air Carrier Charter Rules

AGENCY: Office of the Secretary, DOT.

ACTION: Proposed rulemaking: termination of proceedings.

SUMMARY: Part 380 establishes consumer protection provisions for publicly sold charter flights that are operated in common carriage. Charter participant payments must either be fully secured or held in escrow until the flight operates. In order to ensure that passengers are aware of charter restrictions, they must sign a participant contract that describes their rights and the limitations on those rights. Charter operators must offer the option of a penalty-free refund if they make certain "major changes" to the charter. Cancellations and price increases within 10 days of departure are prohibited.

Chartering organizations which are not operating flights for profit and are not in common carriage do not have to comply with the restrictions of part 380. These flights include the so-called "affinity" charters for fraternal organizations, schools, etc., and "single entity" charters, where the cost is borne by the chartering organization rather than passengers (e.g., gambling junkets, football team charters). Parts 207, 208 and 212 established eligibility restrictions for these charter forms to ensure that operators of publicly sold charters do not use them to evade the consumer protections of part 380. In February 1982, the Civil Aeronautics Board (CAB) issued a notice of proposed rulemaking (NPRM), (EDR-439/SPDR-86, February 1, 1982; 47 FR 7443, February 19, 1982) which proposed a complete restructuring of the way in which the U.S. government regulates air passenger charter operations. The CAB proposed to replace the bonding and escrow requirements for indirect air carriers with a new bonding and registration requirement and eliminate all filing requirements of indirect carriers as well as provisions dealing with affinity group and pro rata charters. The proposal was not received favorably, and in March 1983 the CAB issued a revised NPRM (EDR-456/SPDR-88, March 24, 1983; 48 FR 15639, April 12, 1983). The revised version received no more favorable support than the original proposal, and remains pending at DOT. In light of the lack of support for these proposals and the length of time since they were issued, the Department has decided not to act on the pending NPRM, but rather to consider whether there should be a comprehensive reexamination of all charter regulations, including financial security arrangements.

EFFECTIVE DATE: July 9, 1991.

FOR FURTHER INFORMATION CONTACT: Charles McGuire, Regulatory Analysis Division, P-57, Office of Aviation Analysis, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, or by telephone at (202) 366-1037.

SUPPLEMENTARY INFORMATION:

Passenger charter regulation by the CAB over the years led to two main types of operations: Those not held out to the general public (affinity, single entity, and mixed charters) and those held out to the public by an indirect air carrier middleman which chartered aircraft on its own behalf and assumed the risk, as principal, of successfully marketing the seats on the charter flights. In this latter area, 14 CFR part 380, "Public Charters," evolved from previous publicly sold charter type rules promulgated by the Civil Aeronautics Board. These earlier charter types, inclusive tour charters (1965), study group charters (1971), travel group charters (1972), one-stop inclusive tour charters (1975), and advance booking charters (1976), became gradually less restrictive as, during the era of deregulation, the CAB sought to provide an ever-greater competitive spur to the air transportation industry.

The current Public Charter rule (14 CFR part 380) contains few requirements not related to consumer protection. A person wishing to conduct one or more Public Charter flights must, before commencing advertising or sale of the program, file a charter prospectus with DOT. The prospectus consists of certifications that (1) the charter operator has a binding charter contract with an authorized direct air carrier to provide the intended transportation, and (2) the charter operator has complied with the financial security requirements of the rule. The financial security requirements may be met either by the operator's obtaining a security instrument (such as a surety bond) in an amount equal to the aircraft charter price of the program (or a multiple of this amount, for long-duration tours), or by obtaining a security instrument in the amount of $10,000 per flight (up to a maximum of $200,000 for a series of 20 or more flights), along with an escrow arrangement with a bank by which all passenger payments, less retail travel agents' commissions, will be deposited with and administered by the bank.[1]

The charter prospectus is reviewed by DOT staff and is accepted or rejected, as warranted, during a 10-day review period. Any amendment to programs, such as the addition of flights or the substitution of a different direct air carrier, must also be filed with and accepted by DOT.

As a part of a pre-Sunset review of existing regulations, the CAB issued an NPRM in February 1982 (EDR-439/SPDR-86, *supra*) which proposed a massive restructuring of the way in which the U.S. government regulated passenger charter operations.

Basic to the proposal was the elimination of the current range of charter rules (affinity, single entity, and mixed charters in 14 CFR parts 207, 208, and 212), and their replacement by a single rule (part 212) which would have applied only if the air transportation was marketed by an independent indirect air carrier middleman acting as principal. If the direct air carrier itself was responsible to the passengers for providing the transportation, the proposed rule would not have applied, and the transportation would have been

[1] Other provisions of the rule deal with the contract between the charter operator and the participants, involving areas such as requirements for refunds if major changes are made to a program after a passenger books, and specialized provisions for Super Bowl charters.

considered noncharter "scheduled" air transportation.

This redefinition of scheduled/charter air transportation was to be accompanied by elimination of direct air carrier financial security rules, which protect the charterers', and, indirectly, the passengers' advance charter payments, on the grounds (1) that such financial protection should not be based on the type of transportation marketed, and (2) that no matching financial security requirements were being applied to scheduled operations. The NPRM also proposed to replace the charter prospectus filing requirement with a onetime registration procedure for charter operators, and to replace the existing charter operator financial security requirements with a requirement for a $200,000 bond, with no escrow requirement (or a number of other alternatives). Finally, the proposal would have eliminated the current rules relating to the contents of operator-participant contracts.

The proposal met with almost no support, being attacked by both consumer and industry groups. The commenters' views were, basically, that the present rules worked adequately, and that the consumer protection provisions helped to maintain a good image for the industry by preventing (or minimizing) defaults.

In an attempt to deal with the pronounced lack of enthusiasm for the proposed revisions, the CAB issued a new proposal, EDR-456/SPDE-88, in March 1983. The revised proposal would still have eliminated the affinity, single entity, and mixed charter types, and would again have drawn the distinction between charter and scheduled operations by the presence or absence of an indirect air carrier middleman. But, unlike the previous proposal, it would have retained the present financial security arrangements for both direct and indirect air carriers, and would also have retained, in a slightly modified form, the Public Charter prospectus filing provisions (rather than registration). The proposal would also have clarified a number of "uncertainties" in the present rule, requiring, among other things, that direct air carriers assume responsibility for returning round-trip passengers they carried on outbound charters (whether or not they had been paid by the charter operator for the return transportation) [2] and that sales to the public by independent "wholesalers" were prohibited unless the wholesales themselves complied with part 380.

This proposal received no more enthusiastic response than the earlier one. The majority of industry respondents felt that the proposal, with its (slightly) tightened consumer protection provisions, represented a move to re-regulate the industry, and would make charters more expensive and less competitive with scheduled service.

The CAB never finalized that proposal either, and the rulemaking proceeding remains pending at DOT

The Department's current charter rules, not only part 380 but also those concerning affinity, single entity, and mixed charters, have worked reasonably well for a long period of time. Both the industry and the traveling public are generally familiar with these rules and with the risks and benefits associated with them. The rule has also received a fair measure of acceptance by foreign governments.

On the other hand, part 380's prospectus filing procedures are cumbersome, and the current array of charter types provided for in the Department's rules are somewhat antiquated (especially the detailed rules regarding affinity group membership) and could benefit from revision. Since the proposals in this docket were issued, the aviation industry has undergone numerous changes. In fact, several of the commenters on these proposals are no longer in business. The Department will determine if revision of current charter regulations is called for, and if so will issue a comprehensive new notice of proposal rulemaking or an advance notice of proposed rulemaking. In the meantime, this proceeding is terminated.

Issued in Washington, DC on July 1, 1991.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-16258 Filed 7-8-91; 8:45 am]

BILLING CODE 4910-62-M

[2] This issue was subsequently dealt with by the CAB in an Interpretation of Regulations Concerning Payment to Direct Air Carrier(s) (ER-1387/SPR-194. August 17, 1984; 49 FR 33436, August 23, 1984). The CAB noted that the charter rules which require direct air carriers to be paid in full for both legs of round-trip charter flights prior to the commencement of the outbound transportation, were intended to assure that passengers received return transportation, and that the rules therefore require carriers to provide such return transportation whether or not the carriers have been paid. Arrow Air, Inc. challenged this CAB action in the U.S. Court of Appeals for the District of Columbia, stating that the action was not an interpretation but represented a substantive change in the rule. The Court upheld the CAB's interpretation. *Arrow Air, Inc.* v. *Dole*, 784 F2d 1118 (1986).

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program Amendment; Bonding, and Others

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment (Program Amendment Numbers 91-7A, 91-7B and 91-7C) submitted consists of proposed changes to the Indiana Surface Mining Statute (IC 13-4.1) adopted by the Indiana General Assembly. The amendments are intended to revise the provisions concerning self bonding, bond pool fund, fees assessed to provide program income, requirements for hearings, and the responsibilities of the Director and the Natural Resources Commission, and to add a "no more stringent than" Federal regulations clause.

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on August 8, 1991; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on August 5, 1991; and requests to present oral testimony at the hearing must be received on or before 4 p.m. on July 24, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during

normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone: (317) 232–1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Telephone (317) 226–6166; (FTS) 331–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By letter dated June 4, 1991, (Administrative Record No. IND–0894), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at Indiana Code (IC) 13–4.1–1 through 13–4.1–6, 13–4.1–6.3, and 13–4.1–6.5. The proposed amendment consists of Indiana's 1990 Senate Enrolled Act (SEA) 52, 1991 SEA 46, and 1991 SEA 154. These were received as a single proposed amendment. A letter from the State, dated June 5, 1991 (Administrative Record No. IND–0886), requested the OSM to separately process the three statutes. The OSM will process the submitted amendment as three separate amendments in accordance with the State request. The three Statutes encompass the following:

SEA 52 from the 1990 Legislative Session contains revisions to the self-bonding and bond pool fund provisions.

SEA 46 from the 1991 Legislative Session contains revisions to the bonding and bond pool fund provisions, changes to the fees assessed to provide program income, and the addition of a clause that would prevent the enforcement of either a State rule which is more stringent than a corresponding provision under SMCRA or a condition of a permit imposed under the State statute or rules that is more stringent than the provisions under SMCRA.

SEA 154 from the 1991 legislative Session contains further changes to the fees assessed to provide program income, requirements for hearings, and changes in the responsibilities of the Director and the Natural Resources Commission.

The full text of the proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on July 24, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under "**ADDRESSES.**" A summary of the meeting will be included in the Administrative Record.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 28, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91–16248 Filed 7–8–91; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 943

Texas Permanent Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas permanent regulatory program (hereinafter, the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Texas regulations pertaining to self-bonding. The amendment is intended to ensure that the self-bonding regulations adequately assess the financial health of self-bonding applicants in Texas.

This notice sets forth the times and locations that the Texas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.d.t. August 8, 1991. If requested, a public hearing on the proposed amendment will be held on August 5, 1991. Requests to present oral testimony at the hearing must be received by 4 p.m., c.d.t. on July 24, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Texas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Direct, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, OK 74135, Telephone: (918) 581–6430.

Railroad Commission of Texas, Surface Mining and Reclamation Division, Capitol Station, P.O. Drawer 12967, Austin, TX 78711, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, on telephone number (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning Texas' program and program amendments can be found at 30 CFR 943.15 and 943.16.

II. Proposed Amendment

By letter dated June 24, 1991, (Administrative Record No. TX–493), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposes to amend Texas Coal Mining Regulation 816.309(j) concerning self-bonding.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., c.d.t. on July 24, 1991. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 1, 1991.

Allen D. Klein,

Deputy Assistant Director, Western Support Center.

[FR Doc. 91–16247 Filed 7–8–91; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket 89–554; FCC 91–188]

Preparation for the International Telecommunications Union World Administrative Radio Conference for Dealing with Frequency Allocations in Certain Parts of the Spectrum

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; report.

SUMMARY: This action recommends Commission proposals to the U.S. Department of State for the World Administrative Radio Conference scheduled for February 3–March 3, 1992 (WARC–92) in Spain. The action follows a Notice of Inquiry (54 FR 53341; December 28, 1989), a Second Notice of Inquiry (55 FR 40888; October 5, 1990), and a Supplementary Notice of Inquiry (56 FR 12697; March 27, 1991) that solicited comments on tentative Commission proposals and policies for WARC–91. The objective of this action is to assist the Department of State in preparation for WARC–92.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William Torak, telephone (202) 632–7025.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report in General Docket 89–554, FCC 91–188, adopted June 13, 1991, and released June 20, 1991.

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, Downtown Copy Center (202) 452–1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Report

1. The Notice of Inquiry (NOI) in this proceeding followed the 13th Plenipotentiary Conference (Plenipot), which determined that a World Administrative Radio Conference

should be held in 1992 to address frequency allocations in certain parts of the spectrum. The NOI requested comment on the projected frequency needs of the HF (3–30 MHz) broadcasting service, mobile services and the mobile satellite service (MSS) in the 500–3000 MHz range, high-quality radio and High Definition Television (HDTV) delivered by the broadcasting satellite service (BSS), and new space services above 20 GHz, as well as Articles 55 (Rev.) and 56 (Rev.) of the International Radio Regulations, which concern requirements for on-board maintenance of shipborne radio and electronic equipment.

2. In June 1990, the International Telecommunication Union (ITU) Administrative Council expanded the WARC–92 agenda to include additional issues, such as an allocation for low earth orbit (LEO) satellites, terrestrial broadcasting complementary to satellite broadcasting (sound), and other items related to those recommended by the Plenipot. In September 1990, the Commission adopted a Second Notice of Inquiry (Second NOI) that made specific proposals for some of the services discussed in the NOI and raised the additional issues addressed by the ITU Administrative Council. In March 1991, the Commission adopted a Supplemental Notice of Inquiry (Supplementary NOI) that solicited comment on new proposals and concepts related to satellite and terrestrial audio broadcasting, MSS, future public land mobile telecommunications systems, space research, inter-satellite service, and HDTV, to complement the information previously obtained.

3. Comments to the three NOIs were filed by more than 100 entities. Additionally, the FCC Industry Advisory Committee (IAC) for WARC–92 submitted four interim reports and a final report to the Commission addressing the issues discussed in the NOIs. Commission recommendations on the most significant issues are summarized and discussed below.

4. The first major issue concerns the HF frequency band. A majority of commenters supported increasing the HF broadcasting allocation by approximately 1500 kilohertz. The Commission concluded, however, that with the use of reduced carrier single sideband technology, 1325 kilohertz will be sufficient to meet HF broadcast needs. Adoption of this recommendation would reallocate as much spectrum as possible to broadcasting while providing sufficient channels to reaccommodate fixed and mobile stations that would be affected by the increased broadcasting allocation.

5. The second major issue concerns an allocation of spectrum for new mobile services in the 1700–2500 MHz band. Proponents of services such as personal communications, wireless local area networks, and future public land mobile telecommunications favored an allocation of additional spectrum in this band. However, parties representing fixed and broadcasting services opposed additional mobile allocations in the 1700–2500 MHz band to prevent the possibility that their services might be displaced. The Commission notes that the international Table of Frequency Allocations for Region 2 has a co-primary mobile allocation in the 1710–2500 MHz band, and therefore it does not have to make a specific proposal for an international mobile allocation for the United States to implement new mobile services in this band. Further, an exclusive international mobile allocation could limit the Commission's flexibility to make domestic allocations. Accordingly, the Commission recommends that the co-primary allocation for mobile services at 1710–2500 MHz be maintained.

6. The third major issue concerns additional allocations for MSS. Parties expressed mixed reactions on the need for more MSS spectrum. However, the Commission is convinced that the demand for MSS is growing and that the generic MSS allocations in the 1530–1559/1626.5–1660.5 MHz bands proposed at the 1987 WARC for the Mobile Services remain appropriate. Also, to accommodate future MSS growth, the Commission recommends that the 1525–1530 MHz, 2110–1230/2160–2180 MHz (space-to-Earth), and 2390–2430 MHz (Earth-to-space) bands be reallocated to MSS on a primary or co-primary basis with existing fixed, mobile, and radiolocation services. Finally, the Commission recommends that MSS be permitted to share the 1610–1626.5/2483.5–2500 MHz bands on a co-primary basis with other services, including the Radiodetermination Satellite Service.

7. The fourth major issue concerns an allocation for LEO MSS. Commenting parties generally supported this service, but voiced concern about its impact on existing services. The Commission believes that LEO satellites can provide an important new service. However, the spectrum requirements of this service must be balanced against the needs of current spectrum users. Accordingly, the Commission recommends that, below 1 GHz, most of the 137–138 MHz band be allocated to LEO MSS on a co-primary basis with other satellite services, with remaining LEO MSS use of this band on a secondary basis to the meteorological-satellite service; and that 148–149.9 MHz and 400.15–401 MHz be allocated to LEO MSS on a co-primary basis with existing satellite, fixed, and mobile services. Above 1 GHz, the Commission recommends that the 1613.8–1626.5 MHz band be allocated to MSS (space-to-Earth) on a secondary basis to other satellite services, and that the 1850–1990 MHz band be allocated to MSS without a direction indicator on a co-primary basis with existing fixed and mobile services.

8. The fifth major issue concerns an allocation for satellite and terrestrial audio broadcasting, jointly referred to as digital audio broadcasting (DAB). Several parties expressed support for an allocation for this service in the 500–3000 MHz range, while those representing existing services that might be affected opposed such an allocation. The Commission is convinced that, in order to promote development of DAB, including availability of inexpensive receivers, it will be desirable to select a band that has the broadcast regional and international support. It therefore recommends that some spectrum be allocated to DAB from within the 1429–1525 MHz band. However, since this allocation would impact existing aeronautical mobile telemetry users, it may not be possible to provide enough spectrum in this band to ensure a successful DAB service. Accordingly, the Commission also recommends that some spectrum be allocated to DAB from within the 2300–2390 MHz band, which is currently allocated to mobile and radiolocation services. The exact size of the DAB allocation in each band will be decided after appropriate consultations with the Executive Branch.

9. The sixth major issue concerns broadcasting HDTV by satellite. Commenting parties expressed concern about such a service sharing bands heavily used by terrestrial services. However, the 12 GHz band is already allocated to the BSS and the 24.65–25.25 GHz band is not currently in use. Therefore, the Commission recommends that the existing 12 GHz band be the first choice for meeting an HDTV BSS requirement and that the 24.65–25.25 GHz band be reallocated from the radiolocation service to the BSS for use by HDTV as an alternate choice.

10. The final major issue concerns Articles 55 and 56 of the international Radio Regulations, which were revised at the WARC for the Mobile Services in 1987 to require carriage of personnel certified to service and repair shipborne

radio and electronic equipment. Three parties expressed sharply divergent views regarding the appropriate U.S. position on these articles. The Commission recommends that these articles be further revised to eliminate the requirements for mandated carriage of certified personnel to maintain shipborne equipment.

11. Authority for this Report is contained in sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 303(r), and 403.

List of Subjects in 47 CFR Part 2

Frequency allocations and radio treaty matters; General rules and regulations, Radio.

Donna R. Searcy,

Secretary.

[FR Doc. 91-16182 Filed 7-8-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[Private Radio Docket 91-170; FCC 91-187]

Spectrum Efficiency in the Private Land Mobile Radio Bands in Use Prior to 1968

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Notice of Inquiry.

SUMMARY: The Commission has adopted a Notice of Inquiry dealing with spectrum efficiency in the private land mobile radio bands in use prior to 1968. This Notice of Inquiry explores the issue of whether and how the Commission could modify the regulatory environment to permit, facilitate, and promote the more efficient use of that private land mobile radio spectrum.

DATES: Comments must be filed on or before October 25, 1991 and reply comments must be filed on or before December 13, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Doron Fertig, Private Radio Bureau, Land Mobile Microwave Division, Policy and Planning Branch (202) 632-6497.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry, PR Docket No. 91-170, adopted June 13, 1991, and released July 2, 1991. 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 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20037, (202) 452-1422.

Summary of Notice of Inquiry

1. The Notice addresses several fundamental problems. First, the low (25-50 MHz), high (150-174 MHz), and UHF (450-470 MHz) frequency bands are each extremely congested in many areas of the country. Communications in these bands are unreliable and of low quality due to this spectrum congestion. Finally, these bands do not support non-traditional communications such as mobile data, mobile FAX, intelligent highways, and mobile video. Thus, without significant regulatory change these bands will be incompatible with many of the changing demands of private radio users. The main focus of the Notice is to seek possible means of resolving these problems by altering the Commission's rules and regulations to encourage widespread investment in spectrum efficient equipment.

2. The Notice discusses two possible changes in technological regulation: providing greater technological flexibility and mandating increased spectrum efficiency. An example of technological flexibility would be to permit use of certain spectrum efficient technologies such as centralized trunking and spread spectrum transmission. Examples of mandated increased efficiency would be to require channel splitting on one or more bands to increase the number of assignable channels. The Notice also discusses a number of broad policies the Commission might adopt, including the phasing out of shared use assignments in favor of exclusive use channel assignments; increased reliance on private carriers; and consolidating the nineteen different radio services.

3. The information acquired through this Notice of Inquiry will enable the Commission to develop rules that include the best mix of policies in each of the individual segments of the spectrum occupied by private land mobile radio users. The Commission invites all interested parties to comment on the questions raised in this Notice of Inquiry.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-16183 Filed 7-8-91; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 56, No. 131
Tuesday, July 9, 1991

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

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration, Commerce.

Title: Export Assistance Request.

Form Numbers: Agency—ITA–736P, OMB—

Type of Request: New collection.

Burden: 18,600 respondents; 940 reporting hours.

Average Hours per Response: 3 minutes.

Needs and Uses: The most effective and productive use of the International Trade Administration's U.S. and Foreign Commercial Service's Domestic Operations resources is to target export marketing assistance to "infrequent exporters." Program emphasis is placed on specialized counseling adapted to the needs and objectives of the clients. Each District Office will use this form as a pre-screening device to help the staff determine the level of assistance needed by walk-in clientele, unsolicited telephone requests for information or assistance, or a self-addressed mailer when included in District Office-sponsored trade promotion kits. This information will enable the trade specialist to act on behalf of the company to either initiate a client relationship or refer the company to an appropriate source.

Affected Public: Businesses or other for profit; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edwards Michals, (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated July 3, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–16272 Filed 7–8–91; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1992 Census of Governments—Local Government Directory Survey.

Form Number(s): G–25 through G–32.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 21,250 hours.

Number of Respondents: 85,000.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Bureau of the Census will conduct this survey in conjunction with the 1992 Census of Governments. We will collect data on organizational characteristics, functions, and elected officials from counties, municipalities and townships, special governmental districts, and school systems. This survey will serve several purposes: (1) It provides a comprehensive updated mailing list of all local governments for subsequent phases of the census of governments; (2) it provides a basis for published statistics on the number and organizational characteristics of local governments and public school systems in the United States; (3) it supplies more detailed unpublished listings and machine recorded data for appropriate reference in the subsequent public employment financial data; and (4) it provides a current list of building and zoning permit jurisdictions and officials.

Affected Public: State or local governments.

Frequency: Every five years.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 3, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–16271 Filed 7–8–91; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–201–803]

Final Determination of Sales at Less Than Fair Value: Steel Wire Rope From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 9, 1991.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–4136.

Final Determination of Sales at Less Than Fair Value

The Department of Commerce (the Department) determines that imports of steel wire rope from Mexico are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since publication of the preliminary determination on April 22, 1991, (56 FR

16317), the following events have occurred:

On May 14, 1991, the petitioner alleged that critical circumstances exist for the subject merchandise. The petitioner supplemented its allegation on May 28, 1991.

The petitioner amended the petition on May 28, 1991 to exclude stainless steel wire rope from the scope of the investigation. Comments on this issue were submitted by the petitioner and respondent, Grupo Industrial Camesa, S.A. de C.V. (Camesa), on June 14, 1991.

On June 3, 1991, the petitioner and Camesa submitted case briefs to the Department, including comments on the critical circumstances allegation. On June 4, 1991, we also received comments on the critical circumstances allegation from Cablesa S.A. de C.V. (Cablesa), another Mexican manufacturer of the subject merchandise. The parties submitted rebuttal briefs on June 10, 1991.

On June 13, 1991, we made a preliminary negative determination of critical circumstances with respect to imports of steel wire rope (June 20, 1991, 56 FR 28370). The petitioner submitted comments on June 20, 1991, concerning this preliminary determination.

Scope of the Investigation

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made of brass plated wire. Excluded from this investigation is stainless steel wire rope, *i.e.*, ropes, cables and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under Harmonized Tariff Schedule (HTS) subheading 7312.10.6000.

The appropriate HTS subheadings under which the subject merchandise is classifiable are 7312.10.9030, 7312.10.9060 and 7312.10.9090. HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The period of investigation is June 1, 1990, through November 30, 1990.

Fair Value Comparisons

To determine whether sales of steel wire rope from Mexico to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We used best information available (BIA) as required by section 776(c) of the Act because Camesa failed to correct the deficiencies in its questionnaire response which resulted in a preliminary determination based on BIA. As our preliminary determination, we used as BIA information submitted by the petitioner, revised to account for comtemporaneous price quotes, appropriate currency exchange rates, and value-added tax methodology, as indicated below. In calculating a margin for Camesa, we used the highest of the margins calculated from the information submitted by the petitioner (See Comment 1).

United States Price

We based USP on price quotes for particular Camesa products sold in large quantities, as provided in the petition. We used those U.S. price quotes which were most contemporaneous with the home market prices provided. We deducted from the USP foreign inland freight and insurance, U.S. Customs fees and U.S. inland freight, where appropriate, based on information reported by the petitioner. In accordance with section 772(d)(1)(C) of the Act, we added to the USP the amount of Mexican value-added tax which would have been rebated, or not collected, by reason of exportation of the merchandise. We made no other deductions or adjustments to USP.

Foreign Market Value

We based FMV on Camesa's home market price list, as contained in the petition, for products identical to, and in the most comparable quantities as, those for which USP quotes were provided. We deducted discounts and inland freight, based on information reported by the petitioner. We made a circumstance of sale adjustment for the Mexican value-added tax.

The petitioner converted FMV using the exchange rate effective at the time of the price list issuance. We converted FMV using the exchange rate effective on the date of the U.S. price quotation.

Final Negative Determination of Critical Circumstances

Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist if we determine that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of 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 19 CFR 353.16(f), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Pursuant to 19 CFR 353.16(g), we normally compare the export volume for the three-month period beginning with the month the petition was filed (the comparison period) with the three-month period prior to the filing of the petition (the base period). In our preliminary negative determination of critical circumstances, we compared the export volume of the subject merchandise during a comparison period of five months beginning with the month the petition was filed, November 1990, to a base period of the five months prior to the filing of the petition, in accordance with 19 CFR 353.16(g), because complete import data was available for five months from the month the petition was filed. For the final determination, we have obtained additional information to include the export volume of the subject merchandise for six months beginning with the month the petition was filed. Thus, the comparison period is November 1990–April 1991, and the base period is May–October 1990 (*i.e.*, the six months prior to the filing of the petition). The choice of comparison and base periods is discussed further in Comment 3 below.

Export volume data was obtained from U.S. Commerce Department import data. Our analysis of the imports of steel wire rope from Mexico continues to show that the imports of the subject merchandise from Mexico during the period subsequent to the receipt of the petition have not been massive, as defined by 19 CFR 353.16(f)(2), when compared to imports prior to receipt of the petition.

Since we do not find that there have been massive imports, we do not need to consider whether there is a history of dumping or whether there is reason to believe that importers of steel wire rope knew or should have known that it was being sold at less than fair value.

Therefore, we determine that critical circumstances do not exist with respect to imports of steel wire rope from Mexico.

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for the period of investigation. In place of the official certified rates, we used the average monthly exchange rates published by the International Monetary Fund as BIA.

Interested Party Comments

Comment 1:

The petitioner contends that, as Camesa has failed to participate in this investigation since the issuance of the preliminary determination, the dumping margin should be equal to the highest rate calculated from the petitioner's information, rather than the average rate used in the preliminary determination.

Camesa argues that it responded fully to the Department's questionnaires up until the time the errors were discovered. Given' the effort it put into preparing the response, Camesa believes that the average of the margins alleged in the petition should be used for the final determination, as it was in the preliminary determination.

DOC Position:

Section 776(c) of the Act requires the Department to use the best information available "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation." In deciding what to use as BIA, the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information (19 CFR 353.37(b)). Thus, the Department may determine, on a case-by-case basis, what the best information is, including consideration of the respondent's degree of cooperation in the proceeding.

In this case, the errors in Camesa's computerized sales listing rendered the response unacceptable for purposes of calculating dumping margins. The Department brought these errors to Camesa's attention prior to the preliminary determination and afforded Camesa several opportunities to correct the errors in order to permit use of Camesa's response for the final determination. However, Camesa did not correct these errors and provided no further information regarding its questionnaire response.

When the Department determines that a respondent is noncooperative, Department practice generally is to assign that respondent the highest margin found in the petition. See, *e.g., Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong*, 55 FR 30733 (July 27, 1990). Based on Camesa's lack of cooperation in correcting its response, despite repeated opportunities to do so, we have assigned, as BIA, the highest margin in the petition, adjusted as noted in the "United States Price" and "Foreign Market Value" sections of this notice.

Comment 2:

Camesa opposes the petitioner's request to exclude stainless steel wire rope from the investigation. Camesa argues that the petitioner has no legal basis to amend the scope as the Department has determined in the past that the scope of the "class or kind of merchandise" is to be established by reference to objective factors (See *Antifriction Bearings from the Federal Republic of Germany*, 54 FR 18992, 18998 (May 3, 1989)). Camesa contends that, since the petitioner has not provided any information for the record to demonstrate that stainless steel wire rope is produced, used, sold or advertised in a different manner than other steel wire rope, the petitioner has failed to make a case that stainless steel wire rope is a separate "class or kind". Without any support for distinguishing the products, Camesa states that the scope cannot be redefined solely based on the wishes of the petitioner.

DOC Position:

The Department has the "inherent authority" to define, as well as clarify, the scope of an antidumping duty investigation. See *NTN Bearing Corp. of America, et al.* v. *United States*, 747 F.Supp. 726 (CIT 1990); *Diversified Products Corp.* v. *United States*, 572 F.Supp. 883 (CIT 1983); *Royal Business Machines Inc.* v. *United States*, 507 F.Supp. 1007 (CIT 1983).

Under 19 CFR 353.12 (a) (4), the petitioner is required to provide "a detailed description of the merchandise that defines the requested scope of the investigation, including technical characteristics * * *." Both section 732 (b) (1) of the Act and 19 CFR 353.12(e) permit the Department to allow for timely amendment of the petition. The petitioner's amendment was timely and thus the petition no longer includes stainless steel wire rope within its intended scope. Because the Department finds no reason not to follow the intended scope of the petition, we have amended the scope of the investigation consistent with the scope of the petition.

Camesa's objection is centered on the definition of "class or kind" of merchandise covered by the scope of the investigation. There is no requirement that a petitioner define the scope of the petition to include everything that theoretically could fall within a class or kind. The petitioner's amendment concerns what is to be covered by the investigation, not the classification of merchandise within the scope of the investigation. The petitioner has indicated it no longer has any interest in pursuing unfair trade remedies for this type of product. Under these circumstances, we have determined it is appropriate to amend the scope of investigation to exclude stainless steel wire rope, as requested by the petitioner.

Comment 3:

The petitioner contends that the appropriate comparison period for considering whether or not critical circumstances exist should begin with October 1990, the month prior to the filing of the petition, because the petitioner believes that the respondent and/or importers possessed prior knowledge of the filing of the petition due to the petitioner's extensive market research activities, and Mexico's proximity to the United States. The petitioner alleges that one or more of these parties used that knowledge to begin a surge of "massive imports" at that time. According to the petitioner, including October 1990 in the comparison period will show "massive imports" when compared to the base period prior to that time.

Alternatively, the petitioner requests that the Department exclude October 1990 from both the base and comparison periods because the placement of this month in the critical circumstances analysis is in dispute between the parties, and the data represents a massive aberration from the data for any preceding month. Finally, the petitioner argues that, even if October 1990 is not included in the base period, the import data still will show evidence of "massive imports", as newly-available April 1991 shipment data confirms the pattern of a "massive surge".

Camesa states that it had no information that an antidumping duty petition would be filed until the actual filing date of November 5, 1991, and that there is no evidence that Mexican exporters knew of the petition before it was filed. Camesa explains the October 1990 increase in shipments as based on the Mexican Government's reallocation of Mexico's steel wire rope quota under the Voluntary Restraint Agreement, which enabled Camesa to utilize an unused portion of the quota. Moreover, Camesa contends that the petitioner's allegation of prior knowledge resulting

in the October 1990 increase is inconsistent with petitioner's earlier statement in the petition that steel wire rope producers in subject countries "learned as early as February 1990 that unfair trade actions were being prepared against them."

DOC Position:

Under 19 CFR 353.16(g), the Department "normally will consider the period beginning on the date the proceeding begins and ending at least three months later. However, if the Secretary finds that importers, or exporting producers and resellers, had reason to believe at some time prior to the beginning of the proceeding that a proceeding was likely, then the Secretary may consider a period of not less than three months from that earlier time."

The petitioner's claim of respondent's or importer's prior knowledge of the petition filing rests solely on circumstantial evidence. That is, since there was a substantial increase in steel wire imports from Mexico during October 1990, *ipso facto* the respondent had prior knowledge of the petition filing. The petitioner offers as further support the fact that it was conducting market research prior to November 1990, and Mexico's geographical proximity to the United States. The petitioner, however, has not submitted any evidence on the record that Camesa or any other producer or importer of the subject merchandise was aware of its market research, nor has the petitioner demonstrated how geographical proximity leads to advance knowledge of the petition filing. We do not believe that the petitioner's inference, absent any other evidence on the record, is sufficient to establish that Camesa or any importer had reason to believe that an antidumping petition would be filed prior to the actual filing date.

While the import statistics show an increase of subject merchandise imports from 331 to 691 metric tons from September to October 1990, an increase of over 200%, this increase is not necessarily aberrant. For example, steel wire rope imports from Mexico increased from 149 to 457 metric tons from February to March 1990, an increase of about 300%. Data from other months since January 1989 show additional month-to-month fluctuations, though they are not as great as these two examples. The overall trend in imports since January 1989 has been a steady increase.

Given these circumstances, we have determined that the petitioner has failed to establish, for purposes of this final determination, that the respondent or importers had reason to believe that the filing of an antidumping petition on the subject merchandise was likely under 19 CFR 353.16(g). Further, we see no basis for classifying October 1990 as aberrant and excluding it from our critical circumstances analysis. Therefore, we have included October 1990 in our base period, as described above in our critical circumstances analysis. Accordingly, we have found that critical circumstances do not exist with respect to the subject merchandise.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of steel wire rope from Mexico, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after April 21, 1991. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Mexico exceeds the United States price as shown below. Given the exclusion of stainless steel wire rope from the scope of this investigation, we will instruct the U.S. Customs Service to terminate the suspension of liquidation on that merchandise and to refund any cash deposits or bonds now posted on such merchandise. This suspension of liquidation on all other steel wire rope will remain in effect until further notice. The dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Grupo Industrial Camesa, S.A. de C.V.	52.46
All Others	52.46

ITC Notification

In accordance with section 735(d) of the Act, we have notified the U.S. International Trade Commission (ITC) of our determination. 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 in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to steel wire rope, the proceeding will be terminated and all securities posted as a result of the suspension will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all steel wire rope from Mexico, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20.

Dated: July 1, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-16278 Filed 7-8-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-818]

Final Determination of Sales at Less Than Fair Value: Personal Word Processors From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: July 9, 1991.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hager or Ross L. Cotjanle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5055 or 377-3534, respectively.

Final Determination

We have determined that imports of personal word processors ("PWPs") from Japan are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the "Act"). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

The following events have occurred since the Department made its preliminary determination in this investigation. On April 15, 1991, the date our preliminary determination was signed, Brother Industries, Ltd. and Brother International Corporation (collectively, "Brother") informed the Department that it was withdrawing

from active participation in the investigation and, therefore, would no longer provide responses to the Department's requests for information. The Department's preliminary affirmative determination was published on April 22, 1991 (55 FR 16296).

Interested parties submitted case briefs on May 15, 1991. In a May 20, 1991 letter, Brother informed the Department that it was withdrawing its business proprietary information from the record. Pursuant to Brother's letter, on May 22, 1991, the Department informed all parties that it was returning all submissions containing Brother's business proprietary information and that, due to the late date at which the Department was informed by Brother of its decision to withdraw its information, the Department would permit parties to submit new factual information for potential use in calculating a best information available ("BIA") rate for the final determination. At that time, we also granted interested parties the opportunity to submit supplemental case briefs and extended the due date for rebuttal briefs in order to give parties a full opportunity to address all issues. We received a submission of new factual information from Smith Corona Corporation ("Smith Corona") on May 31, 1991. We received supplemental case briefs and rebuttal briefs on June 5 and June 10, 1991, respectively. A public hearing was held on June 12, 1991.

Scope of Investigation

The merchandise covered by this investigation consists of integrated personal word processing systems and major finished units thereof ("word processors"), which are defined as devices designed principally for the composition and correction of text. All word processors within the scope of this investigation have the following essential features: (1) A customized operating system designed exclusively for a manufacturer's word processor product line which is unable to run commercially available software and which is permanently installed by the manufacturer before or after importation; (2) a word processing software/firmware program which is designed exclusively for the word processor product line and which is permanently installed by the manufacturer before or after importation; and (3) internal memory (both read-only memory (ROM) and read-write random access memory (RAM)) for word processing.

In addition, word processors may include one or more of the following features: (1) An auxiliary memory storage device, whether internal (*e.g.*, RAM storage) and/or external (*e.g.*, which accepts floppy diskettes, RAM cards, or other nonvolatile media); (2) software/firmware designed or modified for use exclusively on a line of word processors (*e.g.*, a spreadsheet or word processing-assist program); (3) an interface permitting the transfer of information to other word processors, telecommunication links, computers, and the like; and (4) a type mode, which permits the word processor to function as a typewriter by typing characters directly onto paper. However, the inclusion or exclusion of one or more of these features from a word processor is not dispositive as to whether merchandise is within the scope of this investigation.

All word processors included within the scope of this investigation contain the following three units: (1) A keyboard for the entry of characters, numerals and symbols; (2) a video display; and (3) a chassis or frame containing the essential word processing features listed above. These units may either be integrated into one word processing system or be combined by the user into one working system. Word processors may include, as a fourth unit, a printer with a platen (or equivalent text-to-paper transfer system) and printing mechanism to permit the printing of text on paper. However, word processors which do not include a printer as one of the major units are also included within the scope of the investigation.

Word processors may be imported as integrated systems, or the major finished units may be imported separately. With respect to major finished units, only the major finished units listed above are covered by this investigation. Keyboards and chassis/frames are included in this investigation if they are designed for use in word processors. Printers and video displays are included in this investigation only if they are dedicated exclusively for use in word processors.

Major finished units are distinguished from parts or subassemblies in that they do not require any additional manufacturing before functioning as a complete unit of a word processor. Neither parts nor subassemblies are included in the scope of this investigation.

Word processing devices which meet all of the following criteria are excluded from the scope of this investigation: (1) Easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability; (2) electric, regardless of source of power; (3) comprised of a single, integrated unit; (4) having a keyboard embedded in the chassis or frame of the machine; (5) having a built-in printer; (6) having a platen to accommodate paper; and (7) only accommodating their own dedicated or captive software. (See also *Final Scope Ruling: Portable Electronic Typewriters from Japan* (55 FR 47358, November 13, 1990).)

Also excluded from the scope of this investigation are personal computers ("PCs"), including those PCs which are capable of word processing. PCs are a class of automatic data processing machines. Unlike automatic data processing machines, word processing machines cannot make the logical decision during processing to modify the execution of a program, *i.e.*, the user of a word processor cannot use the word processor to create new software or to modify the program code of existing computer programs. PCs are also distinguished from the word processors subject to this investigation by reason of their operating systems, which are capable of running a variety of "off-the-shelf" software programs installed by the purchaser. In addition, PCs generally have significantly higher memory storage capacities and often contain major finished units which are interchangeable with units manufactured by several producers. Specifically excluded from the scope of this investigation are automatic typewriters with one- or two-line displays.

Word processors are currently classified under subheading 8469.10.00 of the Harmonized Tariff Schedule ("HTS"). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation is June 1, 1990, through November 30, 1990.

Standing

On March 27, 1991, Brother alleged that Smith Corona is an assembler, not a manufacturer, of the like product in this investigation and, therefore, not an interested party. Brother, therefore, requested that the Department rescind the initiation of this investigation.

After examining the information on the record concerning the nature and extent of Smith Corona's manufacturing operations in the United States, including value added, labor, and other costs, we concluded that Smith Corona engages in sufficient operations to be considered a domestic manufacturer of PWPs in the United States. See the Memorandum from Stephanie L. Hager

to Francis J. Sailer dated May 10, 1991, on file in the Central Records Unit.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of BIA is appropriate for both Brother and Kyushu Matsushita Electric Co., Ltd., Matsushita Electronic Components Co., Ltd., Matsushita Electric Industrial Co., Ltd., and Matsushita Electric Corporation of America (collectively, "Matsushita"). Both Brother and Matsushita refused to comply with the Department's requests for information.

The Department is expected to determine what constitutes BIA on a case-specific basis, taking into consideration the information on the record together with the facts and circumstances of each case. In deciding what to use as BIA, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information.

In this case, Brother participated in the investigation up to the point of the preliminary determination and then withdrew all proprietary information from the record. Matsushita declined to submit any responses to the Department's questionnaires. While the Department might otherwise rely on the petition for purposes of BIA in the case of nonparticipating respondents, we do not find the rates contained in the petition to provide an adequate basis for BIA in this case since the preliminary margin, calculated on the basis of actual company data was substantially higher than the rate found in the petition for purposes of initiation.

Therefore, the Department has concluded that the 58.71 percent rate calculated for Brother for purposes of the preliminary determination is the most appropriate BIA rate for purposes of this final determination. Furthermore, this rate is based on Brother's own information, submitted in anticipation of verification, and, thus, can be considered a realistic estimate of Brother's selling practices. Use of this rate is, furthermore, consistent with the Court of International Trade's ("CIT") holdings that BIA should represent a reasonable, not arbitrarily punitive, measure of dumping. See *National Ass'n of Mirror Mfrs.* v. *United States*, 696 F. Supp. 642, 645 (CIT 1988).

Consistent with the Department's practice, Matsushita, the other respondent investigated by the Department, has also been assigned the 58.71 percent rate calculated for Brother as BIA. Matsushita refused to respond to the Department's request for information and has been assigned Brother's rate because it was the estimated margin for the only participating company at the preliminary determination. See DOC Position to Comment 8.

Interested Party Comments

Scope

Comment 1

Smith Corona argues that the Department should expand the scope of the investigation to include parts and components. Citing public statements made by Brother concerning future production of PWPs at its Bartlett, Tennessee facilities, in addition to data which, according to Smith Corona, indicate that Brother has dramatically increased its importation of PWP parts into the United States, Smith Corona asserts that Brother intends to circumvent any antidumping duty order resulting from this investigation. As support for its request, Smith Corona cites *Cellular Mobile Telephones and Subassemblies Thereof from Japan; Final Determination of Sales at Less Than Fair Value*, 50 FR 45447, 45448–49 (1985) (*CMTs from Japan*), a case in which the Department expanded the scope of the investigation to include subassemblies because of information that the existing scope would be avoided. Smith Corona asserts that the existing PWP scope language, which would limit the order to PWPs and major finished units, will enable Brother to import parts and components of such units for assembly at Bartlett, thereby circumventing any order.

Smith Corona cites the legislative history to the so-called circumvention provision, 19 U.S.C. 1677j (added to U.S. law in the Omnibus Trade and Competitiveness Act of 1988), to support its position that the Administration and Congress did not intend the Department to delay addressing imports of parts and components until after an antidumping investigation is completed. See, *e.g.*, *Message From the President of the United States Transmitting a Draft of Proposed Legislation, "The Trade, Employment, and Productivity Act of 1987"*, H. Doc. 33, 100th Cong., 1st Sess. 460 (1987).

Brother argues that the scope of the investigation should not be expanded to include parts and components of PWPs. First, Brother asserts that Smith Corona's request for expansion of the scope is untimely. Citing 19 CFR 353.31 and *Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review*, 53 FR 4050, 4054 (February 11, 1988), Brother states that in order to meet statutory deadlines and ensure fundamental fairness to all interested parties, the Department has established a firm policy of requiring timely submission of information and arguments. According to Brother, an analogous request to expand the scope of the investigation ten days before the Department's public hearing was rejected by the Department in *Final Determination of Sales at Less Than Fair Value: Certain Internal-Combustion, Forklift Trucks from Japan*, 53 FR 12552, 12566–67 (April 15, 1988) ("*Forklift Trucks from Japan*") on the grounds that the request was untimely. Brother states that, although Smith Corona purports to rest its untimely request on the sudden discovery of Brother's plans to begin importation of PWP parts for assembly in Bartlett, Smith Corona has known about Brother's plans to begin production of PWPs in the United States since Brother discussed those plans at the ITC conference on November 28, 1990.

Brother also argues that, if accepted, Smith Corona's request for expansion of the scope in this investigation imposes an unfair burden on Brother and other parties, including those who import PWP parts and subassemblies into the United States. Furthermore, Brother asserts that Smith Corona's request is vague and unworkable because it is not clear which parts Smith Corona wishes the scope to include. Brother notes that, because many of the parts and components assembled into PWPs are also used in a wide range of electronic products (*e.g.*, portable electric typewriters ("PETS") and PCs), Smith Corona's request, if granted, would create serious administrative difficulties if an antidumping duty order is issued. Brother further argues that major components, such as multiple purpose floppy disk drives, clearly constitute separate classes or kinds of merchandise from PWPs because they are not dedicated for use in PWPs, they have different physical characteristics, end uses, and customer expectations, and they are neither sold in the same channels of trade as PWPs nor do they compete with PWPs in the market place. In support of this argument, Brother again cites *Forklift Trucks from Japan*, in which the Department stated that there was insufficient evidence on the record to properly instruct U.S. Customs in the identification of components to which an antidumping duty order would apply. According to Brother, this language from *Forklift Trucks from Japan* follows the Department's practice of excluding multiple-use components from an antidumping duty order, even if the petition and scope language of the initial investigation includes parts,

components, and subassemblies (*see Final Determination of Sales At Less Than Fair Value; Small Business Telephone Systems and Subassemblies Thereof from Taiwan*), 54 FR 42543, 42544 (October 17, 1989) ("*SBTs from Taiwan*").

Brother also argues that Smith Corona appears to base its request for expansion of scope on mere speculation of circumvention. Again citing *Forklift Trucks from Japan*, Brother maintains that Smith Corona has presented no evidence that any PWP parts will be imported from Japan or that such importation will rise to the level of circumvention.

Matsushita argues that there is no legal basis for Smith Corona's request that the Department expand the scope of this investigation. Like Brother, Matsushita argues that the Department should deny Smith Corona's request for the reasons it denied a similar request in *Forklift Trucks from Japan*: (1) The petitioner initially had clearly excluded such parts from the scope of the petition; (2) petitioner could only speculate as to the apparent intention of the Japanese producers and exporters to circumvent antidumping duties; (3) petitioner's request included components used in end products other than the product under investigation; and (4) petitioner's request to expand the scope was made too late in the investigatory process to permit the Department to obtain evidence, to receive comments from parties which may be affected by a revision of the scope of the investigation, and to allow the Department sufficient time to consider the issue.

Matsushita maintains that there is no factual basis for Smith Corona's allegation that any circumvention is occurring. According to Matsushita, there is no indication where Brother is sourcing the bulk of its parts for its operations; they may have been produced in the United States or from a combination of countries other than Japan. Matsushita argues that the record indicates that, if anything, Brother is seeking to comply with the antidumping law by becoming a full-fledged U.S. producer. Matsushita points out that the ITC preliminarily determined that Brother engaged in sufficient production-related activity in the United States to be considered a domestic producer. See *Certain Personal Word Processors from Japan and Singapore*, Inv. Nos. 731–TA–483 and 484, USITC Pub. No. 2344 (December 1990) (preliminary determination) at 11–13. According to Matsushita, the ITC's decision confirms that there is no factual basis for Smith Corona's assertions that expansion of the investigation to include parts is warranted.

Matsushita further argues that even if Smith Corona's circumvention concerns had any merit, Congress, through its enactment of 19 U.S.C. 1677j, has now made it clear that allegations that foreign producers are circumventing antidumping orders should be addressed under the anticircumvention provision. Citing *Steel Wheels from Brazil*, 54 FR 21456 (May 18, 1989), Matsushita maintains that the Department has abandoned its prior practice of expanding investigations in midstream to cover major parts and components in response to allegations of circumvention. Matsushita further contends that the anticircumvention provision is also a more appropriate mechanism for addressing Smith Corona's concerns because it allows the Department to respond to company-specific allegations without unfairly and unnecessarily expanding the entire proceeding to include all Japanese producers who have not been accused of circumvention.

Matsushita argues that the expansion of the scope requested by Smith Corona should be rejected because it would substantially disrupt trade in parts and components that are used in non-covered merchandise and, hence, create significant administrative problems for the Department. See *Preliminary Determination of Sales at Less Than Fair Value; High Information Content Flat Panel Displays and Subassemblies Thereof from Japan*, 56 FR 7008 (February 21, 1991). According to Matsushita, the requested expansion of the scope to subassemblies, parts, and components would affect not only the allegedly circumventing party, but would adversely and improperly affect: (1) Japanese manufacturers of generic parts; (2) domestic manufacturers of PWPs; and (3) domestic manufacturers of non-PWP merchandise. Matsushita argues that the anticircumvention clause clearly is the most appropriate means of dealing with circumvention of subassemblies, parts, and components because it would not unduly burden those involved in the fair trade of these products.

Finally, Matsushita asserts that Smith Corona's request is untimely. According to Matsushita, it is too late in the investigatory process to properly obtain evidence concerning such parts. Furthermore, Matsushita argues that expanding the scope to include parts and components would require the Department to broaden its own investigation to ensure that the requisite 60 percent of the covered merchandise is investigated. See 19 CFR 353.42(b).

Canon argues that Smith Corona does not identify with any precision the revision in the scope definition that it is requesting. Furthermore, according to Canon, a shift to U.S. production of the product under investigation is not circumvention. Canon asserts that Smith Corona's reliance upon *CMTs from Japan* is not on point because, unlike the present investigation, the products under investigation in *CMTs from Japan* were composed of discrete "subassemblies," each of which was dedicated to use in the product under investigation and had no use or function other than as components of the finished product under investigation.

According to Canon, there are several reasons that the Department rarely, if ever, includes within the scope of the investigation subassemblies or components that are not either "fully dedicated to" the complete product (as in *CMTs from Japan*) or "designed for use" in that product in the sense that the subassembly or component functions to its full capability only when used in the finished product. Perhaps the most important reason, according to Canon, is the need to avoid unintended impacts on importers and producers of different, unrelated products. Canon asserts that Smith Corona has presented no evidence that Brother, or any other PWP manufacturer, produces PWPs composed of dedicated subassemblies, other than the "major finished units" that are already subject to investigation, that might be imported separately in order to circumvent the order in this case. Nor is there any evidence on the record, according to Canon, that Brother is importing, or planning to import, any dedicated PWP subassemblies for use in its Tennessee plant. Accordingly, Canon urges the Department to reject Smith Corona's proposal that the scope of this investigation be expanded.

DOC Position

The Department has determined not to grant Smith Corona's request to expand the scope of this investigation to include parts and components. Like the petitioner in *Forklift Trucks from Japan*, Smith Corona specifically excluded parts and components from the scope of investigation in its petition. This fact distinguishes the present investigation from *CMTs from Japan*, cited by Smith Corona in support of its request, where parts and components were not specifically excluded from the original scope language in the petition. *CMTs from Japan*, 50 FR 45448, 45449 (October 31, 1985). In contrast, Smith Corona's

request represents a significant departure from its original scope request, and is not simply a clarification of the scope as in *CMTs from Japan.*

The Department also finds that Smith Corona's request for inclusion of parts and components was not sufficiently timely to enable us to consider the issue fully. For example, given the complexity of the product and the vagueness of the request, the Department did not have adequate time to fairly examine all issues related to the inclusion of parts and components (*e.g.*,which parts and components were to be included within the scope if Smith Corona's request was granted).

We also note that the data cited by Smith Corona in support of its allegation that imports of PWP parts have increased are not persuasive because they include both PWP and typewriter parts (see, *e.g.*, Exhibit 6, p. 19 of Smith Corona's May 21, 1991 submission).

The Department does not construe general descriptions of policy objectives reflected in the legislative history to mandate the expansion of scope in any circumstance and at any time that the petitioner may present the issue. However, if Smith Corona believes that sufficient grounds exist for inclusion of parts and components under the provisions of 19 U.S.C. 1677j, the Department stands ready to act on such a request.

Comment 2

Matsushita argues that the Department should reconsider and reverse its ruling that office typing systems (OTSs) and PWPs do not constitute two different classes or kinds of merchandise. Matsushita argues that the Department made a fundamental legal error in its principal reliance on the vague notion of the similar "primary function," rather than the traditional *Diversified Products* criteria utilized by the Department under the antidumping law, in determining whether one or more classes or kinds of merchandise exists. See *Diversified Products Corp.* v. *United States,* 572 F. Supp. 883 (CIT 1983) (*"Diversified Products"*). According to Matsushita, the analysis used by the Department is improper and overly simplistic. Matsushita cites, for example, *Torrington* v. *United States,* 745 F. Supp. at 623 and *Final Determination of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany et al.,* 54 FR 18998 (May 3, 1989) (*"Antifriction Bearings"*) in support of this argument. Matsushita argues that the reductionist view taken by the Department causes many types of products to be lumped together in a single class or kind of merchandise and cannot properly substitute for a detailed analysis of and reliance upon the traditional factors used by the Department.

Matsushita claims that if these factors are properly applied, the overlapping or similar functions of products is by no means dispositive.

Matsushita states that PWPs and OTSs have substantially distinct physical characteristics, including differences in size and durability, amount of processing power, and internal and external memory capacity. Matsushita alleges that these distinct physical differences reflect the fact that the ultimate use of, and customer expectations for, OTSs and PWPs differ greatly. Matsushita asserts that, in this regard, businesses choose OTSs rather than PWPs because the OTS has superior printing capabilities and performance, faster operating speed, on-site servicing capability, and exceptional durability and flexibility. Matsushita argues that because these physical differences can result in significant differences in consumer perceptions and uses, the Department should treat these differences as very significant and, on this basis, find PWPs and OTSs to constitute different classes or kinds of merchandise.

Matsushita also contends that the Department, in its analysis, failed to properly consider important differences in the channels of trade for PWPs and OTSs. Matsushita asserts that despite the Department's discovery of some overlap in the channels of trade, the fact remains that OTSs are sold almost exclusively through National Office Machinery Dealers Association (NOMDA) dealers while PWPs are sold primarily through various consumer channels. Matsushita also claims that, even though the Department has found that PWPs and OTSs are often advertised and displayed together, the fact is that a variety of consumer electronic products commonly appear together in advertisements and on display. Matsushita urges the Department to determine that this factor is not dispositive in deciding whether the two products constitute separate classes or kinds of merchandise.

Lastly, Matsushita argues that the Department has disregarded significant price differentials between OTSs and PWPs and that these differentials are a result of the distinctive design features of the OTS. Matsushita contends that there is no price competition between OTSs and PWPs.

Smith Corona argues that Matsushita ignores the Department's reliance on generally similar physical characteristics and identical channels of trade. According to Smith Corona, the Department carefully balanced all of the relevant criteria and rendered a determination in accordance with judicial and agency precedent. For instance, Smith Corona notes that in *Smith Corona Corp.* v. *United States,* 915 F.2d 683 (Fed. Cir. 1990), the Court held that the Department should not exclude later-developed typewriters from the scope of an existing antidumping duty order unless the additional functions performed by such typewriters constitute their primary use. Here, according to Smith Corona, Matsushita does not allege any distinctive difference in primary use between the PWPs admitted to be within the scope of the petition and the OTSs allegedly constituting a different class or kind of merchandise. Citing, for example, *Erasable Programmable Read Only Memories (EPROMS) from Japan; Final Determination of Sales at Less Than Fair Value,* 51 FR 9087 (October 30, 1986), Smith Corona points out that the Department has not attempted to make the distinctions sought by Matsushita in other cases involving merchandise that has the same primary function, but which is available along a wide continuum of sizes or capabilities. Therefore, Smith Corona states that the Department correctly focused upon the essential and primary use of the machines, the general physical characteristics, the channels of trade and advertising, and the customer expectations.

According to Smith Corona, although Matsushita asserts that OTSs have substantially different physical characteristics, including differences in size and durability, as well as different amounts of processing power and internal and external memory capacity, Matsushita offers no new evidence or argument to support its assertions, but instead continues to compare the most inexpensive, light-weight word processors with the most expensive, heavy machines. In addition, according to Smith Corona, several of the PWP models admitted to be within the class or kind of merchandise, including the Panasonic KX-W1500, Smith Corona PWP 100C, and PWP 220, do not include carrying cases or handles to permit portability. Hence, Smith Corona argues Matsushita's comparison of OTSs to lighter, portable models is misleading since such machines are not indicative of the entire class or kind, or useful in delimiting the merchandise covered by the investigation. Smith Corona also states that Matsushita erroneously asserts that the OTSs have faster

processing speeds. In fact, according to Smith Corona, the Smith Corona PWP 220, equipped with a High-Resolution-Transfer printer, has a faster print speed than OTSs.

With respect to the use of OTSs, Smith Corona asserts that Matsushita's analysis fails to account for the essential similarity in the "primary function" of the machines. Smith Corona contends that, although the OTSs have features and functions essential to the work of a professional secretary, there is no support on the record for the assertion that there are any features found on an OTS that are not found on other PWPs. According to Smith Corona, there is also no support on the record for Matsushita's assertion that the PWPs within the scope of the investigation are purchased by consumers mainly for home or dormitory use where the smaller size and transportability are necessary features. Smith Corona contends, in fact, that PWPs are not generally portable and, therefore, the Department defined these products to be different than and not included in the antidumping duty order covering PETs. Moreover, Smith Corona states that Matsushita fails to account for the growing use of PWPs in the home office market, identified as an increasingly important target for NOMDA dealers and other distributors. According to Smith Corona, this overlap, in which both the more durable, higher priced OTSs and the lower-priced word processing machines compete for sales, further blurs any user distinction that Matsushita attempts to draw.

Regarding channels of distribution, Smith Corona asserts that the record shows that its full line of typewriters and PWPs is offered through NOMDA dealers. Smith Corona also points out that Brother's price lists show its full line of office equipment as including not only portable and non-portable typewriters, but also some of its PWPs.

Finally, Smith Corona maintains that there is no distinction in the type of advertising for OTSs and PWPs. Smith Corona cites, for example, advertisements submitted in its January 11, 1991, submission which show both OTSs and PWPs advertised by discount dealers on the same page.

Smith Corona concludes that an analysis of the record evidence with regard to each of the *Diversified Products* factors establishes that OTSs, consisting of a keyboard, memory device, display, and printer, with captive word-processing software, sold together as a system, are within the definition of PWPs used in the petition.

DOC Position

In addressing each of the criteria under *Diversified Products*, the parties have presented no new evidence from that previously submitted and considered by the Department. Therefore, the Department has no new facts on which to reconsider its decision that PWPs and OTSs are within the same class or kind of merchandise.

With respect to Matsushita's criticism of the Department's approach to the *Diversified Products* analysis itself, we do not agree that our analysis erroneously relied on consideration of primary function. Contrary to Matsushita's assertions, the Department did rely upon each of the *Diversified Products* criteria in its class or kind analysis and consideration of primary function was only one part of that analysis.

In its analysis of physical characteristics, the Department examined the features, physical appearance, and size and weight of the PWPs and OTSs. While physical differences were found to exist, none were of such a magnitude as to establish a clear, consistent dividing line between OTSs and other PWPs. Moreover, we determined that none of the differences in physical characteristics between the OTSs and PWPs distinguished them in their primary function, *i.e.*, to compose and correct text. Likewise, in examining the ultimate use of the merchandise, the Department reviewed student, home, and office use in addition to casual and professional use. We noted that an overlap in ultimate uses and the channels of trade supported a finding that, while real distinctions in such criteria were difficult to discern, the primary function of both the OTS and PWP clearly remained word processing. We, therefore, agree with the position expressed by counsel for Smith Corona at the June 12, 1991 hearing that divorcing the elements of the *Diversified Products* analysis from the very function of a product would yield absurd results. See Transcript of Hearing at p. 117.

Comment 3

Matsushita argues that where, as here, Smith Corona does not produce any products that fall within the OTS "class or kind" category, it should not be found to have standing to bring an antidumping investigation with respect to these separate products. Furthermore, Matsushita argues that, contrary to Smith Corona's assertions, while the petition serves as a basis for determining the merchandise subject to investigation, petitioner's mere reference to OTSs begs the question of whether or not such systems are of the same class or kind of merchandise as PWPs and, therefore, whether Smith Corona has standing to petition with regard to each separate class or kind of merchandise. Citing, for example, *Torrington Co.* v. *United States*, 645 F. Supp. 718, 721 (CIT 1990), Matsushita asserts that it is clear that the Department has the authority to clarify the scope of the investigation.

Smith Corona argues that Matsushita, in its class or kind analysis, overlooks the petition and the fact that several of the so-called OTSs were identified in the petition. Furthermore, the Department's investigation also included these machines. According to Smith Corona, given evidence of dumped sales, as set forth in the petition, the Department's final determination should encompass all types of PWPs, without distinction between more or less durable machines.

Smith Corona maintains that even if the Department were to identify a separate class or kind of merchandise limited to OTSs, Smith Corona has standing as a U.S. producer of a like product. First, Smith Corona argues that Matsushita offers no support for its claim that Smith Corona does not produce any products that fall within the OTS class or kind category. Smith Corona asserts that the record establishes that Smith Corona does produce and market word processors that qualify as OTSs as defined by Matsushita. In fact, Smith Corona states that it advertises its PWP 220 as an "office system." According to Smith Corona, to qualify as a petitioner by virtue of its status as a U.S. manufacturer, Smith Corona need only produce a "like product," and its machines sold as office systems qualify as such.

DOC Position

We agree with Smith Corona. Smith Corona's standing to file an antidumping petition in this case is properly assessed by reference to whether it is a manufacturer, producer, or wholesaler in the United States of a like product, irrespective of whether the Department has found one or several classes or kinds of merchandise to be covered by the scope of the investigation. In this case, the ITC has preliminarily determined that there is a single like product, PWPs, which includes both PWPs and OTSs.

Matsushita has presented no evidence or argumentation which would cause us to question the ITC's preliminary like product determination for standing purposes. Because Smith Corona has

clearly established that it is a producer of the like product, we find that Smith Corona has standing to file as a producer of PWPs which encompasses OTSs.

Comment 4

Matsushita requests that the Department confirm that keyboards "designed for use" in PWPs do not include finished keyboards which operate to full capability in non-covered machines, such as PCs, workstations, and other automatic data processing systems. Matsushita contends that the keyboards it produces and exports to the United States (*i.e.*, ESU–46TC001AA, and ESU–45TC009ZZ) are being used in PCs by its U.S. customers. Matsushita further contends that it does not sell any finished keyboards to other computer companies, to PWP producers in the United States, or to PWP producers in Japan. Matsushita claims that the physical/mechanical aspects of the keyboard it sells and its electrical system are customized for use in the PCs and workstations of their U.S. customers. Specifically, Matsushita argues that the operating systems used by each U.S. customer run commercially available software and do not employ customized operating systems designed exclusively for word processing.

Matsushita states that the keyboards they produce and sell are "unfinished" and, therefore, cannot function as a complete unit of a PWP without modification. In addition, Matsushita argues that these keyboards, even in finished form, could not function absent significant modification with any existing PWPs because of the interface codes designated by their U.S. customers. Therefore, Matsushita maintains that its keyboards are outside the scope of the investigation.

Matsushita, citing *Final Determination of Sales at Less Than Fair Value; Certain Small Business Telephone Systems and Subassemblies Thereof from Japan ("SBTs from Japan")*, 54 FR 50789 (Dec. 11, 1989), argues that the Department has, in the past, included certain subassemblies within the scope of an order on finished systems only if such subassemblies were "designed for use" in such systems. It notes that the Department defined "designed for use" in that case to mean a subassembly which "functions to its full capability only when operated as part of small business telephone system." It also argues that the Department clearly determined in that case that "dual use" subassemblies that operated to full capability in non-covered merchandise were outside the scope. On this basis, Matsushita alleges that all finished keyboards which can operate to full capability in merchandise other than covered PWPs should be outside the scope of this investigation. Specifically, Matsushita requests that the Department confirm that: (1) The finished keyboards it produces and exports to the United States are not within the scope of the investigation, (2) all keyboards classifiable under HTS 8471.92.20 (which, by definition, are for use in PCs, workstations, and other automatic data processing machines) are excluded from the scope of the investigation, (3) keyboards classified under HTS 8473.10.00 are the only keyboards subject to the investigation, and (4) keyboards and other major finished units that operate to full capability with merchandise other than PWPs are outside the scope of the investigation.

Smith Corona agrees with Matsushita that keyboards sold to U.S. purchasers for use only in computers, and not compatible with PWPs, would not be subject to any antidumping duty order on word processors and major finished units thereof.

DOC Position

The Department agrees with Matsushita and Smith Corona that the specific keyboards described by Matsushita (*i.e.*, ESU–46TC001AA and ESU–45TC009ZZ), are outside the scope of this investigation given the stated current capabilities of the keyboards produced by and imported into the United States by Matsushita.

As the scope section of this notice makes clear, this proceeding does not cover finished keyboards which are "designed for use" in PCs. In *SBTs from Japan*, the Department employed a "dual use" standard to determine whether a particular subassembly was "designed for use" in a particular telephone system. The Department would undoubtedly turn to this standard as useful guidance in considering whether particular finished units are within the scope of this proceeding. However, we are only addressing the issue of whether the two models listed above are within the scope at this time and we are not willing to rule on scope issues that are not before us.

Finally, it would be inappropriate for the Department to confirm categorically that all keyboards classifiable under HTS subheading 8471.92.20 are, or will always be, excluded from the scope of the investigation, or that the only keyboards that are or will ever be subject to the investigation are classified under HTS subheading 8473.10.00. As stated in the "Scope of Investigation" section of this notice, HTS item numbers are provided merely for convenience and customs purposes.

Brother's Withdrawal of its Proprietary Information

Comment 5

Smith Corona argues that the data submitted by Brother and relied upon by the Department as a basis for its preliminary determination cannot be withdrawn from the administrative record. First, Smith Corona alleges that Brother failed to withdraw its information during the time permitted. According to Smith Corona, only one regulation, 19 CFR 353.34(c), specifically provides a party the right to withdraw information from the record. Smith Corona asserts that this provision only applies to submitters of information who do not consent to the issuance of an administrative protective order, and that withdrawal is limited to two days from the issuance of the protective order. Thus, according to Smith Corona, Brother's untimely attempt to withdraw its data does not fall within any of the regulatory provisions which call for the Department to reject submitted information, or which allow the return of data on request.

Smith Corona, citing *Roquette Freres and Roquette Corporation* v. *United States*, 4 CIT 128, 129 (1982), also argues that the law does not permit information to be withdrawn from the administrative record following a preliminary determination which must be sustainable upon substantial evidence. According to Smith Corona, 19 U.S.C. 1516a(b)(1)(B) and 19 CFR 353.3, call for the establishment of a complete administrative record. Therefore, the record upon which a determination is based should not be disturbed *post hoc* and prior to judicial review.

Smith Corona also argues that although the Department has discretionary authority to return Brother's responses, citing *NTN Bearing Corp. of America, et al.* v. *United States*, 14 CIT ____, 757 F. Supp. 1425, 1432 (1991), the agency may not be arbitrary or capricious and should not prejudice the rights of any party in the exercise of that authority.

Finally, according to Smith Corona, Matsushita's argument that the Department cannot rely upon information that is not contained in the administrative record for purposes of establishing an estimated duty deposit rate supports the proposition that the Department must maintain the integrity of the administrative record despite Brother's withdrawal of its information. Smith Corona states that, if Brother is

permitted to withdraw its data, challenges can be made that the preliminary determination lacks evidentiary support, with respect to both Brother and all other respondents.

Brother maintains that the statutory scheme supports Brother's right to withdraw its questionnaire responses. According to Brother, the issue here is not whether the Department should return Brother's questionnaire responses for failure to comply with the Department's regulations, but whether Brother may withdraw its proprietary information. Citing *Olympic Adhesives, Inc.* v. *United States,* 899 F.2d. 1565, 1572 (Fed. Cir. 1990) (*"Olympic Adhesives"*), Brother argues that it is undisputed that participation in an antidumping investigation by a respondent is voluntary since the Department lacks subpoena power. Furthermore, citing *Antifriction Bearings,* Brother contends that it is well established that a respondent who elects to participate in an investigation may terminate such participation at any time. Therefore, according to Brother, it follows that a respondent which voluntarily submits information may request its return and withdraw such information from the record. Finally, Brother argues that, in light of the fact that Smith Corona, although incorrectly, was given the opportunity to furnish new information to serve as BIA, Smith Corona is in no different position or less favorable position than it would have been had Brother declined to participate at the outset of the investigation.

Matsushita contends that the Department has properly permitted Brother to withdraw its data from the administrative record of this investigation. Matsushita argues that Smith Corona's efforts to find a legal prohibition against Brother withdrawing its information are without merit. First, citing for example, *SBTs from Japan,* Matsushita contends that Smith Corona's arguments concerning 19 CFR 353.34 apply to instances in which the Department must expunge data from the record when, in fact, such a decision is a matter left to the Department's discretion.

Matsushita also challenges Smith Corona's argument that the Department may not permit the withdrawal of data after a preliminary determination. According to Matsushita, the mere fact that, as in *SBTs from Japan,* a party happens to withdraw its data prior to the preliminary determination cannot, as suggested by Smith Corona, give rise to a principle of law that parties cannot withdraw data subsequent to a preliminary determination. Matsushita argues that Brother's withdrawal of its business proprietary information would not compromise the Department's ability to defend its preliminary determination in the courts, as asserted by Smith Corona. Citing 19 U.S.C. 1673a, however, Matsushita asserts that the estimated duty deposit rate in the preliminary determination is not as a matter of law subject to judicial review, and has never been reviewed by a higher court in practice. Therefore, according to Matsushita, under 19 U.S.C. 1516a(a)(2)(B), only final decisions by the Department in antidumping investigations are subject to appeal.

DOC Position

We agree, in part, with Brother and Matsushita that Brother may withdraw its business proprietary information from the record, as the Department has permitted in the past. See *SBTs from Japan.* Although 19 CFR 353.34 does prescribe situations under which the Department must return data, it is not inclusive with respect to when proprietary information may be withdrawn. Respondents are not required to participate in Department investigations. If a participant determines not to cooperate with the Department in an investigation, the Department cannot force it to leave its own proprietary information on the record. However, the withdrawal of respondent's information in this case cannot serve as a basis for expunging the results of the Department's preliminary determination, which was based on information on the record at the time it was made. To permit this would enable parties to manipulate the system when parties concluded that cooperation in an investigation did not serve their interests. This would reward a company's non-cooperation through the use of BIA rather than encourage their cooperation. See the "Best Information Available" section of this notice.

The Department's Request for New Information

Comment 6

Brother asserts that the Department's announcement of the opportunity to submit new information is arbitrary and capricious. Brother asserts that it is unprecedented to provide interested parties with an opportunity to submit additional comments and new unverified factual allegations adverse to Brother in order to increase the BIA dumping margin. According to Brother, this serves to penalize Brother merely because it exercised its right of withdrawal. Brother cites *Chevron Standard, Ltd.* v. *United States,* 5 CIT 174, 563 F. Supp. 1381, 1384 (1983) (*"Chevron"*) and *Olympic Adhesives* as examples where the CIT and the Court of Appeals for the Federal Circuit have overruled the Department's use of punitive BIA. According to Brother, the Department's request for new information is a clear attempt to use the Department's discretionary authority in a manner inconsistent with the intent of the statute.

Smith Corona argues that the Department properly allowed all parties to submit additional information. According to Smith Corona, the statutory scheme compels the Department to provide procedural fairness to the parties and, to the extent that Brother is permitted to withdraw its own data to obtain a lower dumping margin than its own data established, fairness demands that all parties have the opportunity to create an adequate administrative record, providing the "best information available" concerning the level of dumping during the relevant period. Smith Corona points out that 19 CFR 353.31(b)(1) establishes that the Department may solicit information at any time during an investigation. Smith Corona cites *Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Colombia,* 55 FR 20491, 20495 (1990) as an example where the Department permitted parties to submit post-preliminary determination factual information. Furthermore, Smith Corona notes that the Department's request for factual information in the present investigation came after the Department announced its preliminary determination and Smith Corona filed its case brief. Therefore, any of the interested parties could have submitted pricing or other information to show that their LTFV margin should have been less than the rate which the preliminary determination established.

Smith Corona also argues that the precedent cited by Brother with respect to the use of BIA is not on point. Smith Corona asserts that Brother's citations to *Chevron* and *Olympic Adhesives* are not at all similar to the facts of the present case because, in both *Chevron* and *Olympic Adhesives,* the respondent cooperated with the Department, submitting questionnaire responses which the Department was able to verify. Moreover, Smith Corona alleges that Brother does not substantiate its claim that the Department's post-preliminary determination invitation to submit factual information is unprecedented.

Finally, Smith Corona argues that Brother obviously lacks "clean hands" to argue that the Department should not solicit factual information when it is Brother's attempt to remove data from the record that gives rise to the need for additional information.

DOC Position

Because we have used the rate calculated in the preliminary determination as BIA, we need not address this issue. See DOC Position to Comment 8.

"All Others" Rate

Comment 7

Nakajima argues that the "all others" rate should be based on the median of the margins in the notice of initiation. According to Nakajima, any presumption that the rate for Brother is representative of the margin of dumping that would be calculated for other producers does not hold where a BIA rate is used. Nakajima contends that any such presumption would be unsustainable, whether as a general proposition or on the facts of this case, because it ignores the existence of significant structural differences between companies' operations that distinguish their selling practices and, in addition, it is without specific factual basis. For example, in the related market for PETs, Nakajima has consistently been found to have weighted-average margins that are significantly below those of other PET producers in past administrative reviews as well as the original investigation.

According to Nakajima, because producers such as itself had no opportunity to receive a company-specific rate, a duty deposit rate which far exceeds the estimated margins alleged by the petitioner poses a significant burden upon commerce that cannot be justified by the need for a deposit rate that will ensure compliance with the antidumping law.

Canon argues that if the Department elects to use Brother's unverified partial response in determining Brother's final margin, it would be inappropriate to include that margin in calculating the "all others" margin. Citing *National Ass'n of Mirror Mfrs.* v. *United States*, 696 F. Supp. 642, 645 (CIT 1988) Canon argues that the antidumping law is intended to serve remedial, not punitive, purposes. Citing another case, *Asociacion Colombiana de Exportadores* v. *United States*, 717 F. Supp. 834, 838 n.5 (CIT 1989) (*"Asociacion Colombiana"*), Canon argues that the Department is charged with determining reasonably accurate margins for all firms exporting the subject products, not only those issued questionnaires. Furthermore, citing *Certain Fresh Cut Flowers from Ecuador; Final Determination of Sales at Less Than Fair Value*, 52 FR 2128, 2132 (1987), and *SBTs from Taiwan*, Canon argues that the Department may not include a BIA margin in calculating the "all others" rate where it is inappropriate to conclude that a firm's best information dumping margin is representative of the experience of other non-responding firms.

According to Canon, in determining when a BIA margin is representative of other unnamed manufacturers, it is necessary to consider the dual purpose for which BIA may be used. One purpose is that of an informal "club" used by the Department in making adverse assumptions against non-cooperating parties (see *Atlantic Sugar, Ltd* v. *United States*, 744 F. 2d 1556, 1560 (Fed. Cir. 1984)); another is where a punitive approach is inappropriate and BIA means exactly what it says, *i.e.*, the best information that is available. According to Canon, BIA must be used in this case to establish a margin for parties who bear no responsibility for the conduct of respondents who have decided for their own reasons to withdraw from the investigation. Canon argues that ample precedent exists for distinguishing between recalcitrant and innocent parties in determining the appropriate use of BIA. See, *e.g.*, *Antifriction Bearings*. Furthermore, according to Canon, where a company has been cooperative, the Department generally looks to other respondents that have supplied adequate and verified responses, or to the petition. Citing *Final Determination of Sales at Less Than Fair Value; Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong*, 55 FR 30733, 30734 (July 27, 1990) (*"Sweaters from Hong Kong"*) and *Final Determinations of Sales at Less Than Fair Value; Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles from the People's Republic of China*, 56 FR 241, 245 (January 3, 1991), Canon alleges that the Department's selection of a BIA rate will reflect the level of cooperation of the company involved. Canon asserts that it has cooperated fully with requests from both the Department and the ITC. Again, citing *Asociacion Colombiana*, which stands for the principle that parties which have not volunteered information should not, nonetheless, be held accountable for behavior which requires punitive action, Canon argues that the fact that it did not voluntarily submit a separate questionnaire response in no way justifies the making of adverse inferences or use of unreliable information with respect to Canon.

Canon also argues that the unverified information submitted by Brother may not be treated as representative of the margin properly applicable to the "all others" producers. According to Canon, the clear intent and purpose of the statute is to require the Department to use verified information and to exclude unverified information submitted by a nonparticipating respondent. Canon states that, regardless of whether there may be some statutory and/or policy justification for using unverified data against the party who has decided not to permit verification, the statute clearly does not authorize an assumption that such unverified data are in fact, accurate or representative of the experience of other parties. According to Canon, there are also policy justifications for prohibiting use of partial unverified information provided by respondents who subsequently withdraw their participation because such information is inherently unreliable. See *Olympic Adhesives*.

Moreover, Canon argues that the "all others" rate should not" be based on Brother's preliminary margin because that margin, in addition to being substantially flawed, now lacks any basis in the record of this investigation. If the Department were to conclude that it could still use the preliminary margin calculated for Brother as BIA for Brother's final margin, Canon asserts that it would be inappropriate to apply that margin to the "all others" producers because it cannot support an inference that the margin is fairly representative of other companies.

For the above reasons, Canon asserts that the Department should use the average of the margins alleged in the petition and accepted by the Department to determine the margins and cash deposit rate for the "all others" category.

Smith Corona asserts that Canon and Nakajima are arguing that, because they did not respond at all, they should receive a more favorable estimated duty deposit rate than Brother, who attempted to respond and in fact did supply a large portion of the information requested. According to Smith Corona, with respect to Canon and Nakajima, it is not useful to discuss whether these respondents cooperated or whether BIA should be punitive. Smith Corona argues that, since the announced rates are only deposits, which are refundable if the respondent does not dump, it is appropriate to assign the same duty

deposit rate to all respondents. Smith Corona asserts that, in similar circumstances, the Department's practice is to assign "all others" the average of the duty deposit rates assigned to those respondents that filed a response, whether or not the Department used the response or resorted to BIA. See, *e.g., Final Determination of Sales at Less Than Fair Value; Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan*, 55 FR 34585, 34593 (August 23, 1990) (*"Sweaters from Taiwan"*). Here, adherence to precedent requires that the "all others" rate be established at the same level.

Smith Corona asserts, however, that should the Department not apply the highest rate in the petition to imports of PWPs manufactured by Canon and Nakajima, the Department should at least assign the preliminary margin determined for Brother to these imports. According to Smith Corona, this would be proper because Brother's preliminary margin was based on Brother's actual questionnaire response, with an array of adjustments for various expenses commonly incurred in the United States. By contrast, the data relied upon for purposes of initiation of this investigation were substantially understated as evidenced by the rate calculated in the preliminary determination.

DOC Position

The Department has determined that the appropriate "all others" rate in this investigation is the dumping margin assigned to Brother and Matsushita, *i.e.*, 58.71 percent. (See the "Best Information Available" section of this notice.) As discussed above, this was the rate calculated for Brother for purposes of the preliminary determination. Because this rate was calculated based on Brother's own information, the Department believes that, despite its use as BIA, it is not an unrealistic estimate of the selling practices of respondents and all other producers/ exporters in Japan of PWPs.

As stated in *Sweaters from Taiwan*, it is the Department's general practice in investigations to include all rates based on BIA in the calculation of the "all others" rate. The Department assumes that the investigated firms that fail to cooperate in an investigation are more probably dumping than not. Therefore, an "all others" rate which excluded BIA margins normally would be skewed to disproportionately reflect the pricing practices of firms with lower margins. In this instance, because none of the respondents cooperated, the "all others" rate is based exclusively on the BIA rate. We do not believe that any of the parties have submitted sufficient evidence to justify a deviation from our normal practice.

The factual situation in this investigation distinguishes it from *Sweaters from Hong Kong*. In that case, the Department excluded from its calculation of the "all others" rate a BIA rate assigned to a respondent who significantly impeded the investigation. The BIA rate was excluded from the "all others" rate because (1) there was an enormous disparity between the three verified rates and the rate in the petition which we were using as BIA, (2) we examined only the top 30 percent of total quota holdings, and (3) only a small number of firms were investigated.

The Department finds no merit in the argument of those parties who claim that they had no opportunity to receive a company-specific rate in this proceeding. The Department's regulations, specifically 19 CFR 353.14(a), provide that any producer or reseller which desires exclusion from an antidumping duty order may file a request with the Department within the stated time limit. Any company filing such a request would have been considered a voluntary respondent and would have been issued a questionnaire. The Department would have analyzed the company's questionnaire response, issued it a separate preliminary antidumping margin, and verified the response which had been submitted. No such requests were received by the Department during the course of this proceeding.

BIA

Comment 8

Citing *Atlantic Sugar, Ltd.* v. *United States*, 744 F.2d. 1556 (Fed. Cir. 1984), Smith Corona states that the Department is authorized by statute to use BIA if it is unable to verify the accuracy of the information submitted, or if a party refuses or is unable to produce information requested in a timely manner and in the form required. In addition, citing *Pistachio Group of the Association of Food Industries* v. *United States*, 11 CIT 537, 671 F Supp. 31, 40 (1987) (*"Pistachio Group"*), Smith Corona asserts that the use of BIA discourages respondents from providing partial information or otherwise hindering the investigation. Smith Corona, citing *Preliminary Affirmative Countervailing Duty Determination; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Israel*, 53 FR 48670 (December 2, 1988), contends that the Department has frequently found that a deliberate refusal to submit requested data justifies the use of data least favorable to a respondent.

Smith Corona also argues that if Brother is permitted to remove data from the administrative record, the Department should adopt the most adverse information as BIA. In particular, Smith Corona alleges that Brother's strategic withdrawal of information, coupled with its efforts to circumvent the antidumping duty order, require the Department to make adverse inferences in establishing the estimated duty deposit rate. Under these circumstances, Smith Corona contends that the highest margin alleged in the petition, *i.e.*, 335.3 percent, is an appropriate BIA rate. According to Smith Corona, the fact that the Department did not rely on the methodology which produced this margin for purposes of the initiation does not foreclose the use of this data as BIA under 19 U.S.C. 1677e(c).

Smith Corona states that there is a strong inference that Brother withdrew its information because that very information would establish a lower dumping margin than would be established by a complete response, particularly since Brother's withdrawal came late in the proceeding but before verification. Therefore, Smith Corona contends that the LTFV margins originally alleged in the petition are the best information otherwise available within the meaning of the statute and Departmental precedent.

Citing *Pistachio Group*, Smith Corona also refutes Brother's statement that the Department has consistently used the highest margin alleged in the initiation, or established on the basis of other record data, as BIA with respect to respondents that are in "substantial noncompliance." According to Smith Corona, where, as here, both the petition and the administrative record establish margins for Brother that are higher than either the 32.27 percent margin on which the Department initiated the investigation or the 58.71 percent rate preliminarily determined on the basis of Brother's own data, the Department's precedent requires the use of the highest rate alleged in the petition.

Brother argues that, consistent with the Department's past practice for a non-responding company, the BIA rate should be the highest dumping margin derived from the antidumping petition and announced in the Department's notice of initiation (32.27 percent). Citing *PPG Industries, Inc.* v. *United States*, _____ CIT _____, 708 F. Supp. 1327, 1329 (1989), Brother states that the Department's determinations are

required to be based on information in the administrative record. Brother contends that, as a result of the withdrawal of its questionnaire responses, the antidumping petition is the only document on the administrative record that may serve as a legitimate basis for determining Brother's BIA dumping margins.

Brother argues that because the figure the Department uses as BIA for determining Brother's dumping margin must be "reasonably accurate," and not punitive, all of the information in Smith Corona's May 31, 1991 submission should be rejected. Brother states that the "adverse inference" argument made by Smith Corona cannot be the basis of a BIA determination. Citing *Alberta Pork Producers' Marketing Board* v. *United States*, 11 CIT 563, 669 F. Supp. 445, 457 (1987), Brother contends that the Department must use a reasonably accurate figure for BIA. Brother claims that where BIA has taken on the appearance of a punitive rate, the courts have struck down BIA as arbitrary and capricious. Brother submits that the assignment of a punitive BIA rate to it, merely for exercising its right of terminating participation in the investigation, would be arbitrary and capricious.

Matsushita contends that the Department should not utilize the estimated deposit rate of Brother as the deposit rate for Matsushita on the basis of BIA. Rather, citing *SBTs from Japan*, Matsushita claims that the Department should use the estimated dumping margins in the petition which were accepted as a basis for its initiation of this investigation. In its case brief of May 15, 1991, Matsushita further contends that because Brother withdrew from active participation in the proceeding and did not allow the verification of its response, the use of Brother's incomplete data as BIA for purposes of determining Matsushita's rate in the final determination would be contrary to law and common sense. Citing *Antifriction Bearings*, Matsushita states that the Department's choice of a rate based on BIA is to assign the highest rate among: (1) The margins in the petition used as the basis for initiation; (2) the highest calculated margin of any respondent within that country that supplied adequate and verified responses; and (3) the estimated margin found for the affected company in the preliminary determination. On this basis, it argues that the rate in the petition, accepted by the Department in its initiation, should be assigned to Matsushita rather than a rate based on Brother's unverified data.

Furthermore, Matsushita requests that the Department reject Smith Corona's arguments to base BIA on those margins alleged in the petition which the Department repudiated in its initiation. Matsushita asserts that Smith Corona has failed to supply any precedent for its position that the Department should use as BIA the data which were rejected for purposes of initiation. Matsushita also states that the Department properly withdrew all data submitted by Brother in connection with the investigation and, therefore, such information cannot be used to calculate Matsushita's estimated deposit rate in the final investigation. Citing *Torrington Co.* v. *United States*, 745 F. Supp. 718, 723 (CIT 1990), Matsushita argues that the Department, in rendering its final determination, can only rely on the information on the administrative record. Therefore, Matsushita urges the Department to use the data set forth in the petition and accepted by the Department in its initiation as BIA.

DOC Position

As stated in the "Best Information Available" section of this notice, the Department has determined that the most appropriate rate to assign as BIA for Brother and Matsushita is the rate calculated by the Department in its preliminary determination for Brother. Our use of the rate established in the preliminary determination is fully consistent with both lines of Departmental precedent with respect to the use and selection of BIA, *i.e.*, it is both a reasonable estimate of the margin of dumping and an adverse inference.

The Department notes that, in discussing what information on the record would constitute what they believe would be the best information available, the parties have submitted extensive comments concerning the appropriateness and/or adequacy of the methodologies contained in the petition and Smith Corona's May 31, 1991 submission. As stated in the "Best Information Available" section of this notice, however, the rate based on Brother's own information is considered by the Department to be a realistic estimate of the selling practices of the respondents subject to this investigation. Because we have used as BIA the rate calculated for Brother in the preliminary determination, we need not address all comments regarding the different methodologies submitted by petitioner for use as BIA.

Continuation of Suspension of Liquidation

In accordance with section 735(d)(1) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of PWPs, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption, on or after April 22, 1991, which is the date of the publication of our preliminary determination in the **Federal Register.** The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of PWPs exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Brother Industries Ltd. and all related companies	58.71
Kyushu Matsushita Electric Co., Ltd. and all related companies	58.71
All Others	58.71

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. 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 Deputy Assistant Secretary for Investigations, Import Administration.

The ITC will make its determination whether these imports are materially injuring, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess antidumping duties on PWPs from Japan entered, or

withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Dated: July 1, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-16279 Filed 7-8-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-357-805]

Final Determination of Sales at Less Than Fair Value: Steel Wire Rope From Argentina

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: July 9, 1991.

FOR FURTHER INFORMATION CONTACT: Joel Fischl, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1778.

Final Determination of Sales at Less than Fair Value

The Department of Commerce (the Department) determines that imports of steel wire rope from Argentina are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On April 22, 1991, the Department published an affirmative preliminary determination (56 FR 16320). The Department did not receive a hearing request from either petitioner or respondent. On June 3, 1991, the Department received a case brief from petitioner. The Department received no case brief from the respondent.

Scope of the Investigation

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made of brass plated wire. Excluded from this investigation is stainless steel wire rope, *i.e.*, ropes, cables and cordages other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under Harmonized Tariff Schedule (HTS) subheading 7312.10.6000. See *Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Mexico* (published in this section of the **Federal Register**).

The appropriate HTS subheadings under which the subject merchandise is classifiable are 7312.10.9030, 7312.10.9060, and 7312.10.9090. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation is June 1, 1990 through November 30, 1990.

Fair Value Comparisons

The one respondent in this investigation, Acindar Industria Argentina de Aceros, S.A. (Acindar), did not respond to the Department's questionnaire. Therefore, according to section 776(c) of the Act, our results are based on the best information available (BIA). For use as BIA, we compared the United States price to the foreign market value, as reported in the petition, and specified below in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

As BIA we used petitioner's estimate of United States price for steel wire rope which is based on an actual price quote from mid-October 1990. This price was adjusted for U.S. movement charges and distributor mark-up.

Foreign Market Value

As BIA we used petitioner's estimate of foreign market value which is based on a February 1990 price list (f.o.b. Acindar's factory) for sales of steel wire rope. Petitioner adjusted for physical differences in the merchandise.

Currency Conversion

In accordance with 19 CFR 353.60, we converted foreign currency into the equivalent amount of United States currency using the official exchange rates in effect on the appropriate dates.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of steel wire rope from Argentina, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after April 21, 1991. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Argentina exceeds the United States price as shown below. Given the exclusion of stainless steel wire rope from the scope of this investigation, we will instruct the U.S. Customs Service to terminate the suspension of liquidation on that merchandise and to refund any cash deposits or bonds now posted on such merchandise. The suspension of liquidation on all other steel wire rope will remain in effect until further notice. The dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Acindar Industria Argentina de Aceros, S.A.	100.00%
All Others	100.00%

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC or our determination. 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 in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to steel wire rope, the proceeding will be terminated and all securities posted as a result of the suspension will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all steel wire rope from Argentina, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-16277 Filed 7-8-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-054]

Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan; Amendment to Final Results of Antidumping Finding Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of amendment to final results of antidumping finding administrative review.

SUMMARY: On June 6, 1991, the Department of Commerce published the final results of its administrative review of the antidumping finding on tapered roller bearings (TRBs), four inches or less in outside diameter, and certain components thereof, from Japan. The review covered three manufacturers/exporters of this merchandise, Koyo Seiko, K.K. (Koyo), Nachi-Fujikoshi Corporation (Nachi), and Nippon Seiko, K.K. (NSK), and the period August 1, 1987, through July 31, 1988. Based on the correction of a clerical error, we have changed the margin for NSK from 18.83 percent to 18.31 percent.

EFFECTIVE DATE: July 9, 1991.

FOR FURTHER INFORMATION CONTACT: Maureen Price or Laurie Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 1991, the Department of Commerce published in the Federal Register (56 FR 26054) the final results of its administrative review of the antidumping finding (41 FR 34974, August 18, 1976). After publication of our final results, a respondent alleged that a clerical error had been made regarding the adjustment for inventory carrying costs for exporter's sales price (ESP) sales. We agree and have corrected this error.

Amended Final Results of Review

As a result of our correction of the clerical error, we have determined that a weighted-average margin of 18.31 percent exists for NSK.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 18.31 percent shall be required for all shipments of TRBs, four inches or less in outside diameter, from Japan, manufactured by NSK. The cash deposits of estimated dumping duties for Koyo and Nachi, as stated in the June 6, 1991, final results of this administrative review (56 FR 26054), remain in effect.

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipment occurred after July 31, 1988, and who is unrelated to any reviewed firm or previously reviewed firm, a cash deposit of 47.63 percent shall be required. These deposit requirements are effective for all shipments of the covered merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until the publication of the final results of the next administrative review.

This notice is published pursuant to 19 CFR 353.28.

Dated: July 1, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-16280 Filed 7-8-91; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Advisory Group for the Air Force Communications Command (AFCC) Standard Systems Center will meet on 22-23 August 1991, from 8 a.m. to 5 p.m. at the Standard Systems Center Headquarters, Building 888, Gunter AFB, Alabama.

The purpose of this meeting is to review the activities of the Software Center of Excellence that AFCC has established at the Standard Systems Center.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraph (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-162281 Filed 7-8-92 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 432; Project No. 2748]

Carolina Power & Light Co. and North Carolina Electric Membership Corp.; Notice of Availability of Environmental Assessment

July 1, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the applications for major license for the Walters/Waterville Project located on the Pigeon River in Haywood County, North Carolina and has prepared a draft Environmental Assessment (EA) for the proposed project.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Informal comments on the EA should be filed within 30 days of the date of this notice, by July 29, 1991, and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Such comments will be treated as a protest under the Commission's Rules of Practice and Procedure. 18 CFR 385.211. Such comments will be placed in the public file associated with this proceeding and will be considered by the Commission as a statement of position, but will not be a part of the evidentiary record upon which a decision will be made. Please affix Project No. 432/2748 to all comments.

The issues in this proceeding have been set for a trial-type hearing. See 18 CFR 380.10. In order to offer facts or opinions which will become part of the record on which a decision is made, or to otherwise participate in this hearing,

a person must first file a motion to intervene and become a party in the proceeding.

Motions to intervene should be clearly labelled as such, and should be filed with Lois D. Cashell, Secretary, at the address noted above, within 30 days of this notice, by July 29, 1991, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214. Two copies of any motions to intervene should be sent to Curtis L. Wagner, Jr. Chief Administrative Law Judge, Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

To be considered, any facts or opinions on the environmental issues raised in the EA must be filed by parties by August 15, 1991 and in accordance with Rule 507 of the Commission's Rules of Practice and Procedure, 18 CFR 385.507. Such facts and opinions must be in the form of testimony sponsored by a witness who will be available for cross examination at the trial-type hearing scheduled for October 1, 1991.

For further information, please contact John Blair, Environmental Assessment Coordinator, at (202) 219–2845.

Lois D. Cashell,

Secretary.

[FR Doc. 91–16194 Filed 7–8–91; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 3862–003 Illinois]

City of LeClaire; Notice of Availability of Environmental Assessment

July 2, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed LeClaire Project located on the Mississippi River at Lock & Dam 14, in Rock Island County, near Hampton, Illinois, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91–16195 Filed 7–8–91; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. PL91–1–000]

Public Conference and Request for Comments on Electricity Issues; Additional Time

June 28, 1991.

As announced by the Chairman at the public conference held on June 18, 1991, the Commission is allowing additional time for supplemental comments and replies in answer to questions raised by the Commission at the conference or written questions submitted by them after the conference. The questions submitted by Commissioners are attached. An original and 14 copies of supplemental comments and replies should be filed on or before July 19, 1991 with the Secretary, 825 N. Capitol St., NE., Washington DC 20426.

Lois D. Cashell,

Secretary.

Questions for the Record From Commissioner Trabandt

1. Introduction

The written comments filed in this docket and the Public Conference on June 18, 1991 provide the Commission with its first comprehensive review of key issues in the electric utility industry since the public hearings three years ago for the 1988 Electric Notices of Proposed Rulemaking. I want to express appreciation to those who submitted written comments and participated in the public conference, and particularly to those who responded to my separate questions. The purpose of this statement is to provide all interested parties with the opportunity to address a series of questions for the record based on the written comments and the testimony at the public conference.

The questions are of two basic types. The first type is an issue-specific generic question based on internal analysis of the written comments conducted by my fine staff. I want to acknowledge the hard work of Joshua Rokach, George O'Connor and Andrea Dravo in that effort. As I attempted to do at the public conference, I want to follow-up on that analysis and explore various options for Commission action through these questions. I invite all interested parties to provide supplemental comments for the record in response to the generic questions.

The second type of question is more specific to a portion of a particular written filing or oral statement by an individual witness. I have identified the filing party or individual witness by name and would appreciate a response to the question from that party. Any other party also may address the question if they choose to do so.

The Commission has set a deadline of July 19, 1991 for the submission of formal supplemental comments for the record in this docket. I would encourage interested parties to file responses to these questions with the Commission by that date. In any event, I still would be pleased to receive the supplemental information as an individual Commissioner at any reasonable date, if additional time is needed to provide a more complete or thoughtful response. Personally, I consider this a unique and very significant opportunity for the electric utility community to make sure that the Commission is fully and currently informed on these critical issues. I hope all interested parties will take full advantage of that opportunity.

Issue 1: Market Rates for IPPS and Utilities

The comments in this proceeding suggest that the Commission's case-by-case approach to IPP cases fosters uncertainty and delay. To alleviate that, several commentators, including DOE, PGE, PSI, CMS, Energy, Environmental Action and Wisconsin have suggested some form of "safe harbor" guidelines. Indeed, I have publicly ruminated on such a course as well.

I envision any guidelines the Commission may adopt as operating to carve out a class of cases from full review procedures, rather than the straightjacket of the 1988 NOPRs. Therefore, if a transaction fits within the enumerated criteria, the Commission would approve the rates with minimum fuss. Nevertheless, if the parties come to the Commission with contracts that fall outside the rubric, the Commission would still examine the cases individually.

As for the guidelines themselves, I request parties to provide me their reactions to several possible rules, as well as any of the individual proposals of the aforementioned parties.

1. For safe harbor transactions we would institute an abbreviated procedure.

That procedure would entail:

- The seller filing with FERC;
- Protesters have 30 days to intervene;

• If no one appears, the transaction automatically obtains FERC approval.

The transaction must meet the following criteria:

a. The seller must be a true independent, i.e., it may not be affiliated with the purchaser or any utility interconnected with the purchaser; and

b. The seller neither owns nor controls transmission that reaches the buyer, or any other item that the buyer must depend on (such as the last strip of land in the region); and

c. The seller offers new capacity, rather then electricity from existing plant,

For other cases, the Commission will follow its usual process.

In addition to reading any comments the parties may offer, I would appreciate responses to the following:

• What percentage of current IPP transactions would such a rule remove from full review?

• Do only uncontrovertible cases fall within these categories, or do they hide situations requiring possible plenary review?

2. The Commission will also give the abbreviated review I outlined in hypothetical 1 to transactions:

a. That involve parties not affiliated with each other; and

b. That contemplate power flowing within a state; and

c. For which the state commission has instituted a procurement plan, under whatever name, requiring utilities to obtain power by the most economical means; and

d. The purchasing utility has obtained state approval for the purchase under that procurement plan.

A Variation on C and D

The state has reviewed the transaction as part of its certification authority or site selection jurisdiction and found, on the record, that the IPP's sale represents the least cost alternative.

Under both possible rules please answer the following: Do the notice and protest procedures adequately solve the problems associated with full Commission review of IPP cases? If not, should the Commission institute some form of automatic approval? Under what authority may we do that?

With regard to Affiliated Power Producers, is there a formulation of the affiliated relationship or transaction that could be adopted for expedited treatment; if so, what should it be?

In the alternative, are affiliated relationships and transactions inherently of such concern that they must only be treated on a traditional case-by-case basis? If we adopted an expedited procedure only for true independent power producers, but not affiliated power producers, would that create a *de facto* bias against affiliated power producers, or a *de facto* preference for independent power producers, because of the expedition and certainty for IPPS that would result?

Issue 2: Clean Air Act Amendments Implementation

I. Substantial support was expressed for the Commission to act in the near term to identify and settle certain regulatory issues related to allowance trading. Establishment of uniform accounting principles, and a clarification of Commission jurisdiction—or clarification that the Commission will not assert jurisdiction—over allowance trading activities, are issues about which a desire for near-term Commission action was nearly a consensus. Over the longer term, there is an expectation that the Commission will play an important role in development and maintenance of a national data base on allowance trading and regulation.

Significant concern was also expressed, however, that the Commission not crystallize a body of regulation before the Environmental Protection Agency has finalized its allowance trading rule, and before some data and trading experience have developed on which regulatory judgments and policy can be based. The timing and sequencing of regulatory activity will be an important policy decision.

I would appreciate analyses of the appropriate sequencing of FERC regulatory activity, as it relates to activities by the EPA, the state regulatory commissions, and compliance planning and procurement activities of electric power suppliers as well as the vendors working with them on allowance trading.

Some questions that have been raised (and which many commentators have addressed in part) include:

1. What state regulatory issues are contingent on resolution of specific or generic issues by FERC?

2. What FERC regulatory issues are contingent on, or would be improved by, prior resolution of state regulatory issues?

3. How can FERC and state regulators best coordinate the sequencing of decisions?

4. What FERC issues must be resolved for compliance and procurement decisions to be made with a reasonable degree of certainty?

5. What regulatory issues can not be made effectively without more information about how the allowance market actually works? (Commentators had divergent views, for example, on whether an early determination can or should be made regarding assumptions that certain allowance trades or values will be made in a free market.)

6. What specific activities is your organization currently engaged in which require, or would be improved by, near-term resolution of Commission regulatory issues?

II. Commentators agreed that a determination needs to be made regarding who owns allowances, and a significant number of commentators seemed to suggest that the Commission should consider this a federal issue. The central question that is being raised is how the costs, benefits and risks of allowance trading decisions are distributed among utilities, ratepayers and shareholders.

What is FERC's role in making this determination? Should this decision be made at the federal level? Under what authority?

III. A substantial number of commentators addressed issues that would be raised in Commission decisions regarding an allowance cost component in wholesale rates. Little consensus appears to exist on how the Commission's authority in this area will or should operate. I would welcome further comments and recommendations that will lead to a full appreciation of issues that will need to be addressed by the Commission in this area.

IV. Because of the currently scheduled EPA Final Rule on allowance trading in November 1991, it would appear that the Commission may need to proceed with some dispatch on certain issues, such as accounting, which will or may constitute a part of the economic regulatory foundation for successful implementation of emission allowance trading. I have suggested consideration of a Notice of Proposed Policy Statement (NOPPS) as a procedural vehicle to initiate an expedited process for public comment and Commission decision making a Policy Statement in the same time frame as the EPA final rule. A Notice of Inquiry would seem to be too procedurally remote to reach that same result in time, because the NOI record would have to be reviewed and then followed by a subsequent, concrete proposal. Please comment.

Commissioner Ashley Brown of Ohio, Chair of the NARUC Committee on Electricity by letter of June 24, 1991 has recommended that FERC give top priority to workshops on Clean Air Act compliance, as well as transmission issues. Would such a workshop,

assuming it could be scheduled at an early date, be useful in formulating issues and proposed policies for a NOPPS, or is timing such that we should proceed directly with a NOPPS?

Issue 3: Transmission Access and Pricing

1. Many agreed at the Conference that transmission issues, involving both Federal and state regulation should be discussed at Commission workshops. I agree. Because of the complex nature of the issues associated with transmission, it may be prudent to separate the more complex issues so that they can be discussed individually at different workshops. For example, the Commission could set up one workshop to deal with pricing, while at another workshop, issues associated with Independent Power could be discussed in an attempt to isolate access problems. Please comment on how best to set up these workshops on transmission.

2. There was a suggestion at the Conference that the Commission should initiate a "national power survey" to help identify geographic areas that contain transmission "bottlenecks" or the potential for such an impediment to access. The NARUC Electricity Committee already has completed a state-by-state transmission survey that could serve as our analytical foundation for such a national power survey. Please comment on this suggestion.

3. How can transmission be priced so that it will be utilized in the most efficient, or least cost manner? Many of the comments and some of the oral testimony appeared to favor the idea that proper pricing should assure transmission owners receive complete reimbursement for services rendered. It would be helpful to define what complete reimbursement really means. One area discussed at the public conference was opportunity cost pricing, which is the subject of briefs in certain Northeast Utilities cases. Also, for instance, does the term include ancillary costs associated with accommodating particular load increases on the transmission lines? Should the utility be reimbursed for long term costs as well as short term costs? Please comprehensively define this term.

4. a. As a technical matter, setting aside the legal issue of ownership, what are the consequences for power distribution associated with open access? Do they differ from open transportation in natural gas? Do conditions on the electric grid raise more concerns about reliability? Also, what are the consequences from attributing long term obligations to those who seek short term transactions? Are the technical consequences different when third party transactions involve a new line as opposed to an existing line?

b. Is there a conflict between a transmission system's ability to accommodate short-term coordination and emergency transactions, on the one hand, and long-term firm transactions, on the other? How should it be resolved? By whom? What would be the impact on ratepayers and utility operations of a general policy imposting the long-term transmission requirements adopted in the Pacificorp-Utah Power & Light merger case? Also, what would be the impact of a general policy based on the FERC staff transmission recommendations in the Northeast Utilities-PSNH merger case?

c. What economic and reliability benefits devolve from short-term interruptible transactions in the coordination market? Why are these benefits important to utilities? Please cite specific benefits.

d. A study the Office of Technology Assessment conducted indicated that increasing competition among interconnected utilities could have adverse consequences on reliability and reduce the economic benefits derived from utility coordination and cooperation. How will increasing access affect coordination and cooperation among utilities? Who will allocate capacity in shortage conditions as between retail customers and third-party users?

5. The Commission's rehearing order in the Western Systems Power Pool Case (Docket No. ER91-195-001), issued on June 27, 1991, appears to stand for the proposition that the majority is unwilling to support flexibile pricing for services in exchange for voluntary commitments to increased transmission access, as yet another manifestation of the 1989 Transmission Task Force recommendation of mandatory open-access transmission with cost-based services. After reviewing that order (and, I hope, the dissent as well!) I would invite comments from interested parties on the implications of that decision for transmission policy in general. For example, I would suggest that the order leads to a result which is contrary to both the National Energy Strategy and Deputy Undersecretary Stuntz's recommendations on flexibile pricing of transmission services.

6. I also would like to have a greater understanding of those situations where insufficient transmission capacity has played a role in the denial of access requests. To what extent is insufficient transmission capacity a problem for parties seeking transmission access? I request parties to provide any factual information on specific situations.

7. One of the most contentious issues regarding the availability of transmission capacity involves the extent to which existing short-term transactions using the transmission system should be considered in determining the adequacy of transmission capacity to respond to a request from a new party. This issue appears to involve two contentious issues—adequacy of transmission capacity and transmission pricing. Many commentors assert that in order to serve the economic interests of their native load customers transmitting utilities must be able to reserve capacity for short-term economy transactions which reduce rates to such customers. Several of the transmission models identified in the FERC Transmission Task Force Report adopt this approach. A similar approach to such reservation would be to allow transmitting utilities to include the economic benefits of such economy transactions—which FERC staff calls "opportunity costs"—in the price charged when providing transmission for others. The California Energy Commission, for one, recommends this approach as being the most economically efficient way to allocate scarce transmission capacity. I would appreciate comments on this position. Others seem to advocate that long-term firm transactions are always preferable to short-term economy transactions. How do we know they are more efficient if transmission prices do not reflect the benefits of such economy transactions? Please comment on these issues to explain how the economic interests of native load customers in the benefits economy transactions can be preserved while we seek to achieve the most efficient use of the transmission network.

8. Several participants indicated that FERC can and should use its existing authority to require transmission access more aggressively. I am particularly interested in the provisions of sections 211 and 212 of the Federal Power Act. The Commission's decision in the SEPA case, 25 FERC ¶ Par. 61,203 (1983) order on rehearing 24 FERC ¶ 61 61,127 (1984), indicates that those provisions authorize FERC to order transmission services to a purchasing utility which is seeking to respond to growth in customer demand, provided that the transmitting utility and its customers are not harmed. Is there a demonstrated need for the Commission to ensure that these provisions are an effective remedy for electric utilities seeking to serve new incremental needs?

9. In its filing, the California Energy Commission recommends the FERC encourage the following solution:

Parties who own transmission facilities and who need transmission service should develop voluntary associations to foster understanding of the need for transmission and the cost of providing it. The Large Public Power Council ('LPPC') model for an association is a good example of the kind of association that could help develop this necessary basis for long-term transmission planning. (California Commission's comments, p. 9)

Richard M. Flynn, on behalf of the Large Public Power Council and the New York Power Authority, by letter of June 25, 1991, noted that testimony and commented as follows:

"The California Energy Commission strongly recommends that this Commission encourage experimental, voluntary transmission associations. Such experiments have the potential to break down all barriers to transmission access. We agree with the California Energy Commission's comment that "* * * in the absence of experience attempting such a solution, we anticipate that it would be difficult to force mandatory wheeling on the TOUs (transmission owning utilities)."

Furthermore, we also agree with the California Energy Commission that if the associations are not formed voluntarily or if they fail to accomplish their intended purpose, "* * * then FERC and/or other parties could still consider seeking a more drastic solution in Congress or within the jurisdiction of state and federal regulatory agencies."

The Large Public Power Council and the New York Power Authority support these portions of the filing of the California Energy Commission in this proceeding and submit that, with appropriate support by FERC, the formation of voluntary associations by transmission owners, non-transmission utilities, and utility and non-utility power producers is the most effective way to break the current nationwide stalemate preventing the efficient distribution of transmission services."

At the public conference, Mr. Flynn also discussed the decision of the California Municipal Utilities Association (CMUA) Board of Governors' Task Force on Transmission to form a Western Association for Transmission Systems Coordination (WATSCO). WATSCO will be based on the CMUA Recommended Statement of Principles on Transmission submitted to the California Energy Commission on May 7, 1991. (A copy is attached.)

Should FERC encourage such voluntary associations, as recommended by the California Energy Commission? If not, why not? And, if so, how would FERC provide such encouragement, and pursuant to what authority would it do so? What portions, if any, of the CMUA Recommended Statement of Principles would be supported by transmission "haves" or transmission "have nots"? Is this a concept which FERC should actively explore as an option in an overall transmission policy?

10. In the spirit of new legislation encouraging the use of alternative dispute resolution procedures and to reduce regulatory interference, I also would like to investigate the feasibility of using arbitration to resolve transmission access disputes. Technical transmission experts, rather than only lawyers and economists, must be involved in resolving such disputes because of the very technical nature of many of the issues that could arise and because resolution of a request could inadvertently have potentially serious technical impacts. The Large Public Power Council has been in the forefront of advocating the use of arbitration, but several utilities filings have also included arbitration clauses. Also, organizations such as NERC could provide a resource for this purpose. Please comment on the advantages and disadvantages of arbitration, rather than this Commission, resolving transmission access disputes.

11. Former Federal Power Commission Chairman Joseph C. Swidler, on June 5, 1991, presented prepared remarks to the General Meeting of the North American Electric Reliability Council in San Diego, California entitled "The Role of Competition in Bulk Power Supply." In his prepared remarks, he states, as follows at pages 14 to 18:

The demands of the IPPs and others for what is usually called "transmission access" is now roiling the legislative and regulatory waters. The word "access" places an innocuous cast on the demand, but the word is misleading. Access in the usual sense implies the right to use a facility, such as a highway, in common with everyone else. What is meant by the IPPs is the mandated use of utility transmission service, which requires the support of the host's entire G&T system, and of other interconnected systems as well. It is a preclusive easement which deprives the owner of the opportunity to use the property for the advancement of its own business and the best advantage of its customers.

Utilities do not build transmission capacity that they know they will not need. They build only what is required for safety, adequacy and reliability of service, including emergency reserves, plus an increment for foreseeable growth in loads. Any part of the capacity appropriated for other uses is likely to be at the expense of one or more of the uses for which the capacity was installed, unless the purpose of the appropriation is to make possible a transfer of loads of the host's utility's own customers to an IPP. Here the use of the transmission capacity would not change, but the utility would lose a customer, and suffer a loss of profitability and perhaps its solvency. The answer of the IPPs is for the host to build more transmission capacity. They show little awareness of the obstacles, delays and costs, not to mention the uncertainties, of building new transmission lines under present conditions. Some companies have given up on siting a line after a decade of trying. The IPPs are willing to pay a modest fee for the use of existing capacity, but their willingness to shoulder the cost and risks of building new capacity to replace the capacity they have appropriated, is doubtful at best. The utilities' consumers seem likely to pick up the costs for the replacement capacity.

In the case of disagreement as to whether capacity is available for a third party, under the IPP proposals presumably the FERC or a PUC would make the decision or, under one variation, it would go to arbitration. In either case, the decision would no longer be the owner's. Until now, all agreements for third-party use of transmission provided that the owner's decision was final on whether capacity could be made available without sacrifice of reliability. Would the FERC, or a PUC, or an arbitrator, take responsibility for the consequences of its decision? Is it deregulation to convert the management question of the availability of transmission capacity into a regulatory question? And if utility management is deprived of the right to protect its system, what is left of management discretion? The same questions arise, just as seriously, in the regulatory pre-emption of decisions as to who shall build new plants. The IPPs have already caused a marked expansion of the scope of regulation. It takes a lot of regulatory power to force a square peg into a round hole.

Finally, we come to the effect of IPP competition on reliability. There are signs that the reliability structure is under strain. Loads are growing, albeit more slowly than in the past, but there is no commensurate growth in generating or transmission capacity. Generating and transmission systems are becoming more complex as they assimilate IPP facilities. The data reflect a new reluctance or inability of the private sector to expand the basic U.S. transmission network. The reasons are interrelated: loss of confidence in the fairness of the regulators in some states, the added risks occasioned by demands from unregulated companies to use the transmission systems of the utilities to compete against them, and the resulting uncertainties as to retention of markets. The current political and public focus on the short-term may also play a part.

The question is, do the IPPs make any contribution to reliability of power supply, which is the principal concern of NERC? We start with the underlying relationship between the IPPs and the utilities. I have no doubt that an IPP would attempt to cooperate with the host utility in an emergency, especially if it was not financially disadvantaged, and not exposed to risks, but they have different and potentially conflicting interests. The IPP, naturally enough, is interested in maximizing its profits insofar as it can do so under the terms of its contract with the utility. The utility's over-riding responsibility is not limited. It is to assure

adequacy of supply and the utmost feasible degree of reliability at all costs. A contract with an IPP must constrain to a degree the freedom of the utility in dispatching the power from all the plants on the system in the way that will produce the lowest cost for consumers and the greatest reliability. Significantly, EEI reports that only 6% of non-utility capacity is fully dispatchable. (Inside FERC, April 8, 1991.) A loss of system reliability is implicit in non-dispatchable capacity. To pay for my lunch, let me say that NERC has published a comprehensive report on this subject, "Reliability Considerations for Integrating Non-utility Generating Facilities with the Bulk Electric Systems." It should be required reading for the Congressional committees working on promoting competition by opening up the transmission networks to the IPPs.

In addition to contractual constraints are the transactional delays and costs. Without full confidence in its freedom to dispatch for the benefit of the system network, the utility will confront uncertainties and delays which affect risk management. The negative effect on reliability will ultimately require an increase in generating or transmission capacity, or both, and as the IPP plants grow in number, the greater the problems of system management."

Are these concerns of Mr. Swidler legitimate problems which the Commission must consider in fashioning a general transmission policy? If not, why not? If so, why are they in your judgment and what factual basis supports that conclusion? Also, if so, how should those concerns be reflected best in any general transmission policy.

12. Public Service of Indiana and Pacificorp both have Commission approved formulations of a type of open access transmission service, the former voluntarily proffered and the latter mandatorily imposed in the merger case. To date, there have only been a couple of requests for such services on the Pacificorp System from transmission dependent utilities and none at all on the PSI system. Why is there so little activity on those systems, despite all the controversy surrounding those Commission approvals? I'd be particularly interested in a response by the APPA, since the TDUs on the Utah P&L system were so insistent on the Commission ordering such services in the merger case, and many of the particulars we adopted were proposed by the TDUs.

Issue 4: Integrated Resource Planning

On this issue the consensus seemed to be that, rather than promote IRP in wholesale rates, the Commission should remove obstacles to state administration of their own plans.

Please respond to these questions:

1. Would the Commission accomplish that by creating a rebuttable presumption in favor of state IRP determinations in federal rate cases?

2. Besides that, should the Commission encourage regional IRP?

3. Should the Commission engage in IRP for multi-state holding companies within its jurisdiction?

4. Should the Commission encourage multi-state companies to submit IRPs as part of or in addition to their system agreements on file with this agency?

Issue 5: Merger Guidelines

Most people expressed opposition to the Commission adopting substantive criteria, along the lines of the Department of Justice Merger Guidelines, for electric company mergers. They expressed the view that especially on competition questions, the Commission must make specific factual determinations. The Department of Energy did express support for generic rules to alleviate the perception that FERC policies reflect an aversion to mergers. I request parties to respond to the following hypothetical procedural guidelines for mergers.

I would note that I continue to believe that the appropriate policy for the Commission with regard to mergers and alternative contractual arrangements (as in the Pacificorp-Arizona Public Service case) is to neither favor and encourage mergers nor to oppose and discourage mergers *per se* (although our recent transmission conditions may serve that purpose, as a practical matter). Rather we should let the parties propose mergers or alternative contractual arrangements and then fairly assess them in response to protests under applicable substantive standards. The suggestion of procedural guidelines is not intended to change that policy, but rather to expedite orderly processing of such proposals and facilitate more reasoned decision making in those cases.

Current practice calls for the Commission to consider the six Commonwealth factors (36 FPC 927, 932 (1966)) when reviewing a merger. Not all of them require a hearing. When we set cases for hearing, recently we generally direct the administrative law judge to look at the merger's effect on rates and on competition. We should adhere to that practice. We should not, for example, examine independently the adequacy of the purchase price or set for hearing coercion issues, since two consenting (or, in a tender offer, many) parties or corporation law can protect those interests.

Of the two issues we set for hearing, the Commission's review of competition presents the greatest opportunity for mischief. Long delays result from setting for hearing complicated, often amorphous issues. Delay allows intervenors to extract from the applicant utilities concessions in unrelated areas. At the same time, undue haste means that the Commission may be acting in a vacuum.

Other agencies, the Department of Justice or the Federal Trade Commission under Hart-Scott-Rodino review and the Securities and Exchange Commission under the Public utility Holding Company Act (for registered holding companies) also have a say in electric utility mergers.

Therefore, to avoid abuse and duplication of effort and to provide more certainty, the Commission should streamline its consideration of mergers with these considerations in mind. In particular, we must:

1. Issue Commission decisions on the merits by nine months after the parties seeking approval complete filing the application. (Financiers will extend commitments for one year. Similarly, the SEC requires a new registration after one year if the utility has not issued the securities to acquire the target.)

2. Take into account other federal antitrust review.

3. Ask with more precision the question regarding competition. In this regard, the Commission should insist on a direct nexus test. The standard should entail, first, whether the record supports a conclusion that one of the companies engaged in anti-competitive behavior; second, whether the merger will spread that situation over a wider area; third, whether that consequence will harm particular identified customers.

4. Allow intervention only if the party can show direct harm to itself from the merger.

5. Better analyze the market. In order to find harm, the Commission should consider all the choices the customer has: conservation, demand side management, generating its own electricity, purchasing from within its own system, using alternate transmission routes.

6. Take into account the possibility of future complaints in individual cases, along the lines of our PSI approval. Minor problems should not hold up worthwhile transactions (as the WSPP dissent pointed out). Indeed, in examining rates in mergers, the Commission waits for later rate cases.

7. In hostile takeovers, the Commission should not, through scheduling, favor the party that happened to file first. Rather, we must fashion a procedure that allows a decision on the merits. That means either delaying hostile cases until we

can tell who will participate in the chase, or giving late comers a shorter time to begin the hearing. The commission should consolidate all cases dealing with the same assets.

In line with these principles, the Commission would institute the following expedited procedures for gaining approval within nine months, with these possible rules:

1. The Commission will grant merger approval by operation of law if it has taken no action within 180 days after accepting the application for filing. Otherwise, the expedited process will dictate the deadlines. In particular,

2. The Commission will use rules listing the elements the parties must incorporate into the application to start the process. These will include standard conditions on rates and accounting.

In addition, the applicants must show:

(a) That the merger will not increase operating costs and rates;

(b) That the new company will abide by the FERC Uniform System of Accounts;

(c) That the merger will have no negative impact on competition. In that connection, the applicants must compare the competitive situation before and after the merger and identify affected customers; and

(d) That the merger will not impair effective regulation by federal or state regulatory agencies.

Finally, the application must contain verified statements of all the facts.

3. Within 14 days after filing, the Commission will provide public notice of the application and give interested persons 30 days to file motions to intervene. The Commission will grant intervention only if the motion states its claims with particularity on the basis of affidavits (without discovery) and the moving party can show *all* of the following:

(a) A direct nexus between the harm to its interests and the merger;

(b) That the harm did not pre-exist the merger; and

(c) That remedy for the alleged harm must come from the merger proceeding and cannot emerge from a rate case or a complaint in a different proceeding, federal or state.

4. The Commission must rule on interventions either (a) when it accepts the application or (b) 60 days after the public notice, whichever comes first.

5. The Commission staff may request further information, whether by written request or deposition, from the applicants in order to determine whether or not to accept the application for expedited consideration. The staff shall make the information available to the public, to the extent confidentiality allows.

6. If the staff needs the benefit of a technical conference at this preliminary stage, the Commission may convene one, but a Commissioner must preside.

7. The Commission will consider the application accepted for filing after 60 days following the public notice, unless FERC issues a rejection.

8. Once the Commission accepts the application for filing, the burden shifts to opponents to show the merger inconsistent with the public interest.

9. A party granted intervention will have 30 days to file written comments addressing the following questions, as appropriate:

(a) If the intervenor wants the Commission to disapprove the merger, what harm with direct nexus to the merger will result if the Commission approves the merger unconditionally or adds conditions? Why must the relief come from the merger, rather than a rate case or a complaint in a different proceeding?

(b) If a party advocates that the Commission should place conditions on the merger, in addition to the factors in (a), with regard to each condition, how will the merger with the suggested condition not be inconsistent with the public interest?

(c) If the intervenor advocates transferring the case out of the expedited process, what factual disputes require a hearing?

The intervenor bears the burden of making the showing on each question.

10. The applicants will have 30 days to respond to the intervenors' filings, and after that, the intervenors will have 15 days to rebut.

11. The Commission may do nothing, which means that the 180 day period of approval by operation of law applies, or FERC may within that time disapprove the merger, or attach other conditions.

12. The Commission may defer acting on the merger, if:

(a) It finds factual disputes that require a technical conference (at which a Commissioner must preside);

(b) It finds material issues of fact that require a hearing;

(c) The Department of Justice or the Federal Trade Commission has not completed its Hart-Scott-Rodino review, or the statutory (15 U.S.C. 18a) waiting period has not expired, or those agencies have instituted litigation, which is still pending, to block the merger; or

(d) State commissions or federal agencies of competent jurisdiction have not acted upon the merger.

13. If the Commission disposes of the merger in expedited fashion, FERC must act on rehearing requests within 30 days after the last one filed.

Under the expedited procedures, the Commission may given deference to the Justice Department or FTC Hart-Scott-Rodino review or the Nuclear Regulatory Commission's antitrust review or the Securities and Exchange Commission competitive review.

Finally, the Commission may conclude that if an affected party has three choices in a market, the merger will not harm competition in that market."

Parties may also comment on suggestions, such as those Pacificorp and its expert made, that represent variations on this theme.

Issue 6: Rolling Prudence

Few commentators addressed the issue. Of those that did, most advocated leaving rolling prudence to the states. Nevertheless, the question arises on the federal level, as the NE discusses, and I recall a 1988 case in which parties to a transaction requested advance Commission approval of their action. In any event, several questions emerged in my mind from the record and I would like the parties to answer them. In particular,

1. Has the Commission under its forward looking standard for determining prudence (*see, Arlene Violet* v. *FERC*, 800 F.2d 280 (1st Cir. 1986) already adopted the practice, in fact, if not in name, as NRECA suggests?

2. If the Commission adopted rolling prudence, for example, in the utility holding company context, how do we undertake a thorough examination without unduly inserting ourselves into utility management and planning, a concern Southern Companies expresses?

3. On June 6, 1991, a group of utility executives and state regulators issued a proposal, New Approaches to Prudence Reviews for Utility Construction of Major Generating Facilities. That document calls for utilities to submit long-term integrated resource plans, in exchange for early review of construction prudence. Please comment on whether or not that represents an appropriate mechanism for the FERC to adopt.

Issue 7: Federal-State Jurisdiction

I wholeheartedly support the Chairman's decision to propose Federal-State workshops to help bring about federal-state Cooperation on matters of common concern. To ensure success for these meetings, participants must operate under proper procedures. To that end, I request parties to help us make this good idea concrete. In particular,

1. What issues should these workshops cover? As noted earlier, Commissioner Brown of Ohio has proposed Clean Air Act compliance and transmission issues as two high priority topics in the near term.

2. Who, besides FERC and NARUC, should participate?

3. How soon should the first one begin? Should they become a permanent fixture, rather than a one-time trial? How often should the FERC conduct them?

4. How much formality should this Commission introduce into the process? For example,

a. How would FERC institute a workshop?

b. Should we adopt particular procedures for conducting them?

c. Under what kind of time deadlines would the workshop operate, if any?

5. What do interested parties envision as the outcome of these workshops, recommendations, studies, or discussions?

6. How much should anything the workshops produce count in this Commission's deliberations? Should we treat it as part of the record? Should the Commission give any weight to the results of the deliberations?

Attachment—California Municipal Utilities Association Recommended Statement of Principles on Transmission

Preamble

Electricity Transmission Capacity is a scarce and valuable resource which is imbued with the public interest. Therefore transmission facilities should be used in a manner which promotes the broadest public benefits. Optimal use of transmission facilities on a fair, non-discriminatory basis can yield many societal benefits including:

- Enhanced economic efficiency;
- Increased competition in the wholesale power market;
- Better protection of the environment; and,
- Lower rates for consumers.

CMUA's consumer-owned electric systems believe that these benefits can best be achieved through the efforts of utilities and non-utility generators in a voluntary association formed expressly for the purpose of facilitating the use of existing transmission facilities and coordinating the planning for expansion of the transmission system on a regional basis. Use of transmission facilities includes long-distance bulk transmission services ("wheeling through") as well as service for non-utility generators and transmission dependent utilities ["wheeling in", "wheeling within" (a control area), and "wheeling out"]. Region-wide coordinated planning is needed to assure the most efficient development and expansion of the transmission system to serve the needs of all consumers and power providers in the region with a minimum of adverse environmental impacts. This voluntary association must operate on a set of agreed "guiding principles" concerning coordinated planning, efficient use and fair pricing. It must also include resolution of all disputes arising out of the application of these principles through binding arbitration. It must always be the objective in the application of these principles, that the customers of any one utility do not subsidize the customers of another utility or any other party. Those "guiding principles" endorsed by CMUA are set forth below in very general terms. Many details and nuances remain to be specified.

Coordinated Planning

Coordinated transmission planning requires the availability of sufficient information about the existing system to satisfy all concerned parties that the system is accurately understood. Such information includes but is not limited to: current and expected use of transmission facilities; the location and duration of excess capacity; the location of bottlenecks; current plans for system modifications and new generation; and, computer data bases and assumptions used for modeling the transmission system.

Utilities owning transmission have an obligation to build (that is expand the capacity of their transmission system) where it is necessary to accommodate firm wheeling transactions. Such an obligation to build should be on a "best efforts" basis and should not place the utility's native load customers at an unreasonable financial or operational risk.

Equity interests in new transmission facilities, including upgrades, should be made available in proportion to the share of the actual cost born by those willing to participate in providing and maintaining increases in transmission capacity.

Reliability criteria as established by NERC, WSCC, and other reliability councils must continue to govern the reliable operation of the transmission system. To ensure that existing and future transmission capacity is more fully utilized, greater emphasis must be placed on reliability planning, the economically efficient use of the existing transmission system, and the construction of reinforcements to the bulk power transmission system to accommodate economic wheeling transactions.

Efficient Use of Transmission

"Excess Transmission Capacity" should be made available for firm and non-firm wheeling; "Excess Transmission Capacity" is that amount of transmission capacity which exceeds the following requirements: (a) Existing and planned native load (including transmission dependent utilities), (b) contractual obligations, (c) a "prudent reserve" for economy transactions, reliability, etc. "Prudent Reserve" must be based on agreed criteria which include consideration of historical use.

Long-term firm transmission service should be assignable by the wheeling customer provided that reliability is not adversely affected and that only wholesale transactions are undertaken.

Pricing:

Pricing for firm use of existing "excess transmission capacity" should not exceed embedded costs.

Transmission prices should be cost-based except in specific cases where a fully competitive market can be shown to exist.

Pricing for firm use of new facilities should not exceed the marginal (incremental) cost of those facilities and should recognize contributions to any underlying plant and equipment paid by transmission dependent utilities through wholesale rates as well as capital contributions to the new facilities.

The cost of system upgrades necessary to accommodate a firm wheeling transaction should be allocated in proportion to the anticipated use of the new capacity.

Pricing for non-firm use of transmission facilities should be at a discount from firm service to reflect the lower quality of service and to facilitate numerous transactions with small margins but nevertheless should provide a reasonable contribution to fixed costs for the benefit of native load and firm transmission customers.

Dispute Resolution

Transmission disputes including but not limited to those concerning amounts, ownership and location of "excess transmission capacity", as well as prices, competitive markets, and terms and conditions of wheeling transactions must be subject to binding arbitration.

Arbitration procedures should generally conform to the American Arbitration Association's Commercial Arbitration Rules with arbitration conducted by panels of experts from the utility industry.

There is a presumption that there are underutilized transmission systems in this country and that there is sufficient transmission capacity to handle the additional generation that will be coming on line during the next 5 to 10 years. Comment on whether you agree with this presumption and if not why?

Comment on whether the method of determining transmission line "capacity" is clearly defined and understood at the Federal Energy Regulatory Commission for individual lines and for network systems. Is there more than one method?

Branko Terzic,

Commissioner.

[FR Doc. 91–16193 Filed 7–8–91; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. TQ91–4–48–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 2, 1991.

Take notice that ANR Pipeline Company ("ANR"), on June 28, 1991,

tendered for filing as part of its F.E.R.C. Gas Tariff, Original Volume No. 1, the following tariff sheet to be effective August 1, 1991:

Forty-Third Revised Sheet No. 18

ANR states that the purpose of the instant filing is to implement ANR's quarterly PGA rate adjustment pursuant to section 15 of the General Terms and Conditions of ANR's Tariff.

Forty-Third Revised Sheet No. 18 reflects a $0.0134 per dekatherm ("dth") decrease in the gas cost component of the commodity rate of ANR's CD-1/MC-1 Rate Schedules, from rates effective May 1, 1991. There is an increase of $0.085 in the gas cost component of the monthly D-1 demand rate and an increase of $0.0029 in the D-2 demand rate, from rates in effect May 1, 1991.

The instant filing further reflects an increase in the gas cost component of ANR's one-part rate applicable to SGS-1 of $0.0039 per dth, from rates in effect May 1, 1991.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before July 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room

Lois D. Cashell,

Secretary.

[FR Co. 91-16196 Filed 7-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-184-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 2, 1991.

Take notice that ANR Pipeline Company ("ANR"), on June 28, 1991 tendered for filing as part of its Original Volume No. 1 of its FERC Gas Tariff, six copies each of the following tariff sheets:

Tenth Revised Sheet No. 89
Fifth Revised Sheet No. 120
Fourth Revised Sheet No. 121
Second Revised Sheet No. 122

ANR states that the above referenced tariff sheets are being submitted to place into effect, pursuant to section 19 of ANR's General Terms and Conditions, a fixed monthly charge to recover from ANR's sales customers the buyout buydown demand surcharges which Northern Natural Gas Company has received approval to collect from ANR pursuant to the Stipulation and Agreement filed in Docket No. RP91-40 as approved by the Commission on June 19, 1991. ANR has requested that the Commission accept the tendered tariff sheets to become effective July 1, 1991.

ANR states that copies of this filing were served upon all of its Volume No. 1 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 N. Capitol Street NE., Washington, DC 20426 by July 9, 1991 in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16197 Filed 7-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-9-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 2, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on June 28, 1991, filed proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets, to be effective July 29, 1991.

Appendix A Tariff Sheets

Second Revised Sheet No. 92
Second Revised Sheet No. 674D

Appendix B Tariff Sheets

Second Revised Sheet No. 91
Sub. Second Revised Sheet No. 92
First Revised Sheet No. 674A

Algonquin states that the purpose of this filing is to update the amount of take-or-pay charges to be billed to Algonquin by Texas Eastern Transmission Corporation and CNG Transmission Corporation to be recovered by Algonquin by operation of § 33.7 of the General Terms and Conditions to Algonquin's FERC Gas Tariff, Third Revised Volume No. 1. Algonquin also states that the revised take-or-pay surcharges are the result of revised allocation methods imposed by its pipeline suppliers in response to the Commission's Order No. 528 and 528-A.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before July 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16198 Filed 7-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-4-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 2, 1991.

Take notice that on June 28, 1991, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets to be effective August 1, 1991:

FERC Gas Tariff, Second Revised Volume No. 1

Twentieth Revised Sheet No. 8
Second Revised Sheet No. 102
Second Revised Sheet No. 132
Second Revised Sheet No. 171
First Revised Sheet No. 172
First Revised Sheet No. 222
Second Revised Sheet No. 223
First Revised Sheet No. 224
Second Revised Sheet No. 225
Second Revised Sheet No. 226
Third Revised Sheet No. 227
Second Revised Sheet No. 228
Second Revised Sheet No. 229
Second Revised Sheet No. 230
Third Revised Sheet No. 232

Reason for Filing

Twentieth Revised Sheet No. 8 is being filed in accordance with § 154.308

of the Commission's Regulations and pursuant to section 15 of FGT's FERC Gas Tariff, Second Revised Volume No. 1 to reflect a decrease in FGT's jurisdictional rates due to a decrease in its average cost of gas purchased from that reflected in its Annual PGA filing, Docket No. TA91–1–34–000, effective May 1, 1991.

Also, as required by the Commission's Order No. 500–k in Docket Nos. RM87–34–065, *et al.* on April 4, 1991, FGT is filing Second Revised Sheet Nos. 102, 132, and 171 and First Revised Sheet No. 172 to delete all references to take-or-pay crediting.

Additionally, FGT is required to update its Index of Entitlements concurrently with its Quarterly PGA filing pursuant to section 9 of the General Terms and Conditions of its Tariff and has included such changes in First Revised Sheet Nos. 222 and 224, Second Revised Sheet Nos. 223, 225, 226, 228, 229, and 230 and Third Revised Sheet Nos. 227 and 232 contained herein.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–16199 Filed 7–8–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–183–000]

Midwestern Gas Transmission Co.; Tariff Filing

July 2, 1991.

Take notice that on June 28, 1991, Midwestern Gas Transmission Company (Midwestern) filed an original and ten (10) copies of the following tariff sheet to Volume No. 1 of its FERC Gas Tariff to be effective J[illegible] 29, 1991.

Second Revised Sheet No. 90

Midwestern states that the filing proposes the implementation of a reconciliation charge in order to allow Midwestern to recover from its sales customers, which elect to convert their firm sales service to firm transportation service, all demand or fixed charges incurred and other costs realized by Midwestern related to or as a direct result of the converted capacity. Midwestern states that the proposed reconciliation charge is necessary to ensure that customer conversions do not result in an inequitable shifting of costs to Midwestern's small requirements and remaining contract demand customers.

Midwestern states that a copy of its filing was served on each of its customers and affected state commissions pursuant to § 154.16 of the Commission's regulations.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such motions or protests should be filed on or before July 9, 1991. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–16200 Filed 7–8–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–182–000]

Natural Gas Pipeline Co. of America, Changes in FERC Gas Tariff

July 2, 1991.

Take notice that on June 28, 1991, Natural Gas Pipeline Company of America (Natural) submitted for filing Ninth Revised Sheet No. 27 and Original Sheet No. 27A to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective August 1, 1991.

Natural states the purpose of this filing is to revise section 611 of Rate Schedule S–1 to provide customers with more flexibility in determining their withdrawal volumes. According to Natural the revised tariff sheet provides Rate Schedule S–1 customers with the added option of withdrawing S–1 volumes, up to their respective S–1 Daily Withdrawal Quantity levels, after purchasing their respective nominated volume levels under Rate Schedule DMQ–1. Natural also states that this added option is designed to more closely meet the needed and/or requirements of the Rate Schedule S–1 customer. Natural states further that this filing does not change the overall capacity dedicated to the Rate Schedule S–1 storage service, nor does it change the withdrawal capability of Natural's storage reservoirs. Natural claims it is making this revision as a result of the overall renegotiation of its sales service agreements.

Natural Gas requested waiver of the Commission's regulations to the extent necessary to permit the tariff sheets to be effective August 1, 1991.

Natural states that a copy of the filing is being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions to protests should be filed on or before July 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–16201 Filed 7–8–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–6–59–003]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 2, 1991.

Take notice that Northern Natural Gas Company (Northern), on June 28, 1991, tendered for filing changes in its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

On May 31, 1991, Northern filed revised tariff sheets (Docket No. TQ91–6–59) to adjust its Base Average Gas Purchased ceiling rate for the period July 1, 1991 through September 30, 1991. Those tariff sheets reflected the suspension of the commodity PGA surcharge. However, on June 26, 1991, the Commission approved a draft order in this docket containing conditions

unacceptable to Northern. Northern states that it will not accept such conditions and, therefore, Northern herewith submits tariff sheets to reinstate the commodity PGA surcharge. The PGA surcharge results in a $.1576 increase to the market area commodity rate. There is no change in the Base Average Gas Purchased ceiling rate of $1.4643.

Northern states that copies of the filing were served upon the company's jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–16202 Filed 7–8–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–227–025]

Paiute Pipeline Co.; Partial Cancellation of FERC Gas Tariff

July 1, 1991.

Take notice that Paiute Pipeline Company on June 24, 1991, filed Second Revised Sheet No. 1, Original Volume No. 1, to reflect the cancellation of Original Volume No. 1 of Paiute's FERC Gas Tariff. Paiute notes that in order to be consistent with the Settlement approved by the Commission in RP88–227 *et al.* it proposes a June 1, 1991 effective date for the revised tariff sheet.

Paiute requests waiver of any applicable Commission regulations as may be necessary so as to permit the acceptance of the notice of partial cancellation of tariff.

Paiute states that copies of the filing are being served upon all the four affected customers, all interested state regulatory commission, and all parties on the service list in Docket No. RP88–277.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–16203 Filed 7–8–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–68–007]

Penn-York Energy Corp.; Filing of Motion To Place Into Effect Revised Tariff Sheets

July 2, 1991.

Take notice that on June 28, 1991, Penn-York Energy Corporation ("Penn-York") submitted for filing, pursuant to section 4(e) of the Natural Gas Act, as amended, § 154.67 of the Regulations of the Federal Energy Regulatory Commission ("Commission") thereunder, a motion to place into effect the following tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, as of July 1, 1991, subject to refund:

Substitute First Revised Sheet Nos. 5, 6, 7, 8, 9, 14, 15, and 16
Substitute Second Revised Sheet No. 17
Substitute Original Sheet No. 101

Penn-York states that copies of Penn-York's filing were served on Penn-York's jurisdictional customers and on the interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–16204 Filed 7–8–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–3–18–000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 2, 1991.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on June 28, 1991 tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fortieth Revised Sheet No. 10
Fortieth Revised Sheet No. 10A
Twenty-first Revised Sheet No. 11
Eleventh Revised Sheet No. 11A
Eleventh Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to the Quarterly Rate Adjustment provision of the Purchased Gas Adjustment clause of its FERC Gas Tariff and are proposed to be effective August 1, 1991. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $.0499 per MMBtu, a D–1 demand rate increase of $.02 per MMBtu, a D–2 demand rate increase of $.0004 per MMBtu, and an SGN Standby rate increase of $.0023 to $.0024 per MMBtu in purchased gas costs from those reflected in the rates set forth in the Quarterly PGA filed March 28, 1991 (Docket No. TQ91–2–18). In addition, the instant filing reflects a $.1360 per MMBtu commodity rate increase, a $.02 D–1 demand rate increase, and a $.0004 per MMBtu D–2 demand rate increase from the rates effective for the months of May, June, and July, 1991 (Docket No. TF91–6–18).

Texas Gas states that copies of the filing were served upon Texas Gas's jurisdictional customers and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before July 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16205 Filed 7-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-192-006]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 2, 1991.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on June 26, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 2-A:

First Revised Sheet No. 31
First Revised Sheet No. 55

This filing is being made in compliance with a Federal Energy Regulatory Commission (Commission) Order issued June 5, 1991, at 55 FERC Para. 61,368, whereby Texas Gas was directed to file within thirty (30) days of the issuance of that order to revise language contained in section 7.2 of both its FT and IT Rate Schedules. The reference to "Customer's designee" was modified in accordance with the conditions of the June 5, 1991, order, to incorporate the exact language proposed by the Commission.

Texas Gas states that copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16206 Filed 7-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-147-001]

Transcontinental Gas Pipe Line Corp.; Compliance Filing

July 2, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on June 28, 1991 certain revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff, which tariff sheets are listed in appendix A attached thereto. The proposed effective dates of the revised tariff sheets are indicated in appendix A.

Transco states that the purpose of the instant filing is to comply with Paragraph (C) of the Commission's Order issued May 31, 1991 in Docket No. RP91-147-000, which order directed Transco to: (i) Refund, within 30 days of such order, all take-or-pay settlement costs which it has previously collected from Corning Natural Gas Corporation (Corning) via CNG Transmission Corporation (CNG) and (ii) file revised tariff sheets which do not allocate any fixed monthly Producer Settlement Payment (PSP) and Litigant Producer Settlement Payment (LPSP) amounts to Corning. Accordingly, the revised tariff sheets in the instant filing eliminate all fixed monthly PSP and LPSP charges allocated to Corning, which charges pertain to the period May 1, 1988 through June 1, 1991.

Transco states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties to Docket No. RP91-147-000. In accordance with provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16207 Filed 7-8-91 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-82-000]

Viking Gas Transmission Co.; Notice of Tariff Filing Pursuant to Tariff Rate Adjustment Provisions

July 2, 1991.

Take notice that on June 28, 1991, Viking Gas Transmission Company (Viking) filed Fifteenth Revised Sheet No. 6 to Volume No. 1 of its FERC Gas Tariff, to be effective August 1, 1991.

Viking states that the current Purchased Gas Cost Rate Adjustments reflected on Fifteenth Revised Sheet No. 6 consist of a 46.56 cents per dekatherm adjustment applicable to the gas component of Viking's sales rates, and a $1.08 per dekatherm adjustment applicable to the Demand D-1 component.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before July 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16208 Filed 7-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-185-000]

Williams Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

July 2, 1991.

Take notice that Williams Natural Gas Company (WNG) on June 27, 1991, tendered for filing Second Revised Sheet Nos. 8-8B to its FERC Gas Tariff, First

Revised Volume No. 1 to be effective July 1, 1991.

WNG states that the subject tariff sheets are being filed pursuant to Article 26.2(b) of the General Terms and Conditions of WNG's FERC Gas Tariff, First Revised Volume No. 1 to recover the direct bill portion of an additional $2.5 million in Settlement Costs concerning disputes which were in litigation on March 31, 1989, but which have been subsequently settled with payments made by WNG.

WNG states that confidential and proprietary material related to its Settlements with producers has been included in a non-public copy filed with the Commission and sensitive material has been deleted from the public copies of the filing which have been mailed to WNG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16209 Filed 7-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-3-43-000 and TM91-7-43-000]

Williams Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

July 2, 1991.

Take notice that Williams Natural Gas Company (WNG) on June 28, 1991 tendered for filing First Revised Third Revised Sheet Nos. 6, 6A and 9 to its FERC Gas Tariff, First Revised Volume No. 1.

WNG states that pursuant to the Purchased Gas Adjustment in Article 18 of its FERC Gas Tariff, it proposes a reduction of $.4606 per Dth in the Cumulative Adjustment as measured from its annual PGA filing and decreases in transportation fuel rates and in gathering fuel rates to be effective August 1, 1991.

WNG states that pursuant to Article 26 of its FERC Gas Tariff, the above referenced tariff sheets reflect a revised TOP Volumetric Surcharge for the period August 1, 1991 through October 31, 1991 of $.0396 per Dth.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16210 Filed 7-8-91; 8:45 am]

BILLING CODE 6717-01-M

Idaho Operations Office

University of Virginia; Intent to Negotiate Grant Renewal

AGENCY: Department of Energy.

ACTION: Intent to negotiate a grant renewal with the University of Virginia.

SUMMARY: "Reactor Operator Training Program for Disadvantaged Americans." The U.S. Department of Energy (DOE), DOE Field Office, Idaho, intends to negotiate a grant renewal, on a noncompetitive basis, with the University of Virginia, Charlottesville, Virginia. This grant is for approximately $36,159 which will fund grant activities through November 30, 1992. This action is authorized by the Department of Energy Organization Act, under Public Law 95-91. The proposed grant will provide the University of Virginia with funding to support a nuclear reactor training program for socially or economically disadvantaged Americans. Under this grant, the University of Virginia will coordinate and oversee the selection of candidates to participate in the training program and the implementation of the necessary training program to meet the objectives of the program. The authority and justification for determination of noncompetitive financial assistance is DOE Financial Assistance Rule 10 CFR 600.7(b)(2)(i)(A): The activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity. The training program funded by the grant meets the intent of the Department of Energy's Energy Research Program and addresses a public need. Public response may be addressed to the contract specialist below.

Contact: U.S. Department of Energy, DOE Field Office, Idaho, 785 DOE Place, Idaho Falls, Idaho 83402, James McGowan, Contract Specialist (208) 526-8779.

Dated: July 1, 1991.

D.J. Ferri,

Director, Contracts Management Division.

[FR Doc. 91-16254 Filed 7-8-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[Docket No. FE C&E 91-15; Certification Notice-83]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use

coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of proposed new electric base load powerplant has a filed self-certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed an amended self-certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Cogen Power company, Boston, MA	06-21-91	Combine Cycle	* 43.5	Firth, ID.

* Notice of this certification previously appeared in the FEDERAL REGISTER on January 18, 1991 (56 FR 1995). That notice stated that the megawatt capacity was 9.9 instead of 43.5 as the amended certification indicates.

Amendments to the FUA on May 21, 1987 (Pub. L. 100-42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

Copies of this self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 2F-056. FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on July 3, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91-16255 Filed 7-8-91; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 91-16; Certification Notice-84]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311 (A), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of proposed new electric base load powerplant has a filed self-certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has a filed self-certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Encogen Northwest L.P., Houston, TX	06-27-91	Combine Cycle	162	Bellingham, WA.

Amendments to the FUA on May 21, 1987 (Pub. L. 100-42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

Copies of this self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on July 3, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91-16256 Filed 7-8-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3973-2]

Expert Panel on the Role of Science at EPA; Open Meeting

Under Public Law 92-463, notice is hereby given that the Expert Panel on the Role of Science at EPA will hold a public meeting on July 25, 1991, at the U.S. EPA, 401 M Street SW., Washington, DC in the main conference room of the Washington Information Center (inside Waterside mall). The meeting will begin at 8:30 a.m. and will end at 10 a.m.

The purpose of the meeting will be to summarize issues which the Panel has identified for consideration during its review of science at EPA, and to receive input from members of the public. Any member of the public wishing to attend the meeting, present an oral statement, or submit a written statement should contact Gail Robarge, U.S. Environmental Protection Agency, Office of Research and Development (H-8105), 401 M St., SW., Washington, DC 20460, (202)382-7891. For further information concerning the Panel or its activities, please contact Ms. Wendy Cleland-Hamnett, Designated Federal Official to the Panel, Office of the Administrator (A-101), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202)382-4724. Seating is limited due to

the size of the room and will be on a first come basis.

Dated: July 2, 1991.

Wendy Cleland-Hamnett,

Special Assistant to the Administrator.

[FR Doc. 91-16263 Filed 7-8-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3972-7]

Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act; Parker Landfill, Lyndon, VT

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of Dean Parker, Ray O. Parker & Son, and Vermont American Corporation and Its Northeast Tool and Vermont Tap and Die Company Divisions for costs incurred by EPA in conducting response actions at the Parker Landfill Superfund Site in Lyndon, Vermont as of April 9, 1990.

DATES: Comments must be provided on or before August 8, 1991.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts 02203, and should refer to: In the Matter of Parker Landfill Superfund Site, Lyndon, VT, U.S. EPA Docket No. I-90-1090.

FOR FURTHER INFORMATION CONTACT: RuthAnn Sherman, U.S. Environmental Protection Agency, Office of Regional Counsel, RCT, J.F.K. Federal Building, Boston, Massachusetts 02203, (617) 565-3666.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622 (i)(1), notice is hereby given of a proposed administrative settlement concerning the Parker Landfill Superfund Site in Lyndon, VT. The settlement was approved by EPA Region I on June 18, 1991, subject to review by the public pursuant to this Notice. Dean Parker, Ray O. Parker & Son, and Vermont American Corporation and Its Northeast Tool and Vermont Tap and Die Company Divisions, the Settling Parties, have executed signature pages committing them to participate in the settlement. Under the proposed settlement, the Settling Parties are required to pay $134,000 to the Hazardous Substances Superfund. EPA believes the settlement is fair and in the public interest.

EPA is a entering into this agreement under the authority of section 122(h) of CERCLA. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle a claim under section 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice approved this settlement in writing on June 3, 1991.

EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from RuthAnn Sherman, U.S. Environmental Protection Agency, Office of Regional Counsel, JFK Federal Building—RCT, Boston, Massachusetts 02203 (617) 565-3666.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts (U.S. EPA Docket No. I-90-1090).

Dated: June 18, 1991.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 91-16264 Filed 7-8-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3972-9]

Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act; Shpack Landfill, Norton/Attleboro, MA

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of Handy & Harmon, Kewanee Industries, Inc., Swank, Inc., Texas Instruments Incorporated, CONOCO, Inc., and Goditt & Boyer for costs incurred by EPA in conducting response actions at the Shpack Landfill Superfund Site in Norton/Attleboro, Massachusetts as of May 2, 1990.

DATES: Comments must be provided on or before August 8, 1991.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts 02203, and should refer to: In the Matter of Shpack Landfill Superfund Site, Norton/Attleboro, MA, U.S. EPA Docket No. I-90-1114.

FOR FURTHER INFORMATION CONTACT: Andrew Raubvogel, U.S. Environmental Protection Agency, Office of Regional Counsel, RCV, J.F.K. Federal Building, Boston, Massachusetts 02203, (617) 565-3169.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622 (i)(1), notice is hereby given of a proposed administrative settlement concerning the Shpack Landfill Superfund Site in Norton/Attleboro, MA. The settlement was approved by EPA Region I on June 18, 1991, subject to review by the public pursuant to this Notice. Handy & Harmon, Kewanee Industries, Inc., Swank, Inc., Texas Instruments Incorporated, CONOCO, Inc., and Goditt & Boyer, the Settling Parties, have executed signature pages committing them to participate in the settlement. Under the proposed settlement, the Settling Parties are required to pay $175,000 to the Hazardous Substances Superfund. EPA believes the settlement is fair and in the public interest.

EPA is entering into this agreement under the authority of section 122(h) of CERCLA. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle a claim under section 107 of CERCLA for costs

incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice approved this settlement in writing on May 24, 1991.

EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from Andrew Raubvogel, U.S. Environmental Protection Agency, Office of Regional Counsel, JFK Federal Building—RCV, Boston, Massachusetts 02203, (617) 565–3169.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts (U.S. EPA Docket No. I–90–1114).

Dated: June 18, 1991.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 91–16265 Filed 7–8–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3972–8]

Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act; Tansitor Electronics, Inc., Bennington, VT

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of Tansitor Electronics, Inc. and Siemens Communication Systems, Inc., for costs incurred by EPA in conducting response actions at the Tansitor Electronics, Inc. Superfund Site in Bennington, Vermont as of March 16, 1990.

DATES: Comments must be provided on or before August 8, 1991.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts 02203, and should refer to: In the Matter of Tansitor Electronics, Inc. Superfund Site, Bennington, VT, U.S. EPA Docket No. I–90–1099.

FOR FURTHER INFORMATION CONTACT: Audrey Zucker, U.S. Environmental Protection Agency, Office of Regional Counsel, RCT, JFK Federal Building, Boston, Massachusetts 02203, (617) 565–3444.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Tansitor Electronics, Inc. Site in Bennington, VT. The settlement was approved by EPA Region I on June 18, 1991, subject to review by the public pursuant to this Notice. Tansitor Electronics, Inc. and Siemens Communication Systems, Inc., the Settling Parties, have executed signature pages committing them to participate in the settlement. Under the proposed settlement, the Settling Parties are required to pay $95,000 to the Hazardous Substances Superfund. EPA believes the settlement is fair and in the public interest.

EPA is entering into this agreement under the authority of section 122(h) of CERCLA. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle a claim under section 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice approved this settlement in writing on April 15, 1991.

EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from Audrey Zucker, U.S. Environmental Protection Agency, Office of Regional Counsel, JFK Federal Building—RCT, Boston, Massachusetts 02203, (617) 565–3444.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts (U.S. EPA Docket No. I–90–1099).

Dated: June 18, 1991.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 91–16266 Filed 7–8–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 91–814]

Comments Invited on Houston Area Regional Public Safety Plan

June 28, 1991.

The Commission has received the public safety radio communictions plan for the Houston Area (Region 51).

In accordance with the Commission's Report and Order in General Docket No. 87–112 implementing the Public Safety National Plna, parties may file comments on or before August 7, 1991 and reply comments on or before August 22, 1991. (See Report and Order, General Docket No. 87–112, 3 FCC Red 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket No. 87–112, Region 51 consists of the following counties: Shelby, Nacogdoches, San Augustine, Sabine, Houston, Trinity, Angelina, Walker, San Jacinto, Polk, Tyler, Jasper, Newton, Montgomery, Liberty, Hardin, Orange, Waller, Harris, Chambers, Jefferson, Galveston, Brazoria, Fort Bend, Austin, Colorado, Wharton and Matagorda counties, Texas. (See Memorandum Opinion and Order, General Docket No. 87–112, 3 FCC Red 2113 (1988).)

Comments should be clearly identified as submissions to PR Docket 91–199 Houston Area—Region 51, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Betty Woolford Private Radio Bureau, (202) 632-6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–16184 Filed 7–8–91; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for three new FM stations:

Applicant, city and state	File no.	MM docket no.
A. Dean F. Aubol & Keith W. Horton, Southport, N.Y.	BPH-900515MF	91-186
B. Deborah J. Freeman, Southport, N.Y.	BPH-900515MH	
C. (Mark D. Saia and Raymond L. Ross d/b/a) Southport Broadcasters, Southport, N.Y.	BPH-900516MK	
D. Lois W. O'Connor, Southport, N.Y.	BPH-900516MM	
E. Nancy Nicastro, Southport, N.Y.	BPH-900516MN	
F. Lori L. Michael, Southport, N.Y.	BPH-900516MR	

Issue Heading and Applicants

1. Financial, F
2. Misrepresentation, F
3. Environmental, A–F
4. Comparative, A–F
5. Ultimate, A–F

II.

Applicant, city and state	File no.	MM docket no.
A. Mary Miho-Finley, Volcano, HI.	BPH-900220MK	91-185
B. Trader Broadcasting Limited Partnership c/o Gustave D. Forsythe, Volcano, HI.	BPH-900221MG	

Issue Heading and Applicant(s)

1. Comparative, A, B
2. Ultimate, A, B

III.

Applicant, city and state	File no.	MM docket no.
A. Stephen D. Tarkenton, Zebulon, GA.	BPH-900417MU	91-184
B. Taylor Broadcasting, LP, Zebulon, GA.	BPH-900418MJ	
C. South Central Broadcasting Company Limited Partnership, Zebulon, GA.	BPH-900418MK	

Issue Heading and Applicants

1. Comparative, A, B, C
2. Ultimate, A, B, C

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue is question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this notice. A copy of the complete HDO in this proceeding 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 may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone 202–452–1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91–16185 Filed 7–8–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Inter-American Freight Conference, etal.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **FEDERAL REGISTER** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–009648A–053.

Title: Inter-American Freight Conference.

Parties: A. Bottacchi S.A. de Navegacion C.F.I. el.
American Transport Lines, Inc.
A/S Ivarans Rederi, d/b/a Ivaran Lines
Companhia Maritima Nacional
Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritima Netumar
Empresa Lineas Maritimas Argentinas
Sociedad Anonima (ELMA S/A)
Empresa de Navegacao Alianca S.A.
Frota Amazonica S.A.
Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line).

Synopsis: The proposed amendment would add a new provision to the agreement authority in the trades covered by sections A and C, which permits the member lines to space charter or cross slot charter to each other on vessels owned or operated by them, establish joint sailing schedules and port rotation, limit sailings, interchange equipment or otherwise utilize common terminal facilities and advertise sailings on each other's vessels.

Agreement No.: 217–011203–002.

Title: Wallenius-NOSAC Space Charter and Cooperative Working Agreement.

Parties: Wallenius Lines, Norwegian Specialized Autocarriers-NOSAC.

Synopsis: The proposed amendment would allow any space chartered by Wallenius on vessels owned or operated by NOSAC to be sub-chartered (subject to the filing and effectiveness of any agreements subject to the Shipping Act of 1984). It also provides that bills of lading by Wallenius (or its sub-charterer) will be issued for the cargo shipped in the chartered space on NOSAC's vessels.

Dated: July 2, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–16187 Filed 7–8–91; 8:45 am]

BILLING CODE 6730–01–M

Part of Authority of New York et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement: 224–200542.

Title: The Port Authority of New York & New Jersey/Sea-Land Service, Inc. Terminal Agreement.

Parties: The Port Authority of New York & New Jersey (Port), Sea-Land Service, Inc. (Sea-Land).

Synopsis: The Agreement, filed June 26, 1991, provides for: Sea-Land's use and

occupancy of approximately 24 acres of open area together with buildings, structures, fixtures, improvements, and the property, located at the Port's Elizabeth Port Authority Marine Terminal, City of Elizabeth, New Jersey and Sea-Land to pay a rental fee of $43,146 per month for the use of the space. The term of the Agreement is for 5 months.

Agreement No.: 224–010896–007.

Title: Maryland Port Administration/Moller Steamship Line, Inc. (Maersk) Terminal Agreement.

Parties: Maryland Port Administration, Moller Steamship Line, Inc. (Maersk).

Synopsis: The Agreement, filed June 28, 1991, extends the term of the basic agreement for an additional 30 days, beginning July 1, 1991, and pending the final negotiations of the long term lease between the parties.

Agreement No.: 224–004008–012.

Title: Port of Oakland/Marine Terminals Corporation Terminal Agreement.

Parties: Port of Oakland (Port), Marine Terminals Corporation (MTC).

Synopsis: The Agreement, filed June 28, 1991, amends the basic agreement to permit MTC to recover the costs of its crime maintenance obligations without applying the Port's tariff.

Agreement No.: 224–010822–001.

Title: City of Long Beach/Pacific Maritime Services, Inc. Terminal Agreement.

Parties: City of Long Beach (City), Pacific Maritime Services, Inc. (PMS).

Synopsis: The Agreement, filed June 28, 1991, provides for PMS to pay to City a renegotiated rental fee of $20,000 per month for the period commencing May 1, 1990 and ending April 30, 1995, in accordance with certain provisions of the basic agreement. All other terms of the agreement remain unchanged and in full force and effect.

Agreement No.: 224–200541.

Title: Port of Portland/Kawasaki Kisen Kaisha, Ltd./Mitsui O.S.K. Lines, Ltd. and Hyundai Merchant Marine Co., Ltd. Marine Terminal Agreement.

Parties: Port of Portland (Port), Kawasaki Kisen Kaisha, Ltd. (K-Line), Mitsui O.S.K. Lines, Ltd. (Mitsui), Hyundai Merchant Marine Co., Ltd. (Hyundai).

Synopsis: The Agreement, filed June 28, 1991, provides for K-Line, Mitsui and Hyundai (the Lines) to have the preferential use of a container yard area located at Terminal 6 consisting of approximately ten acres of land, including reefer outlets, and one vessel berth and two container cranes (premises) for a period of one year. The Lines shall use the premises for any vessel operations within their transpacific liner service carrying either eastbound or westbound cargo or containers. All rates applicable to the Lines' operations under this agreement shall be subject to Port of Portland's Terminal Tariff No. 6, except wharfage and dockage. The Agreement also provides for the Lines to guarantee to the Port a minimum annual throughput of 32,000 containers, loaded or discharged from vessels at Terminal 6. The Agreement cancels and replaces the agreement between the Port and K-Line (Agreement No. 224–200142) and the agreement between the Port and Hyundai (Agreement No. 224–200141).

By Order of the Federal Maritime Commission.

Dated: July 2, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–16220 Filed 7–8–91; 8:45 am]

BILLING CODE 6730–01–M

Performance Review Board

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: William J. Herron, Jr., Director of Personnel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Christopher L. Koch,

Chairman.

The Members of the Performance Review Board are

1. Francis J.Ivancie, Commissioner.
2. William D. Hathaway, Commissioner.
3. Donald Robert Quartel, Jr., Commissioner.
4. Ming Hsu, Commissioner.
5. Charles E. Morgan, Chief Administrative Law Judge.
6. Norman D. Kline, Administrative Law Judge.
7. Joseph N. Ingolia, Administrative Law Judge.
8. Russell A. Rockwell, Chief of Staff.
9. Edward P. Walsh, Managing Director.
10. Robert D. Bourgoin, General Counsel.
11. John Robert Ewers, Director, Bureau of Administration.
12. Wm. Jarrel Smith., Director, Bureau of Investigations.
13. Robert A. Ellsworth, Director, Bureau of Economic Analysis.
14. Seymour Glanzer, Director, Bureau of Hearing Counsel.
15. Joseph C. Polking, Secretary.
16. Bruce A. Dombrowski, Deputy Managing Director.
17. Austin L. Schmitt, Director, Bureau of Trade Monitoring.

[FR Doc. 91–16221 Filed 7–8–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

ABI Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 29, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. ABI Corporation, Wheeling, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Albright Bancorp, Inc., Kingwood, West Virginia, and thereby indirectly acquire Albright National Bank of Kingwood, Kingwood, West Virginia.

2. Wesbanco, Inc., Wheeling, West Virginia; to merge with Albright Bancorp, Inc., Kingwood, West Virginia, and thereby indirectly acquire Albright National Bank of Kingwood, Kingwood, West Virginia.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Eufaula BancCorp, Inc., Eufaula, Alabama; to acquire 100 percent of the voting shares of 1st AmBanc, Inc., Destin, Florida, and thereby indirectly acquire First American Bank of Walton County, Destin, Florida.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. River Forest Bancorp, Inc., Chicago, Illinois; to acquire 100 percent of the voting shares of Aetna Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire Aetna Bank, Chicago, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Bentonville Bancshares, Inc., Bentonville, Arkansas; to become a bank holding company by acquiring at least 94.5 percent of the voting shares of First National Bank, Bentonville, Arkansas.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First North Financial Services, Inc., Karlstad, Minnesota; to become a bank holding company by acquiring 94 percent of the voting shares of Karlstad State Bank, Karlstad, Minnesota.

Board of Governors of the Federal Reserve System, July 2, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16223 Filed 7-8-91; 8:45 am]

BILLING CODE 6210-01-F

F.N.B. Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 23, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. F.N.B. Corporation, Hermitage, Pennsylvania; to acquire Regency Consumer Discount Company, Inc., Scranton, Pennsylvania, and thereby engage in acting as agent or broker for insurance directly related to an extension of credit by a finance company that is a subsidiary of a bank holding company pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 2, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16224 Filed 7-8-91; 8:45 am]

BILLING CODE 6210-01-F

Max Wishek, Jr., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 29, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Max Wishek, Jr. and Sally Wishek Erickson, Ashley, North Dakota, as co-trustees for the Max A. Wishek, Sr. Trust, the Viola Wishek Trust, and a voting trust established by the Wishek children; to acquire an additional 63.07 percent of the voting shares of McIntosh County Bank Holding Company, Inc., Ashley, North Dakota, and thereby indirectly acquire McIntosh County Bank, Ashley, North Dakota.

2. Max A. Wishek Sr. Trust, Ashley, North Dakota; to acquire 27.3 percent of the voting shares of McIntosh County Bank Holding Company, Inc., Ashley, North Dakota, and thereby indirectly acquire McIntosh County Bank, Ashley, North Dakota.

Board of Governors of the Federal Reserve System, July 2, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16225 Filed 7-8-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0217]

Sterling Drug, Inc., Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three new animal drug applications (NADA's) held by Sterling Drug, Inc. The firm requested the withdrawal of approval of the NADA's because it no longer markets those products. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing those portions of the animal drug regualtions reflecting the approvals.

EFFECTIVE DATE: July 19, 1991.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Sterling Drug Inc., 90 Park Ave., New York, NY 10016, is the sponsor of the following NADA's: NADA 31-709, approved April 5, 1966, for the use of glycobiarsol tablets for the elimination of whipworms

from dogs; NADA 93–985, approved August 5, 1974, for the use of mafenide acetate and nitrofurazone aerosol powder to treat wound infections and pyogenic dermatitis caused by certain bacteria in dogs; and NADA 100–403, approved July 23, 1976, for the use of diatrizoate meglumine injection in dogs and cats as an aid to radiographic delineation of internal structures.

By separate letters dated February 6, 1991, the sponsor requested the withdrawal of approval of NADA's 31–709, 93–985, and 100–403 because it is no longer manufacturing or distributing the products.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 31–709, 93–985, and 100–403 and all supplements and amendments thereto is hereby withdrawn, effective July 19, 1991.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing 21 CFR 520.1065, 522.562, and 524.1301 to reflect the withdrawal of approval of these NADA's.

Dated: July 2, 1991.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine

[FR Doc 91–16282 Filed 7–8–91; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776) and section 402(b)(6), of the Public Health Service Act, as amended (42 U.S. Code 282(b)(6)), the Director, National Institutes of Health (NIH), announces the establishment of the Research Centers in Minority Institutions Review Committee.

The Research Centers in Minority Institutions Review Committee shall advise on programs and activities in minority institutions. This program is designed to expand the Nation's capacity for conducting research by strengthening the research environment at predominantly minority institutions offering doctorates in the health professions or health-related sciences. The program provides awards to broaden significantly the biomedical and behavioral research capability of minority institutions by support of core research laboratories, faculty expansion and enrichment, development or upgrading of physical facilities, development of investigations in the use of state-of-the-art scientific equipment and instrumentation, and scientific exchange through symposia and workshops. The long-term goal is to enhance the ability of faculty members to compete individually or collectively for independent research grant support.

Duration of this committee is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: July 1, 1991.

Bernadine Healy, M.D.

Director, National Institutes of Health.

[FR Doc. 91–16191 Filed 7–8–91; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Request for Nominations for Voting Members on National Vaccine Advisory Committee

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) is requesting nominations to fill three vacancies on the National Vaccine Advisory Committee. The Committee advises the National Vaccine Program and was established by title XXI, subtitle I, section 2105 of the Public Health Service Act, enacted by Public Law 99–660, The National Vaccine Injury Compensation Act of 1986 (42 U.S.C. 300AA–1 *et seq.*).

DATES: Nominations are to be submitted by October 1, 1991.

ADDRESSES: All nominations for membership should be sent to Dr. Yuth Nimit (address below).

FOR FURTHER INFORMATION CONTACT: Yuth Nimit, Ph.D., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program, Office of the Assistant Secretary for Health, room 13A–53, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–0715; Fax number (301) 443–3386.

SUPPLEMENTARY INFORMATION: The National Vaccine Program is requesting nominations of voting members for three vacancies on the National Vaccine Advisory Committee. Nominated individuals should have expertise in vaccine research or the manufacture of vaccines, or should be physicians, or members of parent organizations concerned with immunization, or representatives of State or local health agencies, or public health organizations. Members will be invited to serve four-year terms.

The National Vaccine Advisory Committee (1) studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States, (2) recommends research priorities and other measures the Director of the Program should take to enhance the safety and efficacy of vaccines, (3) advises the Director of the Program in the implementation of sections 2102, 2103, and 2104 of the Public Health Service Act, and (4) identifies annually for the Director of the Program the most important areas of government and nongovernment cooperation that should be considered in implementing these sections.

In keeping with normal departmental policy, nominees generally should not currently be serving on another DHHS advisory committee, although exceptions will be considered.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the National Vaccine Advisory Committee. The nominee should be aware of the nomination, willing to serve as a member of the committee, and appear to have no conflict of interest that would preclude committee membership. A curriculum vitae of the nominee should be submitted with the nomination.

Dated: June 27, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91–16242 Filed 7–8–91; 8:45 am]

BILLING CODE 4160–17–M

Indian Health Service; Statement of Organization and Functions

Part H (Public Health Service) Chapter HG, Indian Health Service, of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (52 FR 47053–67, December 11, 1987, as most recently amended at 56 FR 22015–16, May 13, 1991) is further amended to add functions to the Division of Personnel Management within the Office of Administration and Management, Office of the Director, Indian Health Service (IHS).

Indian Health Service

Chapter HG, section HG–20, Functions, is amended as follows: Under the heading Division of Personnel

Management (HGA24), amend the following: Delete "and" before number 9, redesignate 9 as 10 and insert "(9) provides payroll liaison advice and assistance to headquarters staff; and"

Dated: July 1, 1991.

Everett R. Rhoades, M.D.

Assistant Surgeon General Director.

[FR Doc. 91-16283 Filed 7-8-91; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-010-91-4130-09-2519]

Elko District; Environmental Impact Statement Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the final environmental impact statement and record of decision on the Betze Mining Plan-of-Development in Northeastern Nevada.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, U.S. Department of the Interior has prepared, by a third party contractor, a final environmental impact statement (FEIS) on the Betze plan-of-development in Northeastern Nevada, and has made copies of the document available for public review.

In addition, the BLM has released simultaneously with the FEIS, the Record of Decision (ROD) for the Betze Project. This project cannot begin until the FEIS has been made available to the public for at least thirty days. The FEIS was published in the **Federal Register** in the EPA Notice on June 21, 1991.

The FEIS analyzes the environmental impacts that would result from the expansion of an existing open pit mining operation and alternatives to that project

DATES: The availability period for the FEIS and ROD is until July 22, 1991.

ADDRESSES: A copy of the final EIS and ROD can be obtained from: District Manager, Bureau of Land Management, ATTN: Betze Coordinator, P.O. Box 831, Elko, NV 89801.

The final EIS is available for inspection at the following locations: BLM State Office (Reno), Carson City, Ely, and Elko County Libraries, and the University of Nevada libraries in Reno and Las Vegas.

FOR FURTHER INFORMATION CONTACT: For additional information, write to the above address or call Nick Rieger at (702) 753-0200.

Dated: June 26, 1991.

Nancy Phelps,

Elko Distict Manager, Acting.

[FR Doc. 91-16231 Filed 7-8-91; 8:45 am]

BILLING CODE 4310-HC-M

[NM-030-01-4333-11]

Notification of Recreation Fee Policy Amendment

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of amendment.

SUMMARY: This notice amends the Notification of Recreation Fee Policy published in the **Federal Register,** Volume 55, No. 85, dated April 4, 1990. In accordance with the BLM's Recreation 2000 initiative, the New Mexico BLM Recreation Fee Policy is to continue to collect fees for overnight camping at designated sites. Notice is hereby given that a fee of $5.00 per night will be established for the Datil Well Campground.

EFFECTIVE DATE: July 9, 1991.

ADDRESSES: Copies of the BLM New Mexico Recreation Fee Policy are available at the BLM, Public Assistance Unit, 120 South Federal Place, Santa Fe, New Mexico 87504. Copies can also be requested by calling (505) 988-8000.

FOR FURTHER INFORMATION CONTACT: Kevin Carson, Outdoor Recreation Specialist at the BLM Socorro Resource Area Office, 198 Neel Avenue NW., Socorro, New Mexico 87801.

Dated: June 26, 1991.

H. James Fox,

District Manager.

[FR Doc. 91-16232 Filed 7-8-91; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Finding of No Significant Impact on the Proposed Land Acquisition For National Education and Training Center in the Vicinity of Harper's Ferry, WV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is proposing to acquire properties in the Harper's Ferry, West Virginia, area for the Service's National Education and Training Center (NETC).

Based on a review and evaluation of an Environmental Assessment and other supporting documentation, it was determined that the acquisition designated as Site E for the Service's National Education and Training Center is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental policy Act of 1969. Accordingly, preparation of an environmental impact statement on the proposed action is not required.

EFFECTIVE DATE: May 6, 1991.

ADDRESSES: Comments should be addressed to: Regional Director, United States Fish and Wildlife Service, One Gateway Center, suite 700, Newton Corner, MA 02158.

FOR FURTHER INFORMATION CONTACT: Axel R. Larson, Supervisor Realty Specialist, United States Fish and Wildlife Service, One Gateway Center, suite 700, Newton Corner, MA 02158, (617) 965-5100 Ext. 270, FTS 829-9270.

SUPPLEMENTARY INFORMATION: An Environmental Assessment (EA) was prepared which addressed five alternative land acquisition sites and a no-action alternative. The acquisition of selected site is an essential first step in meeting the Service's goal to construct a facility that would provide both a training center for Service staff and scientists and an environmental education facility open to the public. General considerations were that the site would accommodate a development envelope of at lest 250 acres and that the selected site would fully conform with Federal, State, and local plans and requirements.

The selected alternative is Site E—Driggs (Quarry) and Springs Run. Site E is located south of U.S. 340, along State road 27, approximately 4 miles east of Charles Town, and two miles west of Harpers Ferry. The most distinguishing features of this site are the large quarry/lake and the Shenandoah River which borders the site on the east. The eastern part of the site is mostly upland forested areas, including steep topography in the northeastern areas along the Shenandoah River. The CSX Railroad parallels the eastern and western border of the site. The western portion is primarily agricultural land. Forested areas in the west are limited to the floodplain of Flowing Springs Run and to small stands of trees scattered throughout the agricultural fields. The site offers views of various areas including Bolivar Heights/School House Ridge and the Millville area.

Site E was selected because it has many of the amenities which would be supportive of the NETC goal. Key among these are a high diversity of plant and

animal communities (including large forested tracts), high potential for protection and interpretation of both historical and prehistoric resources, important physical factors such as the quarry/lake and Shenandoah River, and appropriate vehicular access. Community acceptance of Site E is anticipated to be good, due to employment opportunities, increased visitor services; and the acquisition of the site would result in ameliorating a visual eyesore and the remediation of a contaminated site.

Some contamination has been found on Site E. The contaminants include PCBs, asbestos, petroleum hydrocarbons, semi-volatile organics, and arsenic. The Service will work with regulatory agencies and current landowners to ensure that the site is remediated properly.

The other land acquisition alternatives considered were the Gibson and Capriotti Properties, Cooper farm, Nalls Property, Terrapin Neck, and a no-action alternative.

The NETC will consist of two parts: A training campus component and a public education (habitat center) component. The NETC will be designed to provide training in applied science, new technology, and management skills to conserve, protect, and enhance fish and wildlife resources and their habitats in an environment that projects the traditions and values of the Service. The actual development of the NETC site, including resolution of any access problems, will be done through a planning process in conformance with the National Environmental Policy Act and coordinated with affected State and local governments.

A small portion of these lands is either a wetland or within the floodplain, but all reasonable alternatives were considered in the evaluation of this project. Any project-caused wetland and floodplain impacts will be minor to negligible.

This project complies with the provisions of Executive Orders 11988 and 11990.

Ronald E. Lambertson

Regional Director.

[FR Doc. 91-16229 Filed 7-8-91; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Final Environmental Impact Statement on the Northern Montezuma Wetlands Project

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This Notice advises the public that the Final Environmental Impact Statement (FEIS) on the Northern Montezuma Wetlands Project in Cayuga, Seneca, and Wayne Counties, New York is available for public review. Comments and suggestions are requested. The U.S. Fish and Wildlife Service (FWS) and the New York State Department of Environmental Conservation (NYDEC) propose to purchase real property and real property interests on approximately 36,050 acres of private land in the Montezuma wetlands complex to expand the Montezuma National Wildlife Refuge and the State Howland Island, Crusoe Lake, and Cayuga Lake Wildlife Management Areas. These lands will be actively managed for wetland protection, creation, restoration, and enhancement for migratory waterfowl and other wetland-dependent species of wildlife.

DATES: Written comments are requested by August 5, 1991.

ADDRESSES: Comments should be addressed to Ronald E. Lambertson, Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Mr. Carl. P. Melberg, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158, (617) 965-5100, extension 410.

Individuals wishing copies of the FEIS should immediately contact the above contact person. Copies have been sent to all agencies and organizations who participated in the scoping process. Copies will be available for examination at FWS office in Newton, Massachusetts; NYDEC offices in Avon, Cortland, and Delmar, New York; FWS and NYDEC offices at the Montezuma NWR in Seneca Falls, New York; and the Town Clerk's offices in the project area.

SUPPLEMENTARY INFORMATION: This Final Environmental Impact Statement addresses the acquisition and management of the Northern Montezuma Wetlands Project area. It poses five alternative sets of actions, and discusses how each would address the objectives of the FWS and NYDEC; it describes the pertinent environmental characteristics of the area and it projects how the environment would be affected with the implementation of each of these alternatives.

The No Action alternative would involve only the application of legislatively mandated state and federal statutes and regulations which protect wetlands in the project area, and would continue current management and maintenance of existing public lands. There would be no additional purchases of land by the FWS or the NYDEC and no wetland restoration, creation or enhancement. There would be no efforts or public expenditures to manage land within the project other than on the existing State and Federal Lands.

The Proposed Action involves FWS and the NYDEC purchasing real property or real property interests on approximately 36,050 acres of land, exclusive of existing state and federal land. These lands would be managed for wildlife, public recreation, and educational uses. The Proposed Action would consolidate and tie together existing federal, state, and private lands into a cooperative effort to protect, restore, and enhance wetlands and associated upland habitats specifically for waterfowl and wetland-dependent wildlife. Compatible public recreational uses on lands acquired would be permitted in accordance with adopted public use regulations for these categories of land areas, and educational opportunities for research and demonstration areas would be enhanced.

An alternative encompassing a larger area than the Proposed Action includes additional wetlands in the Montezuma Marsh Complex and associated uplands, totalling approximately 50,979 acres, exclusive of existing state and federal land. Elements of land purchases and management would be identical to those described for the Proposed Action, but would be implemented on a larger scale. Correspondingly, the benefits and impacts of this alternative would also be greater than that of the Proposed Action.

An additional alternative, involves the acquisition and management of wetlands within the project and a reduced upland association. This alternative would basically be a wetland preservation with limited management project and would not include restoration or creation of wetland habitats. Remnant wetlands that now exist in the Montezuma Marsh Complex would be purchased in the same manner as described in the Proposed Action, along with a very narrow strip of upland adjacent to these wetlands to provide limited administrative access and a small buffer from adjacent land uses. This alternative includes an area of 11,200 acres exclusive of existing state and federal lands. The benefits and impacts of this alternative would correspondingly be less than those of the Proposed Action, and substantially less than would accrue from the larger alternative.

A non-governmental alternative includes participation of only the private sector in implementing conservation measures and management practices to meet the stated purposes of this project. This alternative does not include the NYDEC or the FWS, but may include private individuals and organizations such as The Nature Conservancy, Ducks Unlimited, Audubon Society, and others.

Other alternatives are analyzed and dismissed as not being reasonable, practical, or viable and are identified in the document along with reasons for not elaborating on them.

Dated: June 21, 1991.

Ronald E. Lambertson,

Regional Director.

[FR Doc. 91–16230 Filed 7–8–91; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31885]

Stillwater and St. Paul Railroad, a Division of the Minnesota Transportation Museum, Inc., Operation Exemption Between Stillwater and Duluth Junction, MN

Stillwater and St. Paul Railroad, a division of the Minnesota Transportation Museum, Inc. (MTM) has filed a notice of exemption to operate in interstate commerce over a 6.3–mile line of railroad extending between Stillwater and Duluth Junction, in Washington County, MN. This includes approximately one-half mile of trackage rights over the Burlington Northern Railroad Company (BN) at Stillwater.

MTM acquired the line to operate it as a living museum on July 22, 1983, after its abandonment by BN. See Docket No. AB–6 (Sub-No. 120), *Burlington N.R. Co.—Aband.—In Ramsey and Washington Counties, MN* (not printed), served August 2, 1982. The trackage rights were acquired on January 31, 1984, in connection with MTM's passenger operation. It now seeks to provide freight service to local shippers.

Any comments must be filed with the Commission and served on Louis Gitomer, suite 1200, 1133 15th Street, NW., Washington, DC 20005, and Byron D. Olsen, 1935 Piper Jaffray Tower, 222 South 9th Street, Minneapolis, MN 55402.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: July 2, 1991.

By the Commission, David M. Konschnik, Director, Office of proceedings.)

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–16267 Filed 7–8–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

Announcement of Availability of a Request for Proposals for a National Evaluation of the National Crime Prevention Campaign

AGENCY: Office of Justice Programs, Bureau of Justice Assistance.

ACTION: Announcement of a competitive solicitation for research services to evaluate the public service announcement strategic component of the National Crime Prevention Campaign.

SUMMARY: The Bureau of Justice Assistance (BJA) is announcing the availability of the Request for Proposals soliciting evaluation research to assess the impact and cost-effectiveness of the National Citizens' Crime Prevention Campaign's activities in producing and disseminating print, radio, and television public service announcements (PSAs).

This evaluation supports BJA efforts to conduct a number of comprehensive evaluations as mandated by the Anti-Drug Abuse Act of 1988. The Bureau of Justice Assistance has supported this major program activity since 1980 by means of a cooperative agreement with the National Crime Prevention Council.

American families are affected on a daily basis by crime and illicit drugs. Because of this, various types of prevention programs and initiatives are being conducted by Federal, state, and local levels of government, national and community organizations, businesses, churches, civic organizations, schools, and individual citizens. The objectives of this specific media campaign, which features McGruff, the Crime Dog, and his "Take a Bite Out of Crime" slogan, is to forge a nationwide commitment by people acting individually and together to prevent crime and drug abuse and to build safer, more caring communities. Although one major goal of the advertising is to create public awareness, the more ambitious goal of the public service advertising campaign is to motivate citizens to take positive actions to protect themselves, rebuild social bonds and reassert the shared pride of community, resulting in an attitude that crime and drugs will not be tolerated.

The National Citizens' Crime Prevention Campaign promotes two aspects of prevention. It teaches people to "watch out," protecting themselves and their property, and to "help out," with mutual assistance and increased community involvement. The campaign is national in scope, but local in application. Its leadership and success is directly related to how responsive it is to local crime problems, to the timeliness of the public service advertising and the quality of the informational material.

DATES: Copies of the Request for Proposals may be obtained immediately. All proposals must be received by the close of business August 9, 1991. No extension of this date will be granted.

ADDRESSES: All proposals must be mailed or otherwise sent to: Central Control Desk, Bureau of Justice Assistance, room 1044, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Dr. Robert A. Kirchner (at the above address). Telephone: (202) 307-5974 (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Justice Assistance is a unit in the Office of Justice Programs of the U.S. Department of Justice. It is authorized by the U.S. Congress to conduct research and evaluation on the programs funded under BJA's Edward Byrne Memorial State and Local Law Enforcement Assistance Program.

Summary of Evaluation Research Effort

The evaluation proposed must assess the program's impact on drug use and anti-drug abuse prevention among the targeted audiences. Impact(s) should be measured, using a variety of traditional data collection methodologies and indicators appropriate for media-based prevention programs, as well as including new and innovative measures which focus on the cost-effectiveness of the program activities (the production and dissemination of print, radio and television public service announcements (PSAs) in producing the program's desired results).

The National Citizens' Crime Prevention Campaign, commonly known as the McGruff Campaign, initiates and stimulates many of the current crime and drug prevention activities implemented across the nation, especially through its development and

distribution of public service announcements. This year the BJA, under its mandate to evaluate each of its programs, is soliciting evaluation proposals to meet this responsibility in this program area.

The evaluation research will address both the processes involved in developing and implementing program activities and the impacts of specific campaign strategies on targeted audiences. Special attention will be given to identifying the lessons learned and the guidance that they can provide to the design of future campaign strategies and to the development and implementation of specific campaign elements aimed at addressing particular problems and audiences relating to drug abuse and crime control.

Level and Duration of Funding

Up to $300,000 will be available for this evaluation. It is anticipated that the evaluation effort will be for an 18-month period.

Eligibility

Eligible applicants include private institutions such as universities, nonprofit research organizations, and profit-making organizations that are willing to waive their fee or profit. To be eligible, the evaluator must show his or her independence from the projects to be evaluated and from the positive or negative results that might emerge from the evaluation. Applicants should be thoroughly experienced in conducting evaluations of community and law enforcement projects that address the problems of crime and drug abuse.

Application Requirements and Procedures

Applicants shall submit three (3) copies of their proposal. Submissions must include the following:

(1) Abstract of the full proposal, not to exceed one page.

(2) Discussion of the relevant research and crime prevention literature, the issues to be addressed in the evaluation, and a clear statement of project goals and objectives.

(3) Description of the research design and methodology for the evaluation of the project's effectiveness, including data gathering methods and the analysis plan to be used.

(4) Statement of the applicant's qualifications, intended management plan, task plan (including task timetable), products to be produced, and resumes of named, primary researchers should be appended. Statements regarding the research team should indicate the variety of skills to be used, a description of the relevant research experience, educational background, experience in dealing with local decisionmakers, law enforcement personnel, and community groups, and the demonstrated ability to produce a final product that is readily comprehensible and usable.

(5) A fully executed Federal Assistance Form 424 with cost estimates by budget category including time commitments from key project personnel and short narrative explanation of budgeted costs. The budget should outline all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, and subcontractors. Separate budgets for each of the eight projects must be prepared to comply with the financial reporting requirements. Percentage of time and person-months of effort to be devoted by principal staff should also be included.

(6) In addition to Form 424, three recent requirements involve certification regarding: (1) Debarment, (2) drug-free workplace, and (3) lobbying. Certification forms can be obtained by contacting the BJA Program Manager. It should be noted that there are separate debarment forms for direct recipients and for subrecipients and separate drug-free workplace forms for individuals and other applicants. Certification regarding lobbying pertains to grants, contracts, or cooperative agreements of $100,000 or more.

Review Procedures and Proposal Evaluation Criteria

Applicants will be rated based on the criteria given below. The order given does not indicate the importance of each criterion. The selection process begins with a panel of consultants that includes both knowledgeable researchers and members of the criminal justice professional community. The Director of the Bureau of Justice Assistance has sole authority for awarding grants. Thus, consultant assessments of proposal submittals, together with the Bureau program manager's assessments, are submitted for consideration by the Director. The following criteria are used to assess proposals:

1. Technical Merit of the Project Design

A full description of all essential elements of the proposed project research design, including the primary objectives to be achieved, anticipated changes in existing procedures to be effected, and the nature of the involvement of all participating agencies or personnel in the local evaluation site. Evidence of an understanding of the evaluation issues involved and any problems that potentially may be involved will be considered. The potential significance and utility of the evaluation proposed will also be considered. The methodology of evaluation will be weighed heavily in the assessments of proposals. Applicants thus are encouraged to explain why the methodology chosen will be successful. Reviewers take into account the logic and timing of the research plan, the validity and reliability of measures proposed, the appropriateness of statistical methods to be used, and the applicant's awareness of factors that might dilute the credibility of the findings.

2. Qualifications of the Proposed Research Team and Adequacy of the Management and Staffing Plan

Both individual expertise and the appropriateness of the mix of skills represented on the research/evaluation team will be considered. In addition, it is important to note that the management plan is a critical and integral part of the evaluation effort and will be weighed accordingly. Information demonstrating the applicant's ability to successfully complete a comparable effort will be considered, as will the feasibility of the proposed project milestones. The comprehensiveness and clarity of the proposal will be used as an indication of the applicant's ability to communicate clearly and effectively.

3. Adequacy of Cost Estimates

Project cost estimates will be assessed to determine if the applicant has estimated the elemental and total project costs realistically and allocated costs among particular sub-categories in a rational and efficient manner. Project costs must be identified as they relate to tasks in the proposed workplan. They must also be consistent with personnel qualifications.

Gerald (Jerry) P. Regier,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 91-16270 Filed 7-8-91; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments

on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment and Training Administration.

Business Confidential Data Request.

1205–0197; ETA 9014.

On occasion.

Businesses or other for-profit; small businesses or organizations 1,500 respondents; 11,625 total hours; 1–10 hrs per response; 1 form Statutory requirements under the Trade Act of 1974 as amended require complete and accurate business confidential data in order to make determinations as to whether imports have contributed to worker separation. The Secretary of Labor's determinations decide if petitioning workers are eligible to apply for worker adjustment assistance.

Signed at Washington, DC this 2nd day of July, 1991.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 91–16249 Filed 7–8–91; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Meeting

Notice is hereby given the Federal Advisory Council on Occupational Safety and Health, established under section 1–5 of Executive Order 12196 of February 26, 1980, published in the **Federal Register**, February 27, 1980 (45 FR 1279), will meet on August 8, 1991, starting at 10 a.m., in room N3437 ABC, of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC. The meeting will be open to the public.

The agenda provides for:

I. Call to Order.
II. Approval of Minutes of the February 27, 1991 Meeting.
III. Appointment to FACOSH.
IV. OSHA Training Institute—Federal Agency Training.
V. Task Force Recommendations on Improving the Federal Safety and Health Program.
VI. Update on Congressional Hearings on Federal Agency Programs.
VII. Pilot Reprisal Project for Federal Agencies.
VIII. Status Report on OSHA Kuwait Initiative.
IX. New Business.
X. Adjournment.

The Council welcomes written data, views or comments concerning safety and health programs for Federal employees, including comments on the agenda items. All such submissions received by close of business August 1, 1991, will be provided to the members of the Council and included in the record of the meeting.

If time permits, the Council will consider oral presentations relating to agenda items. Persons wishing to orally address the Council at the meeting should submit a written request to be heard by close of business August 1, 1991. The request must include the name and address of the person wishing to appear, the capacity in which appearance will be made, a short summary of the intended presentation and an estimate of the amount of time needed.

All communications regarding this Advisory Council should be addressed to John E. Plummer, Director, Office of Federal Agency Programs, U.S. Department of Labor, OSHA, room N3112, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523–9329.

Signed at Washington, DC this 2nd day of July 1991.

Gerard F. Scannell,

Assistant Secretary.

[FR Doc. 91–16250 Filed 7–8–91; 8:45 am]

BILLING CODE 4510–26–M

Shipyard Employment Standards Advisory Committee

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Shipyard Employment Standards Advisory Committee, established under the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C., app. I and section 7(b) of the Occupational Safety and Health Act, 29 U.S.C. 656(b)), will convene on August 12, 1991, at 8:30 a.m., at the Seattle Sheraton Hotel, 1400 6th Ave., Seattle, Washington, 98101. The public is encouraged to attend. The meeting will adjourn on August 13, 1991, at approximately 4 p.m. The agenda is as follows:

I. Call to Order.

II. Review Transcript of May 13–14 meeting.

III. Old Business. Discussion of the following standards:

(a) AD–HOC Committee Report on 29 CFR part 1915, subpart R, commercial diving, covering § § 1915.231 to 1915.244. (Final Review).

(b) AD–HOC Committee Report on 29 CFR part 1915, subpart G, materials handling and storage (portal, tower, and pillar cranes).

(c) AD–HOC Committee Report on 29 CFR part 1915, subpart Z, methylene chloride, covering § 1915.1102.

IV. New Business. Discussion of the following standards, as time permits:

(a) AD–HOC Committee Report on 29 CFR part 1915, subpart P, fire protection.

(b) AD–HOC Committee Report on 29 CFR part 1915, subpart Q, hazardous materials.

(c) 29 CFR part 1915, subpart H, hand and portable powered tools.

Time permitting, the Committee will consider oral presentations relating to agenda items. Persons wishing to address the Committee should submit a written request to Mr. Thomas Hall (address below) by the close of business, July 26, 1991. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and an estimate of the amount of time needed.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210 (202) 523–8617.

Signed at Washington, DC, this 2nd day of July 1991.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 91–16253 Filed 7–8–91; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL MEDIATION BOARD

Appointment of Members to the Performance Review Board

ACTION: Notice of appointment of members to the Performance Review Board.

Notice is hereby given in accordance with 5 U.S.C. 4314 of the membership of the National Mediation Board's Performance Review Board. The members are as follows:

Ms. Kimberly Madigan, Member, National Mediation Board, Washington, DC.

Ms. Linda A. Lafferty, Executive Director, Federal Services Impasses Panel, Federal Labor Relations Authority, Washington, DC

Mr. John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Gill, Jr., Executive Director, 1425 K Street, NW., Washington, DC 20572 (202) 523–5950.

By direction of the National Mediation Board.

William A. Gill, Jr.,

Executive Director.

[FR Doc. 91–16179 Filed 7–8–91; 8:45 am]

BILLING CODE 7550–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Advisory Committee on Semiconductors

The purpose of the National Advisory Committee on Semiconductors (NACS) is to devise and promulgate a national semiconductor strategy, including research and development. The implementation of this strategy will assure the continued leadership of the United States in semiconductor technology. The Committee will meet on Tuesday, July 23, 1991 at Science Applications International Corporation (SAIC), 1555 Wilson Boulevard, 7th Floor, Rosslyn, Virginia. The proposed agenda is:

1. Briefing of the Committee on its organization and administration.

2. Presentations to the Committee by OSTP personnel and personnel of other agencies on proposed and ongoing studies regarding semiconductors.

3. Discussion of Working Group actions.

A portion of the July 23rd session will be closed to the public.

The briefing on some of the current activities of OSTP and other agencies may involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on working group actions. As well, a portion of both of these briefings will require discussion of confidential commercial information related to the semiconductor industry and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b. (c) (1), (2), (4) and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b. (c)(6).

Because of advance security arrangements, persons wishing to attend the open portion of the meeting should contact Ms. Kathleen Elim, at (703) 284–3334 prior to July 22, 1991. Ms. Elim is also available to provide specific information regarding time, place and agenda for the open session.

Dated: July 3, 1991.

Damar W. Hawkins,

Executive Assistant to D. Allan Bromley, Office of Science and Technology Policy.

[FR Doc. 91–16332 Filed 7–3–91; 5:04 pm]

BILLING CODE 3170–01–M

OVERSIGHT BOARD

Oversight Board Meeting

AGENCY: Oversight Board.

ACTION: Meeting.

DATES: Thursday, July 25, 1991, 3 p.m.

ADDRESSES: Office of Thrift Supervision, 1700 G Street, NW., Washington, DC, Amphitheater, 2nd floor.

FOR FURTHER INFORMATION CONTACT: Brian Harrington, Press Officer, Office of Public Affairs, 1777 F Street, NW., Washington, DC 20232, (202) 786–9672.

SUPPLEMENTARY INFORMATION: Discussion Agenda:

- RTC Update.
- National Advisory Board Recommendations.
- Other agenda items to be determined.

Closed session to follow.

Dated: July 3, 1991.

Jill Nevius,

Committee Management Officer.

[FR Doc. 91–16269 Filed 7–8–91; 8:45 am]

BILLING CODE 2222–01–M

PEACE CORPS

Submission of Public Use Form Review Request

AGENCY: Peace Corps.

ACTION: Notice of submission of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and Budget, a request to approve the use of the Medical History and Examination Forms through June 30, 1994. All applicants for service in the Peace Corps must undergo physical and dental examinations prior to service. The results of these examinations are used to ensure that the applicants will, with reasonable accommodation, be able to serve in the Peace Corps without jeopardizing their health. The Peace Corps Office of

Medical Services (M/MS) is responsible for the collection and review of applicant medical information.

Information about the forms:

Agency Address: Peace Corps, 1990 K Street, NW., Washington, DC 20526.

Title: Medical History and Examination Forms.

Type of Request: Approval of Use.

Frequency of Collection: One time per respondent.

General Description of Respondent: All individuals who are nominated and/or invited for Peace Corps Service and their physicians.

Estimated Number of Responses: 15,540 annually (7,770 per form).

Estimated Hours for Respondents to Furnish Information: 22.5 minutes each (average of 30 minutes for Medical Examination Section and 15 minutes for Medical History Section).

Respondent's Obligation to Reply: Required for entrance into the Peace Corps.

Comments: Telephone comments on this proposal should be directed to Marshall Mills, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. Mr. Mills may be called at (202) 395-7340. A copy of the form may be obtained from Theresa van der Vlugt, Office of Medical Services, Peace Corps, 1990 K Street, NW., room 6426, Washington, DC 20526. Ms. van der Vlugt may be called at (202) 606-3512.

This is not a request to which 44 U.S.C. 3504(h) applies. This notice is issued in Washington, DC, on June 28, 1991.

Collins Reynolds,

Associate Director for Management.

[FR Doc. 91-16186 Filed 7-8-91; 8:45 am]

BILLING CODE 6051-01-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 sumit 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.

DATES: Comments should be submitted on or before August 8, 1991. 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. 83), supporting statement, 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: Elizabeth Zaic, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Small Business Investment Companies—Accountant's opinions and Recordkeeping of Financial Statements.

Form No.: SBA Form 1796.

Frequency: Annual.

Description of Respondents: Small Business Investment Companies.

Annual Responses: 369.

Annual Burden: 1,621.

Title: 13 CFR 112.9 and 113.5 of SBA's Non Discrimination Rules and Regulations and SBA Form 793 "Notice to New Borrowers".

Form No.: SBA Form 793.—

Frequency: On occasion.

Description of Respondents: SBA loan recipients.

Annual Responses: 72,800.

Annual Burden: 6,097.

Cleo Verbillis,

Acting Chief, Administrative Information Branch.

[FR Doc. 91-16268 Filed 7-8-91; 8:45 am]

BILLING CODE 8025-01-M

Interest Rate

AGENCY: Small Business Administration.

ACTION: Notice of interest rate.

SUMMARY: Pursuant to 13 CFR 108.503-8(b)(4), the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 108.503-4) shall be the greater of 6% over the New York prime rate or the limitation established by the constitution or laws of a given State. For a fixed rate loan, the initial rate shall be the legal rate for the term of the loan.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 91-16213 Filed 7-8-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2505; Amendment #3]

Declaration of Disaster Loan Area; Mississippi

The above-numbered Declaration is hereby amended in accordance with an amendment dated June 25, 1991, to the President's major disaster declaration of May 17, to include Choctaw and Tippah Counties in the State of Mississippi as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on April 26 and continuing through May 31, 1991.

All counties contiguous to the above-named primary counties have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 15, 1991, and for economic injury until the close of business on February 18, 1992.

The economic injury number is 731500 for Mississippi.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 1, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-16212 Filed 7-8-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended June 28, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47612.
Date filed: June 24, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/C 0886 dated April 29, 1991, Mid Atlantic Resolutions, R-1 to R-7.
Proposed Effective Date: October 1, 1991.

Docket Number: 47613.
Date filed: June 24, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC1 Reso/C 0242 dated May 3, 1991, TC1 (USA & US Territories), R-1 to R-6.
Proposed Effective Date: October 1, 1991.

Docket Number: 47614.

Date filed: June 24, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC1 Reso/C 0241 dated May 3, 1991, TC1 (except USA & US Territories), R–1 to R–5.
Proposed Effective Date: October 1, 1991.

Docket Number: 47617.
Date filed: June 24, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/C 0336 June 4, 1991, TC2 Resolutions, R–1 to R–21; TC2 Reso/C 0337 dated June 4, 1991, Within Europe Resolutions, R–22 to R–28; TC2 Reso/C 0338 dated June 4, 1991, Europe-Africa Resolutions, R–29 to R–37; TC2 Reso/C 0339 dated June 4, 1991, Europe-Israel Resolutions, R–38 to R–44.
Proposed Effective Date: October 1, 1991.

Docket Number: 47618.
Date filed: June 25, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/P 1338 dated June 10, 1991, North Atlantic-Middle East Expedited Reso 002b (R–1) intended effective date: August 1, 1991, TC12 Reso/P 1340 dated June 10, 1991, Mid Atlantic-Europe Resos LA 120 (R–2) and 002 (R–3) intended effective date: June 26, 1991.

Docket Number: 47622.
Date filed: June 26, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/P 1336 dated June 7, 1991, Canada-Israel Expedited Resos, R–1 to R–10 intended effective date: July 15, 1991.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 91–16259 Filed 7–8–91; 8:45 am]
BILLING CODE 4910–62–M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 28, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47611.
Date filed: June 24, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 22, 1991.
Description: Application of Trans African Airlines Ltd., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, requests authority to engage in foreign scheduled air transportation of persons, property, freight, and mail for scheduled service between: West African Route; Atlanta, Georgia to Dakar, Senegal; Abidjan, Ivory Coast; Accra, Ghana; Lagos, Nigeria; Nairobi, Kenya and North African Route: Atlanta, Georgia to Algiers, Algeria; Cairo, Egypt; and Bombay, India.

Docket Number: 47615.
Date filed: June 24, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 22, 1991.
Description: Application of Continental Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity authorizing Continental to provide scheduled foreign air transportation of persons, property and mail between: New York (Newark) via the intermediate points the Azores and Lisbon to Madrid and Barcelona and beyond to points in southern France, Algeria, Tunisia, Egypt, Uganda, Kenya, Tanzania, Turkey, Israel, Jordan, Syria, Saudi Arabia, countries in the Arabian Peninsula, Afghanistan, Pakistan, and India.

Docket Number: 47621.
Date filed: June 26, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 3, 1991.
Description: Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to permit Delta to provide scheduled foreign air transportation of persons, property and mail between Los Angeles, California, on the one hand, and Sao Paulo and Rio de Janeiro, Brazil, on the other hand. In addition, Delta requests allocation of seven (7) weekly combination frequencies pursuant to attachment C to the Memorandum of consultations dated April 26, 1991 between the Governments of the United States and Brazil.

Docket Number: 47624.
Date filed: June 26, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 3, 1991.
Description: Application of Northwest Airline, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for a certificate of public convenience and necessity to enable it to provide scheduled, nonstop service between Los Angeles, California and Sao Paulo and Rio de Janeiro, Brazil.

Docket Number: 47626.
Date filed: June 26, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 3, 1991.
Description: Application of World Airways, Inc. pursuant to section 401 of the Act and subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity to engage in foreign air transportation of property and mail between points in the United States, on the one hand, and Manaus, Rio de Janeiro, Sao Paulo and Recife, Brazil, on the other hand.

Docket Number: 47627.
Date filed: June 26, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 3, 1991.
Description: Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for (1) a certificate of public convenience and necessity authorizing service between the U.S. and Brazil, and (2) the allocation of nine additional weekly frequencies effective January 1, 1992, and five additional weekly frequencies effective January 1, 1993.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 91–16260 Filed 7–8–91; 8:45 am]
BILLING CODE 4910–62–M

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2 p.m., July 25, 1991, at the Corporation's Administration Headquarters, room 5424, 400 Seventh Street, SW., Washington, DC. The

agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than, July 16, 1991, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202/366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on June 28, 1991.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 91–16192 Filed 7–8–91; 8:45 am]

BILLING CODE 4910–61–M

DEPARTMENT OF THE TREASURY

Office of The Secretary

[Supplement to Department Circular—Public Debt Series—No. 19–91]

Treasury Notes, Series AC–1993

June 26, 1991.

The Secretary announced on June 25, 1991, that the interest rate on the notes designated Series AC–1993, described in Department Circular—Public Debt Series—No. 19–91 dated June 20, 1991, will be 7 percent. Interest on the notes will be payable at the rate of 7 percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91–16244 Filed 7–8–91; 8:45 am]

BILLING CODE 4810–40–M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 20–91]

Treasury Notes, Series Q-1996

Washington, June 27, 1991.

The Secretary announced on June 26, 1991, that the interest rate on the notes designated Series Q-1996, described in Department Circular—Public Debt Series—No. 20–91 dated June 20, 1991, will be 7⅞ percent. Interest on the notes will be payable at the rate of 7⅞ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91–16245 Filed 7–8–91; 8:45 am]

BILLING CODE 4810–40–M

Office of Thrift Supervision

Metrobank Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole conservator for Metrobank Federal Savings and Loan Association, Palisades Park, New Jersey, on June 28, 1991.

Dated: July 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–16235 Filed 7–8–91; 8:45 am]

BILLING CODE 6720–01–M

United Federal Savings and Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for United Federal Savings and Loan Association, F.A., Jonesboro, Arkansas, on June 28, 1991.

Dated: July 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–16236 Filed 7–8–91; 8:45 am]

BILLING CODE 6720–01–M

Metrobank for Savings, F.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Metrobank for Savings, F.S.B., Palisades Park, New Jersey, on June 28, 1991.

Dated: July 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–16237 Filed 7–8–91; 8:45 am]

BILLING CODE 6720–01–M

United Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for United Federal Savings and Loan Association, Jonesboro, Arkansas, Docket No. 2362, on June 28, 1991.

Dated: July 3, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–16238 Filed 7–8–91; 8:45am]

BILLING CODE 6720–01–M

Vermont Savings Association, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Vermont Savings Association, F.A., Timonium, Maryland, ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 28, 1991.

Dated: July 2, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–16214 Filed 7–8–91; 8:45 am]

BILLING CODE 6720–01–M

[AC–30; OTS No. 4225]

People's Savings Association, Sharonville, Ohio; Final Action; Approval of Conversion Application

Notice is hereby given that on June 25, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of People's Savings Association, Sharonville, Ohio, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington DC 20552, and

District Director, Office of Thrift Supervision of Cincinnati, 525 Vine Street, suite 700 Cincinnati, Ohio 45202.

Dated: July 1, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc 91–16239 Filed 7–8–91; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 131
Tuesday, July 9, 1991

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).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE. Thursday, July 11, 1991, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO CONSIDERED:

Reloadable Tube Aerial Shell Fireworks.

The Commission will consider a final rule to ban reloadable tube aerial shell fireworks devices that use shells larger than 1.75 inches in outer diameter.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492–6800.

Dated: July 3, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91–16411 Filed 7–5–91; 1:24 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, July 10, 1991, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED.

1. Pride in Public Service Award.

The Commission will present the Pride in Public Service Award to July's recipient.

2. FY 93 Budget

The staff will brief the Commission on issues related to the budget for fiscal year 1993.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492–6800.

Date: July 3, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91–16412 Filed 7–5–91; 1:24 pm]

BILLING CODE 6355–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 11, 1991, from 2:00 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. CoBank—Approval of Technical Assistance Cooperative Development Support, and Related Services Policy and Program.
2. FCA Assessment Regulations (Final).
3. Personnel Administration Regulations (Final).

Closed Session

A. New Business

1. Enforcement Actions.

Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: July 3, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91–16357 Filed 7–5–91; 10:42 am]

BILLING CODE 6705–01–M

FEDERAL COMMUNICATIONS COMMISSION

FCC to Hold a Closed Commission Meeting, Tuesday, July 9, 1991

July 3, 1991.

The Federal Communications Commission will hold a Closed Meeting in Room 814 on the subject listed below on Tuesday, July 9, 1991, which is scheduled to commence at 10:00 a.m., at 1919 M Street, N.W., Washington, D.C.

Item No, Bureau, and Subject

1—Common Carrier—Title: Consideration of recent service difficulties in the telephone network. Summary: The Commission will considering possible investigatory or enforcement action.

This item is closed to the public because it concerns investigatory/adjudicatory matters. (See 47 C.F.R. Sec. 0.603(g & j)).

The following persons are expected to attend:

Commissioners and their Assistants
Managing Director and members of his staff
General Counsel and members of his staff
Director, Office of Public Affairs and members of her staff
Chief, Common Carrier Bureau and members of his staff
Chief, Office of Plans and Policy and members of his staff
Chief, Field Operations Bureau and members of his staff

Action by the Commission July 3, 1991, Chairman Sikes; Commissioners Quello, Marshall, Barrett and Duggan voting to consider this matter is closed session; and to hold a meeting on less than seven day's notice because, in light of the need for prompt Commission response to recent developments, the prompt and orderly conduct of agency business so requires.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Issued: July 3, 1991.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–16355 Filed 7–5–91; 10:41 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Thursday, July 11, 1991

July 3, 1991.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, July 11, 1991, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Item No., Bureau, and Subject

1—Common Carrier—Title: Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (CC Docket No. 90–571). Summary: The Commission will consider adoption of a *Report and Order* implementing Title IV of the Americans with Disabilities Act of 1990.

2—Common Carrier—Title: Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation (CC Docket No. 91–35). Summary: The Commission will consider adoption of a *Report and Order and Further Notice of Proposed Rule Making* on which operator service access methods must be available from aggregator telephones and whether competitive public payphone owners are entitled to compensation for calls routed to non-presubscribed operator service providers.

3—Mass Media—Title: Review of the Policy Implications of the Changing Video Marketplace. Summary: The Commission will consider adoption of a *Notice of Inquiry* concerning the public policy implications of changes in the video marketplace.

4—Private Radio—Title: Amendment of the Aviation Services Rules concerning the frequency tolerance for VHF aircraft radios (PR Docket No. 90–340). Summary: The Commission will consider adoption of a *Report and Order* to amend the Aviation Services Rules concerning the frequency tolerance for aircraft transmitters operating in the frequency band 100 MHz to 470 MHz.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Issued: July 3, 1991.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–16356 Filed 7–5–91; 10:41 am]

BILLING CODE 6712–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, July 15, 1991.

TIME AND DATE: 11:00 a.m., Monday, July 15, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
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. 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: July 5, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–16444 Filed 7–5–91; 3:42 pm]

BILLING CODE 6210–01–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation; Meeting of the Board of Directors

TIME AND DATE: 1:00 p.m. (closed portion), 3:00 p.m. (open portion), Tuesday, July 23, 1991.

PLACE: Offices of the Corporation, Fourth Floor Board Room, 1615 M Street, N.W., Washington, D.C.

STATUS: The first part of the meeting from 1:00 p.m. to 3:00 p.m. will be closed to the public. The open portion of the meeting will commerce at 3:00 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:00 p.m. to 3:00 p.m.):

1. President's Report
2. Insurance Project in Thailand
3. Finance Project in Dominican Republic
4. Proposed OPIC Budget for FY 1993
5. Claims Report
6. Finance and Insurance Reports
7. Approval of 5/21/91 Minutes (Closed Portion)

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 3:00 p.m.)

1. Approval of 5/21/91 Minutes (Open Portion)
2. Information Reports
   (a) Notice to Board of Changes to OPIC Country List
   (b) Political Risk Insurance Issued for 3rd Qtr FY 91
   (c) Country Consentration
   (d) Financial statements as of June 30, 1991
   (e) Report on Smaller Business and Cooperative Activities for 3rd Qtr FY 1991
   (f) U.S. Benefits and Less Developed Country Developmental Effects of Projects Assisted by OPIC through end of the 3rd Qtr FY 1991
   (g) Insurance Portfolio Management
   (h) Revision of Insurance Coverage Structure
4. Reconfirmation of meetings schedule for remainder of 1991

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Corporation Secretary at (202) 457–7007.

Dated: May 3, 1991.

Dennis K. Dolan,

OPIC Corporate Secretary.

[FR Doc. 91–16442 Filed 7–5–91; 3:09 pm]

BILLING CODE 3210–01–M

NUCLEAR REGULATORY COMMISSION.

DATE: Weeks of July 8, 15, 22, and 29, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 8

Thursday, July 11

10:00 a.m.
Briefing on Yankee Rowe Pressure Vessel Embrittlement Issues (Public Meeting)

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 9)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rules Regarding Revisions to Procedures to Issue Orders and Deliberate Misconduct by Unlicensed Persons (Tentative)

Week July 15—Tentative

Tuesday, July 16

10:00 a.m.
Periodic Briefing on EEO Program (Public Meeting)

Friday, July 19

10:00 a.m.
Briefing on Generic Environmental Impact Statement for License Renewal and Proposed Part 51 Rule (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 22—Tentative

Thursday, July 25

1:30 p.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 29—Tentative

Wednesday, July 31

10:00 a.m.
Briefing on AEOD Programs (Public Meeting)

Thursday, August 1

10:00 a.m.
Briefing on Uncertainties in Implementing the EPA HLW Standards (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording) (301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661

Dated: July 3, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–16320 Filed 7–3–91; 4:39 am]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on July 1, 1991, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for August 8, 1991, in Washington, D.C. The members will consider the procurement of light delivery vehicles.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Griesemer, Hall, Mackie, Nevin, Pace and Setrakian; Postmaster General Frank, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Hughes.

The Board determined that pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information, the premature disclosure of which would significantly frustrate proposed procurement actions. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(9)(B) of Title 5, United States Code and section 7.3(i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secertary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

FR Doc. 91–16358 Filed 7–5–91; 10:43 am

BILLING CODE 7710–12–A

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 8, 1991:

A closed meeting will be held on Wednesday, July 10, 1991, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 5552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, July 10, 1991, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272–2100.

Dated: July 2, 1991

Jonathan G. Katz,

Secretary.

[FR Doc. 91–16452 Filed 7–5–91; 3:55 pm]

BILLING CODE 8010–01–M

federal register

Tuesday
July 9, 1991

Part II

Environmental Protection Agency

40 CFR Part 80

Oxygenated Fuels Labeling Regulations; Guidance on Establishment of Control Periods; and Guidelines for Oxygenated Gasoline Credit; Proposed Rule and Notices

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-3965-7]

Oxygenated Fuels Labeling Regulations Under Section 211(m) of the Clean Air Act as Amended

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 211(m) of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (Act) requires that various states submit revisions to their State Implementation Plans, and implement an oxygenated gasoline program. The Act requires that EPA promulgate regulations requiring the labeling of retail fuel pumps that dispense oxygenated gasoline under these state programs. Today's notice proposes these labeling regulations. The oxygenated gasoline program, and therefore the proposed labeling regulations, apply to all states with carbon monoxide (CO) nonattainment areas with design values of 9.5 ppm or more based on data for 1988 and 1989. The proposed labeling regulations apply to those retail gasoline pumps located within the control area of the state oxygenated gasoline program, and apply during the period of the year covered by the state oxygenated gasoline program.

Section 211(m)(4) of the Act requires that certain retail sellers of oxygenated gasoline comply with regulations promulgated by the Administrator regarding the labeling of fuel dispensing systems. This notice sets forth EPA's proposed labeling regulations.

DATES: Comments submitted by August 15, 1991 will be considered in EPA's final rulemaking. The agency will hold a public hearing on this proposed rulemaking. The hearing will be held on July 15 from 9 a.m. to 5 p.m. and July 16 from 8 a.m. to 3 p.m.

ADDRESSES: The hearing will be held at the Westpark Hotel, 1900 North Fort Meyer Drive, Arlington, VA 22209 (703) 527-4814.

Materials relevant to this rulemaking have been placed in Docket A-91-04 by EPA. Additionally, EPA has participated in the Regulatory Negotiation process to develop these proposed regulations. A docket has also been set up for this regulatory negotiation process. Regulatory negotiation materials have been placed in Docket A-91-17. The dockets are located in the Air Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, in room M-1500 Waterside Mall and may be inspected from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket material.

Comments should be submitted (in duplicate if possible) to the Air Docket Section, Docket A-91-04, at the above address. A copy should also be sent to Mr. Alfonse Mannato at the EPA address listed below: U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street SW,. (EN-397F), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Alfonse Mannato, (202) 382-2640.

SUPPLEMENTARY INFORMATION:

I. Introduction

This notice describes EPA's proposed labeling regulations for certain retail pumps that dispense oxygenated gasoline. Under section 211(m)(4), the Administrator is required to promulgate regulations for labeling of retail fuel dispensing systems which dispense oxygenated gasoline pursuant to the requirements of section 211(m) of the Act. EPA has utilized the Regulatory Negotiation process in the development of these proposed regulations. This process is discussed below.

The remainder of this preamble is divided into two parts. Section II provides the background for this proposed action, with respect to chronology and broad issues involved. Section III presents EPA's proposed action and rationale.

II. Background

Requirements of Section 211(m)

Section 211(m) of the Act requires states with carbon monoxide nonattainment areas with design values of 9.5 parts per million (ppm) or more, based on data for the two year period of 1988 and 1989, to submit revisions to their State Implementation Plans (SIP's) and implement an oxygenated gasoline program. The state must implement an oxygenated gasoline program in a specific control area, requiring gasoline to meet a minimum oxygen content of 2.7% by weight subject to a testing tolerance established by the Administrator. This oxygen content requirement applies during the portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. The minimum length of this control period is to be established by the Administrator and shall not be less than four months in length. EPA may reduce the control period if a State can demonstrate, based on metecrological conditions, that a reduced period will assure that there will be no carbon monoxide exceedences outside of such reduced period. The oxygen content requirement is to cover all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located. EPA is required to promulgate guidelines by August 15, 1991 allowing the use of marketable oxygen credits that may be traded within but not between nonattainment areas. EPA is publishing two additional **Federal Register** notices dealing with oxygenated gasoline programs today. The first notice proposes guidelines for state oxygen credit programs, and the second notice sets forth proposed control periods and geographic areas.

Section 211(m)(4) requires that the Administrator promulgate labeling regulations for the sale of gasoline at retail gasoline stations in oxygenated gasoline control areas. This notice proposed such labeling regulations.

Regulatory Negotiation Process

EPA has utilized a Regulatory Negotiation Advisory Committee (Advisory Committee) to aid in the development of these proposed regulations. This process was initiated on February 8, 1991, when EPA announced its intent to form an Advisory Committee to negotiate certain guidelines and proposed regulations implementing the clean fuels provisions of section 211(k) and (m) of the Act.[1] A public meeting was held on February 21-22, 1991 in Washington, DC and, after considering comments submitted in response to the notice and the results of that public meeting, an Advisory Committee was established on March 13, 1991.[2] Those notices contain a more detailed discussion of the issues referred to the Advisory Committee, as well as information on the requirements of the regulatory negotiation process.

Several meetings have been held prior to publications of this notice. On March 14-15, 1991, May 1, 1991 and on May 13-14, 1991, the Advisory Committee met to discuss the issues in this notice and other issues. Between these two meetings there were several meetings of workgroups of the Advisory Committee. While the regulations proposed today do not represent a consensus of the Advisory Committee members, they do reflect various options considered by the Advisory Committee.

[1] 56 FR 5167 (February 8, 1991).

[2] 56 FR 10522 (March 13, 1991).

III. Proposed Action

Under the Agency's proposal, the gasoline pumps at retail stations in each control area would be labelled, during the applicable control period, with conspicuous labels. Persons who own, lease, operate, control, or supervise retail gasoline stations would be responsible for compliance with the labeling requirements of this section. The label must be clearly readable to the public, in order to inform the public of what product it is receiving.

EPA's proposed labeling regulations require that each gasoline pump stand at the affected retail outlets must have, during the control periods, a legible and conspicuous label stating the following:

> The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles.

If the state oxygenated gasoline program contains a credit program with no minimum oxygen content requirement, then the label must state the following:

> The fuel dispensed from this pump meets the requirements of the Clean Air Act as part of a program to reduce carbon monoxide pollution from motor vehicles.

This second form of proposed labeling language is necessary so consumers are not mislead into believing that the purchased gasoline is oxygenated, when in fact it lawfully may contain no oxygen at all. This could occur if a state oxygenated gasoline program contains a credit program, without requiring a minimum oxygen content for all gasoline.[3] Under such a scenario, gasoline with no oxygen content could legally be sold in the control area, during the applicable control period, if it is averaged with gasoline that has an oxygen content greater than the standard. Marketable oxygen credits would be used to offset the lack of oxygen content, with such credits produced by gasoline containing more oxygen than required to meet the standard.

The first form of proposed labeling language would be used in all other situations, i.e., where the state oxygenated fuel program has a minimum oxygen content requirement.

EPA believes each form of the proposed label conforms with the requirements of the Act. They each inform the public of the beneficial goal of section 211(m)'s mandated oxygenated gasoline program, and of reductions in carbon monoxide emissions from motor vehicles. The consumer is provided information in a clear and understandable way, while minimizing the chances of confusing the public.

In order to ensure that this information is legible and made readable to the public, EPA's proposed labeling regulations require that the posting be in block letters of no less than 36-point bold type. The color of the letters should contrast the background upon which they are placed. The label is to be placed on the vertical surface of the pump on each side from which gasoline can be dispensed, on the upper one-third. By specifying the placement and size of the label, EPA seeks to ensure that it is clearly recognizable and readable for the public.

Some parties have expressed concern about a label stating, "The fuel dispensed from this pump meets the requirements of the Clean Air Act as part of a program to reduce carbon monoxide pollution from motor vehicles." The concern is that such a label may still mislead consumers into believing that they are purchasing oxygenated gasoline when they may not be, such as may occur when there is no minimum oxygen content requirement in a state credit program. It has been suggested that when a gasoline contains 0% oxygen, the label should not be used on that pump. To support this position, section 211(m)(4) of the Act would have to be interpreted to apply only to persons selling gasoline which, in fact, contains oxygen. EPA specifically invites comments on this issue.

IV. Environmental Impact

The sale of oxygenated gasoline reduces carbon monoxide emissions from motor vehicles and thereby helps carbon monoxide nonattainment areas in their efforts to achieve compliance with the national ambient air quality standard for carbon monoxide. Oxygenated gasoline is becoming a widely recognized control strategy for reducing carbon monoxide emissions from motor vehicles in a timely and cost-effective manner. The labeling regulations proposed in this notice will promote consumer awareness about the beneficial effects of oxygenated gasoline in the reduction of carbon monoxide emissions from motor vehicles.

V. Public Participation

EPA invites comment on all issues relevant to this rulemaking. All comments received by August 15, 1991, will be considered in EPA's final rulemaking. All comments will be available for inspection during normal business hours at the EPA office listed in the addresses section of this notice.

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket.

Information covered by a claim of confidentiality will be discussed by EPA only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

VI. Impact on Small Entities

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public contact a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e. small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required, however, if the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities.

Because the information required to comply with these labeling regulations will be supplied to retailers as part of the normal course of business by marketers and distributors, EPA estimates that the only cost of this regulation to retailers will be the cost of the label itself. Therefore, the Administrator certifies that the rule will not have a substantial effect on small entities.

VII. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. The proposed rule published today is not major. It will not result in an effect on the economy of $100 million or more, will not result in significant increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity and innovation, and will not disrupt domestic export markets. Therefore the Agency has not prepared

[3] In a separate Federal Register Notice, EPA has published proposed guidelines for state oxygen credit programs. That Notice contains further discussion of the issue of a minimum oxygen content in such programs.

a regulatory impact analysis under the Executive Order.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291. Any written comments received from OMB and any EPA response to those comments have been placed in the public rulemaking docket.

VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, EPA must obtain clearance from OMB for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. This proposed rule does not conduct or sponsor the collection of information, and is therefore not subject to the requirement of the Paperwork Reduction Act.

IX. Statutory Authority

Authority for the action proposed in this notice is granted to EPA by sections 211 and 301 of the Clean Air Act (42 U.S.C. 7545 and 7601).

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: June 11, 1991.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, part 80 of title 40 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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

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

2. Section 80.2 is proposed to be amended by adding new paragraphs (mm), (nn), and (oo) to read as follows:

§ 80.2 Definitions.

* * * * *

(mm) *Control area* means a geographic area in which only oxygenated gasoline under the oxygenated gasoline program may be sold or dispensed, with boundaries determined by section 211(m) of the Act.

(nn) *Control period* means the period during which oxygenated gasoline must be sold or dispensed in any control area, pursuant to section 211(m)(2) of the Act.

(oo) *Oxygenated gasoline* means gasoline which contains a measurable amount of oxygenate.

3. New subpart C consisting of § 80.80 is added to part 80 to read as follows:

Subpart C—Clean Fuels Programs

§ 80.80 Labeling of retail gasoline pumps; oxygenated gasoline.

(a) For oxygenated gasoline programs with a minimum oxygen content or minimum oxygen content requirement in conjunction with a credit program, the following shall apply:

(1) Each gasoline pump stand from which oxygenated gasoline is dispensed at a retail outlet in the control area shall be affixed during the control period with a legible and conspicuous label which contains the following statement:

> The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles.

(2) The posting of the above statement shall be in block letters of no less than 36-point bold type; in a color contrasting the intended background. The label shall be placed in the vertical surface of the pump on each side from which gasoline can be dispensed and shall be on the upper one-third of the pump, clearly readable to the public.

(3) The retailer shall be responsible for compliance with the labeling requirements of this section.

(b) For oxygenated gasoline programs with a credit program and no minimum oxygen content requirement, the following shall apply:

(1) Each gasoline pump stand from which oxygenated gasoline is dispensed at a retail outlet in the control area shall be affixed during the control period with a legible and conspicuous label which contains the following statement:

> The fuel dispensed from this pump meets the requirements of the Clean Air Act as part of a program to reduce carbon monoxide pollution from motor vehicles.

(2) The posting of the above statement shall be in block letters of no less than 36-point bold type; in a color contrasting the intended background. The label shall be placed in the vertical surface of the pump on each side from which gasoline can be dispensed and shall be on the upper one-third of the pump, clearly readable to the public.

(3) The retailer shall be responsible for compliance with the labeling requirements of this section.

[FR Doc. 91–14339 Filed 7–2–91; 10:18 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3965-5]

Proposed Guidance on Establishment of Control Periods Under Section 211(m) of the Clean Air Act as Amended

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed guidance.

SUMMARY: Section 211(m) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 ("the Act") requires that various states submit revisions to their State Implementation Plans (SIPs), and implement an oxygenated gasoline program. This requirement applies to all states with carbon monoxide (CO) nonattainment areas, with design values of 9.5 parts per million or more, based on data for 1988 and 1989. The oxygenated gasoline program must require gasoline in the specified control areas to contain no less than 2.7% oxygen by weight during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide.

Section 211(m)(2) requires that the Administrator specify the portion of the year in which the area is prone to high ambient concentrations of carbon monoxide. This portion of the year ("control period") is to be not less than four months in length, unless the state can demonstrate, based on meteorological considerations, that a reduced period will not result in exceedences outside of such reduced period.

Today's notice proposes EPA guidance on the control periods. The geographic scope of the control area is also discussed.

DATES: The Agency will hold a public hearing on this proposed guidance. The hearing will be held on July 15, 1991 from 9 a.m. to 5 p.m. and July 16, 1991 from 8 a.m. to 3 p.m. at the Westpark Hotel, 1900 North Fort Meyer Drive, Arlington, VA 22209 (703) 527-4814.

Comments received by August 15, 1991 will be considered by EPA in its determination of control periods.

ADDRESSES: Materials relevant to this action have been placed in Docket A-91-04 by EPA. Additionally, EPA has participated in the Regulatory Negotiation process to develop these proposed regulations. A docket has also been set up for this regulatory negotiation process. Regulatory negotiation materials have been placed in Docket A-91-17. The dockets are located in the Air Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, in room M-1500, Waterside Mall and may be inspected from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket material.

Comments should be submitted (in duplicate if possible) to the Air Docket Section, Docket A-91-04, at the above address. A copy should also be sent to Mr. Alfonse Mannato at the EPA address listed below: U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW (EN-397F), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Alfonse Mannato, (202) 382-2640.

SUPPLEMENTARY INFORMATION:

I. Introduction

This notice describes EPA's proposed guidance on establishment of control periods for oxygenated gasoline programs under section 211(m) of the Act. The section II provides the background for this proposed action, with respect to chronology and broad issues involved. Section III presents EPA's proposed action and rationale.

II. Background

Section 211(m) of the Act requires states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more, based on data for the two year period of 1988 and 1989, to submit revisions to their State Implementation Plans (SIPs). Such states must implement an oxygenated gasoline program in a specified control area requiring gasoline to meet a minimum oxygen content of 2.7 percent by weight, subject to a testing tolerance established by the Administrator. This oxygen content requirement applies during the portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. The length of the control period, as required by section 211(m) of the Act, is to be established by the Administrator and shall not be less than four months in length. EPA may reduce the control period if a State can demonstrate, based on meteorological conditions, that a reduced period will assure that there will be no carbon monoxide exceedances outside of such period. The oxygen content requirement is to cover all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located. Proposed credit program guidelines and proposed labeling regulations appear in two additional **Federal Register** notices published today.

This notice provides EPA's proposed guidance to states regarding the establishment of control periods for oxygenated gasoline programs, under section 211(m) of the Act. This guidance is a general statement of policy. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made applying the law, applicable regulations and guidelines on the basis of specific facts and actual action.

Today's notice proposes different approaches to determining the control period. After consideration of public comments on the notice, EPA intends to issue final guidance to the states on this matter. The proper control period will also be an issue during the notice and comment rulemaking undertaken by EPA to review individual state submissions of oxygenated gasoline programs as SIP revisions under section 211(m).

To expedite Agency decisions in particular cases, a state submitting a State Implementation Plan revision which includes an oxygenated gasoline program with a different proposed control period than those specified in these guidelines, should provide as detailed an explanation as possible for the differences.

Regulatory Negotiation

EPA has utilized a Regulatory Negotiation Advisory Committee (Advisory Committee) to aid in the development of these proposed guidelines. The regulatory negotiation process was initiated on February 8, 1991, when EPA announced its intent to form an advisory committee to negotiate certain guidelines and proposed regulations implementing the clean fuels provisions of sections 211(k) and (m) of the Act.[1] A public meeting was held on February 21-22, 1991 in Washington, DC and, after considering comments submitted in response to the notice and the results of that public meeting, an Advisory Committee was established on March 13, 1991.[2] Those notices contain a more detailed discussion of the issues referred to the Advisory Committee, as well as information on the requirements of the regulatory negotiation process.

Several meetings have been held prior to the publication of this notice. On March 14-15, 1991, May 1, 1991, and

[1] 56 FR 5167 (February 8, 1991).

[2] 56 FR 10522 (March 13, 1991).

May 13–14, 1991, the Advisory Committee met to discuss the issues in this notice along with other related issues. Between the two meetings there were several meetings of workgroups of the Advisory Committee.

This notice presents options discussed by the Advisory Committee and its workgroups. For example, three options for determining control periods are set out in this notice. EPA invites comments on each of the options and issues identified in this notice, as well as any other relevant options and issues.

III. Proposed Action

Control Periods

In establishing an oxygenated gasoline program, the Act specifies that oxygenated gasoline will be required during the portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. The control period shall not be less than four months. These control periods are to be determined by the Administrator. EPA may reduce the control period if a state can demonstrate, based on meteorological conditions, that a reduced period will assure that there will be no carbon monoxide exceedances outside of such reduced period. EPA will address the control period issues, as necessary, for areas with carbon monoxide design values of 9.5 parts per million (ppm) or greater for any two year period after 1989. These areas, as noted above, will be required to submit State Implementation Plan revisions within 18 months of such two year exceedance period.

In analyzing the issue of the control period, the Agency has focused on the ambient monitoring data from 1988 and 1989. The Agency chose this time period for two reasons. First, it is the time period specified in section 211(m) of the Act for determining inclusion in the program. Second, it is the most recent period for which a full set of data exists for the nation as a whole.

The first approach taken by EPA analyzed the ambient monitoring data by looking at average carbon monoxide concentrations which occur in 8-hour overlapping periods (Approach I). The date for an 8-hour period was set at the date of the 8th hour, and the highest overlapping 8-hour period in each day was assigned to represent that day. The use of overlapping 8-hour periods ensures that the 24 hour period is represented by the highest 8-hour average of ambient data.[3]

For each of the covered CO nonattainment areas, the five highest days in each month were calculated and plotted, for 1988 and 1989. Bar graphs for the 41 potential oxygenated gasoline areas have been placed in the docket.[4] Preliminary control periods under Approach I were identified by noting those months where any of the five highest days exceeded the National Ambient Air Quality Standard (NAAQS) for CO. The resulting distribution of control periods for Approach I is shown in table I.

In many cases, the 4 month statutory minimum length for the control period was the controlling factor, along with the requirement that these programs begin no later than November 1, 1992. In order to allow for the orderly continuance of the currently applicable control periods in existing state oxygenated gasoline program areas, Phoenix and Las Vegas' control periods were designated as six months, from October 1 to March 31.

Examination of the control periods in Approach I revealed considerable heterogeneity in the length and temporal placement of a number of areas that share fuel distribution facilities. Some parties have suggested that there is a need to constrain this heterogeneity to facilitate transportation logistics. Based on this suggestion, EPA considered a second way of analyzing the monitoring data.

This second approach used the exceedance of the carbon monoxide standard at the design value monitor, in the design year (the year in which the design value was established), to identify the months the individual areas were prone to high ambient concentrations of carbon monoxide. The outer boundaries of the season in which these exceedances at the design value monitor occurred was considered along with the larger body of monitoring data mentioned before. The resulting control periods impose a higher degree of consistency upon the control periods of areas which share oxygenate sources and transportation facilities. In general, this second approach provides a rationale for shortening a number of control periods and shifting others somewhat in time. The resulting distribution of control periods, Approach II, is presented in table II.

Using this second approach, the eastern seaboard, with the exception of the New York City area, converges on a common core 4 month period from November through February. This same core period prevails in Petroleum Administration for Defense Districts (PADDs) 3 and 4 and in a substantial portion of PADD 5. Only six areas were assigned control periods in excess of four months with this approach, as opposed to ten areas with the first approach.

Approach I focuses on ambient data, whether or not it was obtained from the design value monitor. As a result, this approach should be considered as the most environmentally cautious, as it uses the largest amount of available data. Approach II uses the ambient data from the design value monitor, in the design value year which includes only non-overlapping 8-hour averages. It thus ties the control period determination more into the methodology used to define attainment. It is less expansive than Approach I in two ways: (1) It ignores data from other monitors, and (2) It may miss peak concentrations by dividing their effect into two non-overlapping periods. Approach II, however, does provide more logical consistency in the gasoline distribution network.

It was suggested by some parties during the regulatory negotiation, that instead of choosing between Approaches I and II, that Minneapolis should be changed from 12 months to just October through January. In fact, in a letter dated June 7, 1991, the Minnesota Pollution Control Agency stated its preference for a four-month oxygenated gasoline requirement. Their rationale is that the highest carbon monoxide levels occur during the cold-weather season. It is their opinion that the winter oxygenated gasoline program, in addition to the Vehicle Inspection and Maintenance program which is scheduled to begin on July 1, 1991, will result in carbon monoxide attainment.

Also, one party has suggested that the three areas in Southern Oregon should be changed to an October to January control period. It was noted that this would make their control periods compatible with those in Northern California, which is the most likely source of oxygenated gasoline for those areas.

One other area which has requested a deviation from Approaches I and II is the New York City CMSA. On May 31, 1991, the Agency received a letter from the New York State Department of

[3] EPA has attempted to eliminate the possibility that a very high ambient reading near the midnight hour could result in high values on two consecutive days based on the single high reading. For example, a high reading at 11 p.m. on Day 1 of a month could result in a high value assigned to Day 1. Since the 11 p.m. reading would also be included in several 8-hour overlapping periods assigned to Day 2, e.g., 10 p.m. Day 1 to 6 a.m. Day 2, it could also result in a high value assigned to Day 2. EPA has attempted to correct for this possibility.

[4] These bar graphs appear in a document titled, "Bar graphs of carbon monoxide in Non-Attainment Areas—Revised," June 7, 1991.

Environmental Conservation requesting a "modified twelve month oxygenated fuels program." The Director of the Division of Air Resources has proposed that the New York City CMSA program require 2.7% oxygen by weight in gasoline from September 15 to April 30, and 2.0% oxygen by weight from May 1 to September 14. This proposal addresses the State's concern that a summertime 2.7% oxygen by weight program could potentially negatively affect the area's NOx and ozone attainment goals. In effect, this request would be viewed as a request for a control period of September 15 to April 30, with the State separately enacting by legislation a 2.0% program for the summertime. Comments are specifically requested on this issue.

EPA requests comments on the relative merits of these various approaches, as well as any other approaches considered relevant.

Effective Date

The following dates are proposed as effective dates of the state oxygenated gasoline programs. For oxygenated gasoline programs with a control period beginning in September, the effective date will be September 1, 1992. For oxygenated gasoline programs with a control period beginning in October, the effective date will be October 1, 1992. For oxygenated gasoline programs with a control period beginning in November, the effective date will be November 1, 1992. For areas with a control period that covers twelve months, the effective date will be September 1, 1992. Proposed control periods are given under both Approaches 1 and 2 in tables I and II.

Geographic Scope

According to section 211 (m) the Act, SIP revisions must be submitted by each State in which there is located all or part of an area which is designated under title I as a nonattainment area for carbon monoxide and which has a carbon monoxide design value of 9.5 parts per million (ppm) or above based on data for the two-year period of 1988 and 1989. These control areas are as follows:

1. Boston-Lawrence-Salem, MA–NH CMSA
2. Cleveland-Akron-Lorain, OH CMSA
3. Denver-Boulder, CO CMSA
4. Hartford-New Britain-Middletown, CT CMSA
5. Los Angeles-Anaheim-Riverside, CA CMSA
6. New York-Northern New Jersey-Long Island CMSA
7. Philadelphia-Wilmington-Trenton, PA–NJ–DE–MD CMSA
8. Portland-Vancouver, OR–WA CMSA
9. San Francisco-Oakland-San Jose, CA CMSA
10. Seattle-Takoma, WA CMSA
11. Albuquerque, NM MSA
12. Anchorage, AK MSA
13. Appleton-Oshkosh-Neenah, WI MSA
14. Baltimore, MD MSA
15. Chico, CA MSA
16. Colorado Springs, CO MSA
17. Duluth, MN–WI MSA
18. El Paso, TX MSA
19. Fort Collins-Loveland, CO MSA
20. Fresno, CA MSA
21. Greensboro-Winston-Salem-High Point, NC MSA
22. Las Vegas, NV MSA
23. Medford, OR MSA
24. Memphis, TN–AR–MS MSA
25. Minneapolis-St. Paul, MN–WI MSA
26. Modesto, CA MSA
27. Phoenix, AZ MSA
28. Provo-Orem, UT MSA
29. Raleigh-Durham, NC MSA
30. Reno, NV MSA
31. Sacramento, CA MSA
32. San Diego, CA MSA
33. Spokane, WA MSA
34. Steubenville-Weirton, OH MSA
35. Stockton, CA MSA
36. Syracuse, NY MSA
37. Washington, DC–MD–VA MSA
38. Missoula, MT
39. Fairbanks, AK
40. Grant's Pass, OR
41. Klamath County, OR

The requirements of the oxygenated gasoline program shall apply to all gasoline sold or dispensed in the larger of the CMSA or MSA in which the nonattainment area is located. For nonattainment areas not in a CMSA or MSA, the control area is the nonattainment area. The requirements of the program shall apply to every county, or partial county which is wholly or partially located in the CMSA, MSA, or nonattainment areas.

An issue has been raised as to whether a state should apply the program to entire counties, including the parts of counties located outside of the MSA or CMSA boundaries. Setting the boundaries at the county border will facilitate ease of enforcement and will further decrease the likelihood that nonoxygenated gasoline will be available to vehicles which travel in the nonattainment area. However, there may be instances where inclusion of whole counties would result in areas which are far removed from the nonattainment area or CMSA/MSA being inappropriately covered. EPA requests comments on the issue of the desirability of including the entire county where only a part of that county is included in a covered CMSA or MSA.

For areas that have carbon monoxide design values of 9.5 parts per million (ppm) for any two year period after 1989, the Act requires that a revision to the State Implementation Plan (SIP) shall be submitted within 18 months after such two year period. EPA will address the geographic scope issues for these areas as such action becomes necessary.

IV. Environmental Impact

The sale of oxygenated gasoline reduces carbon monoxide emissions from motor vehicles and thereby helps carbon monoxide nonattainment areas to achieve compliance with national ambient air quality standard for carbon monoxide. Oxygenated gasoline is becoming a widely recognized control strategy for reducing carbon monoxide emissions from motor vehicles in a timely and cost-effective manner. The establishment of control periods as required by the Act and proposed in this notice will be valuable implementation guidance for the states and should help to ensure that the full benefits of the oxygenated gasoline program are realized.

V. Public Participation

EPA desires full public participation in arriving at final decisions in this guidance development. A public hearing will be held on this proposed guidance at the time and location listed in the dates section of notice.

All comments received by August 15, 1991 will be considered in EPA's final guidance. Comments should be directed to Docket A–91–04. All comments will be available for inspection during the noted hours at the EPA office listed in the addresses section of this notice.

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket.

Information covered by a claim of confidentiality will be released by EPA only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

VI. Administrative Requirements

Administrative Designation and Regulatory Impact Analysis

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. The guidance proposed today is not a regulation, but together

with the other oxygenated fuels guidance packages, is nonetheless significant. Therefore, the Agency is in the process of preparing a Regulatory Support Document that discusses the economic impacts of implementing the guidance packages. When the Agency has developed these cost projections, they will be placed in the Docket, announced in the **Federal Register**, and copies will be available to parties interested in receiving them.

This proposed guidance was submitted to the Office of Management and Budget (OMB) for review. Any written comments received from OMB and any EPA response to those comments have been placed in the public rulemaking docket.

Impact on Small Entities

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public contact, a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e. small businesses, small organizations, and small governmental jurisdictions). Today's action is not a rulemaking, therefore no regulatory flexibility analysis has been prepared.

VII. Paperwork Reduction Act

This proposed guidance on establishment of control period does not conduct or sponsor the collection of information, and is therefore not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

VIII. Statutory Authority

Authority for the action proposed in this notice is granted to EPA by sections 211 and 301 of the Clean Air Act as amended (42 U.S.C. 7545 and 7601).

Dated: June 11, 1991.

William K. Reilly,

Administrator.

TABLE I—PROPOSED GUIDANCE ON CONTROL PERIOD BY NONATTAINMENT AREA

Approach I
November 1–February 29
Baltimore
Boston
Greensboro
Hartford
Philadelphia
Raleigh
Syracuse
Washington, DC
Cleveland
Memphis
Albuquerque
Colorado Springs
Denver/Boulder
Fort Collins
Missoula
Provo/Orem
Anchorage
Fairbanks
Grant's Pass, OR
Klamath Co., OR
Medford
San Diego
All year
New York/No. NJ
Steubenville
Minneapolis
October 1–January 31
Duluth
Chico
Fresno
Modesto
Reno
Sacramento
San Francisco
Stockton
Portland
October 1–March 31
Las Vegas
Phoenix
El Paso
Winnebago
September 1–February 29
Los Angeles
Spokane
Seattle

TABLE II—PROPOSED GUIDANCE ON CONTROL PERIOD BY NONATTAINMENT AREA

Approach II
November 1–February 29
Baltimore
Boston
Greensboro
Hartford
Philadelphia
Raleigh
Syracuse
Washington, DC
Cleveland
Memphis
Albuquerque
El Paso
Colorado Springs
Denver/Boulder
Fort Collins
Missoula
Provo/Orem
Anchorage
Fairbanks
Grant's Pass, OR
Klamath Co., OR
Medford
Portland, OR
Seattle
San Diego
All year
New York/No. NJ
Steubenville
October 1–February 31
Duluth
Fresno
Winnebago
Minneapolis
Chico
Modesto
Reno
Sacramento
San Francisco
Stockton
October 1–February 29
Las Vegas
Phoenix
September 1–February 29
Los Angeles
Spokane

[FR Doc. 91–14341 Filed 7–2–91; 10:18 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3965–8]

Proposed Guidelines for Oxygenated Gasoline Credit Programs Under Section 211(m) of the Clean Air Act as Amended

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed guidelines.

SUMMARY: Section 211(m) of the Clean Air Act as Amended by the Clean Air Act Amendments of 1990 ("the Act") requires that various states submit revisions to their State Implementation Plans (SIPs), and implement an oxygenated gasoline program. This requirement applies to all states with carbon monoxide (CO) nonattainment areas with design values of 9.5 parts per million or more based on 1988 and 1989 data. The oxygenated gasoline program must require gasoline in the specified control area to contain no less than 2.7 percent oxygen by weight, during that

portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide.

Section 211(m)(5) requires that EPA promulgate guidelines for state credit programs, allowing the use of marketable oxygen credits for gasolines with higher oxygen than required to offset the sale or use of gasoline with a lower oxygen content than required. Today's notice contains EPA's proposed guidelines for such oxygenated gasoline credit programs.

DATES: A public hearing will be held on July 15, 1991 from 9 a.m. to 5 p.m. and July 16, 1991 from 8 p.m. to 3 p.m. at the Westpark Hotel, 1900 North Fort Meyer Drive, Arlington, VA 22209 (703) 527–4814.

Requests to speak at the hearing and written questions for the hearing should be directed no later than July 8, 1991, to Alfonse Mannato at the address listed below.

Comments received by July 31, 1991 will be considered by EPA in promulgating final guidelines.

ADDRESSES: Materials relevant to these proposed guidelines have been placed in Docket A–91–04 by EPA. EPA has engaged in the Regulatory Negotiation process to assist in developing these guidelines. A separate docket has been set up for the Regulatory Negotiation. The docket for the Regulatory Negotiation is Docket A–91–17. These dockets are located in the Air Docket Section (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, in room M–1500 of Waterside Mall and may be inspected from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket material.

Comments should be submitted (in duplicate if possible) to the Air Docket Section, Docket A–91–04 at the above address. A copy should also be sent to Mr. Alfonse Mannato at the EPA address listed below: U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW. (EN–397F), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Alfonse Mannato, (202) 382–2640.

SUPPLEMENTARY INFORMATION:

I. Introduction

This notice describes EPA's proposed guidelines for oxygenated gasoline credit programs, as required under section 211(m)(5) of the Act. The remainder of this preamble is divided into two parts. Section II provides the background for this proposed action, with respect to chronology and broad issues involved. Section III presents EPA's proposed action and rationale.

II. Background

Motor vehicles are significant contributors of carbon monoxide emissions. An important measure toward reducing these emissions is the use of oxygenates in gasoline used by motor vehicles. By adding oxygenates to gasoline, the combustion process is more efficient, and exhaust emissions of carbon monoxide are reduced.

Section 211(m) of the Act requires states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more, based on data for the two year period of 1988 and 1989, to submit revisions to their State Implementation Plan (SIP). The revisions for those areas must require oxygenated gasoline with an average oxygen content of 2.7% by weight subject to a testing tolerance established by the Administrator. This minimum oxygen content requirement applies during the portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. The length of the control period is to be established by the Administrator and shall not be less than four months in length unless a State can demonstrate, based on meteorological conditions, that a reduced period will assure that there will be no carbon monoxide exceedances outside of such period. These requirements are to cover all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located. Proposed determinations of control periods appear in an additional **Federal Register** notice published separately today.

The Act requires that the Administrator promulgate guidelines allowing for the use of marketable oxygen credits from gasolines with higher oxygen content than required to offset the sale or use of gasoline with a lower oxygen content than required. The oxygen credits may not be transferred between nonattainment areas but instead may be used only in the area in which they were created.

This notice proposes guidelines for state oxygenated gasoline credit programs. The guidelines include an enforcement scheme with responsibilities and liabilities of various parties involved in the oxygenated gasoline industry.

In two separate notices published today, EPA's presents its proposed guidance for determination of the applicable minimum control periods and proposes Federal labeling regulations for retail fuel dispensing systems.

This notice provides EPA's proposed guidance to states regarding credit programs employed in oxygenated gasoline programs, under section 211(m) of the Act. This guidance is a general statement of policy. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made applying the law, applicable regulations and guidelines on the basis of specific facts and actu l action.

To expedite Agency decisions in particular cases, a state submitting a State Implementation Plan revision which includes an oxygenated gasoline credit program should identify all areas where the state program differs from these guidelines, and provide as detailed an explanation as possible for these differences. For example, this explanation could include, but need not be limited to, an explanation of any circumstances unique to the state or localities involved.

EPA is aware that the gasoline production and distribution industry extends to all areas of the country, crossing state borders in an intricate, nationwide web of commerce. At the same time, the oxygenated gasoline programs required by the Act are centered around a limited number of carbon monoxide nonattainment areas and their surrounding CMSA or MSA. State-based oxygenated gasoline credit programs should be structured in a way that assures their successful implementation, to the greatest extent possible, cognizant of the limits of state authority over a nationwide production and marketing structure. EPA specifically invites comments on whether or not states can successfully implement and enforce credit programs based on the proposed guidelines. If possible, specific problems involving the exercise of state authority should be identified, along with any suggested modifications or alternatives to the proposed guidelines.

It has been suggested by some parties that the states should be permitted to delegate enforcement of oxygenated gasoline credit programs to EPA. Comments are requested on this issue.

Regulatory Negotiation

EPA has utilized the Regulatory Negotiation process in the development of these proposed guidelines. On February 8, 1991, EPA announced its intent to form an advisory committee to negotiate guidelines and proposed regulations implementing the clean fuels

provisions of section 211 (k) and (m) of the Act.[1] A public meeting was held on February 21–22, 1991 in Washington, DC and, after considering comments submitted in response to the notice and the results of that public meeting, a Negotiated Rulemaking Advisory Committee was established on March 13, 1991.[2] Please refer to those notices for a detailed discussion of the issues considered appropriate for negotiation by the Advisory Committee, as well as information on the requirements of the regulatory negotiation process.

Several meetings have been held prior to the publication of this notice. On March 14–15, 1991, and May 1, 1991, and May 13–14, 1991 the Advisory Committee met to discuss the issues in this notice along with other related issues. Between the two meetings there were several meetings of workgroups of the Advisory Committee.

The proposed guidelines that appear in this notice represent options presently being discussed by the Advisory Committee and do not represent a consensus on the part of Committee members. EPA invites comment on the approaches set forth in this notice as well as any other approaches considered relevant.

Summary of the Guidelines

The EPA is proposing guidelines for credit programs employed in state oxygenated gasoline programs, in which marketable credits would be generated by oxygenated gasoline which contains more oxygen than the minimum that is required.

The credit program guidelines proposed by EPA are designed to ensure that all gasoline sold or dispensed in the control area, on the average, meets or exceeds the minimum oxygen content required under section 211(m). In developing these guidelines many issues have to be confronted, e.g. what time period should oxygen content be averaged over? Should there be a minimum oxygen content, and if so at what oxygen content? What requirements should be placed on parties other than the parties required to meet the average? Analysis of these and many related issues, in the context of the regulatory negotiation discussed above, leads EPA to propose the following guidelines for such credit programs.

An averaging program that required all parties, from refiners to retailers, to be responsible to average the oxygen content of the gasoline they make or distribute is both unworkable and unnecessary. Instead, discussions during the regulatory negotiation focused on averaging at the gasoline terminal level. Typically gasoline is sold or dispensed from these terminals into trucks, for shipment to retail stations, or transferred in bulk to other terminals. Requiring averaging at the terminal level, plus averaging for any oxygenate blending conducted in trucks at the terminal or at remote locations, should result in all the gasoline at the retail level, in a control area, meeting the minimum oxygen content on the average. EPA's guidelines adopt this approach. It takes advantage of the central nature of terminals in the gasoline distribution system to maximize the success of a credit program while minimizing its burdens, both on the regulated community and the governmental bodies involved.

It is necessary to determine what party is responsible for complying with the minimum 2.7 percent oxygen by weight standard on the average, over the designated averaging period. This party will be referred to as the control area responsible party (CAR). The responsibilities of the CAR are discussed more fully below.

At the terminals, the CAR would be the person who owns the gasoline sold or dispensed from a control area terminal into a truck.[3] In addition, persons who blend oxygenates into gasoline intended for use in any control area subsequent to its transfer into a truck are also CARs, called Blender CARs.

The volume and oxygen content of all gasoline entering into a terminal must be provided to the CAR. Based on this and other information, the CAR must keep a running weighted average of the gasoline they transfer by control area.[4] Gasoline that is transferred in bulk becomes the responsibility of the CAR to whom it is transferred, and is removed from the averaging calculations of the CAR who transferred the gasoline. At the end of the averaging period, the average oxygen content of all gasoline distributed by the CAR to trucks destined for each separate control area is calculated. If the average oxygen content is greater than or equal to the required minimum, then compliance has been demonstrated. Credits are created if the average is greater than the required minimum. If the average oxygen content is less than the required minimum, then credits are needed to meet the average. Blender CARs would be responsible for a similar averaging process.

The averaging program proposed in this notice is similar to the type of program used by EPA in the lead phasedown gasoline program. To comply with the oxygenated gasoline program, control area responsible parties must, at a minimum, achieve the sales-weighted average oxygen content over a specified time period. This can be done either by always selling each gallon of fuel with an oxygen content at or above the requisite value, or by adjusting the quantities and types of fuel sold over the averaging period either directly or through obtaining credits from another regulated party within the control period to attain the requisite value. There is no intended prohibition or limitation on the ability of third party brokers to facilitate the purchase and sale of credits. However, credits should be used to achieve compliance only if such credits were properly created, regardless of the good faith of the transferee. Improperly created credits include those which are the result of any transferror having a zero or negative credit balance at the conclusion of any averaging period. Where any credit transferror has in its balance both credits which were properly created and those which are improperly created, the properly created credits should be applied first to the transfers before the transferror may apply any credits to achieve its own compliance.

Another issue is whether persons other than CARs may purchase, sell, or own credits, i.e., whether to allow "credit brokers." The advantages to allowing credit brokers is that the market in credits would be made more flexible and fluid, and credit purchasers and sellers could have anonymity if they wished. A possible disadvantage to allowing credit brokers is that brokers may not be as well established in the industry as CARs would be, which may result in some brokers having a reduced sense of responsibility for program requirements. If brokers were allowed, they would be required to register with the state as brokers in advance of any credit transactions. Additional controls also may be appropriate, including requiring, in addition to end-of-averaging period reports, that brokers inform the state of credit transfers when they occur. EPA is seeking comments on the issue of whether brokers should be allowed, and if so, on appropriate controls.

[1] 56 FR 5167 (February 8, 1991).

[2] 56 FR 10522 (March 13, 1991).

[3] Control area terminals would be those terminals at which gasoline intended for use in any control area is sold or dispensed into trucks. The terminal itself need not be physically located in the control area.

[4] The Act requires that an averaging program be conducted separately for each control area, section 211(m)(5).

Although not actually required to achieve the desired air quality results, an averaging program has certain benefits. The principal advantage of this program design is that it entails a minimum of regulatory intrusion into the marketplace. It also appears to retain the maximum degree of marketing flexibility and competition between blending agents. The advantageous aspects of this approach can be further enhanced by allowing suppliers to trade "oxygen credits" among themselves, with a supplier of relatively low oxygen fuels being able to purchase such credits from a supplier of relatively high-oxygen fuel within a nonattainment area.

EPA and various parties have raised a concern about the possibility that non-oxygenated program gasoline may be sold within a control area. Two options are proposed to address this potential problem. The first option requires the use of a marker. Under that option, gasoline which is not destined for use in a control area must contain a marker, and it is a prohibited act for parties downstream of the terminal in the distribution system to sell or dispense such marked gasoline in a control area. The second option is to establish a minimum oxygen content requirement for all gasoline sold or dispensed within the control area. The minimum content requirement would, in effect, take the place of a marker since all gasoline could be tested for the presence of at least the minimum oxygenate.

CARs are required to register with the state, and to provide reports on each averaging period. Audits must be performed by each CAR as a check on compliance. The proposed guidelines describe the responsibilities of the various parties regarding records, reports and transfer documents, as well as requirements to sample and test the oxygen content of gasoline. Liability for prohibited activities is also included in the proposed guidelines, affecting refiners to retailers, along with defenses to liability.

The proposed credit program guidelines provide that credits must be created on the basis of the oxygen content of the oxygenated gasoline sold in a particular control area, that credits may be used to demonstrate compliance only within the same control area in which they were earned, and that they only be used during the averaging period in which they were created (unless banking were allowed). The averaging periods that have been suggested range from one month to six months.

Another issue which has been raised by some parties concerns the availability of non-oxygenated gasoline which would be blended with ethanol downstream of the refinery. EPA does not anticipate that there will be a problem regarding the availability of non-oxygenated base gasoline, however, comments are requested on whether or not this is likely to be a problem.

III. Proposed Action

Sale of Only Oxygenated Gasoline in a Control Area

Concern has been raised that a cost incentive will exist to cheat by selling less-expensive non-oxygenated gasoline in a control area. There are two options for prohibiting the sale of non-oxygenated gasoline in designated control areas during their control periods. The first option involves the use of a tracer in non-oxygenated gasoline. This option would require that all non-oxygenated gasoline produced nationwide be marked with atracer at any terminal at the time that it is designated for transportation into a non-control area. Any non-oxygenated gasoline intended for use as a blendstock by an oxygenate blender and distributed in a control area would not be marked. Parties downstream from the terminal would be required to conduct programs of quality assurance testing of both non-oxygenated gasoline for the presence of a marker, and of oxygenated gasoline for the absence of a marker as an element of an affirmative defense.

If this option is chosen, then the terminals and parties in the gasoline distribution network downstream of the terminals would be responsible for the requirements regarding the marker. These responsibilities, and the resulting liabilities and defenses for violations which are found, are discussed more fully below. EPA specifically invites comments on the ability of individual states to require a nationwide marking of gasoline through the SIP process.

The second option involves the use of a minimum oxygen content requirement in each gallon of gasoline. This requirement would apply in addition to the averaging requirement. The three oxygen levels that have been suggested are 1.0, 1.5 and 2.0 percent oxygen by weight. The six existing local oxygenated fuels programs rely solely on a minimum content and do not provide for averaging. There are several reasons given for using a minimum content requirement as an adjunct to an averaging program. First, there is less potential variation in the effect of the program on the ambient air quality level on a given day since every gallon of gasoline has at least a certain level of oxygenates. Second, enforcement of the program is somewhat simplified in that samples can readily be taken by states and compared to the requirement. Also, questions of state jurisdiction are simplified, as the focus becomes the oxygenated content of gasoline within the state as compared to the marking on non-oxygenated gasoline on a nationwide basis. Finally, there is less consumer confusion over the level of oxygenate being marketed. The disadvantage of this option is that it limits the production and marketing flexibility of fuel suppliers. Some parties have raised a concern that a minimum may reduce competition between various oxygenating compounds. These effects could result in higher costs.

If the minimum option is chosen, an issue arises as to the need to implement the minimum requirement for some period of time before the beginning of the control period. A regulatory leadtime for the minimum requirement, applied to any party who sells gasoline to a retailer or wholesale purchaser-consumer within a control area, would help to insure that the retailer would be able to meet the minimum oxygen requirements on the first day of the control period. This leadtime, if the option is selected, is proposed to be either one month or five days. Comments are requested on whether a regulatory leadtime is necessary at all, and thus, whether it should be 30, 5 or 0 days.

Comments are requested on the merits of these two approaches, and on whether or not either of these approaches is necessary as a disincentive to selling non-oxygenated gasoline in a control area.

Length of Averaging Period

Shorter averaging periods would limit the likelihood that variations in the oxygen content might result in ambient air quality exceedances. A longer averaging period would give the petroleum industry flexibility in planning for compliance with the required oxygen standard. During the regulatory negotiations discussions, the issue of the length of the averaging period was often discussed in conjunction with the possibility of a minimum oxygen content. Averaging periods that have been suggested range from one to six months.

Comments are specifically requested on the length of the averaging period.

Banking Credits

Some parties have suggested that banking of credits from one averaging period to another should be allowed as a means of permitting further flexibility to the industry. This would allow CARs to use credits in a different period than the one in which they were created,

including a different annual period. Some parties have expressed concern that banking may cause further variations in oxygen content resulting in ambient air quality exceedances. Comments are requested on this issue. In today's notice EPA proposes that if banking is allowed it will be limited to carrying credits over from one averaging period to the next.

Blendstock/Export/Storage Issues

Selling or dispensing non-oxygenated gasoline by any person for use in any control area is prohibited by these proposed guidelines unless (a) such gasoline is segregated from oxygenated gasoline, (b) the documents which accompany such gasoline are clearly marked as "non-oxygenated gasoline, not for sale to ultimate consumer in a control area," and (c) the non-oxygenated gasoline is in fact not sold or dispensed to ultimate consumers, during the control period, in the control area. Under the marker option in these proposed guidelines, gasoline for non-control areas must be marked with a marker and clearly labeled as non-oxygenated gasoline. Under the minimum oxygen content option, gasoline for control areas must contain the required minimum content to avoid enforcement action.

In classifying product, however, some concern has been expressed about blendstock, gasoline which is destined for export, and gasoline in storage. These are petroleum products that are not standard oxygenated gasoline and would not contain a marker, but might have a legitimate presence within a control area.

As a matter of enforcement policy, EPA expects that a state would not hold a party liable for violating product which may arguably meet the regulatory definition of gasoline if the following requirements are met:

1. The product is clearly labeled as blendstock/export/storage and the evidence supports this classification;

2. The accompanying documents clearly state that the product is not intended to comply with the oxygenated gasoline requirements;

3. Some aspect of the product's quality supports the party's claim that the product was intended to be further blended before being sold, supplied, etc. as finished product;

4. The seller, supplier, or transporter of the product has obtained a written certification from the buyer/recipient of the product that the buyer/recipient understands that the product is not intended for sale or distribution as finished gasoline unless or until (a) it is blended to meet the oxygenated gasoline regulatory requirements or (b) the buyer/recipient receives equivalent certification from a subsequent buyer; or obtained a written certification that the gasoline will not be sold for use within a control area; and

5. The party has no knowledge or reason to believe that the product will not be further blended to comply with the regulatory standards before being sold, supplied or transported as finished product, or that it would be sold within a covered area.

Registration

Before the beginning of any control period, any person who will be defined as a control area responsible party (CAR) or blender CAR would be required to register with the state. This registration would be on a form provided by the state, and would contain basic information on the day-to-day operation of the terminal or blending facility from which the CAR operates. A valid registration is a pre-condition for operating as a CAR or blender CAR. This information would be updated no later than 30 days after the previously supplied information became inaccurate.

An issue has been raised as to the appropriate amount of time before the beginning of the control period that the CAR should be required to register. One month has been suggested to give the greatest amount of flexibility to fuel marketers in deciding whether to market in a given area. Three months has also been suggested to give states sufficient time to process the registration requests.

Comments are requested on the appropriate time period.

Specific Responsibilities/Liabilities of Regulated Parties

The oxygenated gasoline credit program guidelines which EPA is proposing imposes responsibilities on persons in the gasoline industry which fall generally into three categories:

Persons who produce or import gasoline (refiners and importers) are responsible for assuring that gasoline is tested and that the documentation that accompanies the gasoline accurately reflects the oxygen content. Liability for violations of these requirements are for the refiner or importer only.

Persons who transport, store or sell gasoline (refiners, importers, blenders, distributors, resellers, retailers, wholesale purchaser-consumers and carriers) are responsible for assuring that only oxygenated gasoline is sold or dispensed for use in control areas. Persons who transport, store, or sell gasoline at the terminal level or downstream from the terminal are responsible for assuring that gasoline represented as non-oxygenated has the required marker if no minimum is used, and that gasoline represented as oxygenated has no marker or alternatively meets the required minimum specification. Persons who transport, store, or sell gasoline at the terminal or upstream from the terminal are responsible for assuring that the oxygenate content, as stated on the accompanying paperwork, is accurate. Liability for violations of these requirements are for the facility where the violation is found, and for all persons upstream from that facility, except in the case of violations associated with the marker or minimum, which stop at the terminal.

CARs and blender CARs are responsible for assuring that the oxygenate content of the oxygenated gasoline they receive, handle or dispense is accurate; for assuring that oxygenated gasoline is in fact sold in the proper control area; and for properly accounting for credits generated, transferred or received; and for assuring that the oxygenated gasoline standard is met on the average for each averaging period.

With respect to those regulatory responsibilities where potential liability exists for parties upstream from the facility found in violation, EPA's proposal includes presumptive liability both for the operator of the facility in violation and for upstream parties. Under this approach, defenses would be available for each party with presumptive liability. This is the scheme which is followed under the federal gasoline lead contamination, volatility, and diesel fuel sulfur content regulations. See 40 CFR 80.23, 80.27 and 80.29.

EPA believes that the principal advantage of the presumptive liability approach is that it would allow identification of the person who caused the violation. EPA is concerned that non-oxygenated gasoline could be mixed with oxygenated gasoline by any person in the gasoline distribution network, and that it would be difficult or impossible for the state to identify the person responsible for causing this violation. In order to address this difficulty, those persons who actually handled the gasoline and who are in the best position to identify the cause of any violation, must have an incentive to be forthcoming with information. EPA believes that a presumptive liability scheme is the most appropriate method of addressing this area. This is a scheme which is familiar both to EPA and to the

industry, and makes the most efficient use of state resources.

For the foregoing reasons, EPA is proposing a liability scheme for the oxygenated gasoline credit program guidance based upon presumptive liability. EPA believes such an approach would be the most effective and equitable method of placing liability upon the party(ies) responsible for causing a violation.

In certain instances the proposed Guidelines impose responsibilities and liabilities on parties physically located outside of states covered by section 211(m), or for activities conducted outside of these states. EPA specifically invites comment on the legal ability of states to regulate these parties or activities, as well as the feasibility of such state regulation. EPA also requests suggested modifications or alternatives to the proposed guidelines if the states subject to section 211(m) cannot lawfully or feasibly implement the guidelines to regulate these parties or activities.

The Control Area Responsible Party

The Control Area Responsible parties (CARs) are those parties subject to the average minimum oxygen content standard. To account for oxygenated gasoline credits, the CAR must know the specific oxygen content of each gallon of oxygenated gasoline delivered to a control area.

EPA is proposing that there be two potential responsible parties. The first would be the person who owns gasoline which is sold or dispensed from a control area terminal, or the CAR. A control area terminal is a facility which is capable of receiving gasoline in bulk, i.e. by pipeline or barge, and at which gasoline which is intended for use in any control area is sold or dispensed into trucks. The second would be the person who owns, leases, operates, control's or supervises a control area oxygenate blending facility or the Blender CAR. A control area oxygenate blending facility is any refinery, independent facility or truck at which gasoline, which is intended for use in any control area, is produced solely through the addition of oxygenate to gasoline, and at which the quality or quantity of gasoline is not altered in any other manner. All CARs and blender CARs will be required to register with the state before being allowed to buy or sell oxygenated gasoline or oxygen credits.

At gasoline terminals which sell or dispense gasoline for use in a control area, the owner of the gasoline which is sold or dispensed is the CAR. The CAR must know the oxygen content of the gasoline it is dispensing or selling in order to account for the credits or debits generated by that gasoline. It is the CAR's responsibility, at the close of every averaging period, to demonstrate compliance with the average 2.7% minimum oxygen content by weight for the total volume of all gasoline sold or dispensed over the course of the entire averaging period.

When any oxygenate is added to gasoline intended for use in the control area, whether at the terminal or at another location, the responsible party is the blender CAR. Non-CAR owners of gasoline are only permitted to sell gasoline in non-control areas, or to sell to registered CARs or blender CARs. Once the blender CAR has obtained the gasoline, it may blend it with oxygenate in order to comply with the average oxygen content standard. It is the blender CAR's responsibility, at the close of every averaging period, to demonstrate compliance with the average 2.7% oxygen content by weight for the total volume of all gasoline sold or dispensed over the course of the entire averaging period.

The responsibilities of a CAR or blender CAR consist generally of accounting for all oxygen content associated with oxygenated gasoline which is dispensed into trucks for delivery in the control area, and for submitting reports to the state at the conclusion of each averaging period showing average oxygen gasoline standards were achieved.

EPA also is proposing that CARs or blender CARs commission an audit to verify the information supplied in the report to the state. This requirement is discussed more fully below.

EPA is proposing that the averaging responsibility be located at the gasoline terminal and at the blender facilities, because as previously described, they represent the last centralized point in the gasoline distribution network before gasoline is transported by truck to a wide variety of retail locations in the control area. Based on its place in the distribution network, EPA expects that compliance with the averaging requirement at terminals and blenders facilities would lead to compliance, on average, by all gasoline dispensed to ultimate consumers in the control area. The centralized nature of these facilities also allows the averaging requirement to apply to a manageable number of identifiable parties, facilitating implementation and enforcement.

Extensive discussions were held at the regulatory negotiation meetings over the proper party at the terminal to hold responsible for averaging. The terminal owner or operator was one option, and another was the owner of the gasoline. EPA is proposing the latter as the CAR—the owner of the gasoline at a control area terminal. This reflects EPA's opinion that the owner of the gasoline is in the best position to exercise control over the oxygen content of the gasoline. At the same time, EPA is proposing that terminal owners and operators may not accept gasoline into the terminal unless the proper documentation accompanies it containing information such as oxygen content and volume. This is designed to assure that the information needed to conduct averaging is available to the CAR or blender CAR. The terminal owner or operator would also be responsible for conducting a quality assurance program to verify the accuracy of such information.

Audits

EPA is proposing that, as a part of its periodic report to the state showing compliance with the oxygenated gasoline credit program, each CAR or blender CAR will commission an audit of the information which forms the basis of the periodic report. These audits are not intended as a substitute for enforcement audits conducted by the state, but are intended to serve as a means of improving compliance with the oxygenated gasoline program by identifying problem areas to the regulated parties. Such audits also assure the regulated parties that the records on which they base periodic reports will be reviewed and cross checked for accuracy by a third party (as well as possibly by the state); will lead to the correction of simple arithmetic errors; will aid in correcting misconceptions about regulatory requirements; and generally will deter the making of false reports.

An issue has been raised as to whether these audits should be conducted by independent auditors or merely by certified auditors who may be an employee of the CAR or blender CAR. Independent CPA's would not be directly employed by the CAR or blender CAR and may ensure the integrity of the audit. It has been suggested that by having the audit done by a CPA, the benefits are achieved whether or not the auditor is independent from the CAR or blender CAR and that this option would be less costly.

Comments are requested on this issue.

EPA is proposing that audits be conducted at the end of the annual control period, or every 6 months, whichever is shorter, with the report submitted to the state by the auditor

within 60 days following the end of the period of the audit. Submission of the auditor's report is required, and failure to do so will constitute a reporting violation by the CAR or blender CAR. EPA intends to develop standardized forms for the audit and procedures on conducting the audit and preparing the audit report. EPA believes that the costs to a regulated party of the audit will be reduced through the use of standardized forms and procedures.

EPA has experience in auditing the records of refiners, importers, and terminal operators. EPA recognizes that each CAR or blender CAR has a unique system of accounting and operating controls, and believes that auditors generally should be free to design an audit program to test the reports and required records to the extent required in each individual case. In order to maintain consistency within the audit process, however, EPA suggests the following credentials for the auditors to be chosen by the regulated parties, and provides the following minimum audit guidelines to be followed in each audit.

(1) *Credentials of Auditors.* The proposed guidelines require that the audits will be conducted by Certified Public Accountants and that audits are to be conducted in accordance with Generally Accepted Auditing Standards ("GAAS"). GAAS' first General Standard requires that "The examination is to be performed by a person or persons having adequate technical training and proficiency as an auditor."

EPA's proposed guidelines, in stating that the audits will be performed in conformity with GAAS, anticipate that the auditors will perform all of the required auditing procedures; including audit planning, review of internal administrative and operating controls, and other required procedures. EPA also expects that the auditor will document the audit procedures and findings within audit working papers, as required by GAAS.

(2) *Audit Guidelines in General.* The proposed guidelines contain a listing of the general types of standard industry records which are required to be included in the auditor's review and analysis procedures. While the auditor, using his professional judgment, should devise audit procedures to correspond with the facts of each individual audit, review internal accounting, operating and administrative controls, and determine the extent of testing required, EPA believes that certain procedures should be conducted during each audit.

Audits of all regulated parties should include a comprehensive review of the systems and procedures employed to assure compliance with the guidelines. Such review should include a review of the administrative, operating, and accounting controls established by the company. The documentation to be reviewed and audit procedures would include reviewing the CAR's or blender CAR's Quality Assurance Program required by the guidelines. This review should be performed, prior to initiating any other detailed auditing procedures, by staff with significant experience in evaluating operating and technical procedures.

(3) *Audit Guidelines for Control Area Responsible Parties.* An audit of a control area responsible party shall include the review and analysis of the following:

1. Records which show the quantity and content of oxygenated gasoline entering the terminal and leaving the terminal in bulk;
2. Records which show the destination, quantity and content of truck loads of oxygenated gasoline going to specific control areas;
3. Records which show the oxygen content of gasoline in storage tanks from which trucks are loaded, and the calculations which formed the basis for claimed oxygen content;
4. Testing results for storage tanks when additional gasoline is added;
5. Records showing the oxygenate type and amount which was blended.
6. Records which show the beginning and ending inventories and oxygen contents of all gasoline and oxygenate storage tanks involved in the oxygenated gasoline program.

Relevant Records: Terminal operators normally prepare daily operations summaries for the volumes of each tank's inventory balances (beginning and ending), transfers in and transfers out. Daily reports are supported by pipeline meter tickets, truck tickets, and tank gauging reports. These daily reports are then summarized by month, or quarter.

The chemical characteristics of the product stored or moved into or out of each tank are based on periodic laboratory analysis. In order to comply with the proposed guidelines, the laboratory reports, or summaries thereof, currently being used must be revised to document more fully the oxygen content of the oxygenated gasoline, to provide a method of averaging these characteristics. The exact form of the detailed or summary reports is not yet known, but the prudent terminal operator will likely perform computer analysis and summarization of the data. These reports will also be the basis for calculating compliance with the oxygen standard, and determining the amount of credits generated or required.

Special circumstances for terminals will likely require special data to be collected in order for the CAR or blender CAR to demonstrate compliance, credit generation, or debit generation. Each CAR or blender CAR is responsible for assuring that such data is available.

The auditor should prove and reconcile total reported receipts, bulk transfers, and deliveries to trucks with internal monthly and daily reports. Accumulation of the daily amounts to monthly totals should be tested. All volumes should be temperature adjusted to 60 degrees fahrenheit. The primary audit test should be a test for overstatement of volumes. The auditor should verify the classification of products by reference to other available operational or accounting reports of product storage. The auditor should determine the procedures used for "cut-off" at the end of each month and perform any other tests considered necessary to verify the proper volumes reported.

The auditor should obtain special laboratory analysis, detailed reports and averaging summaries, and prove the arithmetic accuracy thereof. The auditor should select a representative sample from laboratory analysis reports of oxygenated gasoline receipts and deliveries for detailed examination. The auditor should examine the laboratory reports for accuracy and reasonableness. Comparisons of company laboratory reports should be made with reports of independent petroleum laboratories. Independent calculations of credit accounting should be made, and the amount of credits earned or required should be verified. The auditor should select a representative sample from bulk and truck delivery records. Detailed verification of the sample items should be performed by reviewing pipeline tickets, truck tickets, rack tickets, etc. The auditor should verify that the required transfer and distributors' certification procedures have been adhered to. Tank segregation and data regarding the specific control area served by the terminal should be compared to delivery documentation.

The auditor should also verify that the requirements concerning the transfer of credits have been adhered to. This will entail the review of all records which show the credit transfers to or from the CAR or blender CAR. These records may include, but not be limited to, contracts, letter agreements, invoices, or other documentation evidencing the

transfer of credits. The auditor should examine contracts or other evidence of the transfer of credits to or from the facility and confirm that they were transferred in accordance with the existing program requirements.

(4) *Type and Form of Audit Report and Opinion.* The proposed guidelines require that the auditor's report must be on forms provided by the state, and shall consist of information on records reviewed during the audit; relevant regulated personnel; the location of the regulated party's physical plant; examples of calculations performed; and any discrepancies found.

Refiners and Importers

Refiners and importers are responsible for determining the oxygen content of all gasoline produced or imported. This determination must be made separately for each batch of gasoline. The importance of correctly determining the oxygenate content of each batch of gasoline is that this parameter must be known when the gasoline arrives at the control area of its use. The shipping documents which accompany each batch of gasoline down the distribution chain must specify the oxygenate content associated with the gasoline. In this manner, the person who brings the gasoline into the control area of its use knows the oxygenate content for which an accounting must be made.

The program EPA is proposing would include state inspections and audits of gasoline refiners and importers. The purposes of these inspections and audits would be to collect and analyze samples of gasoline stored at the refinery or import facility, to determine if the gasoline has been properly tested and classified. In addition, the states would audit testing records for oxygenated gasoline previously produced or imported for proper classification and oxygen content.

In order that these audits may be conducted, EPA is proposing that refiners and importers be required to retain copies of documents which demonstrate that appropriate sampling and testing was conducted to support claimed oxygen contents. EPA also is proposing that refiners retain copies of documents which describe the purchase or production of oxygenated gasoline as additional support for oxygen content.

These records are to be retained at the refinery or import facility if practicable, or at the business office of the refiner or importer. An issue has been raised as to how long from the date the gasoline was produced or imported records should be kept. Options range from two to five years. A smaller record retention requirement represents less burden to the industry. A longer requirement would provide the state additional time to identify violators. EPA often audited records kept for lead phasedown compliance which were as old as five years.

Comments are requested on this issue.

Where a violation is found at a refinery or an import facility, the refiner or importer would be solely liable. The refiner or importer would have no specified defense where the violation is discovered at that facility, other than to contest the existence of the violation.

EPA is proposing that in cases where gasoline produced or imported by a refiner or importer is found downstream from that party for which the oxygen content of the gasoline is improperly stated, the refiner or importer would be presumptively liable for these violations. The rationale for this presumption was discussed above. Under EPA's proposal, the refiner or importer would be able to avoid liability if it could demonstrate that it did not cause the violation, and test results conducted by the refiner, importer or blender on the gasoline show the proper classification and oxygen content of the gasoline when it left the control of the refiner or importer.

In cases where gasoline which is identified by the corporate, trade or brand name of a gasoline refiner is improperly classified or for which the oxygen content is improperly stated, EPA is proposing that the named refiner be presumptively liable. EPA is proposing that this liability would attach regardless of who actually produced or imported the gasoline (e.g., the named refiner would be presumptively liable even though the gasoline was obtained by the named refiner from another refiner through an exchange agreement). In order to avoid liability in this situation, EPA is proposing that the named refiner must show the following:

(1) Records of test results for the gasoline when it was produced or imported showing the oxygen content; and

(2) The violation was caused by action(s) of someone other than the refiner or its employees or agents; and

(3) The violation was caused by an act in violation of law, or an act of sabotage or vandalism; or

(4) The violation was caused by an act which was in violation of contractual obligation designed to prevent such violations which was imposed by the refiner on the party operating under the refiner's brand name, and despite periodic sampling and testing by the refiner to assure compliance with the contractual obligations; or

(5) The violation was caused by the act of a carrier or other distributor engaged by the refiner for transportation of gasoline but with whom the refiner did not have a contractual relationship, despite efforts by the refiner (such as a periodic sampling and testing) designed to assure that violations do not occur.

This proposed refiner's defense for violations found at branded facilities is closely modeled upon the enforcement schemes followed in the federal gasoline lead contamination, volatility, and diesel fuel sulfur content regulations.

Distributors

EPA is proposing that gasoline distributors should be responsible for ensuring that gasoline sold, transported or stored by a distributor downstream of the terminal is properly characterized as either oxygenated or non-oxygenated gasoline. Distributors would be prohibited from selling, transporting or storing non-oxygenated gasoline which does not have the required concentration of marker present, and from selling, transporting or storing oxygenated gasoline that has greater than a certain concentration of marker present if that option is chosen. Distributors also would be prohibited from selling, storing or transporting non-oxygenated gasoline for use in a control area or from selling gasoline for use in a control area which does not meet the minimum content requirement, if that option is chosen. Distributors are not prohibited from storing non-oxygenated gasoline within the control area as long as it either has the required concentration of marker present if it is intended for sale in a non-control area. If the fuel is intended for sale after the end of the control period in the control area then the storage tank should remain sealed until that time.

EPA is proposing that a distributor downstream of the terminal should be liable for violations of the above requirements found at the distributor's facility. In addition, EPA is proposing that distributors should be liable for such violations found at facilities downstream from the distributor, which could include facilities operated by other distributors, carriers, retailers and/or wholesale purchaser-consumers.

In the case of oxygenated gasoline which is sold, transported, or stored between the refinery import facility and a control area terminal, EPA is proposing that distributors have the additional responsibility of ensuring that this gasoline conforms to the oxygen content which is stated in the paperwork which accompanies the gasoline. In EPA's scheme, distributors would be liable for violations of this requirement found at the distributor's

facility, and for violations found between the distributor and the control area terminal or oxygenate blending facility.

Under EPA's proposal, the distributor upstream of a control area terminal or oxygenate blending facility could avoid liability for the above requirements if it could show: (1) That it or its employees or agents did not cause the violation (e.g., by showing causation elsewhere); (2) possession of documents required to accompanying the gasoline, such as invoices or bills of lading, which contain the information required by paragraph (i) of the Proposed Guidelines; and (3) evidence of a quality assurance sampling and testing program carried out by the distributor to monitor, when appropriate, the oxygen content.

EPA is proposing that when gasoline found at a distributor's facility is improperly classified or the oxygen content is not properly stated in the accompanying paperwork, persons upstream from the distributor would be presumptively liable for these violations. The upstream persons could include refiners, importers, blenders, carriers or distributors, except that liability associated with the non-oxygenated marker or minimum oxygen content would not apply upstream of the control area terminal.

Carriers

Carriers are distinguished from other distributors in that carriers do not take title to the product they store or transport. As a result of this distinction, carriers traditionally have had liability presumptions and defenses which are different from other distributors under federal fuels enforcement schemes (e.g., volatility, unleaded contamination, and diesel sulfur).

There are at least two options for ensuring that oxygenated gasoline transported or stored by carriers conforms to the oxygenated gasoline requirements. One option is to make carriers presumptively liable only for violations detected at the carrier's facility, unless the carrier is able to show that it did not cause the violation. Under this option, carriers would not be presumptively liable for violations found downstream from the carrier's facility, unless EPA is able to show the carrier in fact caused the violation. This is the traditional approach used for carriers.

The second option is to make carriers presumptively liable for violations detected downstream from the carrier. Carriers would be able to avoid liability if they can show they did not cause the violation, and, in addition, show evidence of an affirmative quality assurance program, such as periodic sampling and testing, to ensure that the gasoline they transport or store conforms to the accompanying shipping documents. Under this option, carriers would not be required to sample and test every load or shipment of gasoline, but rather to conduct a periodic quality assurance program. In this manner, carriers would have an opportunity to detect gasoline tendered which does not conform to the shipping documents, to take appropriate steps to correct the documents (or inform the gasoline's recipient of the correct specifications), and to take actions to prevent future errors in documentation. Such future actions could consist of requiring a particular shipper to produce independent test results to support the specifications documented for future gasoline tendered, or in extreme cases, the refusal to accept gasoline from a particular person.

The rationale for the first option is that carriers normally do not alter the quality of the gasoline they transport or store—in fact, the EPA's definition of carrier in 40 CFR part 80 requires that they not alter the quality of the gasoline. Under this argument, carriers only transport or store what they are given, and have no control over the product. This approach was found to be most appropriate in the gasoline volatility program, in part because EPA is able to sample and test gasoline at any point downstream from the carrier to determine if the gasoline conforms to the standard. When violations of the applicable volatility standard are found, EPA normally is able to gather facts sufficient to establish who caused the violation, with the result that future violations are deterred.

EPA believes that quality assurance programs by carriers is appropriate. EPA is proposing, that if the option involving the marking of non-oxygenated gasoline is chosen, that at all points in the distribution network carriers downstream of the terminal should be responsible for monitoring non-oxygen gasoline for the marker and the lack of a marker in oxygenated gasoline. If the minimum oxygen content option is chosen, carriers downstream of the terminal would be responsible for monitoring gasoline for minimum oxygen content. In addition, EPA is proposing that at points upstream from a control area terminal, carriers be required to conduct quality assurance programs regarding the claimed oxygenate content of the gasoline.

EPA is requesting comment on this proposal. In particular, EPA seeks comments on whether carriers should be required to conduct quality assurance programs, and if so, the manner in which this requirement should be structured; whether such programs only should be a portion of the required showing for a carrier to establish a defense where a violation is found at the carrier's facility or downstream from the carrier's facility; or whether quality assurance by carriers should be excluded from the oxygenated gasoline program altogether.

Retailers and Wholesale Purchaser-Consumers

EPA is proposing that retailers and wholesale purchaser-consumers be prohibited from selling or dispensing oxygenated gasoline that has greater than the allowed concentration of marker present or less than the required minimum oxygen, depending on which option is chosen; and from selling or dispensing non-oxygenated gasoline for use in a control area. EPA is proposing that a retailer or wholesale purchaser-consumer should be liable for violations of the above requirements found at a facility operated by this party.

Under various federal fuels enforcement schemes, retailers and wholesale purchaser-consumers have been able to avoid liability by showing they did not cause the violation. EPA's proposal for oxygenated gasoline adds the defense requirement that retailers conduct a quality assurance program of testing for the presence of the non-oxygenated gasoline marker. EPA believes this change is justified by the anticipated ease and low cost of the marker test, and the importance to the program of preventing conventional gasoline use in control areas. If EPA chooses other than an easy, low cost test, it will reconsider this requirement.

EPA is proposing that the quality assurance defense requirement for retailers and wholesale purchaser-consumers be no different from that requirement for other parties. A retailer or wholesale purchaser-consumer in a control area could avoid liability for non-oxygenated gasoline found at its facility by showing it did not cause the violation, that it had possession of documentation required to accompany the gasoline, and by showing evidence it had conducted the screening test for non-oxygenated gasoline marker subsequent to each receipt of gasoline.

EPA is seeking comments on the issues raised by this section, including the necessity for the marker if there is no minimum oxygen requirement per gallon for inspections at retail gasoline stations and wholesale purchaser-consumer facilities.

Product Transfer Documentation

EPA is proposing that on each occasion physical custody or title of gasoline changes hands, other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, that the documents which accompany the transfer include information necessary for the implementation of the oxygenated gasoline program. This information includes the following:

a. The date of the transfer;

b. The name and address of the transferror;

c. The name and address of the transferee;

d. The volume of gasoline which is being transferred;

e. The proper identification of the gasoline as non-oxygenated or oxygenated;

f. The location of the gasoline at the time of the transfer; and

g. For oxygenated gasoline which is in the gasoline distribution network between the refinery or import facility and the control area terminal, the oxygen content of the gasoline, oxygenate volume of the gasoline, and the purity of the oxygenate.

Recordkeeping and Reporting

All persons subject to the average oxygen content standard, i.e. all CARs and blender CARs, would be required to maintain reports containing compliance information. Parties who have selected the option of meeting the standard on a "per gallon" basis would be required to maintain a basic set of information, including volume of shipments bought and sold, volume of oxygenate bought and sold, oxygen content of all gasoline handled, etc. Parties who have selected the option of meeting the standard on an average basis (with or without trading) would be required to maintain more detailed information because of the greater complexities of determining compliance. Information to be recorded would include data on product received by the party, e.g., date, source, type, volume, test results, and sale/supply of product by the party, e.g., date, type, volume, person to whom sold/supplied, and oxygen content. The party would also be required to calculate the average oxygen content of its product based on such information and according to the procedure outlined above. CARs or blender CARs who are engaged in trading oxygen credits during a compliance period would be required to supply additional information in their reports. Such information would include the name and address of the other party in each trade and the quantity of oxygen credits (volume and oxygen content of gasoline) traded. The party selling or otherwise transferring oxygen credits would have to demonstrate how such credits were calculated. The party buying or otherwise receiving oxygen credits would be required to calculate its compliance with the regulatory standard through the use of these credits. Both parties to an oxygen credit trade would have to submit to the state supporting documentation adequate to demonstrate the agreement of the other party to the trade and to transfer the credits during the relevant period for which the trade is reported, e.g., a contract signed by both parties no later than the last day of the compliance period. A purported trade will not be recognized as valid unless both parties report and adequately document it. Several parties have suggested that the relevant period referenced above should be either ten or fifteen days after the close of the averaging period.

Comments are requested as to the appropriate time period for reconciling oxygen credit trades.

Persons who transport or store gasoline in the control area but who are not subject to the averaging standard (e.g., pipelines) are referred to as terminal operators in the guidelines. These terminal operators would also be required to maintain records. These would have to include information on the ownership, volume, and oxygen concentration of gasoline sold, dispensed or transported during each averaging period, and the location (and the specific tank, if known) to which transported. Such reports would provide a partial cross-check on reports submitted by persons subject to the regulatory standard.

All parties subject to these recordkeeping requirements would be required to retain the records for a period of two to five years (see discussion above). Comments are requested on the appropriate lengths of time. They would have to be available for appropriate state review, although they are not required to submit information to the state. For all records, the state would have the authority to determine whether any record should be recognized as meeting regulatory requirements.

The only parties who would be required to send in compliance reports to the state are the CARs and blender CARs. Not later than 30 days after the close of the averaging period, each such party would be required to submit a report to the state, detailing its purchases, shipments, sales, and creditaccounting for the averaging period in question.

Sampling and Testing Methodologies

The sampling methodologies recommended for oxygenated fuels programs are the same as those set forth at 40 CFR part 80, Appendix D, relating to sampling procedures for fuel volatility.

There are two alternative methodologies for oxygenated gasoline which EPA is requesting comments on. The first methodology is the ASTM standard test method for determination of alcohols and MTBE in gasoline by gas chromatography. This test method covers a procedure for determination of methanol, ethanol, isopropanol, n-propanol, isobutanol, sec-butanol, tert-butanol, n-butanol, and methyl tertiary butyl ether (MTBE) in gasoline by gag chromatography. This methodology appears in Appendix B.

Although the Agency is requesting comments on the appropriateness of using this test method, it is not necessarily accepting the ASTM guidance pertaining to data analysis and interpretation. If this methodology is chosen, the Agency would subsequently publish guidance on testing tolerance.

The other alternative methodology was developed by EPA's laboratory in Ann Arbor, Michigan. This methodology is a single column, direct injection gas chromatographic procedure for quantifying the oxygenate content of gasoline. This methodology appears in appendix C.

The Agency requests comments on the relative merits of these two alternative methodologies.

An issue has been raised concerning the ability to accurately determine the oxygen content of gasoline when oxygenates are added by volume (usually downstream from the refinery). This is a concern because, as the specific gravity of the base gasoline varies, the weight fraction of oxygenate (and oxygen) varies for any specific produced oxygenate blend. Hence, two blends of oxygenate could result in differing oxygen weight fractions if the specific gravity of the base gasolines for the two blends differs.

Comments are requested on whether this is a problem and on possible approaches to deal with this issue.

Blending Allowance

The Agency is recommending the use of a blending allowance for the measurement of methyl-tertiary-butyl-ether (MTBE) and tertiary-amyl-methyl-ether (TAME) blends. When shipped through pipelines and stored in tanks, MTBE or TAME may lose some of its oxygenating properties due to dilution

and density. Because "the maximum volume of MTBE or TAME which can be blended into gasoline under EPA's "Substantially Similar" Rule is 2.7 percent by volume, without a discretionary allowance it may prove very difficult for MTBE or TAME blenders to produce fuel which consistently meets the 2.7 percent by volume requirement if they wish to do so. Therefore, this blending tolerance is intended solely for those parties who want to dispense or offer for sale MTBE or TAME blends containing 2.7 percent oxygen by weight.

In order to compensate for the problems associated with dilution and density, the Agency is proposing to exercise discretion in enforcing the maximum MTBE or TAME limit by permitting a blending allowance of +0.2 percent oxygen by weight for MTBE- or TAME-blended gasoline, that is, gasoline containing MTBE or TAME, but no other oxygenates. That is, MTBE or TAME blends containing up to 2.9 percent oxygen by weight will be considered acceptable when detected at any point in the gasoline distribution network. This will allow MTBE or TAME blenders at the refineries to blend slightly higher volumes of MTBE or TAME into their fuel, thereby anticipating and avoiding the potential loss of oxygen in the gasoline intended for sale in an oxygenated gasoline program. A similar blending allowance was announced by EPA in its Federal Implementation Plan for the Maricopa and Pima carbon monoxide nonattainment areas.[5]

Approved Oxygenates

An oxygenate is any substance which, when added to gasoline, increases the amount of oxygen in that gasoline blend. It is unlawful to introduce oxygenated gasoline into commerce unless it is either "substantially similar" to certification fuel, section 211(f)1 of the Act, or permitted under a waiver granted by the Administrator under the authority of section 211(f)(4) of the Act.

Through a series of waivers and interpretive rules, the Agency has determined the allowable limits for oxygenates in unleaded gasoline. The "Substantially Similar" Interpretive Ru1e[6] allows blends of aliphatic alcohols other than methanol and aliphatic ethers, provided the oxygen content does not exceed 2.7 percent by weight. It also provides for blends of methanol up to 0.3 percent by volume exclusive of other oxygenates, and butanol or alcohols of a higher molecular weight up to 2.75 percent by weight.

The following individual waivers pertaining to the use of oxygenates in unleaded gasoline have been issued by the Agency under the authority of section 211(f)(4), and are available for use by all parties.

1. Blends of up to 10% by volume anhydrous ethanol (200 proof) (commonly referred to as the "gasohol" waiver).[7]

2. Blends of methanol and gasoline-grade tertiary butyl alcohol (GTBA) such that the total oxygen content does not exceed 3.5% by weight and the ratio of methancl to GTBA is less than or equal to one. It is also specified that this blended fuel must meet ASTM volatility specifications (commonly referred to as the "ARCO" waiver).[8]

3. Blends of up to 5.0% by volume methanol with a minimum of 2.5% by volume cosolvent alcohols having a carbon number of 4 or less (i.e. ethanol, propanol, butanol, and/or GTBA). The total oxygen must not exceed 3.7% by weight, and the blend must meet ASTM volatility specifications as well as phase separation and alcohol purity specifications (commonly referred to as the "DuPont" waiver).[9]

4. Blends up to 15.0% by volume methyl tertiary butyl ether (MTBE), which must meet the ASTM D48l4 specifications. Blenders must take precautions that the blends are not used as base gasolines for other oxygenated blends (commonly referred to as the "Sun" waiver).[10]

It is the intent of these guidelines that oxygen content be calculated based upon the actual content of oxygen of a blend. That is, the actual content of oxygen in a gasoline blend is determined based upon the volume of the oxygenate, excluding denaturants or other non-oxygen-containing compounds.

Variances

Some parties have suggested during the regulatory negotiation process that EPA address the issue of temporary "variances to cover situations that may make it impossible for a regulated party to comply with the requirements of a state oxygenated gasoline program under section 211(m). Such "variances" would be limited to unforeseen emergencies and "acts of God." Because the oxygenated gasoline programs required under section 211(m) are to be State programs, EPA's legal basis for authorizing these "variances" is not clear. Also, some parties have raised a concern that the granting of a temporary "variance" would result in a competitive and economic advantage to the party receiving the "variance." EPA invites comments on the desirability of, and legal basis for the suggested "variances" and on how to allow "variances" without creating an economic advantage.

IV. Environmental Impact

The sale of oxygenated gasoline reduces carbon monoxide emissions from motor vehicles and thereby helps carbon monoxide nonattainment areas to achieve compliance with the applicable carbon monoxide ambient air quality standard. Oxygenated gasoline is becoming widely recognized as control strategy for reducing carbon monoxide emissions from motor vehicles in a timely and cost-effective manner.

V. Impact on Small Entities

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e. small businesses, small organizations, and small governmental jurisdictions). Today's action is not a rulemaking, therefore no regulatory flexibility analysis has been prepared.

VI. Public Participation

EPA desires full public participation in arriving at final decisions in this guidance development. A public hearing will be held on these proposed guidelines at the time and location listed in the dates section of notice.

All comments received by July 31, 1991 will be considered in EPA's final guidelines. Comments should be directed to Docket A–91–04. All comments will be available for inspection during normal business hours at the EPA office listed in the addresses section of this notice.

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact person listed

[5] 56 FR 5448 (February 11, 1991).

[6] 56 FR 5352 (February 11, 1991).

[7] 44 FR 20777 (April 6, 1979).

[8] 44 FR 10530 (February 21, 1979).

[9] See 50 FR 2615 (January 17, 1985), 51 FR 15064 (April 22, 1986), 51 FR 39800 (October 31, 1986), 52 FR 18736 (May 19, 1987).

[10] FR 33846 (September 1, 1988).

above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to base its decision on a submission labelled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the docket.

Information covered by a claim of confidentiality will be released by EPA only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter who submitted the information.

VII. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. The guidelines proposed today are not regulations, but are nonetheless significant. Because of this significant economic and environmental impact, the Agency is preparing a draft regulatory support document. This document will be placed in the Docket, announced in the **Federal Register**, and made publicly available when it has been completed.

These proposed guidelines were submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291. Any written comments received from OMB and any EPA response to those comments have been placed in the public rulemaking docket.

VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, EPA must obtain clearance from OMB for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. Since the action in this notice is proposed guidance, and does not involve the collection of information by EPA, the Paperwork Reduction Act does not apply to this action.

IX. Statutory Authority

Authority for the action proposed in this notice is granted to EPA by section 211(m) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990.

Dated: June 11, 1991.

William K. Reilly,

Administrator.

Appendix—Oxygenated Gasoline Credit Programs

(a) *Scope.* These guidelines apply to credit programs employed in state oxygenated gasoline programs under section 211(m) of the Clean Air Act, as amended (Act).

(b) *Definitions.*

(1) *Averaging period*—The period of time over which all gasoline sold or dispensed for use in a control area by any control area responsible party must comply with the average oxygen content standard.

(2) *Blender control area responsible party (Blender CAR)*—A person who owns, leases, operates, controls or supervises a control area oxygenate blending facility.

(3) *Carrier*—Any distributor who transports or stores or causes the transportation or storage of gasoline without taking title to or otherwise having any ownership of the gasoline, and without altering either the quality or quantity of the gasoline.

(4) Control area—A geographic area in which only gasoline under the oxygenated gasoline program may be sold or dispensed, with boundaries determined by section 211(m) of the Act.[1]

(5) *Control area oxygenate blending facility*—Any refinery, independent facility or truck at which gasoline, which is intended for use in any control area, is produced solely through the addition of oxygenate to gasoline, and at which the quality or quantity of gasoline is not altered in any other manner.

(6) *Control area responsible party (CAR)*—A person who owns oxygenated gasoline which is sold or dispensed from a control area terminal.

(7) *Control Area Terminal*—A terminal which is capable of receiving gasoline in bulk i.e., by pipeline or barge, and at which gasoline which is intended for use in any control area is sold or dispensed into trucks.

(8) *Control period*—The period during which oxygenated gasoline must be sold and dispensed in any control area, pursuant to section 211(m)(2) of the Act.[2]

(9) *Distributor*—Any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

(10) *Gasoline*—Any fuel sold for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.

(11) *Non-oxygenated gasoline*—Any gasoline which does not meet the definition of oxygenated gasoline.

(12) *Oxygen Content of Gasoline Blends*—Percentage of oxygen by weight contained in a gasoline blend, based upon its percentage oxygenate by volume, excluding denaturants and other non-oxygen-containing components.

(13) *Oxygenate*—Any substance which, when added to gasoline, increases the amount of oxygen in that gasoline blend. Lawful use of any combination of these substances requires that they be "Substantially Similar" under section 211(f)(l) of the Clean Air Act,[3] or be permitted under a waiver granted by the Administrator under the authority of section 211(f)(4) of the Clean Air Act.

(14) *Oxygenate blender*—A person who owns, leases, operates, controls or supervises a control area oxygenate blending facility.

(15) *Oxygenated gasoline*—Any gasoline which has been included in the oxygenated program accounting by a control area responsible party and which is intended for sale or use in any control area, [option: and which contains less than a certain concentration of the marker designated by EPA or which contains the minimum oxygen required.]

(16) *Refiner*—Any person who owns, leases, operates, controls, or supervises a refinery.

(17) *Refinery*—A plant at which gasoline is produced.

(18) *Reseller*—Any person who purchases gasoline identified by the corporate, trade, or brand name of a refiner or a distributor and resells or transfers it to retailers or wholesale purchaser-consumers displaying the refiner's brand, and whose assets or facilities are not substantially owned, leased or controlled by such refiner.

(19) *Retail outlet*—Any establishment at which gasoline is sold or offered for sale to the ultimate consumer for use in motor vehicles.

(20) *Retailer*—Any person who owns, leases, operates, controls or supervises a retail outlet.

(21) *Terminal*—A facility at which gasoline is sold, or dispensed into trucks for transportation to retail outlets or wholesale purchaser-consumer facilities.

(22) *Wholesale purchaser-consumer*—Any organization that is an ultimate consumer of gasoline and which purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that organization.

(c) *Average oxygen content standard.*

(1) All gasoline sold or dispensed during the control period, for use in each control area by each CAR or blender CAR, as defined in paragraph (b) of this appendix, shall be blended for each averaging period to contain an average oxygen content of not less than 2.7% by weight. Oxygen content calculations shall be performed in accordance with paragraph (d).

(2) The averaging period over which all gasoline sold or dispensed in the control area

[1] The boundaries of the control area are noted in a separate **Federal Register** notice published today.

[2] EPA is required to determine the control period, set by section 211(m)(2) of the Act, as that portion of the year in which the area is "Prone to high ambient concentrations of carbon monoxide." In a separate **Federal Register** Notice published today, EPA proposes lengths of the control periods for the different areas covered by section 211(m).

[3] 56 FR 5352 (February 11, 1991).

is to be averaged shall be [a length of time ranging from one month to six months.[4]]

(d) *Sampling, testing and oxygen content calculations.*

(1) For the purpose of determining compliance with the requirements of these guidelines, the oxygen content of gasoline shall be determined by:

(i) Use of one of the sampling methodologies specified in appendix A of this appendix to obtain a representative sample of the gasoline to be tested;

(ii) Use of the testing methodologies specified in appendix [option: B or appendix C] of this appendix to determine the mass concentration of each oxygenate in the gasoline sampled;

(iii) Calculation of the oxygen content of the gasoline sampled by multiplying the mass concentration of each oxygenate in the gasoline sampled by the oxygen molecular weight contribution of the oxygenate set forth in paragraph (b)(2) of this appendix; and

(iv) All volume measurements shall be adjusted to 60 degrees Fahrenheit.

(2) For purposes of these guidelines, the oxygen molecular weight contributions of oxygenates are the following:

TABLE 1

Oxygenate	Oxygen molecular weight contribution
Methanol	0.4993
Ethanol	.3473
Propanols	.2662
Butanols	.2158
Pentanols	.1815
Methyl Tertiary-Butyl Ether (MTBE)	.1815
Hexanols	.1566
Tertiary Amyl Methyl Ether (TAME)	.1566
Ethyl Tertiary-Butyl Ether	.1569

(3) Examples

(i) *Example 1.* Assume that a batch of gasoline is sampled by use of one of the methodologies set forth in appendix A of this appendix and tested by use of the test methodologies set forth in appendix B of this appendix. The gas chromatograph analysis indicates that the gasoline sampled contains an ethanol mass concentration of 9.85% (0.0985). The oxygen content of the gasoline sampled is calculated as follows:

Oxygen Content
= (Ethanol Mass concentration in Gasoline Sample) × (Oxygen Molecular Weight Contribution of Ethanol)
= (0.0985) × (0.3473)
= 0.0342
= 3.42%

(ii) *Example 2.* Assume that a batch of gasoline is sampled by use of one of the methodologies set forth in appendix A of the appendix and tested by use of the methodologies set forth in appendix B of this appendix. The gas chromatograph analysis indicates that the gasoline sampled contains a methanol mass concentration of 4.50% (0.0450) and an ethanol mass concentration of 2.25% (0.0225). The oxygen content of the gasoline sample is calculated as follows:

Oxygen Content
= (Methanol Mass concentration in Gasoline Sample) × (Oxygen Mass Molecular Weight Contribution of Methanol) + (Ethanol Mass Concentration in Gasoline Sample) × (Oxygen Molecular Weight Contribution of Ethanol)
= (0.0450) × (0.4993) + (0.0225) × (0.3473)
= 0.0225 + 0.0078
= 0.0303
= 3.03%

(e) *Alternative compliance options.* Each CAR or blender CAR shall comply with the standard specified in paragraph (c) of this appendix by means of the method set forth in either paragraph (e)(1) or (e)(2) of this appendix.

(1) Compliance calculation on average basis.

(i) To determine compliance with the standard in paragraph (c), the CAR or blender CAR shall, for each averaging period and for each control area:

(A) Calculate the total volume of oxygenated gasoline sold in the control area which is the sum of:

(*1*) The volume of each separate batch or truck load of oxygenated gasoline that is sold;

(*2*) Plus the total volume of oxygenated gasoline associated with purchased credits;

(*3*) Minus the total volume of oxygenated gasoline associated with sold credits.

(B) Calculate the required total content of oxygen by multiplying the total volume of oxygenated gasoline sold times 2.7 percent.

(C) Calculate the actual total content of oxygen which is the sum of:

(*1*) The oxygen content of each batch or truck load of oxygenated gasoline that was sold in the control area times the associated volume of the batch or truckload;

(*2*) Plus the oxygen content times the associated volume of each individual purchase of credits;

(*3*) Minus the oxygen content times the associated volume of each individual credit which was sold.

(D) Compare the actual total content of oxygen with the required total content of oxygen. If the actual total content of oxygen is greater than or equal to the required total content of oxygen, then the standard in paragraph (c) is complied with. If the actual total content of oxygen is less than the allowed total content of oxygen then oxygen credits are required in order to achieve compliance.

(E) In transferring credits, the transferor shall provide the transferee with the volume and oxygen content of the gasoline associated with the credits.

(ii) To determine the oxygen content associated with each batch or truck load of oxygenated gasoline sold into the control area, use the runnmg weighted oxygen content (RWOC) (see (iii) below) of the tank from which the batch or truck load was received at the time the batch or truckload was received. In the case of batches or truckloads of gasoline to which oxygenated is added outside of the terminal storage tank from which it was received, use the weighted average of the RWOC and the volume of the additional oxygenate added.

(iii) Running weighted oxygen content. The RWOC accounts for the volume and oxygen content of all gasoline which enters or leaves the terminal storage tank, and all oxygenates which are added to the tank. The RWOC must be calculated each time gasoline enters or leaves the tank or whenever oxygenates are added to the tank. The RWOC is calculated weighing the following:

(A) The volume and oxygen content of the gasoline in the storage tank at the beginning of the averaging period;

(B) The volume and oxygen content of gasoline entering the storage tank;

(C) The volume and oxygen content of gasoline leaving the storage tank;

(D) The volume, type and oxygen content of the oxygenates added to the storage tank.

(iv) Credit transfers. Credits may be used in the compliance calculation in (A), provided that:

(A) The credits are generated in the same control area as they are used, i.e., no credits may be transferred between nonattainment areas;

(B) The credits are generated in the same averaging period as they are used, or, during the preceding averaging period if banking is allowed;

(C) The credit transfer agreement is made no later than [the final day, or 10 or 15 days after the final day] of the averaging period in which the credits are generated; and

(D) The credits are properly created.

(v) Improperly created credits.

(A) No party may transfer any credits to the extent such a transfer would result in the transferor having a negative credit balance at the conclusion of the averaging period for which the credits were transferred. Any credits transferred in violation of this paragraph are improperly created credits.

(B) In the case of credits which were improperly created, the following provisions apply:

(*1*) Improperly created credits may not be used to achieve compliance, regardless of a credit transferee's good faith belief that it was receiving valid credits;

(2) The transfer of credits in violation of (e)(1)(v)(A) of this appendix constitutes a violation of these requirements, for which the transferor will be deemed to be in violation; and

(*3*) Where any credits are transferred in violation of (e)(1)(v)(A) of this appendix, the transferor's properly-created credits will be applied first to any credit transfers before the transferor may apply any credits to achieve its own compliance.

(2) Compliance calculation on per gallon basis. Each gallon of gasoline sold or dispensed by a CAR or blender CAR for use within each control area during the averaging period as defined in paragraph (c) shall have an oxygen content of at least 2.7% by weight. In addition, the CAR or blender CAR opting for this alternative method of compliance is prohibited from selling oxygen credits.

[4] As noted in the preamble to these proposed guidelines, several averaging periods are being considered.

(f) *Marking gasoline.*[5]

(1) Any gasoline which is intended for use outside of any control area as defined in paragraph (b) and which contains less than 2.7% oxygen by weight must contain more than a certain concentration of the marker designated by EPA. This marker must be added to the gasoline shipment before it is sold or dispensed from the terminal or control area terminal. It shall be added by the CAR or Blender CAR.

(2) Every refiner or importer must determine the oxygen content of each gallon of gasoline produced by use of one of the methodologies in appendix A. This determination shall include the percent oxygenate by weight and the type of oxygenate, purity, and percent by volume.

(g) *Minimum oxygen content.*[6]

(1) Any gasoline which is sold or dispensed by a CAR or a blender CAR to a retailer or wholesale purchaser-consumer located within a control area, as defined in paragraph (b), shall contain not less than [OPTIONS: 1.0%, 1.5% or 2.0%] oxygen by weight. This requirement shall apply [OPTIONS: 0 or 5 days, one month] prior to and during the applicable control period.

(2) Any gasoline which is sold or dispensed to an ultimate consumer within a control area, as defined in paragraph (b), shall contain not less than [OPTIONS: 1.0%, 1.5% or 2.0%] oxygen by weight. This requirement shall apply during the entire applicable control period.

(3) Every refiner or importer must determine the oxygen content of each gallon of gasoline produced by use of one of the methodologies in Appendix A. This determination shall include the percent oxygenate by weight and the type of oxygenate, purity, and percent by volume.

(h) *Registration.*

(1) [OPTIONS: Either one or three] months in advance of any control period in which a person will meet the definition of CAR or blender CAR, such person shall petition for registration as a CAR or blender CAR in each state that the person intends to serve. This petition for registration shall be on forms prescribed by the state, and shall include the following information:

(i) The name and business address of the control area responsible party;

(ii) The address and physical location of each of the control area terminals from which the control area responsible party operates;

(iii) The address and physical location of each control area oxygenate blender facility which is owned, leased, operated, controlled or supervised by a blender CAR; and

(iv) The address and physical location where documents which are required to be retained by these guidelines will be kept by the control area responsible party.

(2) Within thirty days of any occasion when the registration information previously supplied by a control area responsible party becomes incomplete or inaccurate, the CAR or blender CAR shall submit updated registration information to the state.

(3) No party shall participate in the averaging program under paragraph (e) of these guidelines as a CAR or blender CAR until it has been notified by the state that it has been registered as a CAR or blender CAR. Registration by a state shall be valid for the time period specified by the state. The state shall issue each CAR or blender CAR a unique identification number.

(i) *Recordkeeping and reporting.*

(1) *Records.* All parties in the gasoline distribution network, as described below, shall maintain records containing compliance information as required below. These records shall be retained by the regulated parties for a period of [OPTIONS: either two, three or five] years.

(i) *Refiners and Importers.* Refiners and importers shall, for each separate quantity of gasoline produced or imported, maintain records containing the following information:

(A) Results of the tests utilized to determine the types of oxygenates and percentage by volume;

(B) Oxygen content;

(C) Volume; and

(D) Name and address of the party to whom each separate quantity of gasoline was sold or transferred.

(ii) *Terminal operators.* Persons who own, lease, operate or control gasoline terminals shall maintain records containing the following information for each batch of gasoline handled:

(A) Owner of the gasoline;

(B) Total volume of gasoline;

(C) Oxygen content; and

(D) The results of any quality assurance tests performed.

(iii) *Control area terminal owners.* Control area terminal owners shall maintain records containing the following information:

(A) Volume of each batch or truckload of gasoline going into or out of the terminal;

(B) For all batches or truckloads of gasoline leaving the terminal, the RWOC of the batch or truckload;

(C) Type of oxygenate, purity, and percentage by volume if available;

(D) Oxygen content of all batches or truckloads received at the terminal;

(E) Identification of each batch or truckload receiving the marker;

(F) Destination of each tank truck sale or batch of gasoline, that is, whether it was within a control area or not;

(G) The name and address of the party to whom the gasoline was sold or transferred and the date of the sale or transfer; and

(H) Results of the tests for oxygenates, if performed, of each sale or transfer, and who performed the tests.

(iv) *CARs and blender CARs.* CARs and blenders CARs must maintain records containing the information listed in paragraph (iii) above, plus the following information:

(A) CAR or blender CAR identification number.

(B) Records supporting and demonstrating compliance with the averaging standard listed in paragraph (c) of these guidelines.

(C) For any credits bought, sold, traded or transferred, the dates of the transactions, the names, addresses and CAR or blender CAR numbers of the CARs or blender CARs involved in the individual transactions, and the amount of credits (oxygen content and volume of gasoline) transferred.

(D) The name and address of the accounting firm [OPTION: or internal auditor], and the results of the self-audit conducted pursuant to paragraph (k) of this appendix.

(E) The name and address of the person from whom each shipment of gasoline was received, and the dates when they were received.

(F) Data on each shipment of gasoline received, including:

(1) The volume of each shipment;

(2) Type of oxygenate, purity, and percentage by volume;

(3) Oxygen content; and

(4) Presence of marker.

(G) The volume of each receipt of bulk oxygenates.

(H) The name and address of the parties from whom bulk oxygenate was received.

(I) Date and destination of each sale of gasoline, that is, whether it was intended for use within a control area or not.

(J) Data on each shipment of gasoline sold or dispensed including:

(1) The volume of each shipment.

(2) Type of oxygenate, purity, and percentage by volume;

(3) Oxygen content; and

(4) Presence of marker.

(K) Documentation of the results of all tests done regarding the oxygen content of gasoline.

(L) The names, addresses and CAR or blender CAR identification numbers of the parties to whom any gasoline was sold or dispensed, and the dates of these transactions.

(M) For any credits bought, sold, traded or transferred, the dates of the transactions, the names, addresses and CAR or blender CAR identification number of the CARs or blender CARs involved in the individual transactions and the amount of credits transferred.

(v) *Retailers, wholesale purchaser-consumers, resellers, carriers, and distributors.* Retailers and wholesale purchaser consumers within a control area must maintain the following records:

(A) The names, addresses and CAR or blender CAR identification numbers of the parties from whom all shipments of gasoline were purchased, and the dates when they were received;

(B) Data on every shipment of gasoline bought, sold or transported, including:

(1) Volume of each shipment;

(2) Type of oxygenate, purity, and percentage by volume;

(3) Oxygen content; and

(4) Results of each test for the presence of a marker.

(2) *Reports.*

(i) CARs or blender CARs shall submit a report for each averaging period as defined in paragraph (c) reflecting the compliance information detailed in paragraph (i) of these guidelines. Reports are due on the 30th day of each month following the averaging period for which the information is required. These

[5] With a minimum oxygen content, this paragraph would be deleted including all other references to markers in these guidelines.

[6] If no minimum oxygen content is used, this paragraph would be deleted including all other references to minimum oxygen content in the guidelines.

reports shall be filed using forms provided by the state.

(ii) CARs or blender CARs shall also submit audit reports as required by paragraph (k) of these guidelines. Audits are to be conducted at the end of the control period, or every 6 months, whichever is shorter. The audit report is to be submitted to the state by the auditor within 60 days following the end of the quarter.

(3) *Transfer Documents.* Each time that physical custody or title of gasoline changes hands other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, the transferor shall provide to the transferee, in addition to normal bills of lading, invoices, etc., a document containing information on that shipment. This document shall accompany every shipment of gasoline after it has been dispensed by a terminal. The document shall legibly and conspicuously contain the following information:

(i) The date of the transfer;

(ii) The name, address, and CAR or blender CAR identification number, if applicable, of the transferor;

(iii) The name, address and CAR or blender CAR identification number, if applicable of the transferee;

(iv) The volume of gasoline which is being transferred;

(v) The proper identification of the gasoline as non-oxygenated or oxygenated;

(vi) The location of the gasoline at the time of the transfer; and

(vii) For oxygenated gasoline which is in the gasoline distribution network between the refinery or import facility and the covered area terminal, the oxygen content of the gasoline.

(j) *Prohibited activities.*

(1) During the control period, no refiner, importer, oxygenate blender, carrier, distributor or reseller may manufacture, sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transportation of:

(i) Gasoline represented as non-oxygenated which does not meet the definition of non-oxygenated gasoline [OPTION: or gasoline represented as oxygenated which does not contain at least 1.0%, 1.5% or 2.0% oxygen by weight.]; or

(ii) Gasoline represented as oxygenated which does not meet the definition of oxygenated gasoline, or which has an oxygen content which is not properly stated in the documents which accompany such gasoline.

(2) No retailer or wholesale purchaser-consumer may conduct the activities specified in (j)(1) in a CO nonattainment area subject to the requirements of section 211(m) of the Act.

(3) No person may operate as CAR or blender CAR or hold themselves out as such unless they have been properly registered by the state(s) involved. No CAR or blender may sell or dispense gasoline for use in a control area unless the average oxygen content of the gasoline during the averaging period meets the standard established in paragraph (c) of these guidelines.

(4) For terminals which sell or dispense gasoline intended for use in a control area during the control period, the terminal owner or operator may not accept gasoline into the terminal unless:

(i) Transfer documentation accompanies it containing the information specified in paragraph (h)(3); and

(ii) The terminal owner or operator conducts a quality assurance program to verify the accuracy of this information.

(5) No person may sell or dispense non-oxygenated gasoline for use in any control area during the control period unless:

(i) The non-oxygenated gasoline is segregated from oxygenated gasoline;

(ii) Clearly marked documents accompany the non-oxygenated gasoline marking it as "non-oxygenated gasoline, not for sale to ultimate consumer in a control area", and

(iii) The non-oxygenated gasoline is in fact not sold or dispensed to ultimate consumers, during the control period, in the control area.

(6) No named person may fail to comply with the recordkeeping and reporting requirements contained in paragraph (i) of this appendix.

(7) No person may sell, dispense or transfer oxygenated gasoline, except for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, without transfer documents which accurately contain the information required by section (i)(3).

(8) Liability for violations of the prohibited activities.

(i) Where the gasoline contained in any storage tank at any facility owned, leased, operated, controlled or supervised by any retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer, or oxygenate blender is found in violation of the prohibitions described in paragraph (j)(1)(i) of this appendix, the following persons shall be deemed in violation:

(A) The retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer, or oxygenate blender who owns, leases, operates, controls or supervises the facility where the violation is found; and

(B) Each oxygenate blender, distributor, reseller, and carrier who, downstream of the control area terminal, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.

(ii) Where the gasoline contained in any storage tank at any facility owned, leased, operated, controlled or supervised by any retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer, or oxygenate blender is found in violation of the prohibitions described in paragraph (j)(1)(ii) of this appendix, the following persons shall be deemed in violation:

(A) The retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer, or oxygenate blender who owns, leases, operates, controls or supervises the facility where the violation is found; and

(B) Each refiner, importer, oxygenate blender, distributor, reseller, and carrier who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.

(9) Defenses for prohibited activities.

(i) In any case in which a refiner, importer, oxygenate blender, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer would be in violation under paragraph (b), it shall be deemed not in violation if it can demonstrate:

(A) That the violation was not caused by the regulated party or its employee or agent;

(B) Documents which accompany the gasoline, which contain the information required by paragraph (i); and

(C) A quality assurance sampling and testing program carried out by the regulated party, as described in (j)(8).

(ii) Where a violation is found at a facility which is operating under the corporate, trade or brand name of a refiner, that refiner must show, in addition to the defense elements required by paragraph (j)(7)(i), that the violation was caused by:

(A) An act in violation of law (other than the Act or this part), or an act of sabotage or vandalism; or

(B) The action of any reseller, distributor, oxygenate blender, carrier, or a retailer or wholesale purchaser-consumer which is supplied by any of the persons listed above in paragraph (j)(5)(i), in violation of a contractual undertaking imposed by the refiner designed to prevent such action, and despite periodic sampling and testing by the refiner to ensure compliance with such contractual obligation; or

(C) The action of any carrier or other distributor not subject to a contract with the refiner but engaged by the refiner for transportation of gasoline, despite specification or inspection of procedures and equipment by the refiner which are reasonably calculated to prevent such action.

(iii) In paragraph (j)(9) of this appendix, the term "was caused" means that the party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(10) Quality Assurance Program.

(i) In order to demonstrate an acceptable quality assurance program, a party must present evidence:

(A) That it has conducted screen tests for the presence of the non-oxygenated gasoline marker, as designated by the Agency, subsequent to each receipt of gasoline, which are reflected in documents which state the results of the tests; and

(B) That the party's screen test results were consistent with all product transfer documents; and

(C) That on each occasion when the non-oxygenated gasoline marker was found in gasoline represented to be intended for sale in a control area, or no marker was found in gasoline intended for sale in a non-control area:

(1) The party immediately ceased selling, offering for sale, dispensing, supplying, offering for supply, storing, transporting, or causing the transportation of the violating product;

(2) The product was tested by an independent laboratory to confirm the presence or absence of the marker; and

(3) If the lab test results showed that the gasoline contained an improper concentration of the marker for the category of gasoline, the party promptly remedied the violation (such as by removing the violating product or adding more complying product until the proper concentration of the marker is achieved); or

(4) If, on the basis of the lab test results, the gasoline is found not to be in violation, the party may treat the gasoline as complying product.

(ii) In addition to the requirements of paragraph (i), an acceptable quality assurance program for oxygenated gasoline which is in the gasoline distribution network between the gasoline refiner and the covered area terminal, must include periodic sampling and testing to determine if the oxygenated gasoline has oxygen content which are consistent with the product transfer documentation.

(k) Certified [OPTION: or Independent] audits.

(1) An independent audit shall consist of a review of the information used by a party to prepare required reports to the state, for accuracy, completeness, and conformance with regulatory requirements.

(2) A certified audit shall be conducted by a Certified Public Accountant.

[OPTION: (2) An independent audit shall be conducted by a Certified Public Accountant who is not an employee of the regulated party.]

(3) Auditors are required to exercise due diligence in conducting the audit in accordance with generally accepted auditing standards. The auditor also is required to comply with the general code of conduct and ethics as prescribed by the State in which they are licensed and the American Institute of Certified Public Accountants.

(4) An independent audit conducted of a covered area responsible party shall include the review and analysis of the following:

(i) Records which show the quantity and oxygen content of gasoline entering the terminal and leaving terminal in bulk;

(ii) Records which show the destination, quantity and oxygen content of truck loads of oxygenated gasoline going to specific covered areas;

(iii) Records which show the oxygen content of gasoline in storage tanks from which trucks are loaded, and the calculations which formed the basis for claimed characteristics;

(iv) Testing results for storage tanks when additional gasoline is added; and

(v) Records showing the oxygenate type and amount which was blended;

(5) The auditor's report shall consist of the following items:

(i) A description and the location of all records reviewed during the audit;

(ii) The names and positions of all persons responsible for preparing the regulated party's report to the state, including persons who gathered information, operational personnel, and officers;

(iii) The location and a description of the refinery, import facility, or terminal audited, including its operating procedures and structures of internal controls;

(iv) Specific reports which were audited, accompanied by examples of calculations performed in the conduct of the audit;

(v) Summaries or replications of records which support the auditor's findings, analyses, and conclusions; and

(vi) A complete list of all discrepancies that the auditor found during the conduct of the audit.

Appendix A to Guidelines—Sampling Procedures

EPA's sampling procedures are detailed in appendix D of 40 CFR part 80.

Appendix B to Guidelines—Testing Procedures— Method—ASTM Standard Test Method for Determination of C_1 to C_4 Alcohols and MTBE in Gasoline by Gas Chromatography

1. Scope

1.1 This test method covers a procedure for determination of methanol, ethanol, isopropanol, n-propanol, isobutanol, sec-butanol, tert-butanol, n-butanol, and methyl tertiary butyl ether (MTBE) in gasoline by gas chromatography.

1.2 Individual alcohols and MTBE are determined from 1.0 to 10 volume %.

1.3 SI (metric) units of measurement are preferred and used throughout this standard. Alternative units, in common usage, are also provided to improve the clarity and aid the user of this test method.

1.4 This standard may involve hazardous materials, operations, and equipment. This standard does not purport to address all of the safety problems associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability or regulatory limitations prior to use.

2. Referenced Documents

2.1 ASTM Standards;

D4057 Practice for Manual Sampling of Petroleum and Petroleum Product
D4307 Practice for Preparation of Liquid Blends for Use as Analytical Standards
D4626 Practice for Calculation of Gas Chromatographic Response Factors
E260 Practice for Packed Column Gas Chromatographic Procedures
E355 Practice for Gas Chromatography Terms and Relationships

3. Descriptions of Terms Specific to This Standard

3.1 MTBE-methyl tertiary butyl ether.

3.2 Low Volume Connector-a special union for connecting two lengths of tubing 1.6 mm inside diameter and smaller. Sometimes this is referred to as a zero dead volume union.

3.3 Oxygenates-used to designate fuel blending components containing oxygen, either in the form of alcohol or ether.

3.4 Split Ratio-a term used in gas chromatography using capillary columns. The split ratio is the ratio of the total flow of the carrier gas to the sample inlet versus the flow of carrier gas to the capillary column. Typical values range from 10:1 to 500:1 depending upon the amount of sample injected and the type of capillary column used.

3.5 WCOT—abbreviation for a type of capillary column used in gas chromatography that is wall-coated open tubular. This type of column is prepared by coating the inside of the capillary with a thin film of stationary phase.

3.6 TCEP-1,2,3-tris-2cyanoethoxypropane—a gas chromatographic liquid phase.

4. Summary of Test Method

4.1 An internal standard, tertiary amyl alcohol, is added to the sample which is then introduced into a gas chromatograph equipped with two columns and a column switching valve. The sample first passes onto a polar TCEP column which elutes lighter hydrocarbons to vent and retains the oxygenated and heavier hydrocarbons. After methylcyclopentane, but before MTBE elutes from the polar column, the valve is switched to backflush the oxygenates onto a WCOT non-polar column. The alcohols and MTBE elute from the non-polar column in boiling point order, before elution of any major hydrocarbon constituents. After benzene elutes from the non-polar column, the column switching valve is switched back to its original position to backflush the heavy hydrocarbons. The eluted components are detected by a flame ionization or thermal conductivity detector. The detector response, proportional to the component concentration, is recorded; the peak areas are measured; and the concentration of each component is calculated with reference to the internal standard.

5. Significance and Use

5.1 Alcohols and other oxygenates may be added to gasoline to increase the octane number. Type and concentration of various oxygenates are specified and regulated to ensure acceptable commercial gasoline quality. Drivability, vapor pressure, phase separation, and evaporative emissions are some of the concerns associated with oxygenated fuels.

5.2 This test method is applicable to both quality control in the production of gasoline and for the determination of deliberate or extraneous oxygenate additions or contamination.

6. Apparatus

6.1 Chromatograph:

6.1.1 A gas chromatographic instrument which can be operated at the conditions given in table 1, and has a column switching and backflushing system. Carrier gas flow controllers shall be capable of precise control where the required flow rates are low (Table 1).

TABLE 1.—CHROMATOGRAPHIC OPERATING CONDITIONS

Temperatures	Flows, mL/min	Other parameters, carrier gas helium
Column Oven, 60 °C	To injector 75	Sample size, μL 3.
Injector, 200 °C	Column 5	Split ratio 15:1.
Detector—TCD, 200 °C	Auxillary 3	Backflush, min 0.2–0.3.
—FID, 250 °C	Makeup 18	Valve reset time, 8–10 min.
Valve, 60 °C		Total analysis time, 18–20 min.

Pressure control devices and gages shall be capable of precise control for the typical pressures required.

6.1.2 Detector—A thermal conductivity detector or flame ionization detector, may be used. The system shall have sufficient sensitivity and stability to obtain a recorder deflection of at least 2 mm at a signal-to-noise ratio of at least 5 to 1 for 0.005 volume % concentration of an oxygenate.

6.1.3 Switching and Backflushing Valve—A valve, to be located within the gas chromatographic column oven, capable of performing the functions described in section 11.0 and illustrated in Fig. 1. The valve shall be of low volume design and not contribute significantly to chromatographic deterioration.

6.1.3.1 Valco Model No. CM–VSV–10–HT, 1.6-mm (1/16-in.) fittings. This particular valve was used in the majority of the analyses used for the development of section 15.

6.1.3.2 Valco Model No. C10W, 0.8-mm (1/32-in.) fittings. This valve is recommended for use with columns of 0.32-mm inside diameter and smaller.

6.1.4 Although not mandatory, an automatic valve switching device is strongly recommended to ensure repeatable switching times. Such a device should be synchronized with injection and data collection times. If no such device is available, a stopwatch, started at the time of injection, should be used to indicate the proper valve switching time.

6.1.5 Injection System—The chromatograph should be equipped with a splitting-type inlet device. Split injection is necessary to maintain the actual chromatographed sample size within the limits of column and detector optimum efficiency and linearity.

6.1.6 Sample Introduction—Any system capable of introducing a representative sample into the split inlet device. Microliter syringes, automatic syringe injectors, and liquid sampling valves have been used successfully.

6.2 Data Presentation or Calculation, or Both:

6.2.1 Recorder—A recording potentiometer or equivalent with a full-scale deflection of 5 mV or less.

Full-scale response time should be 1 s or less with sufficient sensitivity and stability to meet the requirements of 6.1.2.

6.2.2 Integrator or Computer—Devices capable of meeting the requirements of 6.1.2, and providing graphic and digital presentation of the chromatographic data are recommended for use. Means shall be provided for determining the detector response. Peak heights or areas can be measured by computer, electronic integration or manual techniques.

6.3 Columns, two as follows:

6.3.1 Polar column—This column performs a pre-separation of the oxygenates from volatile hydrocarbons in the same boiling point range. The oxygenates and remaining hydrocarbons are backflushed onto the non-polar column in section 6.3.2. Any column with equivalent or better chromatographic efficiency and selectivity to that described in 6.3.1.1 can be used. The column shall perform at the same temperatures as required for the column in 6.3.2.

6.3.1.1 TCEP Micro-Packed Column, 560 mm (22 in.) by 1.6-mm (1/16-in.) outside diameter by 0.38-mm (0.015-in.) inside diameter stainless steel tube packed with 0.14 to 0.15 g of 20% (mass/mass) TCEP on 80/100 mesh Chromosorb P(AW). This column was used in the cooperative study to provide the Precision and Bias data referred to in section 15.

6.3.2 Non-polar (Analytical) Column—Any column with equivalent or better chromatographic efficiency and selectivity to that described in 6.3.2.1 can be used.

6.3.2.1 WCOT Methyl Silicone Column, 30m (1181 in.) long by 0.53 mm (0.021-in.) inside diameter fused silica WCOT column with a 2.6 μm film thickness of cross-linked methyl siloxane. This column was used, in the cooperative study to provide the Precision and Bias data referred to in section 15.

7. Reagents and Materials

7.1 Carrier Gas—Carrier gas appropriate to the type of detector used. Helium has been used successfully. The minimum purity of the carrier gas used must be 99.95 mol %.

7.2 Standards for Calibration and Identification—Standards of all components to be analyzed and the internal standard are required for establishing identification by retention time as well as calibration for quantitative measurements. These materials shall be of known purity and free of the other components to be analyzed.

Note 1: Warning—These materials are flammable and may be harmful or fatal if ingested or inhaled.

7.3 Preparation of Calibration Blends—For best results, these components must be added to a stock gasoline or petroleum naphtha, free of oxygenates (Warning—See note 2).

Refer to Test Method D 4307 for preparation of liquid blends. The preparation of several different blends, at different concentration levels covering the scope of the method, is recommended. These will be used to establish the linearity of the component response.

Note 2: Warning—Extremely flammable. Vapors harmful if inhaled.

7.4 Methylene Chloride—Used for column preparation. Reagent grade, free of non-volatile residue.

Note 3: Warning—Harmful if inhaled. High concentrations may cause unconsciousness or death.

8. Preparation of Column Packings

8.1 TCEP Column Packing:

8.1.1 Any satisfactory method, used in the practice of the art that will produce a column capable of retaining the C_1 to C_4 alcohols and MTBE from components of the same boiling point range in a gasoline sample. The following procedure has been used successfully.

8.1.2 Completely dissolve 10 g of TCEP in 100 mL of methylene chloride. Next add 40 g of 80/100 mesh Chromosorb P(AW) to the TCEP solution. Quickly transfer this mixture to a drying dish, in a fume hood, without scraping any of the residual packing from the sides of the container. Constantly, but gently, stir the packing until all of the solvent has evaporated. This column packing can be used immediately to prepare the TCEP column.

9. Preparation of Micro-packed TCEP Column

9.1 Wash a straight 560 mm length of 1.6-mm outside diameter (0.38-mm inside diameter) stainless steel tubing with methanol and dry with compressed nitrogen.

9.2 Insert 6 to 12 strands of silvered wire, a small mesh screen or stainless steel frit inside one end of the tube. Slowly add 0.14 to 0.15 g of packing material to the column and gently vibrate to settle the packing inside the column. When strands of wire are used to retain packing material inside the column, leave 6.0 mm (0.25 in.) of space at the top of the column.

9.3 Column Conditioning—Both the TCEP and WCOT columns are to be briefly conditioned before use. Connect the columns to the valve (see 11.1) in the chromatographic oven. Adjust the carrier gas flows as in 11.3 and place the valve in the RESET position. After several minutes, increase the column oven temperature to 120°C and maintain these conditions for 5 to 10 min. Cool the colurrns below 60°C before shutting off the carrier flow.

10. Sampling

10.1 Gasoline samples to be analyzed by this test method shall be sampled using procedures outlined in Practice D 4057.

11. Preparation of Apparatus and Establishment of Conditions

11.1 Assembly—Connect the WCOT column to the valve system using low volume connectors and narrow bore tubing. It is

important to minimize the volume of the chromatographic system that comes in contact with the sample, otherwise peak broadening will occur.

11.2 Adjust the operating conditions to those listed in table 1, but do not turn on the detector circuits. Check the system for leaks before proceeding further.

11.3 Flow Rate Adjustment:

11.3.1 Attach a flow measuring device to the column vent with the valve in the RESET position and the pressure to the injection port to give 5.0 mL/min flow (14 psig). Soap bubble flow meters are suitable.

11.3.2 Attach a flow measuring device to the split injector vent and adjust the flow from the split vent using the A flow controller to give a flow of 70 mL/min. Recheck the column vent flow set in 11.3.1 and adjust if necessary.

11.3.3 Switch the valve to the BACKFLUSH position and adjust the variable restrictor to give the same column vent flow set in 11.3.1. This is necessary to minimize flow changes when the valve is switched.

11.3.4 Switch the valve to the inject position RESET and adjust the B flow controller to give a flow of 3.0 to 3.2 mL/min at the detector exit. When required for the particular instrumentation used, add makeup flow or TCD switching flow to give a total of 21 mL/min at the detector exit.

11.4 When a thermal conductivity detector is used, turn on the filament current and allow the detector to equilibrate. When a flame ionization detector is used, set the hydrogen and air flows and ignite the flame.

11.5 Determine the Time to Backflush—The time to backflush will vary slightly for each column system and must be determined experimentally as follows. The start time of the integrator and valve timer must be synchronized with the injection to accurately reproduce the backflush time.

11.5.1 Initially assume a valve BACKFLUSH time of 0.23 min. With the valve RESET, inject 3 μL of a blend containing at least 0.5% or greater oxygenates (7.3), and simultaneously begin timing the analysis. At 0.23 min, rotate the valve to the BACKFLUSH position and leave it there until the complete elution of benzene is realized. Note this time as the RESET time, which is the time at which the valve is returned to the RESET position. When all of the remaining hydrocarbons are backflushed the signal will return to a stable baseline and the system is ready for another analysis.

11.5.2 It is necessary to optimize the valve BACKFLUSH time by analyzing a standard blend containing oxygenates. The correct BACKFLUSH time is determined experimentally by using valve switching times between 0.2 and 0.3 min. When the valve is switched too soon, C_5 and lighter hydrocarbons are backflushed and are co-eluted in the C_4 alcohol section of the chromatogram. When the valve BACKFLUSH is switched too late, part or all of the MTBE component is vented resulting in an incorrect MTBE measurement.

12. Calibration and Standardization

12.1 Identification—Determine the retention time of each component by injecting small amounts either separately or in known mixtures or by comparing the relative retention times with those in table 2.

12.2 Standardization—The area under each peak in the chromatogram is considered a quantitative measure of the corresponding compound. Measure the peak area of each oxygenate and of the internal standard by either manual method or electronic integrator. Calculate the relative volume response factor of each oxygenate, relative to the internal standard, according to Test Method D 4626.

13. Procedure

13.1 Preparation of Sample—Precisely add a quantity of the internal standard to an accurately measured quantity of sample. Concentrations of 1 to 5 volume % have been used successfully.

13.2 Chromatographic Analysis—Introduce a representative aliquot of the sample, containing internal standard, into the chromatograph using the same technique as used for the calibration analyses. An injection volume of 3 μL with a 15:1 split ratio has been used successfully.

13.3 Interpretation of Chromatogram—Compare the results of sample analyses to those of calibration analyses to determine identification of oxygenates present.

TABLE 2.—RETENTION CHARACTERISTICS FOR TCEP/WCOT COLUMN SET CONDITIONS AS IN TABLE 1

Component	Retention time, min	Relative retention time (t-amyl alcohol = 1.00)
Methanol	3.21	0.44
Ethanol	3.58	0.50
Isopropanol	3.95	0.56
tert-Butanol	4.31	0.61
n-Propanol	4.75	0.68
MTBE	5.29	0.76
sec-Butanol	5.63	0.82
Isobutanol	6.33	0.93
n-Butanol	7.55	1.10
Benzene	7.88	1.17

14. Calculation

14.1 After identifying the various oxygenates, measure the area of each oxygenate peak and that of the internal standard. Calculate the volume percent of oxygenate as follows:

$$V_i = \frac{V_s \times PA_T \times 100}{PA_s \times S_T \times V_G}$$

where:

V_i = volume percent of oxygenate to be determined,

V_s = volume of internal standard (tert-amyl alcohol) added,

V_G = volume of gasoline sample taken,

PA_i = peak area of the oxygenate to be determined,

PA_s = peak area of the internal standard (tert-amyl alcohol), and

S_i = relative volume response factor of each component (relative to the internal standard).

14.2 Report the volume percent of each oxygenate.

15. Precision and Bias

15.1 Precision—The precision of this test method as determined by the statistical examination of the interlaboratory test results is as follows:

15.1.1 Repeatability—The difference between successive results obtained by the same operator with the same apparatus under constant operating conditions on identical test material would, in the long run, in the normal and correct operation of the test method exceed the following values only in one case in twenty (see table 3):

Methanol $0.086 \times (V + 0.070)$
Isobutanol $0.064 \times (V + 0.086)$
Ethanol $0.083 \times (V + 0.000)$
sec-Butanol $0.014 \times \sqrt{V}$
Isopropanol $0.052 \times (V + 0.150)$
tert-Butanol $0.052 \times (V\ 0.388)$
n-Propanol $0.040 \times + (V + 0.026)$
n-Butanol $0.043 \times (V + 0.020)$
MTBE $0.104 \times (V + 0.028)$

where V is the mean volume percent.

TABLE 3.—PRECISION INTERVALS—DETERMINED FROM COOPERATIVE STUDY DATA SUMMARIZED IN SECTION 15

Components	Volume %							
	0.20	0.50	1.00	2.00	3.00	4.00	5.00	6.00
Repeatability								
Methanol	0.02	0.05	0.09	0.18	0.26	0.35	0.44	0.52
Ethanol	0.02	0.04	0.08	0.17	0.25	0.33	0.42	0.50
Isopropanol	0.02	0.03	0.06	0.11	0.16	0.22	0.27	0.32

TABLE 3.—PRECISION INTERVALS—DETERMINED FROM COOPERATIVE STUDY DATA SUMMARIZED IN SECTION 15—Continued

Components	Volume %							
	0.20	0.50	1.00	2.00	3.00	4.00	5.00	6.00
n-Propanol	0.01	0.02	0.04	0.08	0.12	0.16	0.20	0.24
tert-Butanol	0.03	0.05	0.07	0.12	0.18	0.23	0.28	0.33
sec-Butanol	0.01	0.01	0.01	0.02	0.02	0.03	0.03	0.03
Isobutanol	0.02	0.04	0.07	0.13	0.20	0.26	0.33	0.39
n-Butanol	0.01	0.02	0.04	0.09	0.13	0.17	0.22	0.26
MTBE	0.02	0.05	0.11	0.21	0.31	0.42	0.52	0.63
Reproducibility								
Methanol	0.10	0.21	0.39	0.75	1.11	1.47	1.83	2.19
Ethanol	0.07	0.19	0.37	0.75	1.12	1.49	1.87	2.24
Isopropanol	0.07	0.14	0.25	0.46	0.67	0.89	1.10	1.32
n-Propanol	0.04	0.09	0.17	0.33	0.49	0.68	0.82	0.98
tert-Butanol	0.10	0.16	0.25	0.43	0.60	0.78	0.96	1.14
sec-Butanol	0.12	0.20	0.28	0.39	0.48	0.55	0.62	0.68
Isobutanol	0.05	0.10	0.19	0.37	0.55	0.73	0.91	1.09
n-Butanol	0.09	0.22	0.42	0.84	1.25	1.67	2.08	2.50
MTBE	0.05	0.12	0.23	0.45	0.68	0.90	1.13	1.35

15.1.2 Reproducibility—The difference between two single and independent results obtained by different operators working in different laboratories on identical material would in the long run, exceed the following values only in one case in twenty (see table 3):

Methanol $0.361\times(V+0.070)$
Isobutanol $0.179\times(V+0.086)$
Ethanol $0.373\times(V+0.000)$
sec-Butanol $0.277\times\sqrt{V}$
Isopropanol $0.214\times(V+0.150)$
tert-Butanol $0.178\times(V+0.388)$
n-Propanol $0.163\times(V+0.026)$
n-Butanol $0.415\times(V+0.020)$
MTBE $0.244\times(V+0.028)$

where V is the mean volume percent.

15.2 Bias—Since there is no accepted reference material suitable for determining bias for the procedure in this test method, bias cannot be determined.

For additional information please see ASTM Designation D 4815–88.

Appendix C to Guidelines—Test for the Determination of Oxygenates in Gasoline

1. Scope and Application

1.1 The following single column direct injection gas chromatographic procedure shall be to qualify and quantify the oxygenate content of gasoline. Other procedures with similar capabilities are allowed provided they comply with the quality control requirements of section 8 below.

1.2 This method covers the qualitative and quantitative determination of the oxygenate content of gasoline through the use of an oxygenate flame ionization detector (OFID). The procedure's calibration range is 0.25 to 12.0 volume percent. Samples above this level should be diluted to fall within the specified range.

1.3 Where trade names or specific products are noted in the method, equivalent apparatus and chemical reagents may be used. Mention of trade names or specific products is for the assistance of the user and does not constitute endorsement by the U.S. Environmental Protection Agency.

2. Summary of Method

2.1 A measured volume of a gasoline sample is spiked to introduce an internal standard, mixed, placed into a sealed ampule, and injected into a gas chromatograph (GC) equipped with an oxygenate flame ionization detector (OFID). After chromatographic resolution the sample components enter a cracker reactor in which they are stoichiometrically converted to carbon monoxide (in the case of oxygenates), elemental carbon, and hydrogen. The carbon monoxide then enters a methanizer reactor for conversion to water and methane. Finally, the methane is detected by a flame ionization detector (FID).

2.2 All oxygenated gasoline components (water, alcohols, ethers, etc.) may be assessed by this method.

2.3 The total concentration of oxygen in the gasoline, due to oxygenated components, may also be determined with this method by summation of all peak areas except for dissolved oxygen water. Sensitivities to each component oxygenate must be incorporated in the calculation.

3. Sample Handling and Preservation

3.1 Samples should be collected and stored in containers which will protect them from changes in the oxygenated component contents of the gasoline, such as loss of volatile fractions of the gasoline by evaporation.

3.2 If samples have been refrigerated they should be brought to room temperature prior to analysis.

3.3 Gasoline is extremely flammable and should be handled cautiously and with adequate ventilation. The vapors are harmful if inhaled and prolonged breathing of vapors should be avoided. Skin contact should be minimized.

4. Apparatus

4.1 A GC equipped with an oxygenate flame ionization detector.

4.2 An autosampler for the GC is highly recommended.

4.3 A 30 m length × 0.32 mm ID 5.0 μm film thickness nonpolar capillary GC column (J&W DB-1 or equivalent).

4.4 A 3 m length × 0.32 mm ID 0.25 μm film thickness polar capillary GC column (J&W DB-Wax or equivalent) to be added to the end of the nonpolar capillary column.

4.5 An integrator or other acceptable system to collect and process the GC signal.

4.6 A positive displacement pipet (200 μL) for adding the internal standard.

5. Reagents

Note: Gasoline and many of the oxygenate additives are extremely flammable and may be toxic over prolonged exposure. Methanol is particularly hazardous. Persons performing this procedure must be familiar with the chemicals involved and all precautions applicable to each.

5.1 Reagent grade oxygenates for internal standards and for preparation of standard solutions.

5.2 Supply of oxygenate-free gasoline for blank assessments and for preparation of standard solutions.

5.3 Calibration standard solutions containing known quantities of suspected oxygenates in gasoline.

5.4 Reference standard solutions containing known quantities of suspected oxygenates in gasoline.

6. Calibration

6.1 Calibration standard solutions (made in gasoline).

6.1.1 Reagent grade or better oxygenates (primarily methanol, absolute ethanol, t-butanol, and MTBE) are to be diluted with regular unleaded gasoline that has been previously determined by GC/OFID to be free of oxygenates. Newly acquired stocks of reagent grade oxygenates shall be analyzed for contamination by GC/FID and GC/OFID before use.

6.1.2 Required calibration standards (% by volume in gasoline):

Oxygenate	Range (percent)	No. of standards (minimum)
Methanol	0.25–12.00	5
Ethanol	0.25–12.00	5
t-Butanol	0.25–12.00	5
MTBE	0.25–12.00	5

The standards should be as equally spaced as possible within the range and may contain more than one oxygenate. A blank for zero concentration assessments is also to be included. Additional standards should be prepared for other oxygenates of concern.

6.2 Precisely add an aliquot of an internal oxygenate standard (such as 0.20 mL of i-propanol) as an internal standard to 5.00 mL of each of the prepared standards. The addition of an internal standard reduces errors caused by variations in injection volumes. To ensure adequate method detection limits, the volume of the internal standard added should be minimized (such as 5% or less than the volume of the sample). Transfer approximately 2 Ml of each of these solutions to vials compatible with the autosampler.

6.3 Based on chromatographic operating conditions (section 7.1 below), determine the retention time of each component oxygenate by analyzing dilute aliquots either separately or in known mixtures. Approximate retention times for selected oxygenates under these conditions are as follows:

Oxygenate	Retention time (minutes)
Dissolved oxygen	1.40
Water	1.80
Methanol	2.25
Ethanol	3.00
Acetone	3.45
i-Propanol	3.60
t-Butanol	4.10
n-Propanol	4.70
MTBE	5.10
2-Butanol	5.60
i-Butanol	6.10
ETBE	6.20
n-Butanol	6.95
i-Pentanol	8.60

6.4 Determine the peak area of each oxygenate and of the internal standard. After dilution corrections, calculate the stoichiometric relative volume response factor of each oxygenate, relative to the internal standard as follows:

$$V_j = \frac{V_s \times PA_j \times 100}{PA_s \times S_j \times V_g}$$

where:

V_j = volume percent of oxygenate to be determined,

V_s = volume of internal standard added,

V_g = volume of gasoline sample taken,

PA_j = peak area of the oxygenate to be determined,

PA_s = peak area of the internal standard, and

S_j = relative volume response factor of each component (relative to the internal standard).

6.5 Obtain a linear calibration curve by performing a least squares fit of the corrected component peak areas to the standard concentrations.

7. Procedure

7.1 The Gas Chromatograph operating conditions are as follows:

7.1.1 Oxygenate free helium carrier gas; 15 mL/min (1 bar):

7.1.2 Carrier gas split ratio; 1:10

7.1.3 Zero air FID fuel: 370 mL/min (2 bar)

7.1.4 Oxygenate free hydrogen FID fuel: 15 mL/min (2 bar)

7.1.5 Injector temperature: 250 °C

7.1.6 Cracker reactor temperature: Sufficiently high enough temperature to ensure reduction of all hydrocarbons to the elemental states (ie., $C_xH_{2x} -> C + H_2$, etc.)

7.1.7 FID temperature: 400 °C

7.1.8 Oven temperature program: 50 °C for 1 min, followed by 10 °C/min to 150 °C for 4 min

7.2 Prior to analysis of any samples, inject a sample of nonoxygenated gasoline into the GC to test for hydrocarbon breakthrough overloading the cracker reactor. If breakthrough occurs, the OFID is not operating effectively and must be corrected before samples can be analyzed.

7.3 Add precisely the same quantity of the internal standard (as in section 6.4 above) to 5.00 mL of the gasoline sample. Transfer approximately 2 mL of this solution to a vial compatible with the autosampler.

7.4 Report the volume percent of each oxygenate. If the volume percent exceeds the calibrated range, dilute the sample to a concentration within the calibration range and repeat the procedures in sections 7.2 and 7.3 above.

7.5 Sufficient sample should be retained to permit reanalysis.

8. Quality Control of Precision and Accuracy

8.1 The laboratory shall routinely monitor the precision of its analyses. At a minimum this shall include:

8.1.1 The preparation and analysis of laboratory duplicates at a rate of one per analysis batch or at least one per ten samples.

8.1.2 Laboratory duplicates shall be carried through all sample preparation steps independently.

8.1.3 The average range (absolute difference) for duplicate samples shall not exceed 0.4 volume % or the average relative range shall not exceed 8.0% where the relative range is defined as: 100%(range/[(initial concentration + duplicate concentration)/2). The maintenance of control charts is one acceptable method for ensuring compliance with this specification. If the results of individual duplicate analyses differ by more than 0.5 volume %, or 10.0% average relative range, the results of the entire analysis batch should be considered suspect.

8.2 The laboratory shall routinely monitor the accuracy of its analyses. At a minimum this shall include:

8.2.1 Independent reference standards shall be analyzed at a minimum of once per analysis batch or at least one per 100 samples.

8.2.2 Independent reference standards shall be prepared from materials that are independent of the calibration standards.

8.2.3 If the measured concentration of the reference samples is less than 10% or greater than 10% of the theoretical concentration, the results of the entire analysis batch shall be considered suspect. The maintenance of control charts is one acceptable method for ensuring compliance with this specification.

[FR Doc. 91–14342 Filed 7–2–91; 10:18 am]

BILLING CODE 6560–50–M

federal register

Tuesday
July 9, 1991

Part III

Environmental Protection Agency

40 CFR Part 80

Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS-FRL-3965-9]

Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA proposes, in today's notice, two related programs implementing section 211(k) of the Clean Air Act (CAA or the Act) as amended by Public Law 101-549. The primary program under that section requires that gasoline sold in the nine worst ozone nonattainment areas be reformulated to reduce toxic and ozone-forming volatile organic compound (VOC) emissions. The second program prohibits gasoline sold in the rest of the United States from becoming more polluting. These regulations will take effect on January 1, 1995.

DATES: Comments on this proposal will be accepted through August 15, 1991. EPA will hold a public hearing on July 15, 1991, from 9 a.m. until 5 p.m. and on July 16, 1991, from 8 a.m. until 3 p.m., regarding the contents of this proposal. If, after publication of this proposal but prior to the July 15-16, 1991, hearing, the Agency has issued a supplementary notice based on the results of a consensus that is reached through a continuing negotiated rulemaking process, the public hearing will also cover the contents of that notice. Additional information on the submission of comments and the public hearing can be found under "Public Participation" in the Supplementary Information section of today's notice.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Air Docket Section (LE-131), U.S. Environmental Protection Agency, Attention: Docket No. A-91-02, 401 M Street, SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to Carol Menninga, SDSB-12, EPA Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105.

The hearing will be held at the Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia.

Materials relevant to this proposal have been placed in Docket No. A-91-02 by EPA. The docket is located at the above address in room M-1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 12 p.m. and 1 to 3 p.m., Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT:

Carol Menninga, Standards Development and Support Branch, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, telephone: (313) 668-4575.

Richard A. Rykowski, Standards Development and Support Branch, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, telephone: (313) 668-4339.

To request copies of this notice contact: Marie Tolonen, Standards Development and Support Branch, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4295.

SUPPLEMENTARY INFORMATION:

I. Use of Regulatory Negotiations

EPA is developing the regulations proposed today through the process of regulatory negotiation. Over the past several years, the Agency has developed and employed this process as a means of developing rules that are acceptable to all the interests that will be significantly affected by the rules. Rules so developed are far less likely to be challenged in court. The process entails convening a negotiating committee that consists of representatives from EPA and all affected interests, generally including other government agencies, states, localities, industry, consumers and environmental groups. The Negotiated Rulemaking Act of 1990, Public Law 101-648, expressly authorizes use of the negotiated rulemaking process in appropriate circumstances and sets forth procedural requirements which the Agency has met for the negotiations being conducted on these regulations. A complete description of the negotiated rulemaking process and the Agency's decision to use that process for these regulations may be found in the notice of "Intent to Form an Advisory Committee to Negotiate Guidelines and Proposed Regulations Implementing Clean Fuels Provisions" (56 FR 5167, February 8, 1991) and in the notice of "Open Meeting of the Negotiated Rulemaking Advisory Committee; Clean Fuels Rules and Guidelines" (56 FR 8972, March 4, 1991).

The Agency first convened the negotiating committee for these regulations on March 14, 1991. The committee includes representatives from EPA, the Department of Energy, the State and Territorial Air Pollution Program Administrators, the Association of Local Air Pollution Control Officials, the Northeast States for Coordinated Air Use Management, the California Air Resources Board, the American Petroleum Institute, the National Petroleum Refiners Association, the American Independent Refiners Association, the Rocky Mountain Small Refiners Association, the Clean Fuels Development Coalition, the Oxygenated Fuels Association, the Renewable Fuels Association, the American Methanol Institute, the National Council of Farmer Cooperatives, the National Corn Growers Association, the Petroleum Marketers Association of America, the Society of Independent Gasoline Marketers of America, the Independent Liquid Terminals Association, the Motor Vehicles Manufacturers Association, the Association of International Automobile Manufacturers, Citizen Action, the Sierra Club, the American Lung Association, and the Natural Resources Defense Council.

The Agency believes that the negotiating committee has made significant progress towards arriving at a consensus on regulations implementing section 211(k). The Agency wants the regulatory negotiation process to continue because it believes that consensus can be reached. However, for EPA to meet the statute's November 15, 1991 deadline for promulgating final regulations implementing section 211(k), the Agency believes that it cannot wait for consensus to be reached before publishing a proposal. EPA has therefore decided to present in today's notice the positions being taken on different issues by one or more parties to the negotiation. The fact that an option has been included in this notice does not mean that every party to the negotiations, including the Agency, believes that it would be appropriate to adopt the option in the final rule. Indeed, a number of participants have expressed opposition to many of these options. Their inclusion in this notice does not constitute endorsement by all of the participants. EPA requests comments on the appropriateness of each of these options. If the negotiating committee reaches consensus, EPA will provide a supplemental notice describing the committee's recommendations and provide an opportunity for the public to comment on those recommendations.

II. Statutory Provisions

A. Overview

Section 211(k) of the Act as amended prohibits the sale of gasoline that EPA has not certified as reformulated from

being sold to consumers in the nine large ozone nonattainment areas that experienced the worst ozone pollution during the period of 1987 through 1989. Any other ozone nonattainment area may have the prohibition applied to gasoline sold within its borders at the request of the governor of the state in which it is located. Further, conventional gasoline sold elsewhere may not be more polluting than it was in 1990. The prohibitions take effect beginning on January 1, 1995, although a later effective date may be provided under certain circumstances in the case of areas opting into the reformulated gasoline program.

Section 211(k) requires EPA to promulgate regulations establishing requirements for reformulated and conventional gasolines within one year of the amendments' enactment, i.e., November 15, 1991. Those regulations must include the specifications and performance standards that gasoline must meet to be considered reformulated; a process for certifying gasolines as reformulated; a program for granting tradeable credits to fuel producers that certify reformulated gasoline which is less polluting than required; and provisions implementing the prohibition against sale of conventional gasoline which is dirtier than it was in 1990.

B. Compositional Specifications for Reformulated Gasoline

Section 211(k)(2), provides that EPA's regulations shall require that reformulated gasoline comply with each of the following compositional requirements: An oxygen content not less than 2.0 percent by weight, a benzene content of not more than 1.0 percent by volume, and no heavy metals, including lead or manganese.

That provision, however, permits the Administrator to waive the application of the oxygen content requirement and the heavy metal ban under certain circumstances. If the Administrator determines that compliance with the oxygen content requirement would interfere with the attainment of a national primary ambient air quality standard in a covered area, the application of that requirement may be waived, in whole or in part, for that area. In addition, if the Administrator determines that the addition of a heavy metal other than lead to reformulated gasoline will not increase toxic air pollutant emissions from motor vehicles on either an aggregate mass or a cancer-risk basis, the prohibition against the use of that metal in reformulated gasoline may be waived.

C. Emission Standards for Reformulated Gasoline

1. NOx Emissions

Section 211(k)(2)(A) also provides that emissions of oxides of nitrogen (NOx) from baseline vehicles may be no greater when using reformulated gasoline than when using the baseline gasoline which is defined in CAA section 211(k)(10) and described below in section D of this proposal. If the Administrator determines that compliance with this limitation is technically infeasible, considering the other requirements applicable under section 211(k), the Administrator may adjust or waive any of the other requirements, as appropriate, to ensure compliance with the NOx emission limit.

2. VOCs and Toxic Air Pollutants

At the heart of section 211(k) are requirements that reformulated gasoline reduce ozone-forming and toxic air pollutant emissions. Section 211(k)(1) states that the EPA regulations implementing that section "shall require the greatest reduction in emissions of ozone forming volatile organic compounds (VOCs) (during the high ozone season) and emissions of toxic air pollutants (during the entire year) achievable through the reformulation of conventional gasoline, taking into consideration the cost of achieving such emission reductions, any non-air-quality and other air-quality related health and environmental impacts and energy requirements." Section 211(k)(10)(C) defines "toxic air pollutants" to mean the aggregate emissions of benzene, 1,3-butadiene, polycyclic organic matter (POM), acetaldehyde, and formaldehyde.

Section 211(k)(3) requires that VOC and toxic emissions from baseline vehicles be reduced relative to the emissions attributable to the baseline gasoline. The reduction requirements for VOC emissions would apply during the high ozone season, and the requirements for toxic emissions would apply year round. The Act requires that both VOC and toxic emissions shall be assessed on a mass basis, rather than an ozone-forming or reactivity basis for VOCs, or a cancer-causing basis for toxic air pollutants.

Under section 211(k)(3), the reductions in VOC and toxic emissions that reformulated gasoline must achieve are to be determined by comparing the emission reductions resulting from the use of a "formula" fuel (defined by section 211(k)(3)(A) and described below in section F of this proposal) with a specified 15 percent reduction in emissions from baseline vehicles (defined by section 211(k)(10)(A) as representative model year 1990 vehicles). The more stringent emission reduction becomes the minimum standard. VOC and toxic emission standards are to be determined separately, so that the "formula" fuel might set the standard for toxic emissions, while the 15 percent reduction standard might apply to VOCs. The determination of the proposed standards for both VOC and toxic emissions is discussed below in section III.D of this proposal.

For the year 2000 and beyond, section 211(k)(3)(B) provides that VOC and toxics emission reduction requirements for reformulated gasoline are to be based on a comparison of the emission performance of the formula fuel to a 25 percent reduction in VOC and toxic emissions, relative to emissions from the baseline gasoline. Considering technological feasibility and cost, the Agency may adjust the "Phase II" emission standard to require more or less emission reductions, but in no case shall such an adjustment provide for less than a 20 percent reduction. Phase II reformulated gasoline standards will be developed through a later rulemaking.

D. Composition of Baseline Gasoline

Section 211(k)(10) defines "baseline gasoline" to mean one thing in the summer, which is the high ozone season, and another thing in the winter. It specifies the composition of summer gasoline in detail and leaves the composition of winter gasoline to be determined by the Administrator.

1. Summer Baseline Gasoline

In the case of gasoline sold during the high ozone season, section 211(k)(10) defines 'baseline gasoline' as a gasoline which meets the following specifications:

BASELINE GASOLINE FUEL PROPERTIES

API Gravity	57.4
Sulfur, ppm	339
Benzene, volume percent	1.53
RVP, psi	8.7
Octane, R+M/2	87.3
IBP, degrees F	91
10%, degrees F	128
50%, degrees F	218
90%, degrees F	330
End Point, degrees F	415
Aromatics, volume %	32.0
Olefins, volume %	9.2
Saturates, volume %	58.8

There are, however, other fuel parameters for which the definition of baseline summer gasoline contains no specifications. Levels of oxygen, lead,

and deposit-control additives are all defined for the 'formula' fuel as described below in section E, but are not specified for the baseline gasoline. EPA's proposals regarding the other parameters of summer baseline gasoline are discussed in section III.A.1 of this notice.

2. Winter Baseline Gasoline

As noted earlier, the Act does not specify the composition of winter baseline gasoline. Instead, it requires that EPA establish specifications based on industry average gasolines sold in other than the high ozone season in 1990. The high ozone season is defined in section II.H of this proposal. EPA's proposed specifications for winter fuel are set forth in section III.A.1 of this proposal.

E. Formula Fuel

Section 211(k)(3)(A) describes the following formula fuel as containing:

—No more than 1.0 volume percent benzene,
—No more than 25 volume percent aromatics,
—At least 2.0 weight percent oxygen,
—No lead, and
—Additives to prevent the accumulation of deposits in engines or vehicle fuel supply systems.

The Act is silent regarding many other compositional parameters of the 'formula' fuel, such as sulfur, Reid Vapor Pressure (RVP), octane (R+M/2), distillation points, API gravity, olefins, and saturates. EPA's proposal regarding these compositional elements of the formula fuel is set forth in section III.D of this notice.

F. Affected Nonattainment Areas

1. Areas Covered by the Operation of the Law

Section 211(k)(5) of the Act prohibits the sale of gasoline not certified as reformulated (i.e., conventional gasoline) in "any covered area." Section 211(k)(10) defines covered areas as the nine ozone nonattainment areas with the highest ozone design values during the years from 1987 through 1989 and with a 1980 population of over 250,000. Also defined as covered areas are ozone nonattainment areas reclassified as severe ozone nonattainment areas under section 181(b) of the Act, effective one year after reclassification.

Title I of the Clean Air Act defines five levels of ozone nonattainment. In order of increasing severity, they are: Marginal, moderate, serious, severe, and extreme. Based on 1987 through 1989 ozone design values, a total of 96 areas of the country are at some level of ozone nonattainment. Of those, nine are classified under section 181(b) as severe or extreme, and fifteen as serious. To be reclassified as severe, an area must have an ozone design value of 0.16 ppm or higher.

Based on United States census data and 1987 through 1989 ozone air quality design values, as published by EPA's Office of Air Quality Planning and Standards in August, 1990, the nine nonattainment areas that meet the criteria of the nine originally covered areas are the metropolitan statistical areas (MSAs) or consolidated metropolitan statistical areas (CMSAs) containing Baltimore, Maryland; Chicago, Illinois; Hartford, Connecticut; Houston, Texas; Los Angeles, California; Milwaukee, Wisconsin; New York, New York; Philadelphia, Pennsylvania; and San Diego, California. Of these nine areas, Los Angeles is designated as extreme, Hartford as serious, and the remaining seven are severe ozone nonattainment areas. A more detailed description of these areas and the counties they include can be found below in section VIII.C.

2. Opt-In Areas

Under section 211(k)(6), the governor of a state may apply to have any ozone nonattainment area in the state included in the reformulated gasoline program. Upon receiving an application, the Agency is to publish it in the **Federal Register** and establish an appropriate effective date for including the area in the program, to take place not later than January 1, 1995, or one year after the application is received, whichever is later. The Administrator may extend the effective date by up to three years if he determines, in consultation with the Department of Energy, that there is an insufficient domestic capacity to produce the reformulated gasoline needed to supply opt-in areas. If the Administrator so finds, he is to extend the effective date for areas with lower ozone classifications before doing so for areas with higher classifications. According to EPA's data, there are 87 ozone nonattainment areas eligible to opt into the reformulated gasoline program.

G. Averaging and Trading

Section 211(k)(7) requires EPA to grant credits to persons who make or import and who certify gasoline that has more oxygen or less benzene or aromatics than is required to comply with sections 211(k)(2) and (3). Such credits may be used to demonstrate compliance with section 211(k) requirements, and they are tradeable. However, they must be used within the nonattainment area in which the credit-generating gasoline is sold. In addition, EPA may not grant or permit transfers of credits to the extent that the use of such credits would result, on average, in lower levels of oxygen or higher levels of benzene or aromatics in conventional gasoline in a nonattainment area than would occur in the absence of using such credits.

H. Fuel Certification

Section 211(k)(4) calls for fuels to be certified as reformulated if they comply with the compositional requirements and NOx emission limit established under section 211(k) and if they achieve equivalent or greater reductions than are achieved by a gasoline meeting the formula-fuel- or performance-standard-based requirements established under section 211(k)(3). EPA is to act on certification petitions within 180 days of receipt. If the Agency fails to act in time, the fuel is deemed certified until EPA does act.

I. Prohibitions

The linchpins of the reformulated gasoline provisions are the prohibitions in section 211(k)(5). That section provides that, beginning on January 1, 1995, the sale or dispensing by any person of conventional gasoline to ultimate consumers (e.g., car owners) in any covered area is prohibited. (Section 211(k)(10)(F) defines "conventional gasoline" as any gasoline that does not meet the specifications of a certification issued under section 211(k)). Section 211(k)(5) also prohibits any refiner, blender, importer, or marketer from selling or dispensing conventional gasoline for resale in a covered area (e.g., to a wholesaler) without segregating it from reformulated gasoline and clearly marking it as "conventional gasoline, not for resale to ultimate consumers in a covered area." Relatedly, it prohibits anyone who purchases properly segregated and labeled conventional gasoline from labeling, representing, or wholesaling it as reformulated gasoline. EPA is authorized to impose sampling, testing, and recordkeeping requirements to prevent violations of these prohibitions.

J. Anti-Dumping

Section 211(k) provides, not only for a program that cleans up gasoline sold in ozone nonattainment areas, but a program that maintains, on average, the current quality of gasoline sold in the rest of the country. The provisions of section 211(k)(8), which establishes the "anti-dumping" program, are described in section IX of this notice.

III. Derivation of Emission Standards

The first step in implementing the reformulated gasoline program is to determine the levels of the applicable emission standards. In the case of NOx, VOC, and toxic emissions, the Act specifies standards that are relative to emission levels from baseline vehicles using baseline fuel. In addition, it requires EPA to determine whether the specified formula fuel achieves reductions in toxic and VOC emissions greater than 15 percent of baseline emissions, as the specified performance standard otherwise requires. Finally, section 211(k)(1) provides that the VOC and toxic standards require the greatest achievable reductions, considering specified factors.

In this section, EPA first lays the foundation for determining the emission standards by proposing a determination of baseline emissions. To do so, it defines or supplements the statutory definitions of baseline fuel, high ozone season, and baseline vehicle. The Agency then considers how different fuel parameters affect emissions of the regulated pollutants. With that background, it judges the emission reduction benefits of the formula fuel and the achievability of VOC and toxic emission reductions greater than those derived from a comparison of the formula fuel and the performance standard.

A. Baseline Emissions

1. Baseline Fuel

As described earlier, the statutory definition of baseline fuel specifies most, but not all, of the components of summer baseline fuel and delegates to EPA the task of defining winter baseline fuel based on 1990 industry averages.

a. Summer Baseline Gasoline. As mentioned above in section II.D of this notice, there are some fuel parameters which are specified for the formula fuel, but for which the baseline summer gasoline, as defined in the Act, contains no specifications.

For summer baseline gasoline, EPA proposes that the oxygen level be zero. Oxygenates were used in some fuels in 1990, with the most widely used fuel oxygenates being MTBE at an average of less than 2 percent and ethanol at less than 1 percent by volume. However, oxygenated fuels were often sold in specialized markets, such as under state-mandated programs to reduce wintertime emissions of carbon monoxide in CO nonattainment areas, in interim reformulated gasolines, or in some premium gasolines to increase their octane level. Because oxygenates were not more widely used, EPA believes it appropriate not to include oxygen in the summer baseline gasoline. The Agency welcomes any comments on the appropriate oxygen level of baseline summer gasoline.

While lead had not been entirely eliminated from all gasoline sold in 1990, its use continues to decrease over time. To ensure a complete elimination of lead from gasoline, Congress included, in its 1990 amendments, subsection 211(n), which prohibits the use of leaded gasoline in motor vehicles beginning after December 31, 1995. Because gasoline sold for highway use will be virtually leadfree by the time the reformulated gasoline program takes effect, and additionally because the baseline 1990 model year vehicles are all designed to run on unleaded gasoline, the Agency believes that it is appropriate to define baseline gasoline as thus containing zero lead. Comments on this determination are encouraged.

Deposit-control or detergent additives, while not specified for the baseline gasoline, were present to some degree in almost all gasoline sold in 1990. They are also present in gasolines used in vehicle emission testing programs, such as EPA's Emission Factor (EF) test program and the Auto/Oil Research Study, which is sponsored by both the automobile and petroleum industries, to determine the effects on emissions due to changes in certain fuel parameters. The inclusion of deposit-control additives in the 'formula' fuel, as described above in section II.E of this notice, is provided for in the Act. Section 211(1), of the Act, which, like the reformulated gasoline provisions, will take effect on January 1, 1995, requires the use of effective deposit-control additives in all of the nation's gasoline. In light of these factors, the Agency proposes that the baseline fuel likewise contain detergent additives.

b. Winter Baseline Gasoline. As for baseline gasoline for wintertime comparisons, the Agency has based its proposed specifications on an analysis of surveys performed by the Motor Vehicle Manufacturers Associations and by Southwest Research Institute.

i. *Base Fuel Parameter Values.* The data EPA used to determine the winter baseline gasoline specifications was culled from the Southwest Research Institute (SwRI) 1990 gasoline surveys (January-April and October-December) and the Motor Vehicle Manufacturer's Association (MVMA) 1990 winter gasoline survey (January). Fuel parameter values are presented in these surveys by city, grade and month. The number of samples per city, grade and month is also provided. These surveys, however, only sampled unleaded grades of gasoline. Nevertheless, since the vast majority of vehicles in 1990 operated on unleaded fuel, EPA believes that the 1990 baseline fuel can be appropriately based on unleaded gasoline specifications.

ii. *Sales Data.* The best publicly available data on 1990 fuel sales is from Petroleum Marketing Monthly (PMM), a Department of Energy, Energy Information Administration publication. PMM reports fuel sales by grade, month, and states. The use of state data assumes uniform fuel consumption throughout a state. The sales data from PMM is listed under "Volumes of First Sales of Motor Gasoline by Grade." This data reflects first delivered sales of gasoline into the states where it is expected to be consumed.

Comments concerning the appropriateness of these or other references for determination of an industry average fuel, and of specific data within these references, are requested.

iii. *Calculation Methodology.* Initial survey parameter values were obtained by city, grade and month by combining SwRI and MVMA data. The following discussion explains the methodology used to combine the data of these two surveys to obtain a single initial parameter value by city, grade and month for the winter season.

During the winter season, MVMA data is available for all parameters of interest only for the month of January. For all parameters except sulfur, aromatics, olefins and saturates, SwRI data is available year round on an every-other-month basis. For those four parameters, data is available only during January/February and July/August. MVMA samples in 23 continental U.S. cities while SwRI samples 53 continental U.S. cities. Twenty-two continental U.S. cities are sampled by both surveys.

As mentioned above, for all but four fuel parameters, gasoline samples in the SwRI survey were taken on an every-other-month basis. Some cities were sampled on a January-March-May-July-September-November schedule, others on a February-April-June-August-October-December schedule. For averaging purposes, survey months were grouped into the following two-month pairs: January/February, March/April, May/June, July/August, September/October, November/December. Thus, data for SwRI cities sampled in January and SwRI cities sampled in February were assumed representative of gasoline sold in the city in the January/February time frame. For determination of a winter season baseline, the January/

February, March/April, and November/December bimonthly data was used, along with the October data in those SwRI cities sampled in October. September data was not included because September is not a non-high ozone season month.

For those 22 cities sampled both by MVMA and SwRI, the January data from MVMA and the Jan/Feb data from SwRI were averaged together on a sample-weighted basis (i.e., each sample from each survey was treated equally and independently) for each fuel parameter, gasoline grade and city. This step was unnecessary for the single MVMA city not part of the SwRI survey or for the 31 SwRI cities not part of the MVMA survey.

iv. *Nationwide Parameter Value Calculation.* The calculation of a nationwide average for each fuel parameter of the winter baseline gasoline was accomplished step-wise as follows.

The values for a given fuel parameter for each city, grade and bi-monthly (including October) period (either from the combined SwRI and MVMA data as described above or from either survey independently) were first weighted by grade fraction based on the gasoline grade sales data in PMM, resulting in one fuel parameter value per city per bi-monthly period. Next, using state fuel consumption data from PMM, the fuel consumption per city per bi-monthly period was determined by assuming uniform fuel consumption within a state and using the ratio of city to state population. The fraction of each city's fuel consumption per bi-monthly period to the total fuel consumption of all the survey cities in the period was then calculated using city population data. This resulted in a fractional fuel parameter value for each city in that bi-monthly period. The sum of these fractional fuel parameter values over all survey cities and bimonthly periods yielded the final, nationwide winter baseline fuel parameter.

v. *Oxygenate.* The Agency proposes not to include oxygen content as a specification of the winter baseline gasoline for the same reasons it proposed not to include oxygen in the specification of summer baseline gasoline. Comments are requested concerning the inclusion or exclusion of oxygen content in the development of the industry average baseline gasoline.

vi. *Geography.* The Agency proposes to determine the winter baseline gasoline on a nationwide basis (as per the summer baseline gasoline defined in the Act). Comments are requested on using this approach versus developing a regional, PADD or other geographically-limited baseline.

vii. *Final Winter Baseline Specification.* Using the methodology described above, the following specifications for winter baseline gasoline were determined, and EPA proposes them today:

Benzene, volume percent	1.64
Aromatics, volume percent	26.3
Olefins, volume percent	11.9
T90, degrees F	332
T50, degrees F	199
Sulfur, ppm	340
RVP, psi	12.3

2. High Ozone Season

The term 'high ozone season' is used in section 211(k) to refer to the period of time during which VOC control is required. Sections 211(k) (3)(B)(i) and (10)(B)(i) provide that the Administrator is to define that period of time. The Agency is considering three options for defining the high ozone season.

Under the first option, high ozone season would refer to the period from May 1 through September 15. This is the period during which most of the nation's ozone exceedances occur. (96 percent of all ozone exceedances from 1986–1988 occurred during this period, excluding those in California and Houston, which tend to experience high ozone concentration levels all year. Of the ten highest ozone levels experienced in each of the "nine cities" from 1986–1988, including California and Houston, 87 percent occurred from May 1 through September 15. This is also the period over which EPA volatility (RVP) standards for gasoline apply in all 48 contiguous states (40 CFR 80.27). A parallel schedule for reformulated gasoline and for volatility control would permit refiners of reformulated gasoline to meet requirements of both programs by producing only two separate product lines, one for summer and one for winter, rather than three separate product lines to be sold during three or four different enforcement periods. Moreover, defining high ozone season to be May 1 through September 15 would be in keeping with the basis for applying the volatility rule during the same period, since the primary purpose of that rule is also to reduce ozone-forming emissions.

Under the second option, the high ozone season would be lengthened to include May 1 through September 30. EPA believes that this option may simplify record-keeping requirements, which are generally monthly, by being consistent with the monthly compliance periods being considered for reformulated gasoline in order to accommodate the emissions averaging program provided by section 211(k)(7) of the Act and described in this notice in section VIII.

Under the third option, high ozone season would be defined uniquely for each ozone nonattainment area, based on the period during which ambient levels of ozone in that area exceed the ambient air quality standard. This period would be based on an analysis of past ozone data over a specified period (e.g., 1987–1989). The guiding principle might be, for example, to select the shortest period which encompasses 90 percent of all ozone violations occurring in each area within that area's high ozone season. VOC control would thus be focused on those periods during which each area is likely to suffer from high rates of ozone formation. The Agency welcomes information regarding the determination of area-specific high ozone seasons and encourages comments on all options for the definition of "high ozone season".

3. Representative 1990 Model Year Vehicles

Under section 211(k) of the Act, reformulated gasoline must result in reduced emissions of VOCs and toxic compounds, relative to emissions from baseline or representative model year 1990 vehicles, when using the baseline gasoline. EPA proposes that representative model year 1990 vehicles refers to all recent model year vehicles utilizing current vehicle technology. This could include 1986–1991 closed-loop vehicles with adaptive learning in order to take advantage of all available data on emissions from vehicles with technology comparable to that of actual model year 1990 vehicles. The use of all available data is critical to the development of a model for purposes of determining whether candidate fuels may be certified as reformulated. (See discussion of modeling below in section IV.) For certifying fuels using a test procedure rather than the model, EPA proposes that baseline vehicles be limited to vehicles from model years 1989 through 1991. Test results from each vehicle type will be weighted according to its 1990 model year sale fraction (described below in section V).

4. In-Use Basis

When quantifying emissions from a vehicle or fleet of vehicles, it is important to realize that emissions will vary over a vehicle's lifetime, generally increasing with age due to factors including normal mechanical aging as well as possible malmaintenance or

tampering. To ensure that the standards set for reformulated gasoline achieve the intended environmental benefits, the Agency proposes to assess emissions on an "in-use" basis, such that emissions from 1990 model year vehicles are the estimated average emissions from those vehicles over their lifetimes. Comments regarding the impacts of an in-use approach on determining representative vehicle emissions are requested.

a. *Use of EPA's Mobile4.1 Emissions Model.* Traditionally, the Agency, along with state and local air pollution agencies, the auto industry, and other parties interested in estimating mobile source emissions have estimated in-use mobile source emissions using versions of EPA's Mobile emissions model. The model, which incorporates data from EPA's Emission Factor (EF) program involving testing of in-use vehicles, is capable of projecting motor vehicle emissions under a range of ambient conditions and a variety of regulatory schemes. The current version of the model, Mobile4.0 is currently being updated. This updated version, Mobile4.1, will be available for use in June. Because Mobile4.1 focuses on calendar year 1990 emissions and includes vehicle technology up to and including the 1990 model year, it will provide a more accurate estimate of in-use emissions from 1990 vehicles than previous versions of the model. Also, because Mobile4.1 will be used by states to estimate mobile source emissions for the purpose of developing their State Implementation Plans (SIPs), its use in determining the emissions baseline for reformulated gasoline will provide consistency between state and federal programs. While final Mobile4.1 emission estimates were not available in time to be included in this proposal, the baseline emission estimates described in this proposal are based on projections of a draft version of Mobile4.1. Projections from the final version will be available shortly and will be made public through a notice published in the Federal Register. EPA strongly believes that Mobile4.1 should be used as the source of baseline emission estimates for this rulemaking and requests comments on its use for this purpose.

i. *Temperature Conditions.* EPA's Mobile emissions model has been developed to predict motor vehicle emissions on an area-specific basis. In order to use the Mobile model, it is necessary to specify a temperature range for that area in which motor vehicle emissions are being evaluated. Regarding the temperature conditions at which emissions from baseline, formula, and reformulated gasolines will be modeled, the Agency is proposing two options.

Under the first option, EPA is considering modeling baseline emissions under different temperature conditions for gasoline sold in the cooler, more northerly areas classified as "Class C" areas under EPA's Phase II volatility regulations (40 CFR part 80, 55 FR 23659, June 11, 1990) than in warmer areas, classified as "Class B". This option is being proposed to account for the differences in these areas' ambient temperature conditions and the fact that levels of non-exhaust (evaporative, running loss, resting loss, and refueling) emissions and rates of ozone formation are associated with the temperature conditions in an area.

Under the second option, EPA proposes modeling emissions for all areas under Class C conditions. This option is a simplification relative to the first option, but would generally be consistent with the Act's approach to defining the summer baseline gasoline, which represents a typical Class C area gasoline in that its Reid vapor pressure is 8.7 psi, although it is to be used as the baseline fuel for reformulated gasoline to be sold in all covered ozone nonattainment areas.

Section III.D.3 of this notice lays out alternative proposals for the VOC emission standard applicable to reformulated gasoline sold in Class B covered areas. Under the first alternative, a more stringent standard would apply in Class B covered areas than would apply in Class C ozone covered areas. Under the second alternative, the same standard would apply to both Class B and Class C areas. The two options being presented here regarding temperature conditions are dependent, in a practical way, on those in section III.D.3. If a more stringent VOC emission standard is applied in Class B areas, then it would be appropriate to use different temperature conditions to model emissions in those areas. If the same VOC emission standard is applied in all areas, then the Phase II RVP standards will cause all fuels to meet the VOC standard, regardless of whether a Class B or Class C temperature range is used. Thus, for reasons of simplicity, the same temperature range could be used in both Class B and C areas.

Comments are requested on the impacts of modeling baseline emissions under different temperature conditions for Class B and Class C nonattainment areas, as described above.

ii. *High Ozone Temperature Determination.* For determining an appropriate range of temperatures at which to model high ozone period emissions for ozone nonattainment areas, two alternative proposals are presented here. Either option could be applied in conjunction with either of the temperature condition options described above.

The first alternative would use the mean maximum and mean minimum daily temperatures at which the ten highest ozone exceedances occurred in each nonattainment area over the period from 1986 through 1989. These city-specific mean maximum and minimum temperatures would then be weighted by each areas' gasoline consumption level to derive a single temperature range for Class B and Class C ozone nonattainment areas (either one range for both Class B and Class C areas or else one range for each). These temperatures are being determined and will be placed in the docket for this rulemaking as soon as they are available.

The second option would utilize two sets of diurnal temperature ranges which EPA has, in the past, used in regulatory analysis. For Class C and B areas, these diurnal temperature ranges are 72–96 and 74–106 degrees F, respectively and were based on the 90th percentile high temperatures from 1984 for all Class C cities combined and Class B cities combined. As such, they represent a somewhat more extreme set of high ozone conditions. The Agency encourages comments regarding appropriate temperature ranges for high ozone periods in Class B and Class C areas.

b. *Effects of Stage II Refueling Controls.* EPA proposes that the conditions under which baseline vehicles emissions are modeled be representative of the conditions that will be encountered during the time when reformulated gasoline provisions will be in effect. During this period, all moderate, serious, severe, and extreme ozone nonattainment areas will be required to implement EPA's "Stage II" refueling controls as a means of limiting gasoline refueling emissions. Stage II controls require the use of emission control devices installed in service station pumps to recycle emissions that would otherwise be lost into the atmosphere.

EPA's regulatory impact analysis supporting refueling emission regulations estimated the efficiency of Stage II equipment to be 86 percent in areas where the program is very strictly enforced and 62 percent where enforcement is minimal. The overall average efficiency for Stage II equipment in areas currently using Stage

II controls has recently been estimated at 80 percent. EPA's Stage II implementation guidelines will allow exemptions for up to 25 percent of the nation's gasoline. (Exemptions are allowed for independent stations with throughput below 50,000 gallons per month and all stations with average throughput below 10,000 gallons per month.) The state of California, however, does not allow any exemptions from Stage II controls in their ozone nonattainment areas. Assuming that 25 percent of gasoline sold in nonattainment areas outside of California will be exempt, EPA projects that refueling controls will, on average, reduce refueling emissions by 66 percent in areas where the program is in effect. Comments are encouraged regarding this estimate of the in-use efficiency of Stage II refueling controls.

Due to this program, refueling emissions will constitute a smaller fraction of total in-use VOC emissions at the time reformulated gasoline provisions go into effect than is currently the case. EPA thus believes that it would be appropriate to account for Stage II refueling impacts when assessing emissions attributable to reformulated gasolines. In order that emissions due to reformulated gasolines and to the baseline gasoline be assessed on a consistent basis, the Agency proposes also including the impacts of Stage II refueling control in estimates of baseline emissions. The Agency welcomes comments on the inclusion of Stage II refueling control effects in evaluations of emissions from the baseline gasoline and other gasolines.

c. *Effects of Enhanced Inspection/Maintenance Programs.* A large portion of motor vehicle emissions are attributable to a small fraction of vehicles whose emission levels are extremely high due to tampering or malmaintenance. The enhanced inspection and maintenance (I/M) programs, which are mandated by the Act for all serious, severe, and extreme ozone nonattainment areas, will be addressing this category of emission sources by enforcing proper maintenance of exhaust and evaporative emission control equipment on motor vehicles. The Agency is in the process of developing the minimum criteria for enhanced I/M programs. The types of control measures being considered include anti-tampering inspections or canister purge and fuel tank pressure checks for evaporative emissions, and also an idle test or an "IM240" (a comprehensive emission test) for exhaust emissions. Mobile4.1 will be capable of modeling the emissions effects of enhanced I/M. Enhanced I/M, while not formally a part of Mobile4.1, has been discussed at all Mobile4.1 workshops. The criteria for the enhanced I/M program are expected to be defined and made available by July, 1991, at which time they will be placed in the public docket of this rulemaking.

The Agency proposes to include the impacts of enhanced I/M programs on baseline emission projections since enhanced I/M programs will be in place when requirements for reformulated gasoline take effect. To bracket the potential impact of enhanced I/M, EPA has used two different I/M program scenarios in deriving estimates of toxic, VOC, and NOx emissions from baseline gasoline. These enhanced I/M scenarios represent two extremes with regard to the impact of enhanced I/M on the composition of reformulated gasolines.

Under the first enhanced I/M scenario (referred to hereafter as the low evaporative or "low evap" case), the program is assumed to include canister purge and fuel tank pressure checks for evaporative and running loss emissions. For exhaust, it would require an IM240 test, with a stringent cut-point (the emission level above which a vehicle fails the test) for exhaust hydrocarbons. Under this scenario, 98 percent of the vehicle population would undergo inspections, and waivers would be granted for 2 percent of the inspected vehicles. Also, it is assumed that inspections would be performed on an annual basis.

Under the second scenario, the "high evap" case, only an anti-tampering inspection would be required for evaporative and running loss emissions. Exhaust emissions would be assessed by an idle test, which is a simpler test than the IM240 test. Under this scenario, 95 percent of the vehicle population will undergo inspections, and waivers would be granted for 5 percent of inspected vehicles. As under the first scenario, inspections are assumed to be performed on an annual basis.

The primary reason for including enhanced I/M benefits in the reformulated gasoline baseline is to focus the determination of reformulated gasoline's potential benefits on the sources of emissions that would remain after enhanced I/M programs are in place. The effect of including enhanced I/M would be to change the baseline ratio of exhaust to non-exhaust emissions, which could affect the types of fuel reformulations which are most cost effective. As will be seen in the next section, however, the definition of enhanced I/M is unlikely to significantly affect gasoline reformulation. This is true because the evaporative fraction is expected to continue to dominate overall emissions for both the high and low evap cases, and, consequently, volatility control will continue to be one of the major means of controlling total VOC emissions.

Comments regarding the impacts of I/M programs on baseline emissions modeling are solicited. EPA also encourages interested parties to participate in the public process of developing enhanced I/M measures and to express their views regarding the impact of these programs on gasoline reformulations.

5. Projected Baseline VOC Emissions

Assuming the above proposals for 1990 model year vehicles, in-use emissions and, Stage II refueling controls, and using Mobile4.0 and projected Mobile4.1 emission factors EPA estimates the Class C (with diurnal temperatures of 72–96 degrees F) VOC baseline emissions as follows:

Model: Enhanced I/M Scenario	Mobile4.0	Mobile4.1	
		Low evap VOC	High evap VOC
Exhaust (g/mi)	0.71	0.50	0.58
Hot Soak/ Diurnal	0.25	0.25	0.81
Running Loss	0.53	0.22	0.53
Refueling	0.07	0.07	0.07
Total VOCs (g/mi)	1.56	1.04	1.99

For both baseline and standard-setting purposes, VOC emissions are proposed to include all oxygenated and non-oxygenated hydrocarbons and to exclude methane and ethane because of the low reactivity of these compounds.

6. Baseline Toxic Emissions

As noted above, VOCs include all oxygenated and non-oxygenated hydrocarbons except for the simple compounds methane and ethane. All five of the toxic air pollutants whose emissions will be controlled through reformulated gasoline: Benzene, 1,3-butadiene, polycyclic organic matter (POM), formaldehyde, and acetaldehyde, also fall under the category of VOCs. Benzene, an aromatic compound, is a natural component of gasoline and, as such, is present in gasoline vapor emissions. Benzene is also formed from other aromatics during the combustion process and is emitted as exhaust. The four other toxic air pollutants subject to control by reformulated gasoline are solely products of combustion.

Under high ozone conditions, all five toxics are present in exhaust emissions, and only benzene is present in evaporative, running loss and refueling emissions (non-exhaust emissions). EPA proposes to regulate aggregate toxics emissions based on exhaust and non-exhaust emissions during this period. Under non-high ozone or winter conditions, on the other hand, EPA believes that non-exhaust VOC emissions will be very small relative to exhaust VOC emissions, making non-exhaust benzene emissions very small as well. EFA therefore proposes to consider non-exhaust toxic emissions to be negligible outside of the high ozone season and to regulate aggregate toxics emissions based on total exhaust emissions during this period. EPA requests comments on this approach to toxics regulation.

a. *Proposed Exhaust Benzene.* In the following section C, several correlations relating fuel parameters to emissions of toxic compounds are described. The first of these correlations, described further in section C.1, relates the benzene fraction of exhaust emissions to the levels of fuel benzene and aromatics. Under this correlation, the weight percent of benzene in exhaust non-methane/non-ethane emissions is equal to:

$$1.077 + 0.9441*(Bz) + 0.1133 \times (Arom-Bz)$$

where Bz is the volume percent of fuel benzene and Arom is the volume percent of fuel aromatics. EPA proposes that this correlation also be used to establish the level of benzene exhaust emissions from the baseline gasoline and welcomes comments. As the summer baseline gasoline contains 1.53 and 32 volume percent benzene and aromatics, respectively, the proposed benzene weight fraction of exhaust VOC emissions would be 0.0597. For the winter baseline gasoline described in section III.A.1 above, the analogous figure is 0.0542.

b. *Non-exhaust Benzene.* i. Evaporative (Hot Soak and Diurnal) Benzene Emissions. Evaporative benzene emissions from a given vehicle are primarily a function of fuel benzene content, temperature, RVP and MTBE content. The MTBE effect is not a function of its oxygen content, but is a function of its chemical interaction with the other liquid compounds of the fuel. Data showing this effect is only available for MTBE at this time. Other ethers may show similar effects. Alcohols do not show this effect.

Since hot soak emissions (evaporative emissions from a warm vehicle after it has been running) occur at higher temperatures that diurnal emissions (evaporative emissions from a sitting vehicle as the daily ambient temperatures rise and fall), the benzene fraction of hot-soak VOC emissions tends to be higher for a given fuel than that for diurnal VOC emissions. Evaporative benzene emissions also appear to be a strong function of the condition of the vehicle's evaporative emission control system, with the benzene fraction of evaporative VOC emissions being higher for those vehicles with properly operating systems and low VOC emissions (those likely to "pass" EPA's purge and pressure tests) and lower for those vehicles with inoperative systems and higher VOC emissions (those likely to "fail" EPA's purge and pressure tests).

EPA assumes that the benzene fraction of both hot-soak and diurnal emissions for "pass" vehicles be based on the percentage of benzene in the fuel. This benzene fraction estimate is nearly equivalent to data submitted by ARCO (L.A. Rapp to R. Rykowski, May 15, 1991) and :somewhat lower than the Auto/Oil test results. The Auto/Oil test results show benzene to be 2.0 and 3.9 percent of hot-soak and diurnal VOC emissions for an industry average fuel which has the same benzene content and RVP as the summer CAA baseline fuel.

For "fail" vehicles, EPA chooses to use the General Motors' tank vapor emissions model (which has been confirmed by both tank vapor data and similar models developed by CRC and EPA) for representative tank temperatures. For CAA baseline fuel, the benzene fractions of hot-soak and diurnal emissions are 1.143 and 1.033 percent, respectively.

ii. Running Loss Benzene Emissions. Fractions of vaporous emissions of benzene from an operating vehicle (benzene running loss emissions) were also determined in the Auto/Oil program, although only two vehicles were tested for running loss emissions. These measurements varied widely, as may be expected for well-maintained vehicles like these with very low running losses. The great majority of in-use running loss emissions come from vehicles which fail EPA's purge or pressure tests. For the baseline levels of benzene running loss emissions, therefore, EPA proposes the use of General Motors' tank vapor emissions model described above for a representative tank temperature rise for both "pass" and "fail" vehicles. The result of using that model for running losses is a benzene fraction of running loss VOC emissions of 1.140.

EPA requests comments and any additional data which may be available concerning the use of these figures for baseline fuel toxic emissions.

iii. Refueling Benzene Emissions. Projections relating fuel benzene levels to the weight percent of benzene in refueling emissions have been estimated using EPA, American Petroleum Institute (API), and General Motors (GM) tank vapor emissions models. These three models project very similar values and have been shown to be consistent with available data. The GM model is the most sophisticated scientifically, so EPA proposes its use here. Using this model, EPA finds the benzene fraction of refueling VOC emissions for the baseline gasoline is 1.057 percent. EPA requests comments and any additional data which may be available concerning the use of this figure for baseline fuel toxic emissions.

c. *Formaldehyde, Acetaldehyde, and 1,3-Butadiene Emissions.* The Auto/Oil test results on formaldehyde, acetaldehyde and 1,3-butadiene emissions due to the industry-average fuel can be applied directly to the reformulated gasoline baseline summer gasoline, since, as discussed above, the industry-average fuel fits the specifications of summer baseline gasoline. From that data EPA has calculated that the exhaust fractions of 1,3-butadiene, formaldehyde, and acetaldehyde are, respectively, 0.56, 1.25, and 0.89 weight percent of exhaust VOC emissions. EPA proposes the use of these fractions, applied to levels of summer baseline exhaust VOC emissions, to determine levels of summer baseline aldehydes and 1,3-butadiene.

For the winter baseline fuel, EPA proposes to use the correlations proposed in section C below. These correlations, also based on Auto/Oil test results, quantify the effects of fuel aromatics, MTBE, olefins, and T90 on each toxic's fraction of VOC exhaust emissions. Given the specification of winter baseline fuel described above, the correlations project that 1,3-butadiene, formaldehyde and acetaldehyde represent 0.64, 1.39, and 0.98 weight percent of exhaust VOC emissions, respectively. Future Auto/Oil data, as well as other data, will be considered in estimating the effects of other oxygenates.

d. *Baseline Toxics Emission Projection.* Based on the toxic pollutant fractions and correlations proposed above in section III.A.6, and using the VOC emission breakdowns derived above in section III.A.5, the following table lists EPA's estimated toxic

emissions (mg per mile) from baseline vehicles when using summer baseline gasolines as they vary with the different options regarding use of EPA's Mobile model, low or high evap scenarios for enhanced I/M programs, and assuming Class C area temperatures.

Model: Enhanced I/M scenario	Mobile4.0	Mobile4.1	
		Low evap	High evap
Exhaust benzene (mg/mi)	42.40	29.87	34.65
Evaporative benzene	2.86	2.76	8.97
Running loss benzene	6.05	2.51	6.05
Refueling benzene	0.74	0.74	0.74
1,3-butadiene	2.77	2.78	3.22
Formaldehyde	5.75	6.28	7.28
Acetaldehyde	4.05	4.46	5.17
Polycyclic organics	1.40	1.40	1.40
Total toxics (mg/mi)	65.93	50.79	67.49

For winter baseline gasoline, toxic emissions are estimated to be as follows:

Model: Enhanced I/M scenario	Mobile4.0	Mobile4.1	
		Low evap	High evap
Exhaust benzene	51.06	35.96	41.73
1,3-butadiene	6.06	4.27	4.95
Formaldehyde	13.12	9.24	10.72
Acetaldehyde	9.24	6.51	7.56
Polycyclic organics	1.40	1.40	1.40
Total toxics (mg/mi)	81.48	57.38	66.36

B. Impacts of Fuel Parameters on NOx and VOC Emissions

Having developed emission estimates for the baseline fuel, it is now necessary to determine how changes in the baseline fuel parameters will affect emissions, in order to evaluate the performance of the formula fuel, the performance of candidate reformulated gasolines, and the achievability of greater emissions. EPA presents two alternative proposals for predicting the emission impacts of changing fuel parameters by applying existing data to an emissions model.

Under the first option, a simple model would be developed which includes only the effects of fuel benzene and aromatics levels on benzene emissions, RVP on non-exhaust VOC emissions, and oxygen and aromatics on exhaust VOC emissions, and oxygenates on emissions of aldehydes. A large amount of data is available on these fuel parameters and emission impacts, so that a model can be developed which predicts these effects of these parameters with a high degree of certainty. They are also the most likely fuel parameters to be changed in gasoline reformulations.

Under the second option, a more comprehensive, more complex model would be developed that includes additional parameters, such as fuel sulfur and olefin levels and distillation points, whose emissions effects are less well known.

The advantage of a more comprehensive model is that it would provide fuel producers with more ways of reformulating gasoline that could still be certified using a model instead of through more costly testing. On the other hand, adding fuel parameters could impose an added burden on some refiners, since any modeling of improvements in fuel characteristics to show reduced emissions would have to be accompanied by the modeling of increased emissions due to a worsening of those same fuel characteristics. Because roughly half of all gasolines have characteristics that are above an average value while the other half are below, for each fuel parameter roughly half of all refiners would need to make improvements simply to match the characteristics of the baseline gasoline.

In addition, with the more comprehensive model, there is less certainty whether specific changes to the parameters actually produce the projected effect and less confidence that the emission reduction goals of the Act are being met. This option would also require a more complex and demanding enforcement mechanism.

For use under either option, there is a variety of data available from different sources regarding the emission effects of changes in fuel parameters. Recently published results from the Auto/Oil research study constitute much of that data, and, in particular, provide the bulk of additional data that would be used in a more comprehensive model under the second option.

The Auto/Oil tests used, as their baseline, a gasoline that meets the specifications of the CAA baseline summer gasoline, and because most of the Auto/Oil tests were performed on 1990 model year vehicles or vehicles with comparable relevant technology, the data resulting from these tests is relevant for potential inclusion in EPA's certification emissions model for baseline, formula, and reformulated gasolines. On the other hand, the Auto/Oil test program used only ten vehicles, all low emitters, and thus would not fit the requirements of EPA's testing protocol described below in section V.

Another important data source is EPA's Emission Factor (EF) database, which contains a substantial amount of data on oxygen and emissions. Other data is also available and will be described, along with Auto/Oil test results and EPA EF data, in the following paragraphs.

While most test programs have been performed on well-maintained vehicles, the actual condition of vehicles on the road could have a strong influence on the in-use emission effects that will result from changes in fuel composition. Exhaust VOC emissions effects, particularly those which influence the effectiveness of the vehicle's catalyst, will likely vary between vehicles with low, high, and super high (high-high) exhaust emissions (low, high and super high emitting vehicles are described further in Section V of this notice). VOC evaporative and running losses, subject to the condition of the canister, are most likely to be accurately estimated by using different fuel factors for "pass" vehicles (those capable of passing evaporative emission tests) or "fail" vehicles, and weighing these factors according to the fleet percentage of these vehicle types.

Because Mobile4.1 considers the above-mentioned vehicle emitter classes separately based on their emission rates, EPA proposes using, to the extent that they are available, separate exhaust, evaporative, and running loss emission effects for each emitter subclass. These effects will be weighted by vehicle type and incorporated into a single model projecting the effect of fuel parameters on total VOC emissions. The procedure for incorporating emission effects into a model will be consistent with the assumptions made concerning Stage II and enhanced I/M programs in estimating baseline emissions.

1. NOx and VOC Exhaust Emissions

The Auto/Oil test results suggest both NOx and VOC emissions to be affected by a fuel's oxygen, sulfur, aromatics, and olefin levels and by its T90 percent distillation point (T90). NOx emissions may be reduced through higher aromatics, lower olefins, lower oxygen, lower sulfur, and higher T90, while VOC emissions may be reduced through lower aromatics, higher olefins, higher oxygen, lower sulfur, and lower T90. Some of these oxygen and aromatics effects are corroborated by other test data and could be applied to a simple model, while other correlations go beyond the RVP, oxygen, aromatics, and benzene effects proposed for a simple model, but could be included under the second option of a comprehensive emissions model as described above. Based on the Auto/Oil mean emission

results, the correlations between these fuel parameters and VOC and NOx emissions can be characterized as follows:

VOC exhaust (g/mi) = Baseline VOC exhaust + [1 − (0.0060) × (32 + Arom)] + [1 − (0.010) + (Oxygen)] + [1 − (0.0038) + (330 − T90)] + [1 − (0.00042) + (339-Sulfur)];

NOx exhaust (g/mi) = Baseline NOx emissions + [1 + (0.00047) + (32 + Arom)] + [1 + (0.0088) + (Oxygen)] + [1 − (0.0049) × (9.2 − Olefins)] + [1 + (0.00047) × (330 − T90)] + [1 − (0.00030) + (339 − Sulfur)].

Arom, Oxygen, Olefins, T90, and Sulfur refer, respectively, to the fuel volume percent aromatics, weight percent oxygen, volume percent olefins, T90 in degrees F, and sulfur content in parts per million. The above characterization will be explained further in the Regulatory Impact Analysis supporting this rulemaking which, as noted below, will be available at a later date.

In addition to data from the Auto/Oil study, a substantial amount of data on VOC and NOx emissions at different oxygen levels is available as part of EPA's Emission Factor (EF) database. There is a great deal of data available which relates fuel oxygen to exhaust emissions. Still, not many fuel oxygenate levels have actually been tested. Most emission measurements were performed with MTBE at 2.7 weight percent oxygen or with ethanol at 3.5 weight percent oxygen, so some questions remain regarding whether emissions are a function of the oxygen level (weight percent) regardless of oxygenate type or of the oxygenate type and level (volume percent). There is also some speculation regarding the shape of the "curve" describing the relationship between either oxygen or oxygenate level and emissions. The Agency requests comments regarding the quantification of NOx and VOC emission effects due to fuel oxygen or oxygenate levels. The Agency requests comments on whether different oxygenates should be assessed differently for their effects on VOC and NOx emissions. Comments are also requested regarding the treatment, in a modeling approach, of oxygenates which were not included in EPA's EF or in Auto/Oil testing programs.

Olefins, the familiar name for double-bonded hydrocarbon molecules, are among the most reactive compounds that are emitted by motor vehicles, combining very quickly with NOx in the presence of sunlight to form ozone. As projected by Auto/Oil data, decreasing a fuel's olefin content will result in both decreased olefin emissions and decreased NOx emissions, contributing thereby to reduced ozone formation. (While disagreements exist as to the precise ratio of olefin reactivity to typical VOC reactivity, all estimates show olefins to be substantially more reactive.) However, Auto/Oil data also indicates that the mass of exhaust VOC emissions is actually increased by decreasing levels of fuel olefins. Inclusion of this relationship in the VOC emission model would encourage high fuel olefin levels that could cause more, rather than less, ozone formation than the baseline fuel causes, or that would reduce ozone formation less than reformulated gasoline with low olefin levels does. EPA is considering including the emissions effect of olefins in the comprehensive option for a NOx emission model, but excluding it from the exhaust VOC emission model in order to avoid this inappropriate incentive. The Agency welcomes comments on this matter.

Aside from such fuel parameters as olefins, whose inclusion in a certification model for VOC emissions would result in undesirable environmental impacts, EPA believes that, under the option of a comprehensive emissions model as described at the beginning of this section, all fuel parameters whose emissions effects can be reliably substantiated in time to be included in the reformulated gasoline rulemaking should be included in the derivation of the certification emissions model. In order to be reliably substantiated, EPA would have to be confident that the effect of a parameter was known for both low and high emitting vehicle types, or, if known for one type, that the results could be extrapolated for the other. EPA would also need to be confident that the emission effect was induced due to the specified parameter, and that the effect was independent of other fuel parameters or that its interaction with other parameters was known. The Agency would consider using current and future Auto/Oil data to model the effects of aromatics, olefins, oxygen, sulfur, and T90 on exhaust VOC and NOx emissions, and is also including EPA's EF data, along with Auto/Oil data, to model the effects of aromatics and oxygen. Under the first option of a simple model, the effects of olefins, sulfur, and T90 would be excluded, leaving only the effects of oxygen and aromatics. EPA is very interested in receiving comments on the impacts of fuel parameters on NOx and VOC exhaust emissions, and is especially interested in comments on the inclusion of these impacts in its certification emissions model. As the Agency finds that the fuel effects of additional parameters can be reliably substantiated, it will issue notices thereof.

In order to provide some indication of the types of reformulated gasolines which could be certified under the modeling approach being proposed today the proposed regulations assume adoption of the second, more comprehensive option for the model (i.e., including all of the correlations (except for the effect of olefins on exhaust VOCs) that were developed from the Auto/Oil test results for low-emitting vehicles and applying them to all vehicles).

2. Evaporative, Running Loss and Refueling VOC Emissions

The effects of fuel volatility (RVP) on evaporative, running loss, and refueling emissions are well characterized for Class C area summertime conditions within a volatility range of 7.8 to 11.5 psi and for Class B summer conditions between 7.0 and 10.5 psi. EPA proposes using its Mobile4.1 emissions model (which will address the effect of RVP under such conditions) to evaluate evaporative, running loss, and refueling emissions due to changes in gasoline RVP. As Mobile4.1 is not yet available, all projections made below utilize the effect of RVP on non-exhaust VOC emissions as projected by Mobile4.0. The Agency welcomes comments and information regarding the effects of volatility and other fuel parameters on nonexhaust emissions.

C. Impacts of Fuel Parameters on Toxic Emissions

As in the above section B on the Impacts of Fuel Parameters on NOx and VOC Emissions, the Agency is considering two options for predicting the impacts of fuel parameters on toxic emissions which are analogous to those for exhaust VOC emissions. The first is a simple model that includes the effects of fuel benzene, aromatics, oxygen, and RVP on toxic emissions. The second is of a more comprehensive model that also accounts for the impacts of other fuel parameters like sulfur content, olefins, and distillation points on toxics.

1. Exhaust Benzene Emissions

Exhaust benzene emissions can be affected by fuel modifications in two basic ways. Some fuel effects will change the fraction of benzene in the exhaust, regardless of the total VOC mass that is emitted as exhaust. For

instance, increasing or decreasing the levels of benzene in a fuel will lead to a direct increase or decrease in the benzene fraction of exhaust emissions. Moreover, changes in the level of benzene precursors (primarily nonbenzene aromatics) will affect the amount of benzene that is produced during combustion, also changing the benzene fraction of exhaust VOC emissions.

Second, fuel modifications can affect the overall level of exhaust VOC emissions by affecting the efficiency of the engine in burning hydrocarbons or by affecting catalyst efficiency. In these cases, the benzene fraction of exhaust VOC emissions may stay relatively constant and benzene exhaust emissions will change proportionally with exhaust VOC emissions. Of course, some fuel modifications can produce a combination of these two effects.

EPA proposes to analyze the effect of fuel modifications on exhaust toxic emissions by separating the two types of effects described above. This applies, not only to benzene, but to all five toxic air pollutants. With this approach, fuel modifications which change the level of VOC exhaust emissions can be considered to change the levels of toxic exhaust emissions proportionally.

With respect to the effects of fuel modifications on the benzene fraction of exhaust VOC emissions, both fuel benzene and fuel aromatics appear to be the primary factors. A recent correlation developed by Chevron used the results of three studies (described in the Regulatory Impact Analysis) to relate fuel benzene and aromatics to exhaust benzene and characterizes the weight percent of benzene in exhaust VOC (nonmethane/nonethane) emissions as equal to:

$$1.077+0.9441\times(Bz)+0.1133\times(Arom-Bz)$$

where Bz is the volume percent of fuel benzene and Arom is the volume percent of fuel aromatics. Because a sizeable amount of data went into these three studies, and because their results were all very similar, EPA proposes the use of this correlation for both summer and winter fuels and welcomes new information or suggestions regarding the effects of varying fuel parameters on exhaust benzene emissions.

2. Nonexhaust Benzene Emissions

Benzene is the only toxic air pollutant that is emitted in measurable quantities from evaporative, running loss and refueling vapors. Reductions in fuel benzene may be expected to result in reductions in benzene emissions from all of these nonexhaust emission sources. The Agency proposes including this proportional effect of fuel benzene in nonexhaust benzene emissions in the emissions model.

In addition to fuel benzene content, two other fuel parameters—RVP and MTBE, can also reduce nonexhaust benzene emissions. Reducing RVP reduces evaporative and running loss VOC emissions, since lower vapor pressure leads to lower emission levels of all pollutants, even if the fuel benzene level and the benzene vapor pressure remain constant. However, this effect is not proportional, meaning that benzene emissions will decrease less than one percent for every one percent decrease in VOC emissions.

The effect of MTBE is more unusual. The presence of MTBE appears to depress benzene vapor pressure despite no change in fuel benzene content. This effect has been confirmed both by tank vapor data and the GM tank vapor model referred to above.

EPA is considering alternative proposals for modeling the effects of RVP and MTBE on evaporative and running loss benzene emissions. Under the first option, EPA would utilize GM's tank vapor model to predict the effects of RVP and MTBE on tank benzene vapor emissions from both "pass" and "fail" vehicles. This model predicts that the benzene weight percent of hot soak VOC emissions for a fuel is described by the following relationship:

$$Bz\times(1.4448-0.080274(RVP)-(0.0342)\times(OX))$$

where Bz is the volume percent benzene, RVP is in psi and Ox is the weight fraction oxygen in the form of MTBE. Similarly, the benzene weight percent of diurnal VOC emissions is:

$$Bz\times(1.3758-0.080274(RVP)-(0.0289)\times(Ox)).$$

Since additional data on the effects of RVP and MTBE on nonexhaust benzene emissions from both "pass" and "fail" vehicles will become available through future Auto/Oil testing, the second option would include the results of this future data to model nonexhaust benzene emissions in the certification model. The Agency welcomes comments and data on the relationships between fuel volatility and oxygenate on benzene emissions and between overall nonexhaust VOC emissions and benzene emissions.

3. Nonbenzene Toxic Emissions

a. *1,3 Butadiene, Formaldehyde, and Acetaldehyde Emissions Effects.* Available data vary regarding the effects of fuel parameters on 1,3-butadiene, formaldehyde, and acetaldehyde emissions.

Under the first option of a simple, well-substantiated model, the Agency proposes to include the effects of fuel oxygen content on acetaldehyde and formaldehyde, both of which are oxygen-containing toxic air pollutants, since a substantial amount of collaborative data exists regarding these relationships, while the effects of other fuel parameters on formaldehyde and acetaldehyde emissions and the effects of oxygen on 1,3-butadiene display a range of varying and unpredictable results. Under the second comprehensive model option, the Agency proposes including the results of the Auto/Oil test program showing the effects of fuel aromatics, olefins, T90, and MTBE on these three toxics, as they have been included for other VOC and toxic emissions.

Just as lower emissions of total exhaust VOCs will result in lower exhaust benzene emissions, so will they result in lower exhaust emissions of 1,3-butadiene, formaldehyde, and acetaldehyde. EPA proposes that other fuel modifications which reduce VOC exhaust emissions, such as higher oxygen levels or, under the second option, lower sulfur content, be assumed to reduce all toxic exhaust emissions proportionately.

Additional Auto/Oil data will be available soon which quantifies the effects of ETBE and ethanol on 1,3-butadiene, formaldehyde, and acetaldehyde. EPA proposes to use this and all other available data to determine the effect of fuel modifications on these three toxic emissions, and would consider applying the results of this determination in the certification model, under the comprehensive model option, just as previously available Auto/Oil results have been proposed for that option. EPA welcomes comments on this approach and requests that any data showing the effect of fuel parameters that effect emissions of 1,3-butadiene, formaldehyde, or acetaldehyde be submitted.

b. *POM Emissions.* Exhaust polycyclic organics (POMs) include a number of different toxic compounds, mostly high molecular weight aromatics. There is no data quantifying the impacts of gasoline reformulations on POM emissions. At the present time, there are no widely accepted test procedures for measuring POM in both the gaseous and particulate phases. In addition, they constitute a very small fraction of total toxic emissions (less than 2 percent). For these reasons, the Agency proposes that the emissions model contain no effects on POM emissions. Comments are

welcome on this proposal. EPA also encourages comments on whether it would be more technically correct to treat POMs as a constant percentage of exhaust VOC emissions or as a constant value (in mg per mile).

D. Proposed Emission Standards

The final step in this analysis is to determine the appropriate levels of the VOC and toxic emissions standards that gasoline must meet in order to be certified as reformulated. As described earlier, section 211(k)(1) provides that gasoline is to be reformulated to yield the greatest achievable reductions in VOCs and toxic emissions, considering cost, energy, health and environmental impacts. Section 211(k)(3) provides that reformulated gasoline be required to comply with VOC and toxic emission standards determined by comparing the emissions performance of a specified formula fuel with specified performance standards. If the formula fuel achieves emissions reductions greater than the performance standards require, then the reductions achieved by the formula fuel become the standard; otherwise the performance standards apply. This determination is to be done separately for VOCs and toxics, so that the formula fuel may determine the standard for one of the pollutants and the performance standard may apply to the other.

A fundamental issue of statutory construction is raised by the section 211(k) provisions regarding VOC and toxic emission standards. On the one hand, section 211(k)(1) calls for standards that require the greatest achievable reductions, considering specified factors. On the otherhand, section 211(k)(3) specifies VOC and toxic emission reductions that reformulated gasoline must achieve. Nothing in the language of section 211 or the Act addresses how these two provisions interrelate. The legislative history of section 211(k) does not definitively address the issue, either.

One rule of statutory construction is that the specific governs the general. Application of that rule here would appear to mean that section 212(k)(3) determines the applicable reduction requirements. However, another rule of statutory construction is that every word of a statute is to be given effect; put another way, a statute should not be interpreted in a way that renders a word or provision superfluous. Applying this rule would seem to mean that section 211(k)(3) does not by itself determine the VOC and toxics standards, because such an interpretation would render the provision of section 211(k)(1), for standards requiring the greatest achievable reduction, meaningless. A corollary of this rule is that statutory provisions are to read together in a way that gives all of them effect. A possible reading of section 211(k)(1) together with section 211(k)(3) is that the latter provision establishes minimum reduction requirements that reformulated gasoline must meet, while the former authorizes EPA to set more stringent standards if it finds such standards achievable in light of the specified factors. Another rule of construction that must be considered is that statutory provisions are to be interpreted in a manner consistent with Congress' purpose and policy in enacting the provisions.

In the section below, EPA considers two alternative interpretations of the statutory provisions with regard to the VOC and toxic emissions standards: (1) Section 211(k)(3) establishes minimum standards that may be tightened pursuant to section 211(k)(1); or (2) section 211(k)(3) governs what standards apply. In any event, the first step in determining the required emission reductions is to determine the emission performance of the formula fuel relative to baseline emissions. For that determination to be made, the rest of the formula fuel's formula must be considered, since that statute only specified some of the fuel's parameters.

1. Definition of Formula Fuel

As described above in section II.F, the formula fuel is defined in the Act as containing:

—No more than 1.0 volume percent benzene,
—No more than 25 volume percent aromatics,
—At least 2.0 weight percent oxygen,
—No lead, and
—Additives to prevent the accumulation of deposits in engines or vehicle fuel supply systems.

The Act is silent regarding other parameters that have been defined for baseline gasoline—sulfur, Reid Vapor Pressure (RVP), octane (R+M/2), distillation points, API gravity, olefins, and saturates. EPA proposes that, where a compositional characteristic is not specified for the formula fuel, its characteristic will be that specified for the baseline gasoline, in order that any emission reductions result from only the stated parameters, free of the many and varying influences that other gasoline properties may have on emissions. The Agency welcomes comments on specifications for the undefined components of the formula fuel.

2. VOC Emission Performance of Formula Fuel Relative to Baseline Gasoline: Summer

Based on the impacts of fuel parameters on NOx, VOC, and toxic emissions discussed above in sections B and C, EPA estimates that exhaust VOC emissions are reduced between 2 and 11 percent from gasoline containing 2.0 weight percent oxygen in the form of MTBE (versus zero oxygen). The lower end of the range results from using Auto/Oil-determined MTBE effects and the upper end from using EPA-determined MTBE effects. Lower fuel benzene will only affect VOC exhaust emissions through its effect on total fuel aromatics, which is defined as 25 volume percent for the formula fuel. Lowering total fuel aromatics from 32 to 25 volume percent. will reduce exhaust VOC emissions slightly, based on Auto/oil test results.

With regard to evaporative, running loss, and refueling VOC emissions, with constant fuel RVP, changes in benzene, oxygen, and aromatics content are not expected to have any effect. Thus, with a maximum reduction in exhaust VOC emissions of 2 to 11 percent and no change in the other VOC emissions, the reduction in total VOC emissions from the formula fuel relative to baseline gasoline is less than the 15 percent standard to which the Act defaults. Accordingly, the minimum VOC emissions performance standard for reformulated gasoline is a 15 percent reduction relative to baseline gasoline.

3. Class B VOC Emission Reduction Standard

The volatility of gasoline, as measured by its Reid Vapor Pressure (RVP), is a major factor in the level of diurnal/hot soak, running loss, and refueling vapors emitted from vehicles. The warmer the temperature, the greater the contribution of RVP to high levels of these VOC emissions.

EPA's Phase II volatility regulations (40 CFR part 80, 55 FR 23659, June 11, 1990) address the impact of gasoline volatility on ozone-forming emissions by limiting RVP to no greater than 9.0 psi in gasoline sold nationwide from May 1 through September 15. In addition, the RVP of gasoline sold in ozone nonattainment areas in those 23 southern states having the highest evaporative VOC emission levels (EPA Class A and B areas) may not exceed 7.8 psi from June 1 through September 15. These Phase II regulations will take effect May 1, 1992. Of the mandated nine areas in which only reformulated gasoline may be sold, Los Angeles

Houston, San Diego, and Baltimore are Class B areas and represent 45 percent of the total population in the nine areas.

The extent to which reformulated gasoline will be an effective ozone control measure in these four covered areas will depend largely on the VOC emission reduction standard applicable to reformulated gasoline sold in these areas. As determined above in section D.2, the more stringent of the two alternative requirements laid out in section 211(k)(3) of the Act for VOC control is the minimum 15 percent reduction relative to emissions attributable to the baseline fuel. While the summertime baseline fuel has a specified RVP of 8.7 psi, gasoline sold in Class B ozone nonattainment areas during the summer will have a maximum RVP of 7.8 psi beginning in 1992. Reducing RVP from 8.7 to 7.8 is expected to result, with no other changes being made to the gasoline, in a 15 percent reduction in VOC emissions. Consequently, if reformulated gasoline achieves no more than a 15 percent VOC reduction relative to baseline fuel, it will achieve no more VOC reductions in Class B areas than the conventional gasoline that had already been sold in those areas for over two years.

Today's notice lays out two alternative approaches to VOC standards, which incorporate four options. The first approach is premised on a reading of the statute as providing no more than a 15 percent emission reduction over the baseline gasoline. Under this approach, the Agency proposes an option that would require a 15 percent reduction in VOC emissions relative to baseline emissions during the high ozone season in all covered areas.

The second approach is premised on the view that it would be inconsistent with the scope and intent of the reformulated gasoline program to apply a VOC standard that requires no more than a 15 percent reduction over baseline fuel. That the principal purpose of the reformulated gasoline program is to reduce ozone is clear from its scope. The program applies in the nine worst ozone nonattainment areas in the country and, at states' option, all other ozone nonattainment areas as well. It is not available to areas not in ozone nonattainment. According to this view section 211(k) authorizes a VOC reduction standard that achieves additional ozone reduction benefits for southern ozone nonattainment areas, including four of the nine worst ozone nonattainment areas.

To ensure environmental benefits in all covered areas, the second approach would require that reformulated gasoline sold in Class C covered areas achieve VOC reductions of 15 percent over baseline fuel and that reformulated gasoline sold in Class B covered areas achieve more than 15 percent reduction in VOC emissions relative to baseline fuel. Specifically, the Agency proposes that, under one option, the VOC standard for gasoline sold in Class B covered areas would be a 30 percent reduction over baseline fuel, or equivalent to a 15 percent reduction beyond the VOC emissions benefits already achieved by Phase II volatility control. A second set of options would require Class B areas to use the Clean Air Act performance standards for the year 2000 for VOC emissions control. For 2000, the Act specifies a 25 percent reduction standard, which could be adjusted down to a minimum of 20 percent (section II.C), relative to the baseline emissions.

EPA projects that an RVP reduction down to 7.1–7.2 psi, along with the formula fuel specifications, will achieve a 30 percent reduction in VOC emissions, relative to the baseline gasoline. EPA estimates that it is both technically feasible and cost effective to achieve a more stringent standard for VOC emission control in Class B areas and would have beneficial effects on health and the environment. (Cost and cost effectiveness estimates are still being developed. When these are completed, EPA will place them in the Docket, announce them in the **Federal Register**, and make them available, by mail, to parties interested in receiving them.) Because a 15 percent standard does achieve a substantial reduction in tons of VOCs in Class C covered areas, EPA would not consider a more stringent VOC standard to be appropriate for Class C areas. EPA requests comments on all options for VOC emission standards in Class B and Class C areas.

Under the approach requiring more stringent VOC standards for Class B areas, there are three possible sub-options regarding the period over which the Class B VOC standard would apply. Under the first sub-option, and for ease of enforcement, a Class B VOC emission standard would be in effect over the entire high ozone season, as it is defined for reformulated gasoline. Under the second sub-option, and in order to be consistent with Phase II volatility control, the Class B VOC emission standard would apply from June 1 through September 30, when the Phase II 7.8 psi requirements apply, while a 15 percent standard would apply during the remainder of the high ozone season.

While Phase II volatility regulations require the strictest levels of RVP control from June through September in all Class B areas, analyses supporting the volatility rule show that, in order to achieve emissions comparable to those of the average Phase I Class C areas using 9.0 RVP gasoline in July, nonattainment areas in many Class B states would actually require RVP controlled below 9.0 during only two or three months. Among the "nine cities", Baltimore is an example where sub-9 RVP control is only required in July. A third sub-option would be to apply the Class B VOC standard, on an area-specific basis, during only those months when RVP levels below 9.0 were found necessary in order to make emissions levels in those Class B nonattainment areas comparable with emission levels in Class C, 9 RVP, areas. A 15 percent VOC reduction would be required during all other months that fall within the high ozone season. The Agency encourages comments regarding the implications of these control season sub-options under the approach requiring a stringent Class B VOC emission standard.

4. Toxic Emission Reductions Due to the Formula Fuel, Relative to Baseline Gasoline: Summer

As with ozone season VOCs, section 211(k)(3) sets, as the minimum standard for toxic emissions, a reduction of 15 percent over baseline fuel, or that which is achieved by the formula fuel, whichever is more stringent.

The effect of the formula fuel on toxic emissions is more dramatic than its effect on VOCs. Its lower benzene and aromatic contents dramatically reduce both exhaust and nonexhaust benzene emissions. If MTBE is used as an oxygenate, the presence of 11 volume percent MTBE (the quantity needed to meet oxygen level requirements of 2.0 weight percent) has been shown to reduce nonexhaust benzene emissions, as described above in section 3. (For this and following emission estimates, the effects of oxygen have been modeled using MTBE, since Auto/Oil test data for other oxygenates has not yet been released) Based on the emissions effects proposed above, EPA estimates that a reduction in fuel benzene and aromatics to 1.0 and 25 volume percent, respectively, and the addition of 2.0 weight percent oxygen (via MTBE) to gasoline will reduce overall toxic emissions by 15.5–18.8% percent in the summer using a draft version of Mobile4.1 with Stage II refueling controls and a range of potential definitions of enhanced I/M (which have already been described). In the winter, the formula fuel is projected to reduce toxics emissions by 5.5 percent.

While these estimates are being proposed as the toxic emission reductions achieved by the formula fuel, the values will likely change somewhat once Mobile4.1 has been finalized in June 1991 and enhanced I/M defined in June or July 1991. The projected effectiveness of the formula fuel in reducing toxic emissions may also be affected by new data received in response to this proposal. If new information warrants a change in the proposed toxic emission effects of the formula fuel, EPA will publish a **Federal Register** notice announcing the revision and will provide an opportunity for public comment. The Agency does anticipate, in any event, that the toxic emission reduction attributable to the formula fuel will exceed 15 percent, relative to the summer baseline gasoline, and that it will thus set the minimum standard for toxic emission reductions.

The Agency has considered whether to apply a more stringent standard than the minimum standard for toxic emission control, as it has considered such an option for VOC control. Preliminary estimates indicate that the measures that would be required of refiners in order to reduce toxic emissions beyond the minimum requirements would be costly and not of great benefit. (The Regulatory Impact Analysis supporting this rulemaking will discuss in greater detail the environmental and economic impacts of reformulated gasoline.) EPA therefore proposes that, for toxics, the required reduction be based on the performance of the formula fuel, as described above. The Agency requests comments on the summer toxic emission standard.

5. NOx Emissions Attributable to the Formula Fuel Relative to the Baseline Summer Gasoline

As explained earlier, section 211(k)(2) of the Act requires that NOx emissions from reformulated gasoline be no greater than the level of those emissions from baseline gasoline, but allows EPA to adjust or waive other requirements as needed to prevent the NOx cap from being exceeded. Since the formula fuel determines the toxics reduction requirement, it becomes relevant to determine whether the formula fuel would increase NOx emissions and, if the formula fuel does increase NOx emissions, whether adequate NOx control is technically and affordably achievable by adjusting other fuel parameters, without having to adjust any requirements of this program.

An application of the correlation between various fuel parameters and NOx emissions proposed above in section IV.B.1 projects that the oxygen and aromatics content of the formula fuel will together result in an increase in NOx emissions of 2.1%, relative to NOx emissions from the baseline gasoline, assuming, as described above, MTBE as the oxygenate. The proposed correlation further projects that either a reduction in fuel olefins from 9.2 to 5.0 volume percent or a reduction in the sulfur level of gasoline from 339 to 270 will counteract the NOx emission increase due to the formula fuel without increasing either VOC or toxic emissions. Thus, the fact that the formula fuel itself increases NOx emissions does not necessitate that other requirements be changed to permit compliance with the NOx cap.

6. Formula Fuel Emission Projection

Using the comprehensive option for a fuel certification emissions model, projections for Mobile4.1, Class C temperatures, and the emission effects proposed for that option in sections B and C above, the following table lists EPA's estimated VOC, NOx, and toxics emissions from baseline summer gasoline under the two enhanced I/M scenarios and from the formula fuel. (As described above in Section 3, oxygen effects have been modeled using MTBE as the oxygenate.)

	Baseline low evap	Formula w/ MTBE	Baseline hi evap	Formula w/ MTBE
Exhaust (g/m)	.50	.47	.58	.54
Hot Soak/Diurnal	.25	.25	.81	.81
Running Loss	.22	.22	.53	.53
Refueling	.07	.07	.07	.07
Total VOCs (g/m)	1.04	1.01	1.99	1.95
NOx (g/m)	.930	.949	.930	.949
Exh Benzene (mg/m)	29.87	22.25	34.65	25.81
Evap Benzene	2.76	1.64	8.97	5.34
Running Loss Benz.	2.51	1.49	6.05	3.59
Refueling Benzene	.74	.44	.74	.44
1,3-Butadiene	2.78	2.80	3.22	3.25
Formaldehyde	6.28	8.19	7.28	9.50
Acetaldehyde	4.46	4.71	5.17	5.47
POMs	1.40	1.40	1.40	1.40
Total TAPs (mg/m)	50.79	42.93	67.49	54.81

7. Toxic Emission Reductions Due to the Formula Fuel, Relative to Baseline Gasoline: Winter

As explained above, the toxic emissions performance of the formula fuel relative to the summer baseline gasoline is higher than the mandated minimum 15 percent reduction. However, EPA estimates that the formula fuel achieves only a 5.5 percent toxics emission reduction relative to the winter baseline gasoline, well less than the minimum 15 percent toxics emission reduction that is required.

Using the comprehensive option for a fuel certification emissions model, projections for Mobile4.1, and the emission effects proposed for that option in sections B and C above, the following table lists EPA's estimated VOC, NOx, and toxics emissions from baseline winter gasoline under the two enhanced I/M scenarios and from the formula fuel. (As described above in section 3, oxygen effects have been modeled using MTBE as the oxygenate.)

Enhanced I/M case fuel	High evap		Low evap	
	Baseline	Formula	Baseline	Formula
Exhaust VOCs (g/mi)	.77	.71	.66	.64
Total VOCs [1] (g/mi)	.77	.71	.66	.64
NOx (g/mi)	.930	.947	.930	.947
Exh Benzene (mg/mi)	41.73	35.49	35.96	30.59
1,3-Butadiene	4.95	4.88	4.27	4.20
Formaldehyde	10.72	13.27	9.24	11.43
Acetaldehyde	7.56	7.63	6.51	6.58
POMs	1.40	1.40	1.40	1.40
Total TAPs (mg/mi)	66.36	62.68	57.38	54.20

[1] This assumes, as described above in section III.A.4, that wintertime evaporative emissions are negligible.

There are two alternative proposals for setting the toxic emission standard. Under the first option, the winter toxics standard would default to the 15 percent reduction requirement with the required reductions being measured against the toxic emissions of winter baseline gasoline. The summer standard, on the other hand, would be determined by the performance of the formula fuel, that is, a projected reduction of 15.5–18.8 percent relative to the summer baseline gasoline emissions.

Under the second option, the performance of the formula fuel would be averaged for the summer and winter baseline gasolines. The resulting annual average toxic emission reduction, if greater than 15 percent, would become the minimum standard for toxic emission control and would be applied on a year round basis. When averaging the summer and winter performance of the formula fuel based on the length of the season (assuming a high ozone season of five months) or based on the mass of toxic compounds which emitted during the season, the resulting annual average emission reduction of the formula fuel is, in either case, projected to be less than 12 percent. The standard would thus, under this option, default to a minimum 15 percent year round reduction in toxic emissions.

Under either option, EPA proposes that the minimum standard apply for winter toxic emission control, as proposed for the summer. The Agency encourages comments regarding the impacts of setting a year round or a seasonal toxic emission standard for reformulated gasoline.

IV. Fuel Certification by Modeling

To certify a fuel as reformulated, the person refining, blending, or importing the fuel for ultimate sale in a covered area must declare the composition of the fuel and demonstrate to EPA that it meets, not only compositional requirements, but also emission performance standards for VOCs, toxic air pollutants, and NOx. (Section VIII on Reformulated Gasoline Compliance describes procedures by which refiner, blender, or importer would declare a fuel's composition and demonstrate its performance.)

There are two possible ways that emissions performance might be demonstrated: By subjecting the fuels to vehicle emission testing or by applying the fuels' compositional specifications to a computer model that predicts vehicle emissions based on varying fuel characteristics. In either case, it will be necessary to declare all of the compositional characteristics of the candidate fuel that are defined for the baseline gasoline (API gravity, octane, distillation points, RVP, and sulfur, olefin, benzene, aromatics, and saturates levels) plus its oxygen level, oxygenate type, and heavy metal content. The Agency believes that demonstrating fuel effects on emissions through testing is likely to be very expensive and time consuming. At the same time, it believes that there is adequate data available on the emissions effects of some fuel parameters to construct a model that could reliably predict the emissions effects of the fuel reformulations involving changes in those parameters. Use of such a model would be vastly cheaper than fuel testing and would generally yield results as reliable as testing would. (See section V for more information regarding variability and other impacts on testing reliability.) For the reasons discussed above, EPA believes that certification by modeling should be an option for refiners, blenders, and importers of reformulated gasoline and encourages comments regarding the advisability of a modeling option for fuel certification.

A. Contents of the Model

EPA believes that any emissions model must be validated by substantial and reliable test data and proposes that a model option be available which includes the effects of certain fuel parameters on NOx, VOC, and toxics emissions effects. As described above in section III.B, the Agency suggests two options with regard to which fuel parameters would be included in such a model. Under the first option, the model would contain only the more established effects of fuel benzene and aromatics levels on benzene emissions, oxygenates on aldehyde emissions, oxygen and aromatics on exhaust VOC emissions, and fuel volatility on nonexhaust emissions. Under the second option, a more comprehensive model would also include the impacts of fuel sulfur levels and its T90 distillation point, and possible fuel olefin levels. Section III.B also contains a brief discussion of the implications of using one option over the other. Comments on the use of an emissions model for fuel certification and the contents of such a model are encouraged.

B. Updating a Model

Because of ongoing testing programs which are addressing fuel effects on emissions, and because further emissions effects may be determined based on fuel certification testing, it is likely that any model included in this final rulemaking would need to be updated to account for future findings. (If further findings become available in time to provide adequate public notice and opportunity for comment, EPA will include such findings in any model prior to publishing the final rule.) Afterwards, the model could be changed only through additional rulemakings. The Agency proposes two options for updating a certification model. Under the first option, any fuel certified by a model will be saleable through December 31, 1999 (up until Phase II reformulated gasoline requirements take effect). Once the model has been revised, fuel producers will have a choice of certifying fuels under either the original or the revised model. Under the second option, any fuel certified by a model will be saleable through December 31, 1999, unless that fuel no longer meets the emission standards

under an updated model, in which case the fuel would be certified for no more than two years after the updated model becomes effective. While the first option would provide greater flexibility for refiners, the second option would ensure that environmental benefits are met. Under either option, a new model will be developed for Phase II reformulated gasoline, which takes effect in 2000. Comments regarding updating a model and on the impacts of model updates on fuel certifiability are encouraged.

V. Certification by Vehicle Testing

As discussed above, data with which to develop an emission model is limited for many fuel parameters. As a result, the model described above is not able to incorporate all fuel parameters which may have an impact on emissions. Because of this, EPA is also proposing that a fuel producer be able to certify its candidate fuel through vehicle testing options when the candidate fuel either includes parameters not incorporated in the model or when parameter values fall outside of the modeled ranges. The following sections discuss proposals regarding the general requirements of the vehicle testing options, the emission reduction requirements, the test procedures, the test fleet requirements, the calculational and statistical compliance methodologies, and EPA's verification provisions.

A. General Requirements

1. Appropriate Conditions for Testing

EPA considers testing to be an important alternative means of fuel certification so that fuel producers have an opportunity to develop more cost effective formulations beyond those allowed by the emissions model. However, testing may not be an appropriate option in all cases. EPA proposes that the testing option be limited to only those situations where the characteristics of the candidate fuel clearly fall outside of the range of fuel parameters and/or their values covered by the model. Without such a constraint, it may, depending on statistical compliance criteria, be possible for a fuel producer to use the statistical variance associated with testing to certify a fuel through the testing option which would fail to be certified under the modeling approach. For example, a fuel that would fail to meet the VOC requirement through the model by a small margin could be tested and potentially pass due to the testing error associated with any vehicle testing program. The range of fuel properties covered by the models is discussed in section IV.

In some cases, however, it may be appropriate to permit testing even though the effect of the pertinent fuel parameters are included in the model. This is especially true as it relates to the comprehensive modeling option discussed in section III.B where fuel parameter effects may be included based on limited testing. In this case the amount of testing involved in the fuel certification protocol may be more extensive and thorough than the information that went into developing the model. Thus, there may be comparable or greater confidence in the certification test results than in the model and testing would be an acceptable option. Results from such testing would be very useful to increase the confidence in the effects of a number of the parameters in the model. Comments on the criteria to be used in allowing use of the testing option are requested.

2. Testing Options

EPA proposes that the testing option be coordinated with the modeling option such that a fuel producer could certify under the testing option by either testing for all emission types (exhaust, evaporative, running losses, and refueling) or, with the Administrator's approval, testing for only exhaust emissions and modeling the remaining emission types.

As discussed above, if a candidate fuel's parameters or their values fall outside of the range covered by the model, then testing is required (unless test data would be more comprehensive than the data supporting the model); if not, then testing is not permitted. EPA proposes that this requirement apply to exhaust and non-exhaust (evaporative, running loss, and refueling) emissions in different ways, since fuel parameters that affect evaporative emissions are likely to have an exhaust emissions effect as well, while the opposite is not necessarily true. As a result, if testing is required for non-exhaust emissions, it is required for all emissions, but if testing is required for exhaust emissions, it may or may not be required for non-exhaust emissions. If the latter case is true and the fuel producer wishes to model non-exhaust emissions, the fuel producer must prove to the Administrator that the fuel's non-exhaust emissions can be accurately determined by the model by proving that the RVP of the fuel falls within the range of 7 to 11.7 psi, that the distillation curve of the fuel is normal up to the 10% point, and that the effect of any oxygenates on the benzene vapor pressure of the fuel is factored into the model. If the fuel producer wishes to test, these conditions must be proved to be false.

By allowing non-exhaust emissions to be modeled under appropriate circumstances even though exhaust emission are measured, EPA believes that not only will the candidate fuel's emissions be more accurately determined, but also testing resources can be focussed on those emission effects which the models predict with the least degree of certainty. The results from testing that is performed can then be used to improve the models, as well as improve EPA's estimates of the air quality benefits of reformulated gasoline.

To the extent testing is performed, EPA proposes that it be performed for all the pollutants included in the reformulated gasoline certification requirements, including toxics. Failure to have such a requirement could allow fuel producers to "game" the certification requirements by permitting them to utilize the modeling option for one pollutant when it would be advantageous and the test results for another pollutant when it would be advantageous. Certified reformulated gasolines may then not meet all of the applicable emission reduction requirements in-use. For example, testing may show that a fuel may meet the VOC requirement but fail the toxics requirement, while the model may suggest that the fuel may meet the toxics requirement. Allowing the fuel to use the model for toxics would ignore fuel impacts on toxics that may not be addressed by the model.

Testing costs could be significantly reduced if only the pollutants other than toxics are measured by testing, and toxics are allowed to be modeled. However, since the testing option must be used when the candidate fuel's parameters fall outside of the range of the model, EPA does not believe situations will exist where only the pollutants other than toxics need be measured. As discussed earlier, if a fuel parameter is expected to impact toxics, and is not covered by the model, toxics must be measured. In addition, EPA believes that any fuel parameter expected to impact the pollutants other than toxics in an unknown fashion such that testing is required, will likely have an unknown impact on toxics emissions and thus warrant the measurement of toxics emissions, as well. Comments are encouraged on the above options. If additional options are identified that provide assurance that emission reduction requirements for all pollutants are obtained, then EPA will consider

them in the development of the final rule.

3. Seasonal Limitation on Testing

In order to be certified as reformulated, a gasoline must meet VOC, toxics, and NOx emission requirements in the high ozone season (summer) and toxics and NOx emission requirements outside of the high ozone season (winter). (See section II.) EPA believes that fuel producers would not likely utilize a testing option to certify non-high ozone season fuels. First, there is no VOC emission reduction requirement in the winter. Consequently, the candidate fuel formulations are more likely to be determined by the formula fuel specifications. Secondly, the cost of testing at winter temperatures would be significantly greater than testing at normal temperatures due to the need to use cold-room test facilities. As a result, EPA is proposing that testing be an option only for high ozone season fuel certification.

EPA is, however, soliciting comment on an option that would allow any fuel producer wishing to certify a non-high ozone season fuel by testing to petition the Administrator for such testing. Under this option the petitioner would be required to provide appropriate rationale to support such a request. This rationale would simply need to present some evidence that the fuel parameter in question may have a different effect in winter than in summer. Under this option, EPA proposes that any testing that is allowed would be performed either under appropriate wintertime conditions or under the same conditions used for high-ozone season fuels. EPA requests comment on the appropriate conditions for such testing.

4. Fuels

The fuels to be used for fuel certification include the candidate fuel and the baseline fuel since the candidate fuel's emission performance must be compared to the baseline fuel's to determine compliance with the VOC, NOx, and toxics emission requirements. Section II defines both the parameters and their corresponding values for the baseline fuel. For testing purposes, it is appropriate to allow the measured value of each of the parameters to be within some tolerance due to the difficulty of producing a test fuel to precise specifications and the statistical error associated with the measurement procedures. Since it is likely that the baseline fuel will be supplied by only one or two fuel suppliers, the variability due to fuel production will be minimized. Furthermore, since the fuel's properties can be tested multiple times, the statistical error due to the measurement procedures can also be minimized. As a result, EPA proposes that the baseline fuel's properties be within the tolerances defined in the table V.1. Due to the difficulty in accurately measuring the initial boiling point (IBP) and the fact that its value tends to be controlled by the RVP and the 10% distillation point, EPA proposes that no limitations be placed on IBP for fuel testing purposes.

TABLE V-1.—SUMMER BASELINE FUEL PROPERTIES

	Mean	Tolerance
API Gravity, °API	57.4	±0.3
Sulfur, ppm	339	±25
Benzene, wt%	1.82	±0.3
RVP, psi	8.7	±0.3
Octane, (R+M)/2	87.3	±0.3
IBP, °F		
10%, °F	128	±5
50%, °F	218	±5
90%, °F	330	±5
End point, °F	415	±20
Aromatics, vol%	32.0	±2.7
Olefins, vol%	9.2	±2.5
Saturates, vol%	58.8	

EPA also is proposing two alternatives to direct use of the baseline fuel as defined above which would reduce the error in the emission reduction estimates resulting from blending of the baseline fuel. In the first, the model would be used to determine the exhaust VOC emission impact of the actual measured values of the parameters in table V.1 relative to the required mean values. If the emissions impact of the actual measured values is more than two percent different from that of the required mean values, the fuel would not qualify as a baseline fuel. In the second option the model would be used to adjust the emission effects of the baseline fuel to account for fuel properties that differ from those listed in table V.1. EPA requests comment on both these options and the tolerances defined in table V.1.

In order to effectively evaluate the emission performance of the candidate fuel and be able to monitor and enforce the quality of the candidate fuel once introduced into commerce, the characteristics of the fuel which are important for evaluating emission performance must be known and verifiable. Accordingly, EPA proposes that, at minimum, the fuel properties listed above for the baseline fuel also be specified for the candidate fuel.

5. Emission Reduction and Fuel Testing Requirements

In order to be certified as a reformulated gasoline, a candidate fuel (high ozone season fuel) must result in the required VOC and toxics emissions reductions below the emissions resulting from the baseline gasoline and show no increase in NOx emissions. As discussed in section III, the required reduction in toxics emissions is based on the formula fuel's toxics emission performance. EPA currently projects that the formula fuel will result in a 18.6 to 22.1 percent reduction in air toxics emissions relative to the baseline fuel in the high ozone season. The Agency will issue a supplemental notice when it determines the actual percent reduction associated with the formula fuel once MOBILE4.1 is available and the definition and effectiveness of enhanced I/M are better known. (See section III for a more detailed discussion of this issue.) For VOC emissions, however, the formula fuel does not achieve the minimum 15 percent emission reduction required by section 211(k)(3) of the CAA. Instead EPA is proposing the alternative that the candidate reformulated gasoline be required to achieve a 15 percent reduction in VOCs over baseline gasoline for all areas, or a 15 percent reduction over baseline gasoline for ASTM Class C areas and a greater percent VOC reduction for Class B areas. In sum, the Agency proposes that for testing purposes the candidate reformulated gasoline be required to demonstrate no increase in NOx emissions, the required reduction in VOC emissions, and the reduction in toxics emissions determined by the formula fuel (currently estimated to be 18.6 to 22.1%). These reductions are all relative to the summer baseline fuel in the high ozone season.

A fuel certified through testing would have to be segregated from other reformulated gasolines unless the fuel producer demonstrated that mixing this fuel with other fungible reformulated gasolines certified using the model did not deteriorate the emissions reductions of either fuel beyond that estimated by a linear averaging of the emissions effects of the relevant parameters of the two fuels.

A second testing option proposed by EPA is to allow testing to determine the effectiveness of modifying a single fuel parameter (or a number of fuel parameters if changing a single fuel parameter naturally results in changes in others) at reducing emissions. If more than one new parameter is varied and they are not the natural consequence of

each other, then the fuel EPA would consider the fuel as being tested under the first testing option above. Under this second option, the goal of the fuel producer would be to identify the emissions effects of a fuel parameter which is not yet part of EPA's certification model, so that the effect of this new parameter can be added to other fuel modifications which are addressed by the model to produce a certifiable reformulated gasoline. The key requirement of such a program is that the emissions effect of the new fuel parameter be additive to those already in the model and not duplicative.

To best insure this, the reference fuel should be as close to the final, desired reformulated gasoline as possible, with the exception that the value of the new fuel parameter should be that of the baseline fuel. The candidate fuel containing the changed value of the new fuel parameter would then be the same as the reference fuel in every respect, except for the value of the one new fuel parameter. Again, a number of fuel parameters could differ between the candidate and reference fuels, if the differences all naturally resulted from changing a single fuel parameter. In such a case, the emission effect which is determined will be attributed to all the fuel modifications and not just one of them. All the fuel modifications would have to be present for the effect to be attributable to a given fuel. The emission reduction associated with this fuel parameter(s) will then be used to adjust the emission reductions granted to the candidate fuel by the model. While this option does not reduce the testing burden, it enables the fuel producer to evaluate and produce fuels beyond the applicable range of the model while still taking advantage of the model. It also enables test data to be used more readily to update and improve the model over time. In addition, it allows the fuel to be fungible if the effect of the new fuel parameter neither deteriorates when the fuel is mixed with other fungible reformulated gasolines nor deteriorates the emissions effects of other fuels.

In general, EPA does not expect reformulated gasoline to be marketed as a number of segregated unique formulae. Rather, the Agency anticipates that reformulated gasoline will vary in composition to reflect different circumstances, but will retain the overall emission performance required relative to the baseline fuel. If a reformulated gasoline has a unique formula, meaning that its properties have not been shown to blend in a non-deteriorating manner, it is possible that blending with other reformulated gasolines might not result in the same in-use emission reductions, as would have been achieved by the individual fuels. Thus, as EPA proposed in section IV of this notice, for candidate fuels whose parameters have not been shown to blend in a non-deteriorating fashion, the fuels must be either segregated in the fuel distribution system or, if the nature of the deteriorating effect is known, modified such that blends with other reformulated gasolines still meet the required emission reductions.

6. Statistical Requirements for Emission Reductions

Due to statistical variability associated with testing, the emission reduction requirements discussed above do not provide a complete description of the certification requirements. Some statistical criteria need to be applied to the test data to determine whether it in fact establishes that the emission reduction requirements have been met. EPA proposes a number of options to accomplish this goal, and requests comment on the appropriateness of these options or any others that can be identified.

The first option entails comparing the mean of the measured values from testing on all of the vehicles in the test fleet to the emission reduction requirements. Any fuel with a mean measured emission reduction greater than or equal to that required would be eligible for certification. This option is consistent with the use of the mean emissions effects from test data to develop the model.

The difficulty with this option is that the magnitude of statistical variability in measuring of the emission reduction values may be so large due to the variability inherent in vehicle testing (±5 percent or more), that many fuels may pass the certification test but have a significant probability of not meeting the performance standards in-use. Even if the fuel failed to pass the certification test the first time, the fuel could be slightly modified and retested, and would likely pass at some point in time due to the variability in the test measurements.

As a result, EPA is proposing a second option in which not only must the mean emission reductions meet the requirements, but the lower 90 percent confidence limit (the value at which one can be 90 percent confident that the mean is at least that large) of the mean emission reductions must also meet the emission reduction requirements less some percentage, for example 2.5 percent (i.e., assuming a 15 percent reduction requirement for VOC emissions a fuel would pass if the lower 90 percent confidence limit of the test results was 12.5 percent for VOC, −2.5 percent for NOx, and 16.1 to 19.6 percent for toxics). This would establish a high degree of confidence that the candidate fuel's emission reductions are at least as great as those minimum levels. To ensure that its complying fuel passes the test according to these criteria, a fuel producer could do one of two things or a combination of both. First, it could increase the statistical accuracy of the test results by testing more cars than are required to be tested. Second, it could test no more than the required number of cars but increase the chance that the fuel would pass the test despite poor statistical accuracy of the test results by formulating the fuel to achieve greater emission reductions than are required.

Rather than adding additional statistical criteria to increase statistical confidence as is done in the second option, EPA is also proposing a third option wherein the test fleet size, test fleet makeup, and number of tests is highly specified to ensure an acceptably narrow confidence interval. Under this third option, like the first option, compliance with the VOC, NOx, and toxics emission reduction requirements would be based solely on the mean of the test results. The number of vehicles required to be tested would be that which is sufficient to accurately define the mean emissions impact. If testing of the last five vehicles to meet the minimum testing requirement failed to result in any significant change (e.g., 0.5% or some similar figure) to the mean emission reduction estimates, then no additional vehicles need to be tested. If, however, a significant change resulted, then an additional five vehicles must be tested. Additional vehicles would be required to be tested until the mean emission reduction estimates ceased to change significantly. EPA requests comment on the appropriateness of this option, as well as what an appropriate test fleet size and makeup, and number of tests might be.

Instead of relying on the mean emission reductions with or without additional statistical criteria, EPA is also proposing two options which rely solely on the upper or lower confidence levels to determine compliance with the emission reduction requirements. In the first option the lower 90 percent confidence limit (or some similar figure) of the emission reductions would be required to meet the applicable VOC and 18.6 to 22.1 percent toxics emission reduction requirements, and similarly show no increase in NOx emissions. This would place all of the testing error

on the side of the environment, resulting in a high degree of confidence that each of the three emission requirements will be met in-use. In effect, it would require a greater emission reduction (on average) than mandated in order to account for such factors as testing error and inappropriate or inadequate vehicle selection. By requiring this measure of performance for VOC, NOx, and toxics, however, many fuels that would meet the requirements, on average, would still fail to be certified. In the second option the upper 90 percent confidence limit (or some similar figure) of the emission reductions would be required to meet the above emission reduction requirements. This would place all of the testing error on the side of enabling fuels to certify, allowing a fuel barely meeting each certification standard to have a high probability of passing. Under this approach, however, many fuels that would not meet all of the mandated emission reduction requirements on average would still be certified, and the in-use emission reduction goals of the reformulated gasoline program would be eroded.

B. Testing Requirements

For the reformulated gasoline program to achieve actual in-use reductions in fuel-related VOC and toxics emissions, certification test results must correlate with reductions in in-use emissions. No test procedure, however, is completely representative of all in-use conditions. The range of vehicle uses and operating conditions and the range of geographical and climatic conditions throughout the country prevent a single test procedure from being entirely representative. EPA has, however, developed test procedures which attempt to reflect a broad spectrum of in-use vehicle operating conditions. These test procedures have been used to develop EPA's MOBILE emissions model, which in turn has been used to develop the modeling option for fuel certification. To maintain consistency between the certification methods, these test procedures are also proposed for fuel certification by vehicle testing.

1. Test Procedures for High Ozone Season Fuel Certification

a. *Exhaust Emissions Testing.* For exhaust emissions, EPA is proposing that the exhaust portion of the Federal Test Procedure (FTP) for new vehicle certification (Subpart B of part 86 of the Code of Federal Regulations) be utilized. Two modifications to the FTP, however, are necessary. First, in order to effectively determine the difference in emissions between two fuels, carry-over effects from one fuel to the next must be minimized. As a result, the vehicles must be afforded an opportunity to be preconditioned on each fuel prior to testing in order to purge both the fuel system and the evaporative control system of the previously used fuel. A preconditioning sequence has recently been adopted by auto and oil companies in their joint Auto/Oil test program. As this sequence appears to have sufficiently eliminated fuel carryover effects in that program, EPA is proposing that it be adopted for reformulated gasoline certification. The proposed sequence consists of a canister purge and fuel tank drain followed by a series of fuel fills, idle or LA–4 operation, diurnal heat builds or hot soaks, and fuel drains. EPA requests comment on the appropriateness of this preconditioning sequence.

The second modification to the exhaust FTP involves the inclusion of toxics sampling and analysis techniques. These are needed to ensure compliance with the toxics emission reduction requirement. As provided by section 211(k)(10)(C) of the CAA the covered toxics include benzene, 1,3-butadiene, formaldehyde, acetaldehyde, and polycyclic organic matter (POM). POM can be present in both the gaseous and particulate phases of the exhaust. While various test programs have attempted to measure POM in one or both phases, no universally accepted test procedure exists for either. If such a test protocol were developed, it would also likely be quite costly. As discussed under the development of the certification model, POM, as measured to date, has been shown to be a small fraction of the total weight of the other toxics and its dependence on the type of gasoline used is currently unknown. As a result, EPA has proposed that POM be assumed to be a constant, either in terms of the fraction of total exhaust VOC or grams per mile. To be consistent, EPA proposes that POM not be measured when a reformulated gasoline is certified via testing, but be treated as POM is treated in the model.

EPA proposes that sampling for benzene and 1,3-butadiene be accomplished by the current bag sampling techniques for total hydrocarbons outlined in part 86, subpart 8 of the Code of Federal Regulations. Conversion of the sample gas concentration to vehicle emissions would be accomplished using similar equations as for the total hydrocarbon analysis, but with chemical specific densities and carbon to hydrogen ratios for benzene and butadiene rather than those for gasoline exhaust.

EPA proposes that both benzene and 1,3-butadiene concentrations be measured by gas chromatography with a limit of quantification adequate to determine exhaust emission measurements of 0.1 mg/mi and evaporative emission measurements of 0.2 mg/mi. EPA believes that because the value has a significant effect on fuel certification that this level of accuracy in measurement is warranted, and believes that it is possible by incorporating the measures described below. Other methods may be allowed provided equivalency to the accepted chromatographic technique can be demonstrated.

EPA proposes that benzene and 1,3-butadiene be analyzed in either separate instruments or separate columns of a chromatographic technique in order to achieve the desired measurement accuracy.[1] Such individual analysis allows for improved sensitivity and separation. Without proper care in choosing the chromatographic columns and conditions, benzene will coelute with either cyclohexane or 1-methylcyclopentene.[2] Because of the coelution, the recorded benzene concentration would be higher than actually present.

Measurement of 1,3-butadiene presents several sampling and analysis problems. Results from the Auto/Oil test program called into question the stability of 1,3-butadiene in the presence of nitrogen oxides. However, EPA believes that if 1,3-butadiene is measured within two hours of sampling that degradation will not produce a significant bias in the measurement.[3] In addition to this stability problem, it is difficult to attain the required sensitivity with the proper separation of peaks. EPA proposes a reference method which produces a limit of detection of approximately 1 ppb of butadiene.[4] A

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[1] Memo from J.E. Sigsby Jr. to C.E. Lindhjem, February 15, 1991.

Knapp, K., Sigsby, J.E. Jr., Stump, F.D., and Dropkin, D., "Speciation of Organic Components of Mobile Source Emissions", Proceedings of EPA/Air and Waste Management Association International Symposium on the Measurement of Toxic and Related Air Pollutants, Raleigh, NC, May, 1990, pg 266.

[2] Seizinger, D.E., Marshall, W.F., Cox, F.W., and Boyd, M.W., 'Vehicle Evaporative and Exhaust Emissions as Influenced by Benzene Content of Gasoline', Coordination Research Council Report CAPE–35–83 and Department of Energy Cooperative Agreement DE–FC22–83FE60149.

Auto/Oil Air Quality Improvement Research Program.

[3] Memo from J.E. Sigsby Jr. to C.E. Lindhjem, February 15, 1991.

[4] *Ibid.*

bag concentration at this level would correspond to approximately 0.01 mg/mi for most cars. This is well below the level of 5 to 10 mg/mi expected for the entire federal test procedure (FTP). By analyzing benzene and 1,3-butadiene separately, larger sample sizes may be used to gain the required sensitivity.

EPA first described formaldehyde sampling and analysis in the preamble to the final rule establishing standards for emissions from methanol-fueled motor vehicles (See 54 FR 14426, April 11, 1989). EPA proposes that the methodology described there as refined and improved by today's proposal be used for both formaldehyde and acetaldehyde emissions measurement.

Sampling of the aldehydes is performed by impingers filled with a solution of 2,4-Dinitrophenylhydrazine (DNPH) in acetonitrile (ACN) or silica cartridges impregnated with DNPH. Organic carbonyls, such as aldehydes and ketones, react with DNPH to produce hydrazone derivatives which are subsequently measured by high performance (pressure) liquid chromatography (HPLC).

EPA proposes that to ensure that the accuracy and reproducibility of the method is within five percent of the observed value, and that the limit of quantification be low enough to measure exhaust emissions down to 0.1 mg/mi, that at least 4 L of diluted sample be drawn for the cartridge method and 15 L for the impingers method. Typical measured values for formaldehyde and acetaldehyde in diluted exhaust are at least 0.25 and 0.03 ppm respectively. The low value for acetaldehyde corresponds to approximately 0.35 mg/mi.

b. *Evaporative and Running Loss Emission Testing.* EPA also proposes that the FTP be used for the measurement of evaporative emissions. This test procedure, however, is currently being revised; the proposed revision was published in 55 FR 1914, January 19, 1990. The revised procedure will both improve the accuracy of the evaporative emissions test and incorporate a running loss emissions test. EPA proposes that the evaporative and running loss emissions test procedure as revised be used for reformulated gasoline certification, since any improvements in the tests ability to measure evaporative and running loss emissions will be as important to the reformulated gasoline program as it is to the motor vehicle emissions control program. However, a couple of modifications are necessary in order to have it satisfy the purposes of the reformulated gasoline program. First, as in the case of exhaust, toxics sampling and analysis techniques must be incorporated. Since the only toxic that occurs in evaporative emissions is benzene, only benzene sampling and analysis procedures need to be incorporated. Those discussed above for exhaust emissions apply for evaporative emission purposes as well. Second, in order to provide a complete set of evaporative emissions data for use directly in the MOBILE4.1 model, EPA proposes that the revised evaporative test procedure be further modified to include a 7-day diurnal. However, if any time after 3 diurnals (the number likely to be required by the new evaporative test procedure) two consecutive diurnals have values within 10 percent of each other, the remaining diurnal tests may be omitted.

As discussed in the section on modeling above, EPA is considering two options for determining the temperatures to be used in evaporative and running loss emission testing. Under the first option, the design-value-day temperatures from the evaporative emissions rule would be used (i.e., 72–96 °F for Class C areas). These temperatures are relatively high, worse case temperatures used to assure effective vehicle emission control design. Under the second option temperature ranges expected to be used in various areas' State Implementation Plan analyses (averaged over all Class B and C areas separately or all together) would apply. Such temperature ranges are expected to be derived for each area by averaging the temperatures for the ten highest ozone days measured over a three-year period. Test results from use of these temperatures would more likely represent average inused emissions than testing at design-value-day temperatures. Regardless of which option is chosen, EPA proposes to use the same temperatures for both modeling and testing of reformulated gasoline to maintain consistency between the two means of fuel certification.

c. *Refueling Emissions Testing.* The FTP does not currently contain test procedures for refueling emissions. However, in 1987 a test procedure for certifying onboard refueling controls was proposed by EPA (52 FR 31162, August 19, 1987). Therefore, as one option EPA proposes that the proposed version of the onboard test procedure be utilized for refueling emission measurement unless a modified test procedure is promulgated along with onboard refueling controls. If the onboard test procedure is not finalized prior to the promulgation of this rulemaking, then a fuel producer wishing to test a unique fuel formulation for refueling emissions can petition EPA for promulgation of suitable test procedures.

Because certain areas where reformulated gasoline will be sold have Stage II refueling controls, and all ozone nonattainment areas will have Stage II by 1995, the actual emission result from any refueling testing performed will have to be adjusted downward by 66 percent (see section III discussion). In addition, the air toxics sampling requirements proposed for evaporative and running loss emissions are proposed for refueling emissions, as well.

In comparison to EPA's proposed refueling test procedure which requires the use of an evaporative SHED, other procedures may be simpler and result in equally valid test results. The proposed refueling procedure was designed to measure emissions from vehicles which possessed onboard refueling emission controls. Whereas refueling vapors from onboard equipped vehicles would tend to be released from a number of places on the vehicle, such vapors from vehicles without onboard controls (such as those that will be tested for reformulated gasoline certification) would be released exclusively from the fill spout. As a result, a test procedure which measures emissions leaving the fill spout may be just as effective for reformulated gasoline certification as a test procedure which uses the SHED. One such procedure might be the EPA short test procedure proposed but never finalized by EPA (See 41 FR 48044, November 1, 1976). EPA is currently evaluating the appropriateness of this refueling test procedure, and will also consider any other procedures recommended by commenters. For any tests procedures recommended by the commenters, EPA requests that data showing the effectiveness of the procedure relative to the SHED procedure also be submitted.

2. Test Procedures for Non-High Ozone Season Fuel Certification

As discussed in section (A)(3), EPA believes that a testing option for non-high ozone season fuel certification is unnecessary. As a result, EPA is proposing that testing not be a standard option for non-high ozone season fuel certification. However, should any fuel producer wish to certify a non-high ozone season fuel by testing, they may petition the Administrator. If the petition is granted, EPA would promulgate test procedures as consistent as possible with those for the high ozone season, but including testing at non-high ozone season temperatures. Such temperatures have been estimated to be an average low of 42 °F, an average high of 59 °F,

and an overall average of 50 °F based on available data for the 25 ozone non-attainment areas that have been classified as serious, severe, or extreme.

C. Vehicle Selection

1. General Requirements

Section 211(k)(3) of the CAA specifies that the required reductions in VOC and toxics emissions are to be measured from the emissions of those pollutants from "baseline vehicles." Section 211(k)(10)(A) defines baseline vehicles as representative model year 1990 (MY–90) vehicles. In the interest of simplifying test fleet vehicle selection, EPA proposes to allow the use of not only MY–90 vehicles, but also closed-loop MY–89 through MY–91 vehicles which are technologically equivalent (i.e., have adaptive learning) and representative of the MY–90 vehicles. Furthermore, due to the predominance of light-duty vehicles and light-duty trucks in the gasoline vehicle market and the added testing burden associated with heavy-duty engine/vehicle testing, EPA is proposing that heavy-duty gasoline vehicles need not be included in the test fleet.

Another consideration in vehicle selection is in what condition the vehicles are to be tested. EPA believes that Congress intended that the required VOC and toxics emission reductions be achieved not only at certification but also in-use. In order for this to be true, the test vehicles' condition should be representative of that of in-use vehicles. Therefore, for the purposes of this rulemaking, representative 1990 MY vehicles are defined to be 1989–91 MY vehicles having not only a technology mix representative of the 1990 model year fleet, but also emission performance typical of the in-use emission performance of 1990 vehicles over their lifetime.

While the goal is to test vehicles with emissions representative of in-use 1990 vehicle emissions, the actual in-use emission performance of 1990 model year vehicles over their useful life can only be predicted. Based on information in EPA's emission factors database,[5] exhaust VOC emissions vary widely across the in-use fleet, with some vehicles emitting at levels more than 20 times the standard. Evaporative and running loss emissions also vary significantly, apparently due to the effects of malmaintenance or tampering. Refueling emissions, which were not controlled on 1990 MY vehicles, are more a function of ambient conditions than vehicle type. NOx emissions tend to vary much less than VOC emissions and tend to follow more of a normal distribution. Since CO and toxics emissions for the most part mirror VOC emissions, by obtaining a representative VOC distribution, representative CO and toxics distributions should also be obtained. Therefore, EPA proposes that exhaust VOC emission performance be the primary basis for selecting vehicles for the test fleet. The Agency also proposes that evaporative emission performance be a secondary basis, which, as discussed below, would be handled through disabling key components of the evaporative systems on vehicles obtained through screening for exhaust emission performance. As discussed below, EPA proposes that the relative number of vehicles tested for the various emission types (exhaust, evaporative, running loss, and refueling) and the number of vehicles tested with various emission performance levels be based upon the contribution of each category to in-use emissions as estimated using MOBILE4.1 with an enhanced I/M program.

2. Vehicle Selection Criteria for Exhaust Emission Testing

a. *In-use Emission Performance.* In order to ensure that test vehicles represent the range of exhaust emission performance typical of the likely in-use emission performance of 1990 MY vehicles over their lifetime, EPA proposes that vehicles be tested which fall into the different exhaust emitter groups used in the MOBILE4.1 emissions model. These emitter groups (normal, high, very-high, and super) were determined based on analysis of the VOC and CO test data in EPA's in-use emission factor data base. Vehicles with exhaust VOC emissions less than twice the 0.41 g/mi standard are defined to be normal emitting vehicles. Vehicles with exhaust VOC emissions from two to four times the standard are defined to be high emitters. Vehicles with exhaust VOC emissions above four times the standard and up to 10 g/mi are defined to be very-high emitters, and vehicles emitting at more than 10 g/mi are defined to be super emitters. While super emitter vehicles contribute significantly to the total in-use emission inventory as a result of their high emission rate, following implementation of an enhanced I/M program EPA estimates that they will represent less than one percent of the vehicles in the in-use fleet. As a result, it may be extremely difficult to find vehicles for a test program which are super emitters. For this reason, EPA proposes that the very-high and super emitter groups be combined into one emitter group for purposes of reformulated gasoline testing.

If test fleet emission measurements are to reflect in-use emissions, the representation of each emitter group in the test fleet must reflect their representation in the in-use fleet. The nationwide average, however, is not appropriate for the purpose of the reformulated gasoline program. All of the areas of the country covered by the reformulated gasoline sales requirement are also covered by a requirement that they incorporate enhanced I/M programs. This will affect the in-use emissions performance of vehicles in those areas by requiring vehicles with poor emission performance to be repaired, decreasing their contribution to the total in-use emission inventory. As discussed earlier the impacts of enhanced I/M will be combined with the MOBILE4.1 emissions model for use in developing the modeling option. These impacts thus should also be reflected in the testing option. Table V–2 shows the range of estimated average emissions rate and representation of the emitter groups in the 1990 in-use fleet, with the anticipated impacts of an enhanced I/M program incorporated. These values will be adjusted to reflect the likely effects of the enhanced I/M program when EPA determines the exact nature of that program.

TABLE V–2.—EMITTER GROUPS

Emitter group	Fraction of in-use fleet	Fraction of in-use emissions
Normal: <2×Standard	0.81–0.84	0.49–0.60
High: >2×Standard; <4×Standard	0.12	0.23–0.25
Very High & Super: >4×Standard	0.05–0.07	0.15–0.28

As can be seen in table V–2, high, very high, and super emitting vehicles represent a small fraction of the vehicles in the in-use fleet, but represent a considerably larger fraction of the in-use emissions. Since EPA intends to analyze the test results from the different emitter groups separately for comparison to the MOBILE4.1 baseline values (as is discussed in subsection D), it is important that the test results from all the emitter groups possess a significant degree of statistical certainty. In order to maximize the overall accuracy of the test results, however, emissions from those emitter groups which have the greatest contribution to total in-use emissions are those which should be known with the greatest degree of

[5] EPA's Emission Factors Database on MICRO in the Michigan Terminal System (MTS) computer network system.

certainty, while those which have only a small contribution to total in-use emissions can be known with a lesser degree of certainty. As a result, EPA proposes that the representation of each emitter group in the test fleet be based upon the contribution of each emitter group to total in-use emissions. As shown in table V–2, the test fleet should thus be composed of 49 to 60 percent of normal emitting vehicles, 23 to 25 percent of high emitting vehicles, and 15 to 28 percent of very-high and super emitting vehicles. Thus, as one option, EPA proposes that the test fleet reflect these percentages.

While testing high, very-high, and super emitting vehicles will better represent actual in-use vehicles, there are a couple of problems associated with this approach. First, even though a high emitter is selected from the in-use fleet, the range of causes of high emissions is so broad that the cause of the high emission rate of a particular test vehicle may not be representative of the typical causes for high emissions in the in-use fleet. As a result, even though the test fleet contains high emitters, these vehicles may not be representative of the typical high emitters in the in-use fleet. Related to this issue is the concern that it may be possible for fuel producers to choose high emitting vehicles which have emission control problems that show a large benefit for their fuel while more representative high emitting vehicles may show no benefit. This situation could be remedied if EPA specified the causes of the high emissions such that only the most predominant in-use emission problems (excluding those likely to be corrected by an effective enhanced I/M program) were represented in the test fleet. However, this may not be possible given the lack of information correlating specific emission control problems to vehicles in high emitter categories.

Concern over the representativeness of the in-use emission problems of high emitting vehicles is eliminated if only normal emitting vehicles are selected for the test fleet. While the test fleet is then by definition not fully representative of in-use 1990 vehicles, it eliminates the potential for high emitters to be selectively included in the test fleet to obtain the desired emission reduction results. Other benefits of including only normal emitters is that it would greatly simplify testing and vehicle procurement and decrease the variance in the emission testing results.

Concerns also exist if high emitting vehicles are excluded. Limited information on ethanol fuels suggests that high emitting vehicles may show larger VOC emission reductions than normal emitting vehicles. Thus, if high emitting vehicles are excluded from the test fleet, some reformulations of gasoline might be credited with less VOC reduction benefit than deserved. Limited information with sulfur suggests that, since sulfur impacts catalyst activity, reducing the fuel sulfur content may have a smaller effect on high emitting vehicles than on normal emitting vehicles. In this case, excluding high emitters from the test fleet would cause the VOC reduction benefits attributable to sulfur reduction appear to be greater than what would occur in-use.

Since including high emitters in the test fleet can have both advantages and disadvantages, EPA is proposing a second option where only normal emitting vehicles need be included in the test fleet and the resulting percent emission reduction results applied to the total MOBILE4.1 exhaust emission value (normal, high, and high-high and super emitter exhaust emissions). EPA requests comment on the appropriateness of this option.

b. *Categorizing Test Vehicles by Emission Performance.* Requiring a test fleet with a certain emission performance distribution necessitates that vehicles be obtained which have the desired emission performance. This can be accomplished by one of two methods; either obtain vehicles with the desired emission performance from the in-use fleet, or intentionally disable emission control hardware on vehicles to result in the desired emission performance. EPA proposes that vehicles be obtained from the in-use fleet and tested in their as-received condition. This is the only means of ensuring that the vehicles have emission control problems which are truly representative of in-use emission problems. Disablement, however, is an attractive option since it would greatly reduce the cost of obtaining high, very high, and super emitting vehicles. Use of this option may also allow super emitters to be included in the test fleet as a separate emitter group. Unfortunately, EPA is currently unaware of sufficient information to define disablements which are representative of typical in-use emission problems and their effect on other parts of the emission control system. On some vehicles it may be possible to cause a vehicle to become a super emitter by disabling the oxygen sensor. On actual in-use vehicles, however, a failed oxygen sensor may have also resulted in other emission control problems such as deterioration of the catalyst. The result may be a significant difference in the fuel effects on their emissions. Similarly, it may be possible to cause a vehicle to become a very high emitter by decreasing catalyst performance. However, on actual in-use vehicles this may have been caused by a partially failed oxygen sensor. EPA requests comments on whether intentional disabling is the appropriate means of obtaining high, very high, and super emitting vehicles, and what disablements might be appropriate for the different emitter groups.

Regardless of whether high and very high emitting vehicles are obtained directly from the in-use fleet, or from disablement of normal emitting vehicles, prescreening of their emission performance is necessary to place them in the appropriate emitter group. EPA proposes that prescreening tests be conducted using EPA vehicle certification fuel (Indolene) over the Federal Test Procedure since these were the conditions which were used to generate the data for the in-use emission distribution. Alternatively, EPA will consider allowing prescreening tests to be performed using the baseline reformulated gasoline and/or the I/M 240 test procedure (a short transient test cycle based on the FTP which utilizes a hot-start only). The emission results under these conditions may be similar enough to those of the FTP and indolene to allow for a proper correlation to the in-use emission distribution. If this is a desirable option, then such correlation will need to be developed. EPA invites comment on these prescreening requirements and limitations.

c. *Technology Representation of the Emitter Group Subfleets.* The vehicle technologies which are likely to impact the emission performance of a fuel in a vehicle are those which should govern the selection of vehicles for the test fleet. Unfortunately, there is little information as to what vehicle technologies are likely to exhibit a fuel effect. However, a number of vehicle technologies are known to have an impact on a vehicle's emission performance, and as such are proposed to serve as the basis for test vehicle selection. The following vehicle technology categories are proposed: fuel system type (throttle body injection (TBI), port fuel injected (PFI), and carburetted (CARB)), catalyst type (three-way (3W), three-way plus oxidation (3WOX), and oxidation (OX)), air injection, exhaust gas recirculation (EGR), manufacturer, and vehicle type (LDV or LDT). The latter two categories are only indirectly related to vehicle technology, but many other vehicle

technology classifications are thought to vary in performance between the manufacturers or vehicle types. In order to represent all of the variations without grossly increasing the test fleet size, manufacturer and vehicle type are substituted. Additional categories not proposed include: Number of cylinders, feedback control, turbocharging, and adaptive learning. (All test vehicles must possess adaptive learning, but there are many different types of adaptive learning, some of which may be more effective than others.)

The four primary vehicle technology categories (fuel system type, catalyst type, air injection, and EGR) form the basis for vehicle selection for the test fleet. This selection is based exclusively on their representation in the 1990 fleet as determined using actual 1990 MY U.S. sales data from the vehicle manufacturers. At present only sales projections are available, and the numbers used below reflect those estimates. However, these values will be adjusted when actual sales data becomes available. The vehicle manufacturer selection is then based primarily on which manufacturer best represents the given vehicle technology in the 1990 fleet. In addition to basing selection on sales within a technology category, however, an attempt was made to have the manufacturer distribution also reflect overall fleet sales fractions, and to maximize the variety of manufacturers when appropriate to do so.

Table V.3 shows what EPA believes to be the most appropriate vehicle selections (in decreasing order of priority) in order to best represent the 1990 MY on the basis of vehicle technology. Vehicles are to be added to the test fleet(s) in the order in which they appear in the table. If more vehicles are to be included in a test fleet than are represented in table V.3, then the additional vehicles shall be selected starting over with vehicle number one.

TABLE V.3—TEST VEHICLE CHARACTERISTICS

Vehicle No.	Fuel system	Catalyst	Air injection	EGR	Tech. group	Manufacturer
1	Multi	3W	No Air	EGR	1	GM.
2	Multi	3W	No Air	NoEGR	2	Ford.
3	TBI	3W	No Air	EGR	3	GM.
4	Multi	3W	No Air	EGR	1	Honda.
5	Multi	3W+OX	Air	EGR	4	Ford.
6	Multi	3W	Air	EGR	5	Toyota.
7	Multi	3W	No Air	NoEGR	2	GM.
8	TBI	3W	No Air	EGR	3	Chrysler.
9	Multi	3W	No Air	EGR	1	Ford.
10	TBI	3W	Air	EGR	6	GM.
11	TBI	3W+OX	Air	EGR	7	Chrysler.
12	TBI	3W	No Air	NoEGR	8	Honda.
13	Multi	3W	No Air	EGR	1	Toyota.
14	Multi	3W	No Air	NoEGR	2	Chrysler.
15	TBI	3W	No Air	EGR	3	Ford.
16	Carb	3W+OX	Air	EGR	9	Toyota.
17	Multi	3W	No Air	EGR	1	GM.
18	Multi	3W+OX	Air	EGR	4	GM.
19	Multi	3W	No Air	EGR	1	Nissan.
20	Multi	3W	No Air	NoEGR	2	Mazda.
21	TBI	3W	No Air	EGR	3	GM.

Vehicle type—passenger car (LDV) or light-duty truck (LDT)—is proposed to be addressed independently from the other vehicle parameters. Roughly 30 percent of the 1990 fleet is composed of LDTs. EPA therefore proposes that roughly 30 percent of the vehicles selected for the test fleet from table V.3 be LDTs. The fuel producers would be free to decide which of the vehicles in table V.3 are to be represented by LDTs. Alternatively, EPA could instead specify which of the vehicles in table V.3 are to be LDTs based on knowledge of 1990 MY LDT sales. This option would ensure that those LDTs selected for the test fleet are the most representative of 1990 MY LDTs. Without this specificity, a truck could be used to represent a technology group dominated by LDVs or vice versa. Furthermore, another truck line may have much higher sales and be much more representative of a given technology group. Specifying which vehicles are to be LDTs, however would also reduce some of the flexibility granted to the fuel producers in obtaining an acceptable test fleet. EPA requests comment on these two approaches for LDT test vehicle selection. EPA also requests comments on the option of treating vehicle manufacturer like the LDV/LDT breakdown. That is, the fuel certification fleet would have to follow the priority of Table V.3, but without the manufacturer specification. The manufacturer breakdown would only be applied against the whole test fleet. This option may particularly simplify the selection of high and high-high/super emitters.

It must be pointed out that under the option where the exhaust emission test fleet consists of three separate sub-emitter categories (see section C.2.a above) the vehicle technology distribution discussed above must apply to each of the emitter group subfleets separately. Failure to have such a requirement could result in each subfleet being composed of vehicles which are unrepresentative of the in-use fleet as a whole. Since the results from each subfleet are used independently of each other, this could result in inappropriate test results. If the option is selected, however, to test only normal emitting vehicles, then the vehicle technology distribution will obviously apply to only that single test fleet.

The technology distribution option discussed above fails to ensure that the vehicles selected for testing in each of the emitter group subfleets is actually representative of that subfleet. For example, a vehicle from one particular technology group may be much more likely to result in very-high or super-high emissions than another vehicle from the same group. Conversely, certain vehicle technology groups may tend not to display very-high or super emission levels in-use, causing vehicle selection

to be very difficult. Therefore EPA is also proposing an option for test fleet selection which would define unique vehicle technology test fleet requirements for each of the emitter group subfleets based upon knowledge of which vehicle technologies are more likely to exhibit the given emission performance in use. This would make the test fleet vehicle selection even more representative of the 1990 in-use fleet. At present, however, information on recent model year vehicles with emission levels as a function of vehicle technology is not sufficient to implement such an option. The limited amount of data in EPA's in-use emission factor database on recent model year vehicles with the vehicle technologies identified in table V.2 is sufficient only to allow for the general conclusion that all of the vehicle technology groups are likely to exhibit normal, high, and very-high emission levels in the in-use fleet. Only two of the vehicle technology groups exhibited super-high emission levels in the emission factors data. In order to go one step further to define which vehicle technology groups are more or less likely to exhibit normal, high, very-high, or super emission levels would require a significant amount of additional data. Given the fact that this data is not likely to exist in the near future, this option does not appear to be very practical at this time. If any commenters believe that this option should be pursued, and are aware of any additional information to make it more feasible, EPA would welcome such comments.

Rather than more narrowly define the test fleet, EPA is also proposing for public comment a much more flexible option where any or all of the vehicle technology, manufacturer, vehicle type and emission performance criteria may be met independent of each other based upon their representation in the in-use fleet (as is proposed for light-duty trucks). The resulting test fleet requirements are shown in tables V.4 and V.5. The benefit of this option is that it would permit the fuel producers much greater flexibility in, and decrease the cost of, obtaining test vehicles. Unfortunately, there would be no certainty that the vehicles that were ultimately selected for the test fleet were representative vehicles, unless they were recruited randomly with the vehicle procurer paying careful attention to pre-testing a representative number of each vehicle type, technology, etc. EPA requests comments on this option and its potential effect on the performance of reformulated gasolines in-use.

Table V.4.—Projected Vehicle Technology Distribution for 1990 MY Passenger Cars and Light-Duty Trucks

Category	Percent of fleet
Fuel System	
Multi	71.2
TBI	26.9
Carb	2.0
Catalyst	
3-Way	85.4
3-Way + Ox	14.3
Ox	0.2
None	0.06
Fuel/Air System	
Closed Loop/No Air	75.4
Closed Loop/Air	24.2
Open Loop/Air	0.4
Exhaust Gas Recirculation	
Yes	77.3
No	22.7
Vehicle Type	
LDV	70.0
LDT	30.0
Percent of in-use emissions	
Emitter Group	
Normal	49–60
High	23–25
Very-high and Super	15–28

Table V.5.—Projected Representation of Vehicle Manufacturers in MY-90 Fleet of Passenger Cars and Light-Duty Trucks

Manufacturer	Percentage of fleet
General Motors	35.6
Ford	22.6
Chrysler	8.7
Toyota	7.3
Honda	5.3
Nissan	3.3
Mazda	2.8
American Motors	1.8
Hyundai	1.8
Mitsubishi	1.5
Fuji Heavy Ind	1.4
Suzuki	1.1
New United Motor Mfg. Inc	1.1
Isuzu	1.1
Diamond Star Motors	0.9
Volkswagen	0.8
Volvo	0.8
Mercedes Benz	0.4
BMW	0.3
Daihatsu Motor Co. Ltd	0.2
Jaguar Cars Inc	0.2
SAAB	0.2
Audi	0.2
Grumman Allied Industries	0.1
Yugo America Inc	0.1
Asc, Inc	0.1
Porsche	0.1

d. *Number of Test Vehicles.* Exhaust emissions represent the emission category most likely to be tested due to the number of fuel parameters which may impact exhaust emissions. Furthermore, a much greater variability in the fuel effects is expected with exhaust emissions than with the other emission types. As a result, statistical uncertainty in the exhaust emission reduction estimate will have the greatest impact on the uncertainty in the overall test result. For this reason, it is important that an adequate number of vehicles be tested for their exhaust emissions to limit the statistical uncertainty to acceptable levels. In the Auto/Oil test program, even with the relatively low vehicle-to-vehicle variability of the test fleet, the emission reduction estimate resulting from their 20 car test fleet could only be determined to within roughly ± 5 percent for a two-fuel comparison. In order to keep the statistical uncertainty reasonably low while at the same time limiting the test fleet size to reasonable levels, EPA proposes that at minimum the test fleet for exhaust emissions consist of 25 vehicles. Even if the test fleet consists of vehicles with a greater degree of variability than in the Auto/Oil fleet, a statistical uncertainty of roughly ± 5 percent should still be maintained.

The importance of establishing the 25 test vehicle minimum is dependent on which statistical compliance option discussed in section A.6 is being considered. For the options where the mean or the upper 90 percent confidence limit of the measured emission reduction are being utilized, there is no incentive for the fuel producer to minimize the statistical uncertainty, and in fact in the latter option there is actually an incentive to maximize statistical uncertainty. Thus, for these options, a relatively high minimum test fleet size is very important. This is not the case, however, under the option where the lower 90 percent confidence limit of the measured emission reduction is required to meet the emission reduction requirements. In this option EPA would have a 90 percent confidence that the emission reduction requirements are being met. The greater the uncertainty, the greater the measured mean emission reduction must exceed the standard. Thus, EPA need not require that as many vehicles must be tested. The fuel producer would have an incentive to test additional vehicles in order to reduce the confidence intervals and permit fuels with smaller average emission reductions to be certified. This would likely reduce the cost of producing the reformulated fuel. However, the fuel producer would also have the option of reducing testing costs by testing fewer vehicles and devoting resources into fuel modifications which would result in greater mean emission reductions than otherwise required. In

order to permit this, EPA proposes that, for the statistical compliance option where the lower 90 percent confidence limit must meet the emission reduction requirements, the 25 vehicle minimum be relaxed to 10 vehicles.

As discussed above, EPA has proposed an option whereby the exhaust test fleet is divided into three subfleets based upon the contribution of each subfleet to the total in-use emission inventory. Using the in-use emission distributions for the three subfleets shown in table V.2 and a 25-vehicle minimum for the test fleet (to obtain reasonable statistical accuracy), 12 vehicles must be included in the normal emitter subfleet, 6 vehicles in the high emitter subfleet, and 7 vehicles in the very-high and super emitter subfleet.

As discussed in 2.c, if in-use emissions are to be accurately estimated, the vehicles in each of the subfleets must be representative of the vehicles found in-use in that sub-fleet. Based on a review of the manufacturers' sales data, a normal emitter subfleet composed of the first 12 vehicles in table V.3 represents 97.6 percent of the sales in that sub-fleet on the basis of the four primary vehicle technology categories (fuel system, catalyst, air, and EGR), and 61.3 percent of the sales on the basis of these technology categories and the manufacturer; a high emitter subfleet composed of the first 6 vehicles in table V.3 represents 91.7 percent of the sales in that sub-fleet on the basis of the four primary technology categories, and 46.8 percent of the sales on the basis of the technology categories and the manufacturer; and a very high and super emitter subfleet composed of the first 7 vehicles in table V.3 represents 91.7 percent of the sales on the basis of the four technology categories, and 49.8 percent of the sales when the manufacturer is included. While adding additional vehicles to any or all of these subfleets could add to the degree with which the technology within each subfleet is representative of the in-use fleet, the size of these fleets appears to be adequate for this purpose. A test fleet that included all 21 vehicles listed in table 2 would only marginally improve the representation of the in-use fleet to 99.2 percent of the sales on the basis of the four primary technology categories and 74.5 percent on the basis of the technology categories and the manufacturer.

The total number of test vehicles discussed here and their distribution among the different emitter group subfleets is what EPA proposes to apply to all statistical compliance options described in section A.6. As discussed in section A.6, however, EPA proposes for the third option that additional vehicles be included in the test fleet in groups of five until significant changes of the added vehicles on the mean emission reductions cease to occur. For the third option, any additional vehicles added to the test fleet are to be added in a manner such that the overall fraction of vehicles in the normal, high, and very-high and super emitter subfleets fulfills the requirements expressed in section (a). EPA requests comment on the appropriateness of its proposal regarding both the total number of test fleet vehicles and their distribution among the different emitter groups.

3. Vehicle Selection Criteria for Evaporative and Running Loss Emission Testing

a. *In-Use Emission Performance.* In order to ensure that test vehicles have evaporative and running loss emission performance typical of the in-use emission performance of 1990 vehicles over their lifetime, EPA proposes that the test fleet include not only vehicles which have normal evaporative and running loss emissions, but also vehicles having high evaporative and running loss emissions. Since the causes of high evaporative and running loss emissions are far fewer and far better understood than for exhaust emissions, obtaining high emitters from the in-use fleet is not necessary to develop a representative test fleet. EPA therefore proposes that in-use high emitters need not be obtained unless the Agency later finds them necessary to better represent in-use emissions. Instead, EPA proposes that high emitters may be obtained through intentional disablement of the evaporative systems of normal emitting vehicles. This approach would permit vehicles selected for evaporative and refueling emissions testing that have normal emissions to be the same ones that are tested as high emitters following disablement of their emission control systems. The disablements would be those which are representative of the evaporative emission control problems of tampered and poorly maintained vehicles in the in-use fleet. These emission control problems primarily include missing or disconnected evaporative canisters and missing or defective fill spout caps. EPA proposes that the proportion of vehicles disabled by disconnecting the canister and removing the fill spout cap reflect the relative emissions contribution of vehicles with these two emission control problems to the in-use emission inventory assuming an operative enhanced I/M program. At the present time EPA proposes that 30 to 40 percent of the test vehicles have their canisters disconnected and 60 to 70 percent have their fill spout caps removed. When EPA defines enhanced I/M, these percentages will be adjusted to reflect the influences of an operative enhanced I/M program.

As an alternative to the disablement option described above, EPA is also proposing that testing only be required on normal emitting vehicles and that the emissions of the high emitters be modeled. Evaporative emissions are fairly well understood, especially if they are uncontrolled as is the case if the evaporative canister is removed or if the fill spout cap is removed. As a result, the testing burden could be significantly reduced if emissions from these vehicles were modeled instead. EPA requests comments on the appropriateness of these options.

b. *Vehicle Technology.* While there are a wide variety of canister designs and sizes and purge control strategies, the vast majority of evaporative control systems are very similar—enclosed fuel systems with charcoal canisters that are purged to the engine. In addition, the bulk of in-use evaporative emissions (depending on the I/M program in place) are expected to result from malmaintained and tampered vehicles where the system design is irrelevant. As a result, the importance of obtaining vehicles which represent the various technologies tends to be much lower than for exhaust emissions. Merely obtaining a variety of vehicles is likely to result in an adequate distribution of evaporative control technologies. For this reason, EPA proposes that vehicles to be tested for evaporative and running loss emission performance also be selected from table V.3 in the order in which they appear in the table.

c. *Number of Test Vehicles.* Since evaporative and running loss emissions represent a large fraction of total in-use vehicle emissions (50 to 70 percent based on MOBILE4.1 depending on the I/M program assumed), any variance associated with the evaporative and refueling emission measurement could have a significant effect on the variance in the total vehicle emissions. Fortunately, the impact of fuel changes (i.e., RVP and benzene content) on evaporative and running loss emissions should be very consistent across vehicles, resulting in a relatively low variance in the evaporative and running loss emission reduction estimate as compared to the exhaust emission estimate. Furthermore, EPA anticipates that fuel producers will rarely test for evaporative and running loss emissions. Testing is only an option if the

candidate fuel's properties fall outside of the range of the model or if the effect of the model is based on limited data, and the only three properties currently known to affect evaporative and running loss emissions (RVP, benzene, and MTBE) are included in the model over the entire range of expected fuel formulations. For these reasons, EPA proposes that fewer vehicles be tested for evaporative emissions than for exhaust emissions even though evaporative emissions may represent a larger fraction of the inventory. Since the statistical benefit of additional tests decreases significantly by the time 10 tests are performed, EPA proposes that this be the number of normal emitters tested. The same 10 vehicles are also to be tested in the disabled condition. If the results from MOBILE4.1 indicate the impacts of enhanced I/M will significantly decrease the contribution of high emitting vehicles to the total in-use inventory, then EPA may consider decreasing the number of high emitters that must be tested. These 10 vehicles should be more than sufficient to permit testing of an adequate number of different evaporative control systems such that additional vehicles need not be tested on the basis of vehicle technology.

4. Vehicle Selection Criteria for Refueling Emission Testing

Vehicle selection criteria for refueling emission testing can be much simpler than for exhaust, evaporative, or running loss emission testing. Due to the fact that there are no refueling emission controls on 1990 MY vehicles, refueling emissions are entirely uncontrolled (except for the effect of Stage II, which is vehicle independent) and should therefore be very similar on a gram of VOC per gallon basis among all vehicle types. As a result, there are no in-use emission requirements or in-use fleet vehicle technology requirements which need to be emulated in order to represent in-use refueling emissions. Therefore, EPA proposes that vehicles to be tested for refueling merely be selected from the vehicles selected for testing of exhaust emissions. Vehicles are to be selected from table V.3 in the order in which they appear in the table.

Since there are no vehicle technology requirements for refueling emission testing which necessitate the need to test a variety of vehicles to represent the in-use fleet, there is no minimum number of vehicles which must be tested on the basis of vehicle technology. Furthermore, since refueling emissions represent a small fraction of total in-use vehicle emissions (less than 4 percent based on MOBILE4.1), the impact of even a wide variance in refueling emission test results on the variance in the total vehicle emissions would be small. In addition, as for evaporative and running loss emissions, EPA anticipates that due to the adequacy of the model for refueling emissions, testing will seldom be utilized. As a result, EPA proposes that just 5 vehicles need to be tested for refueling emissions.

D. Calculation Methodology and Statistical Requirements

In order for reformulated gasoline to be certified, it must meet the VOC, NOx, and air toxics emission reduction requirements specified in section II. For these emission reductions to be realized in-use, the manner in which the test data is to be analyzed must be consistent with that goal.

1. Calculation of Total Vehicle Emissions

The emission requirements placed on reformulated fuels apply to total vehicle emissions. While the vehicle selection criteria discussed in the previous section are intended to provide test data that reflects in-use conditions, no test fleet can completely represent in-use conditions. EPA's MOBILE4.1 model will represent the most complete and accurate estimation of in-use emissions. For this reason, it is being used to determine baseline emission conditions for use with the modeling option. Similarly, EPA proposes that it be used to determine baseline emissions of all of the different emission categories for use with the testing option.

The eight different emission categories include: Normal emitter exhaust, high emitter exhaust, very-high and super emitter exhaust, pass and fail evaporative, pass and fail running loss, and refueling. Although the MOBILE4.1 output combines the exhaust emissions of the different emitter subgroups after the effects of enhanced I/M are incorporated, a review of the MOBILE4.1 input data reveals, as discussed in section C.2.a, that 50 to 60 percent of the exhaust emissions are due to normal emitters, 23 to 25 percent due to high emitters, and 15 to 28 percent due to very-high and super emitters. These percentages are used to develop all of the baseline MOBILE4.1 emission values. EPA proposes that a candidate fuel's total emissions be calculated from test data by multiplying the ratio of emissions from the candidate fuel to that of the baseline fuel by the baseline MOBILE4.1 emission value for each of the emission categories. So weighted, the emissions from the candidate fuel in all of the emission categories are then added together. By combining the emissions with the proper weighting, they thus reflect in-use conditions regardless of the test data. The total vehicle emissions from the candidate fuel are then compared to the MOBILE4.1 baseline value to determine whether the emission reduction requirements are fulfilled.

2. Statistical Criteria

Some of the options described in section B include statistical criteria beyond merely the mean emission reduction effects of the candidate fuel. For these options, additional calculational requirements beyond those described above are required in order to determine the confidence limits around the mean emission reduction. For this task, EPA proposes that an analytical method be used to combine the average emissions and the variability of the various emission categories. One method is an approach whereby the variances associated with each of the emission categories are appropriately summed together using statistical formulae based upon the contribution of each emission category to the total in-use emissions. The total variance is then used with a standard t-test to determine the confidence limits around the mean. However, EPA believes that this method may overstate total variability, and as a result a Monte Carlo approach is also proposed that would be more cumbersome but which should not overstate total variability. Emissions from each emission category would be put in terms of a percent reduction and a mean and standard deviation calculated. From these values a normal distribution would be created for each emission category. Using a random number generator of the standard normal variate, random emission reduction values for each of the emission categories would be selected from their respective populations and combined to determine single estimates of the total VOC, total NOx, and total toxics emission reductions for the candidate fuel. By performing this technique many (e.g., 1000) times, distributions of the overall VOC, NOx, and toxics emission reductions for the fuel are generated from which the confidence limits can be determined directly. EPA requests comment on the appropriateness of these two techniques and specifically what would be an appropriate form for the arithmetic technique.

E. EPA Confirmatory Testing and Fee Schedule

EPA proposes that fuel producers perform the certification testing. EPA will attempt to confirm the accuracy of the test results and on that basis certify the reformulated gasoline if appropriate. However, EPA reserves the right to perform confirmatory testing of its own to insure the validity of the test results and the emission performance of the reformulated fuel. Furthermore, EPA reserves the right to charge fees of an amount sufficient to recoup all costs associated with such confirmatory testing. Different fees may be appropriate depending on whether the fuels are certified through modeling, a combination of testing and modeling, testing with an approved fleet at a contractor, or testing with EPA's own fleet. EPA requests comment on the appropriateness of charging different fees and what those fees should be.

VI. Fuel Certification

Section 211(k)(4) requires that EPA include in the reformulated gasoline regulations procedures under which the Administrator shall certify reformulated gasoline as complying with the reformulated gasoline requirements. The procedures are to provide that any person may petition the Administrator to certify a fuel formulation or slate of fuel formulations as meeting the applicable requirements. They are also to require that the Administrator act on any such petition within 180 days of receipt. In the event that the Administrator fails to act within that time, section 211(f)(4) provides that fuel shall be deemed certified until the Administrator acts.

For fuels for which testing is used to determine emissions performance, EPA proposes to require that certificates of compliance with the reformulated gasoline requirements be obtained from the Agency before the fuel is sold as reformulated. EPA believes that certification by the Agency is necessary for such fuels because of the many issues that must be properly addressed by a testing program for the test results to be considered reliable indications of emission performance. The petition for certification would have to contain specific information describing the gasoline that was used as the baseline (see section V), the candidate reformulated gasoline(s) (defined to the extent to which the baseline gasoline is defined (section II(D)), the vehicles used (manufacturer, mileage, model year, model type, and vehicle identification number (VIN)), the test facility, the number of tests and their results, both in the form of raw data and as summarized results incorporating the raw data and as summarized results incorporating the statistical analysis methods proposed in section V. Any certificate issued on the basis of test results would remain in effect until the more stringent Phase II reformulated gasoline requirements take effect on January 1, 2000.

For fuels for which the model is used to determine emissions performance, EPA is considering two alternative approaches to certification. One approach would require that certificates of compliance with the reformulated gasoline requirements be obtained from the Agency before such a fuel is sold as reformulated, as would be the case for fuels certified through testing. This approach is consistent with the statutory requirement that EPA certify fuels as reformulated. It would also provide the Agency with assurance that every fuel's emissions performance is being properly assessed and attributed. In addition, it would provide EPA with information about the reformulations being produced before the end of the compliance period, so that the Agency would have an opportunity to spot and potentially correct any problems in achieving compliance. The disadvantage of this approach is the increased regulatory burden on refiners and importers it would entail.

Within this option, there are two approaches to what information should be submitted in a certification application. Under the first, every petition would be required to list the candidate gasoline's specifications for every parameter of the reformulation that is listed for the baseline gasoline (defined in section II(D) of this notice) and also the gasoline's oxygen level and oxygenate type. Under the second, only the specifications for those parameters that are contained in a certification model would need to be defined for the reformulation. (Section IV(A) of this notice discusses the options regarding the contents of a certification model. The advantages and disadvantages of using a simple model or a comprehensive model discussed in that section would also apply to the options described here.) Petitions would list those levels which the reformulation would not exceed for all parameters except the oxygen level, which should be listed as the minimum amount contained in the reformulation. Comments are encouraged regarding the appropriate fuel parameters to include in petitions to certify reformulated gasoline.

The other approach would be to not require refiners and importers to obtain certificates from EPA for fuels for which the model is being used to determine emissions performance. Since use of the model is expected to be straightforward, the Agency expects that refiners and importers would be able to use it correctly, thus minimizing the need for Agency oversight. The approach would obviously reduce the costs of the reformulated gasoline program for both industry and the Agency. The legal basis of this approach is questionable, however.

In the case of either the modeling or testing approach to certification, an additional issue is whether further submittal may be required for gasolines that do not, on their own, meet the requirements of the program. Section 211(k)(4)(B) provides that the Administrator shall certify a fuel as reformulated if it meets the requirements applicable to reformulated gasoline. In the case of gasolines that meet the requirements only when averaged with other gasolines, the statute would thus appear to require that petitions for certification of such gasolines identify the gasoline that will generate the needed credits so that EPA may ascertain whether in fact the credits can be generated. Since section 211(k)(7) provides that credits may only be earned by certified gasolines, moreover, the gasoline identified would have to be certified. The Agency would then be able to check that gasoline's certification in determining whether it could produce the necessary credits. In addition, for gasolines being averaged with gasoline supplied by another refiner or importer, it would similarly appear that the petition should include evidence of an agreement that the supplying refiner or importer will in fact supply enough of credit-generating gasoline and transfer enough credits for the credit-requiring gasoline to meet the requirements for each of the averaging periods during which the fuel is sold.

Any certificate issued for a credit-requiring gasoline under this approach would be conditioned on enough credits being obtained to demonstrate compliance with the reformulated gasoline requirements on average. If at the end of the compliance period sufficient credits had not been obtained, the certificate would be void *ab initio* and penalties levied for that amount of credit-requiring gasoline that had been sold for which offsetting credits had not been obtained. It would not be a violation of the certificate for credits to be obtained from a source different from that which had been identified in the certification application. In the case of fuels for which credits were to be

obtained from another refiner or importer, the certificate would remain in effect for as long as the agreement with the other refiner or importer lasted.

The advantage of this approach is that credit-requiring gasoline could only be sold as reformulated gasoline if a credit-generating gasoline had already been developed and certified to offset it and any necessary agreements for the production of the credit-generating gasoline had been reached. EPA thus would have greater assurance that gasolines would be produced in the right mix to meet the reformulated gasoline requirements on average. The person responsible for ensuring that the reformulated gasoline supplied to each covered area met the reformulated gasoline requirement would also have greater assurance that the right mix of gasolines would be available for purchase. (See section VIII(G)(4) of this notice for a discussion of the "covered area responsible party".) This approach would not ensure, however, that the right mix of gasoline would actually be supplied to each covered area. The disadvantage of this approach is its burden on refiners and importers.

Another approach to certification of a credit-requiring gasoline would be not to require that the petition identify the credit-generating gasoline and not to condition the certificate on the appropriate mix of credit-requiring and credit-generating gasoline to be made. Instead, the refiner or importer would determine its fuel's emissions performance using the model and its oxygen, benzene and heavy metal content. It would include that information on the fuel's shipping documents and so "certify" that the fuel met the reported specifications. The refiner or importer of the credit-requiring gasoline would not be obligated itself to produce or ensure the production of a sufficient quantity of the credit-generating gasoline. It would be up to the covered area responsible party dispensing gasoline to a covered area to ensure that gasolines supplied to each covered area met the reformulated gasoline requirements on average.

Under this approach, the duration of the certificate would not be linked to any agreement with another refiner or importer to supply the needed credits. For gasolines certified using a model, section IV(B) of this notice considers two options relating to the duration of the certificate based on whether the model is updated prior to the rulemaking that will establish Phase II reformulated gasoline requirements.

The advantage of the second approach to certification is that it avoids the complexity and regulatory burden of the first. Refiners and importers of credit-requiring gasoline would not have to ensure that the necessary credit-generating gasoline is made. Requiring terminal operators to supply the right mix of gasoline would be expected to generate the market forces necessary to ensure that the necessary credit-generating gasoline is produced. Refiners and importers would also not be required to get their reformulated gasolines certified by EPA if they were using the model to determine the gasolines' emission performance. In addition, there would be less monitoring, reporting and record-keeping than would be required to implement the first approach. The disadvantage of the second approach is that it affords less assurance that the right mix of gasoline will be made to meet the reformulated gasoline requirements on average. The legal basis for it is also questionable.

A third certification approach, which contains elements of the first two, is to include as a certification condition that refiners and importers must obtain enough credits to demonstrate compliance with the reformulated gasoline requirements on average, but not require refiners and importers to identify the source of such credits at the time of certification. Like under the first approach, such a certification would be void *ab initio* if a refiner or importer failed to obtain sufficient offsetting credits for any credit-requiring reformulated gasoline produced or imported. This approach has the advantage of not requiring regulated parties to identify, and where necessary obtain commitments from others for, the source of credits in advance of the production period. While this approach provides some certainty that the correct mix of reformulated gasolines will be produced on average, the degree of certainty is less than under the option which requires parties to identify the source of credits in advance.

EPA requests comments on these options for certification and any other approaches that might be preferable. In addition, EPA requests comments as to the appropriate interpretation of the terms "slate of fuel formulations" as used in section 211(k)(4), and "slate of gasoline" as used in section 211(k)(7)(A).

VII. Reformulated Gasoline Opt-in Provisions

CAA section 211(k)(6) describes provisions for areas not explicitly covered under these proposed provisions to opt into the reformulated gasoline program. Any area (of any size population) is eligible to opt-in if it is classified as an ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act.

Although reformulated gasoline provisions will be federally enforced, the environmental benefits resulting from reformulated gasoline can be applied toward meeting the VOC requirements of a State Implementation Plan. The Agency urges Governors who are considering making an application for areas in their state to opt-in to reformulated gasoline requirements to do so at an early date, thus allowing industry ample lead time to incorporate the necessary processing adjustments, thereby precluding otherwise avoidable delays in implementing the program.

A. Procedure for Opting-In to the Reformulated Gasoline Program

For any ozone nonattainment area to opt-in to the reformulated gasoline program, the Governor of the state containing the area must apply to EPA. A Governor may do this by signing a certified letter to the Administrator of the Agency stating their request to opt-in. Upon receipt of such letter, the Administrator will publish the application in the **Federal Register.** The Agency will also estabLish a date on which reformulated gasoline provisions will take effect in the opt-in area. This date, under CAA 211(k)(6), should be either January 1, 1995 or one year after the opt-in application is received, whichever is later. Under CAA section 211(k)(6) provides that the effective dates for opt-in areas can be delayed by one year, three times, if there is "insufficient domestic capacity to produce" reformulated gasoline. Such a detemination will be made by the Agency (after consultation with the Department of Energy) on motion of the Administrator or on petition of any person.

B. Opt-In Priority

Under CAA 211(k)(6), any extensions for effective opt-in dates based on questions of national availability will be granted for areas with a lower ozone classification before those with a higher classification. After making a possible determination of insufficient capacity, the Agency would then delay effective dates for the appropriate ozone classification areas.

C. Process for Establishing and Delaying Effective Dates for Opt-In Areas

EPA is developing an orderly process for establishing effective dates in response to opt-in applications, which will ensure that the worst ozone nonattainment areas receive priority as

required by the Act and described above in section B. This process is being designed to allow a maximum number of areas to opt in to the program as quickly as possible, while providing ample lead time for industry to make reformulated gasoline available to its intended markets.

VIII. Credits and Enforcement

A. Introduction

Section 211(k)(5) of the Clean Air Act prohibits, beginning January 1, 1995, the sale of gasoline not certified as reformulated ("conventional gasoline") in certain ozone nonattainment areas ("covered areas"). Under the enforcement scheme proposed here, refiners and importers would be required to designate all gasoline as either reformulated or conventional; reformulated gasoline would have to meet the certification requirements; and conventional gasoline would have to be marked to allow its detection if sold in a covered area and labeled as not for sale to ultimate consumers in a covered area. An averaging and trading ("credit") program also is proposed for two or more of the regulated parameters of reformulated gasoline. The program would permit credits to be generated for surpassing, and used to demonstrate compliance with, requirements regarding oxygen and benzene content, and possibly aromatic hydrocarbon content, and VOC and toxics emissions performance. Further, the program would permit averaging and trading either within each covered area or within covered areas in a particular section of the country.

B. Program Duration

The reformulated gasoline requirements for NOx, oxygen, benzene, heavy metals and toxics apply year round; the VOC standard applies only during the high ozone season of May 1 through September 30. (Other options for the duration of the high ozone season are discussed in section III of this notice.) Reformulated gasoline meeting the VOC standard must be produced and shipped sufficiently in advance of May 1 so that reformulated gasoline meeting this standard will be sold in each covered area on that date. For this reason, EPA is proposing that terminals serving covered areas be required to meet the VOC standard during the averaging period which begins April 1. EPA believes this lead time is sufficient for most terminals and retail outlets to replace non-VOC controlled gasoline with gasoline which is so controlled through normal product turn-over.

C. Geographic Scope

Section 211(k)(10)(D) defines the "covered areas" in which reformulated gasoline must be sold as the nine ozone nonattainment areas having a 1980 population of more than 250,000 and the highest ozone design values during 1987 through 1989. The nine ozone nonattainment areas meeting these criteria are as follows:

1. Los Angeles-Anaheim-Riverside, California consolidated metropolitan statistical area (CMSA): Counties of Los Angeles, Orange, Riverside, San Bernardino, and Ventura.
2. Houston-Galveston-Brazoria, Texas CMSA: Counties of Brazoria, Galveston, Harris, Fort Bend, Liberty, Montgomery, and Waller.
3. New York-Northern New Jersey-Long Island, Connecticut CMSA: *New York:* Counties of Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, Westchester, Orange and Putnam. *New Jersey:* Counties of Bergen, Passaic, Hudson, Hunterdon, Middlesex, Somerset, Monmouth, Ocean, Essex, Morris, Sussex, and Union. *Connecticut:* Counties of Fairfield, New Haven, Litchfield, and Stamford.
4. Baltimore, Maryland metropolitan statistical area (MSA): Counties of Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Annes, and the cities of Annapolis and Baltimore.
5. Chicago-Garyhake County, Illinois-Indiana-Wisconsin CMSA: *Illinois:* Counties of Cook, Du Page, Kane, Kendall, and Joliet. *Indiana:* Counties of Lake and Porter. *Wisconsin:* Kenosha County.
6. San Diego, California MSA: San Diego County.
7. Philadelphia-Wilmington-Trenton CMSA: *Delaware:* New Castle County. *Pennsylvania:* Counties of Bucks, Chester, Delaware, Montgomery, and the city of Philadelphia. *Maryland:* Cecil County. *New Jersey:* Counties of Burlington, Camden, Gloucester, Mercer, Cumberland, and Salem.
8. Hartford-New Britain-Middletown, Connecticut CMSA: Counties of Hartford, Middlesex, Tolland and New London.
9. Milwaukee-Racine, Wisconsin CMSA: Counties of Milwaukee, Ozaukee, Racine, Waukesha, and Washington.

Section 211(k)(10)(D) also provides that effective one year after an area is reclassified as a severe ozone nonattainment area under section 181(b), that area will also be a "covered area." In addition, as discussed above, under section 211(k)(6) any other ozone nonattainment area will be included in the reformulated gasoline program at the request of the Governor of the State in which the area is located.

Under section 107(d)(4)(A)(iv) of the Clean Air Act, the boundaries of any ozone nonattainment area which is classified as serious, severe or extreme are deemed to encompass the entire MSA or CMSA, unless these boundaries are changed in response to a petition from the Governor of the State in which the area is located. Petitions have been filed for most of the ozone nonattainment areas listed above, but these petitions have not been ruled upon by EPA.

As a result of a Governor's petition, the reformulated gasoline program may thus apply in an area smaller than the MSA/CMSA. However, under section 211(m)(2) the oxygenated fuels program is required to apply to the MSA/CMSA of the affected carbon monoxide nonattainment areas. The issue thus raised is what should occur in those areas in which both the reformulated gasoline program and the oxygenated fuels program apply. One option would be to require reformulated gasoline only in nonattainment areas as these areas may be constricted in response to a Governor's petition. Another approach would be to require that reformulated gasoline be sold in the MSA/CMSA's, even if one or more covered ozone nonattainment areas have been constricted to less than the MSA/CMSA. The latter option would result in more reformulated gasoline being sold, which would result in more environmental benefits, and facilitate gasoline distribution and EPA enforcement. However, this option would entail the increased cost of producing and distributing additional reformulated gasoline, and the legal basis for requiring reformulated gasoline outside of nonattainment areas is questionable. EPA invites comments on this issue.

D. Effective Date

Section 211(k)(5) makes the reformulated gasoline program effective January 1, 1995, in the nine originally covered nonattainment areas. Under section 211(k)(6)(A), the effective date of the program in any area which opts into the program is January 1, 1995, or one year after EPA receives the request to include the area in the program, whichever is later. Section 211(k)(6)(B) provides that EPA may extend the effective date of the program in opt-in areas by up to three years if the Agency finds that there is an insufficient domestic capacity to produce reformulated gasoline.

E. Linearity Requirement

For the proposed enforcement scheme to work, any reformulated gasoline that may be mixed with any other reformulated gasoline cannot result in the degradation of any of the individual reformulated gasolines' emissions performance characteristics when so mixed. That is, the effects on the VOC,

toxics, and NOx emissions of any reformulated gasoline must be linear in relation to that of any other reformulated gasoline if it may be mixed with other reformulated gasolines. Otherwise, a reformulated gasoline that has a non-linear effect on VOC, toxics, or NOx emissions must be segregated from all other reformulated gasoline to the point of delivery to the retail outlet. Whether the effects of reformulated gasoline on emissions are linear or non-linear will be decided based upon a scientific evaluation of the interactions of gasoline parameters. If the outcome of that evaluation is that reformulated gasolines can have non-linear effects, EPA proposes that reformulated gasolines whose effects are non-linear be segregated. In addition, a refiner would have to demonstrate that its candidate reformulated gasoline affects emissions only in a linear fashion to avoid having to segregate its gasoline. EPA invites comments on the appropriate manner of addressing linearity.

F. Manufacturing and Selling Reformulated Gasoline Which Does Not Involve Credits

A regulated party may choose not to participate in the averaging program with regard to the portion of that party's reformulated gasoline which satisfies the reformulated gasoline content and performance standards without creating or requiring any credits (credit neutral reformulated gasoline). Credit neutral reformulated gasoline has important advantages. Assuming the emissions effects are linear (as discussed above), this type of reformulated gasoline may be mixed fungibly with any other credit neutral reformulated gasolines which meet the same performance standards (e.g., all gasolines in a mixture must be VOC controlled in order for the mixture to meet high ozone season standards). These fungible mixtures may then be sold in any covered area in the proper season.

In addition, regulated parties who bring only credit neutral reformulated gasoline into a covered area would not be required to carry out the record-keeping, accounting, and reporting requirements associated with reformulated gasoline credits. The requirements for such parties would be limited to monitoring the quality of gasoline to assure it meets the minimum specifications, and retaining relevant shipping and testing documents to allow EPA compliance audits.

G. Reformulated Gasoline Averaging and Credits

1. Options Regarding Which Parameters to Average

Section 211(k)(7)(A) of the Clean Air Act expressly provides for credits to be granted to persons who refine, blend or import and certify a gasoline that surpasses the requirements regarding the content of oxygen, benzene, and aromatic hydrocarbons. Section 211(k)(7)(B) further provides that such credits may be used or transferred for use within the same nonattainment area for purposes of complying with the reformulated gasoline requirements. The Act is silent, however, regarding whether the toxic and VOC emissions performance standards may be achieved on an averaged basis; that is, whether credits may be granted for surpassing, and used to demonstrate compliance with, the toxic and VOC emissions performance standards.

Various options have been considered for which parameters to include in an averaging program: Only oxygen and benzene; oxygen, benzene, toxics and VOC; and oxygen, benzene and toxics. The conceptual problems associated with aromatics averaging are explained later.

The first option, where only oxygen and benzene are averaged, would have the advantage of simplifying testing and sampling by industry and EPA to determine compliance with the reformulated gasoline requirements of the Act. Under this option, gasoline could be tested at any point in the gasoline distribution network, including the retail level, to determine whether the gasoline satisfied the per-gallon requirements for VOC and toxics. A program which does not include VOC and toxics performance averaging, however, would restrict benzene averaging because benzene comprises about seventy-five percent of toxics emissions. EPA believes that oxygen averaging would be unaffected by this option.

The second option would be to include VOC and toxics emissions performance in the credit/averaging program. The legal basis for granting VOC and toxics emissions credits is arguable, however. The advantage of including VOC and toxics performance is that regulated parties could lower costs and produce more diverse types of reformulated gasoline as long as the standards are met on average over the averaging period. Furthermore, because of the strong relationship between benzene content and toxics emissions, some averaging of toxics emissions would likely be necessary in order to allow unencumbered operation of the benzene credit program. At the same time, under this option sampling and testing of reformulated gasoline would be limited to gasoline upstream of the point of fungible mixing (i.e., generally the refinery), which would constrain compliance determination.

Whether EPA is authorized to allow toxics averaging separate from benzene averaging and VOC averaging is questionable. The advantage of including VOC and toxics performance averaging is that regulated parties could lower costs and make more diverse types of reformulated gasoline as long as the standards are met on average over the averaging period. At the same time, under this option sampling and testing of reformulated gasoline would be limited to gasoline upstream of the point of fungible mixing (i.e., generally the refinery), which would constrain compliance determination.

The third option, which allows trading for oxygen, benzene and toxics, is a compromise solution.

EPA invites comments as to which parameters should be included in the reformulated gasoline averaging program.

2. Averaging Period

EPA is proposing several alternatives regarding the length of the averaging period, including the following: Each calendar month; each calendar quarter; each calendar year; and for VOC performance averaging, if permitted, the high ozone season (April 1 through September 30).

The likelihood that high levels of averaged fuel parameters will occur at some point during an averaging period ("spiking") is reduced as averaging periods are made shorter, because shorter averaging periods mean a shorter period of time that regulated parties can produce gasoline with high levels of averaged parameters before they must produce gasoline with commensurately low levels of these parameters. A reduced opportunity for parameter spiking generally is an environmental advantage. At the same time, short averaging periods would result in reduced flexibility for regulated parties, which is a cost disadvantage. Longer averaging periods would also entail fewer periodic reports, saving resources for both regulated parties and the government.

An option for reducing the potential magnitude of any spiking which might occur with a longer averaging period would be to set a per-gallon limit on the maximum or minimum levels of averaged parameters. For example, a

per-gallon 1.5% or 1.0% minimum oxygen content standard, in addition to the 2.0% average oxygen content standard, while more costly than a zero minimum, would set an absolute lower limit on oxygen content of 1.5% or 1.0%. In the event that VOC emissions performance is an averaged parameter and that this parameter is averaged over the entire high ozone season, a per-gallon maximum VOC emissions might also be applied to prevent spiking. EPA invites comments on the appropriate averaging period and any maximums or minimums which may be appropriate.

In addition, some parties to the regulatory negotiation have suggested that EPA address the issue of unforeseen emergencies and "Acts of God" which hamper a party's ability to comply with the requirements of section 211(k). EPA is concerned about the legal basis for formalizing by regulation the factors which would constitute such an emergency or the appropriate government response, and potential economic advantages which could result from waivers from regulatory requirements. In previous gasoline programs, EPA has addressed situations of this type on a case-by-case basis, and when appropriate has exercised its enforcement discretion to provide relief from regulatory requirements. EPA invites comments on the desirability of and legal basis for this suggestion, and appropriate mechanisms to prevent economic advantages resulting from waivers from regulatory requirements.

3. Alternatives Regarding Grouping of Covered Areas for Averaging

Section 211(k)(7)(B) of the Act states that credits may be used or transferred to another person for use within the same covered area where the credits were earned. This indicates that averaging must occur separately for each covered area, which would preclude grouping together of more than one covered area for averaging purposes. However, some persons have argued that separate averaging for each covered area is impossibly complex, with the result that such a program could neither be managed by regulated parties nor enforced by EPA. For this reason, this preamble discusses both the option of averaging within each covered area separately, and of grouping covered areas together for averaging purposes.

The advantage of averaging within each covered area separately lies in the certainty that each covered area will receive reformulated gasoline meeting the applicable requirements on average; no covered area will receive a disproportionate share of reformulated gasoline having less than 2.0% oxygen or more than 1.0% benzene. The disadvantages of this approach are its complexity and the limited flexibility provided to achieve compliance (which in turn may increase costs).

The option of combining covered areas for averaging purposes is based upon the assumption that the quality of gasoline which is delivered to a particular region of the country is essentially consistent. If an entire region of the country receives the same quality of gasoline, then each separate nonattainment area in the region also receives the same quality of gasoline. This assumption has not been proven true, but it nevertheless is supported by certain factors. The vast majority of gasoline is transported fungibly from the refinery to the retail outlet. Gasoline produced at most refineries is combined by grade (e.g., regular unleaded, premium unleaded) in pipelines, ships, and barges for shipment to distribution terminals, with concern only for compliance with industry-determined grade specifications. Normally it is only when gasoline is loaded into trucks at terminals that brand-specific additives are added to the gasoline, which identifies the gasoline as belonging to a specific refiner. As a result, the function of the gasoline distribution system normally results in generic, homogeneous gasoline being delivered to a region of the country.

A second factor which fosters general consistency in gasoline quality is the fact that most major markets are served by at least several major oil companies, as well as by smaller companies. As a consequence, a concerted effort would be required for a particular nonattainment area to receive a disproportionate share of low oxygen or high benzene reformulated gasoline.

Other factors, however, may result in differentiation in gasoline quality for different cities in a region of the country, such as cities which have different volatility requirements, or receive gasoline via different means of transport. For example, the volatility requirements for Baltimore are different from other Petroleum Administration for Defense District (PADD) I cities north of Baltimore. See 40 CFR 80.27. Furthermore, Baltimore receives almost all of its gasoline via the Colonial pipeline from the Gulf coast, while other nonattainment areas in the northern portion of PADD I receive a significant portion of their gasoline from local refineries or by water transport. As a result, if all the covered areas in the northern portion of PADD I are combined for averaging purposes, Baltimore may receive a different quality of reformulated gasoline than the other cities.

As additional nonattainment areas opt into the reformulated gasoline program, the chances of differences such as those discussed for Baltimore will increase. On the other hand, additional nonattainment areas will increase the complexity of a program which requires separate averaging for each area.

A proposal for grouping nonattainment areas for averaging purposes would divide the country into twelve reformulated gasoline averaging regions. These regions are intended to group areas which generally have common means of gasoline supply. The proposed regions are as follows:

PADD I Southern

Arkansas
Louisiana
Mississippi
Alabama
Georgia
South Carolina (except coastal area)
North Carolina (except coastal area)
Georgia (except coastal area)
Tennessee

PADD I Coastal

Florida
Coastal Georgia
Coastal South Carolina
Coastal North Carolina

PADD I Northern

Virginia
District of Columbia
Maryland
Delaware
Pennsylvania East of 79° Longitude
New Jersey
New York
Connecticut
Rhode Island
Massachusetts
Vermont
New Hampshire
Maine

PADD II Western

North Dakota
South Dakota
Nebraska
Minnesota
Iowa

PADD II Southern

Kansas
Oklahoma
Missouri

PADD II Eastern

Kentucky
Illinois
Indiana
Ohio

Wisconsin
Michigan
West Virginia
Pennsylvania West of 79° Longitude

PADD III Western

Texas West of 99° Longitude
New Mexico

PADD III Eastern

Texas East of 99° Longitude

PADD IV

Colorado
Utah
Wyoming
Montana
Idaho
Oregon East of 121° Longitude
Washington East of 121° Longitude

PADD V Southern

Southern California (San Diego and Los Angeles)
Southern Nevada (Las Vegas)
Arizona

PADD V Central

Central and Northern California
Central and Northern Nevada

PADD V Northern

Oregon West of 121° Longitude
Washington West of 121° Longitude

Under this proposal, each person who delivers reformulated gasoline into any of these regions would be responsible for ensuring that the reformulated gasoline delivered by that person into the region meets on average the reformulated gasoline requirements that may be averaged. Furthermore, credits earned by delivering to the region reformulated gasoline which surpasses the standards could be used or traded for use in that region only.

A possible addition to this proposal would be use of per-gallon maximum benzene content and minimum oxygen content requirements. The use of maximum and minimum requirements would reduce the likelihood a particular nonattainment area would receive less than the full benefit of reformulated gasoline.

EPA invites comments regarding whether averaging should be for each covered area separately or whether covered areas should be grouped together for averaging purposes; and for the second option, the appropriate grouping and any maximum's or minimum's which would be appropriate.

4. Options Regarding the Person Responsible for Credit Accounting

Several options exist regarding who should be responsible for ensuring that the credit-deficit reformulated gasoline sold in a covered area is balanced by credit-generating reformulated gasoline; that is, who should be the covered area responsible person, or "CAR." [6] These options include the person who owns the reformulated gasoline when it arrives at a terminal serving a covered area; the person who operates the covered area terminal; and the person who owns the gasoline when it is dispensed into trucks at the terminal's truck loading rack (i.e., when the gasoline goes "over the rack").

The option of the CAR being the person who owns the gasoline when it arrives at the terminal has several advantages. The companies which fit into this category are primarily refiners, importers, and very large distributors. These companies generally have control over the quality and timing of gasoline receipts at the terminals, which are important factors in determining reformulated gasoline compliance. Most companies of this type also are accustomed to dealing with more complex regulations, such as those governing lead phasedown, than are small gasoline distributors, making compliance more certain. In addition, the characteristics of reformulated gasoline can be determined with greater certainty when the gasoline arrives at a terminal, than after the gasoline has been combined with other reformulated gasoline at the terminal. The disadvantage of this option is that the person who owns the gasoline when it arrives at the terminal may not know its destination in the case of gasoline sold to distributors at the terminal. As a result, the person would have to rely on the attestations of distributors that the reformulated gasoline is being delivered into the appropriate covered area.

The option of the CAR being the terminal owner or operator has many of the advantages described above, so long as the terminal owner or operator is also a refiner or importer. An additional advantage is that one person would be responsible for all reformulated gasoline entering the terminal (or segregable portion thereof), regardless of who owns the gasoline. As a result, the number of persons who would be required to account for reformulated gasoline credits would be reduced, making reporting and enforcement simpler. The disadvantage of this option is that some terminal owners or operators are independent of refiners and importers and do not own any of the gasoline entering the terminal. Such independent terminal operators may operate fungible storage tanks, where all gasoline entering must meet certain minimum specifications set by the terminal, and tanks which are leased to a particular company for which the terminal sets no specification requirements. Independent terminal operators thus have less control over the specifications of gasoline entering the terminal and the timing of its entry than do refiners and importers.

The option of making the CAR the person who owns the gasoline when it goes "over the rack" would make most persons who deliver gasoline to retail outlets responsible for credit accounting. This includes most refiners and in addition, all distributors who purchase gasoline at terminals and deliver it to retail outlets. The advantage of this option is that these parties know whether gasoline is delivered to retail outlets in the appropriate covered area. On the other hand, the number of persons who would be responsible for credit accounting would be significantly larger than would be the case in the other options. For example, according to the National Petroleum News 1990 Factbook the nationwide number of gasoline distributors is about 15,000, while the number of gasoline terminals is fewer than 2,000. In addition, the reformulated gasoline characteristics of the gasoline in each terminal tank from which reformulated gasoline is dispensed to distributors would have to be determined on a running weighted basis, so the distributors may keep account of the credit balance of the gasoline delivered to each covered area by the distributor. At the same time, compliance based upon running weighted averages is less certain than compliance based upon the specifications of gasoline received by the terminal. Moreover, gasoline distributors have little control over the specifications of gasoline purchased at terminals; they generally know only that generic grade requirements are met. As a result, distributors may have difficulty obtaining credit-generating reformulated gasoline with the specific characteristics and at the time needed to offset credit-deficit reformulated gasoline. Finally, many gasoline distributors are smaller companies, lacking the sophistication of larger companies in dealing with complex regulatory programs which include averaging and reporting.

[6] This responsibility is distinct from that of a refiner, importer, and blender who certifies credit-requiring gasoline to ensure that its production, importation, or blending of such gasoline is balanced by credit-generating gasoline. That responsibility is discussed in the next section of this notice. This section considers who should ensure that the reformulated gasoline received in each covered area meets the averaged standard on average.

EPA invites comments regarding who would be the appropriate covered area responsible person.

Another issue is whether persons other than CARs may purchase, sell, or own credits, i.e., whether to allow "credit brokers." The advantage to allowing credit brokers is that the market in credits would be made more flexible and fluid. A possible disadvantage to allowing credit brokers is that brokers may not be as well established in the industry as CARs would be, which may result in some brokers having a reduced sense of responsibility for program requirements. If brokers were allowed, they would be required to register with EPA as brokers in advance of any credit transactions. Additional controls also may be appropriate, including requiring, in addition to end-of-averaging-period reports, that brokers inform EPA of credit transfers when they occur. EPA is seeking comments on the issue of whether brokers should be allowed, and if so, on appropriate controls.

5. Aromatic Hydrocarbon Credits Are Not Included

The credit scheme being proposed by EPA does not include credits for aromatic hydrocarbons, even though section 211(k)(7) states that such credits should be included, because section 211(k) contains no specific content requirement for aromatics. Section 211(k) does specify oxygen and benzene content requirements, making it possible to grant credits to the extent the requirements are surpassed and to use credits where the requirements are not met. However, section 211(k) does not require that reformulated gasoline have no more than a specified amount of aromatics. While the formula fuel specified by section 211(k)(3)(A) does include an aromatics parameter, under section 211(k)(4)(B), even if the formula fuel determines the stringency of the performance standards, a gasoline may be certified as reformulated if it achieves equivalent or greater reductions in emissions as are achieved by the formula fuel. Thus, the formula with its specified aromatic content is not itself required, only the emissions reductions achieved by the formula fuel. Because there is no aromatics content requirement, there is no benchmark from which credits can be calculated and to which credits can be applied.

EPA requests comments on the issues raised in this section, including whether an aromatic hydrocarbon content requirement should be included.

6. Additional Constraint on Credit Creation and Use

Section 211(k)(7)(C) of the Clean Air Act states that the regulations dealing with reformulated gasoline credits shall prohibit the granting or transfer of credits to the extent that, in any covered area, credits would result in average aromatics or benzene levels which would exceed, or oxygen levels which would be below, the levels of these parameters which would occur in the absence of using any credits.

Implementation of this provision entails comparing the levels of benzene and oxygen content which regulated parties would achieve if credits could be used to demonstrate compliance with the reformulated gasoline certification requirements with the levels that would be achieved if credits were not available, i.e., if every gallon of reformulated gasoline must meet the standard. If regulated parties were likely to produce and market gasoline cleaner than required in order to provide a "margin of safety" against being found in noncompliance with "per gallon" requirements, the amount of any credits granted would have to be adjusted to the extent that use of credits resulted in regulated parties reducing their margin of safety. The appropriate margin would be applied to credit creation; all credits created would be adjusted by subtracting the factor, thereby reducing the overall credit pool by the appropriate percent. If, at the end of a control period, all deficit reformulated gasoline were offset by credit reformulated gasoline (as adjusted), then the average levels of oxygen and benzene would not have exceeded the levels of these parameters in the absence of credits. In the event the reformulated gasoline program includes toxic and VOC credits, the Agency seeks comment on whether these parameters should receive the same safety margin treatment, if any, as the other parameters.

EPA's experience with the degree to which regulated parties exceed the regulatory requirements in the gasoline volatility program (which is a per gallon rule) is different than EPA's experience in this regard in the lead phasedown program (which is an averaging program). In the gasoline volatility program, gasoline samples tested by EPA have revealed, on average, Reid vapor pressures which were better than (i.e., lower than) the regulatory requirement. These volatility levels may have been influenced by the fact that EPA's policy was to apply no enforcement tolerance and that portions of the country (e.g., most Northeastern states) had state volatility standards which were more stringent than EPA's. In contrast, during the period when the lead phasedown program permitted credit trading, reports filed with EPA usually indicated that most companies met the applicable standard almost exactly, with no margin for error.

EPA is not able to determine at this time what, if any, margin of safety regulated parties are likely to build into their compliance with the reformulated gasoline requirements. Important aspects of these requirements (such as test procedures and testing tolerances) will not be decided until the Agency promulgates its final rule. How industry will comply with those requirements, moreover, will not be precisely known for some time. Therefore, EPA is proposing that the margin of safety, if any, which would result if every gallon of reformulated gasoline had to meet applicable requirements be evaluated using one or more of the following approaches:

a. Evaluate the precision of the laboratory tests that would be used to measure each of the physical and chemical properties which define reformulated gasoline. Presumably, if every gallon had to comply, regulated parties would produce and sell gasoline for which there is some certainty that the required parameters, when analyzed in the laboratory, will be found to be at appropriate levels.

b. Evaluate the precision of the refining processes which are likely to be used to produce reformulated gasoline. When a refiner produces gasoline which must not violate a particular requirement (e.g., pipeline specifications), the refiner may aim to produce gasoline that surpasses the requirement in order to be sure it will in fact comply. The degree to which the product of the refining process may be predicted would likely influence this type of decision.

c. Evaluate the degree to which refiners have built margins into their compliance with other gasoline requirements (e.g., pipeline or New York Mercantile Exchange standards, or regulatory requirements), and compare the circumstances that might have led such margins to be provided in those cases to the circumstances that refiners will face in producing reformulated gasoline.

EPA is requesting comments and recommendations regarding the appropriate method for implementing the requirements of section 211(k)(7)(C).

A further issue is whether any credit discounting must occur with regard both to credits generated by refiners,

importers, and blenders in producing credit-generating reformulated gasoline needed to conform with certificates for credit-requiring gasoline and to credits generated by CARs which dispense a mix of gasolines which on average is cleaner than required. Discounting credits at both the refiner and CAR levels may constitute a "double hit," since CARs presumably could not have generated credits if refiners, importers, and blenders had not supplied a credit-positive mix of gasoline. The issue is thus whether discounting should occur at both the refiner and CAR levels, or at only one.

7. Improperly Created Credits

EPA believes that the reformulated gasoline credit program, like all credit programs, must be based only upon credits which are validly created. In implementing the lead phasedown credit program, EPA identified situations where a transfer of "credits" occurred, but where the "credits" were not properly created. In some of these situations, the transferee who ultimately attempted to achieve compliance using the bogus credits (and who may have been a third or fourth party transferee) acted in good faith, paying a fair price for what the transferee thought were valid credits. Even in this type of situation, however, EPA believes that bogus credits cannot be used to achieve compliance, regardless of the good faith of the transferee.

The best protection for purchasers of credits against the possibility that purchased credits are bogus is to use normal business methods of protection, such as dealing with reputable companies and requiring contract clauses which protect against any liability resulting from bogus credit.

EPA has included in its draft regulations provisions which address this area. These provisions are not, however, intended to restrict persons who may facilitate trades between credit transferor and transferee.

8. Banking of Credits

The portion of the Clean Air Act which deals with reformulated gasoline is silent regarding the use of credits in averaging periods other than the period in which they were earned, i.e., banking of credits. EPA views banking as a potential means of reducing the costs of the program. For this reason, optional language has been included in the draft reformulated gasoline regulations which would implement a banking program.

The advantage of banking is added flexibility to regulated parties; the disadvantage is that the likelihood of temporal high levels of pollutants is increased. The flexibility advantage of banking decreases as the length of the averaging period becomes longer.

An issue for any banking program is the length of time banked credits may be saved prior to use. Options for length of time range from no time limit (i.e., credits may be used any number of years after they were created), to a requirement that credits only may be used in the subsequent averaging period.

Another option short of banking would be to allow a short reconciliation period subsequent to the end of an averaging period during which credits may be traded for the previous averaging period. This option would allow regulated parties to reconcile their books for the reporting period, have its audit performed, and then purchase or sell credits if necessary.

EPA is seeking comments as to whether banking should be included in the reformulated gasoline program, and if so, the appropriate length of time in which credits must be used; and whether a reconciliation period should be included, and if so, the appropriate length of time.

9. Additional Requirements for Credit Accounting for Reformulated Gasoline

The responsibilities of a CAR (discussed more fully below) consist generally of accounting for all characteristics associated with reformulated gasoline which is dispensed into trucks for delivery in the covered area; ensuring that the reformulated gasolines supplied to a covered area meet on average the requirements that may be met on average; and for submitting reports to EPA at the conclusion of each averaging period showing that the relevant reformulated gasoline standards were achieved on average.

EPA is proposing that each CAR must register with EPA prior to 1995, or prior to dispensing gasoline for transport to a covered area if the person would begin doing so after January 1, 1995. Further, CARs would have to file a report with EPA for each covered area at the end of each averaging period, specifying the volume and relevant characteristics of all reformulated gasoline dispensed for transport to the covered area; the average of these characteristics for the sum of all reformulated gasoline brought into the covered area; and for any credits transferred, the number and type of credits transferred and the transferror(s) and transferee(s) involved.

EPA also is proposing that CARs commission an audit to verify the information supplied in the report to EPA (discussed more fully below).

To account for reformulated gasoline credits, the CAR must know the relevant characteristics of each gallon of reformulated gasoline and the specific covered area to which it was delivered. To determine the relevant characteristics of each gallon, a CAR might have to sample and test the reformulated gasoline received at or dispensed from its terminal. How frequently the gasoline should be sampled and tested is an issue. Options include testing every batch, periodic testing, or no testing. Testing every batch would have the advantage of providing the greatest degree of confidence in compliance determinations. The disadvantage of this option is its cost, particularly if VOC and toxics performance standards may be met on average. Periodic testing provides a quality assurance program which would be less expensive than testing every batch, but would reduce confidence in compliance determinations. The option of no testing has the advantage of minimal cost, but compliance determinations would be based only upon the refiner or importer's paperwork which accompanies the gasoline. Under this option, confidence in compliance determinations may be low, because the refiner or importer may have improperly characterized the gasoline. Without a countercheck at some point in the distribution network, noncomplying gasoline could be distributed without detection and environmental benefits would be lost.

EPA is proposing the requirement that CARs conduct a periodic sampling and testing program to monitor the accuracy of the reports on relevant fuel characteristics accompanying the reformulated gasoline received by the CAR. CARs would be required to sample and test every tenth batch of reformulated gasoline received, for each parameter which defines reformulated gasoline. In the event that any of a CAR's test results differs from the invoice test results by less than the reproducibility of that test method, the average of the two results would be used for compliance calculations. In the event the two test results differ by more than the reproducibility of the method, the CAR would be required to use the more conservative of the two results for compliance calculation, and sampling and testing each batch of reformulated gasoline until test results for five consecutive batches are within the applicable reproducibility ranges.

In other motor vehicle fuel programs enforced by EPA which include quality assurance testing programs, such

programs are not mandatory, but are defense elements which parties may advance if EPA documents a violation. For this program, however, EPA is proposing that the periodic sampling and testing program be a mandatory requirement for CARs, because the opportunity to cross-check the relevant characteristics of reformulated gasoline received is lost once the gasoline is mixed with other reformulated gasoline at the terminal.

EPA believes that the CAR should be required to have documents showing that all gasoline from its reformulated gasoline storage tank (or tanks) was in fact delivered to retail outlets or wholesale purchaser-consumer facilities in the relevant covered area. Such documents normally would be copies of truck manifests for gasoline delivery trucks receiving gasoline from the storage tank. There would be difficulty with making such a showing, however. The gasoline contained in the storage tank may not be owned by the CAR (in the case of an independent terminal operator), or the gasoline may be owned by more than one person, which may restrict access to truck manifests reflecting gasoline pulled from the storage tank. In addition, some gasoline distributors who purchase gasoline at a terminal do not reveal the locations of their customers, in which case the CAR would not know whether the gasoline was being delivered within the covered area or not.

There are several options for dealing with this situation. One option is to require CARs to document the destination of as much reformulated gasoline as possible, and if this showing consistently demonstrates deliveries into the proper covered area, to assume that all reformulated gasoline is going into the covered area. It is unlikely, in any event, that reformulated gasoline would be delivered to non-covered areas since it will be more expensive than conventional gasoline, which could and presumably would be sold in these areas. In addition, there generally appears to be little cost incentive to truck reformulated gasoline from one covered area to another covered area. Particular cost/supply situations, however, could create incentives to deliver reformulated gasoline to locations other than in the proper covered area. For instance, price wars in a particular area may result in an incentive to deliver presumably cheaper deficit reformulated gasoline (i.e., gasoline requiring credits to meet the standards) to that area and a disincentive to deliver the presumably more expensive credit gasoline needed to offset it. These improper deliveries may not be detected.

A second option is to require all distributors (including carriers) who receive reformulated gasoline from a particular storage tank to identify the locations where they will deliver the gasoline or to attest that the gasoline is being delivered into a particular covered area. Another option is to require that distributors be informed as to the proper covered area for particular reformulated gasoline (e.g., through designations on the gasoline transfer documents) and that they deliver the gasoline within that covered area and retain copies of delivery records to support that they did so.

EPA is proposing the option that requires all distributors who receive reformulated gasoline from a CAR to provide to the CAR an attestation which identifies the covered area to which the gasoline will be delivered. EPA believes this approach allows distributors to safeguard the specific identity of their customers, while permitting CARs and EPA to account for whether the proper mix of reformulated gasoline reached each covered area.

In the case where oxygenate is added to reformulated gasoline downstream from the refinery/import facility (e.g., truck splash-blending with ethanol), it is necessary that the resulting gasoline meet all requirements for reformulated gasoline. It is intended that oxygen content be calculated based upon the actual content of oxygen in gasoline, which would require discounting from oxygen content calculations any denaturants or other non-oxygenates included in the blend.

10. Compliance Determination for a Terminal Serving Only A Single Covered Area

One likely scenario for reformulated gasoline credit accounting involves a reformulated gasoline storage tank from which gasoline goes to a single covered area only. This gasoline storage tank could be located either inside or outside the actual physical boundary of a covered area; the key factors are that only reformulated gasoline is put into the tank and that the tank serves a single covered area only. In this case, credit accounting may occur on the basis of the quantity and relevant characteristics of gasoline which enters the storage tank.

A CAR would know the relevant characteristics of a particular batch of gasoline arriving at the terminal tank from testing performed by the CAR on gasoline received, and/or the shipping documents associated with the gasoline which state the intended characteristics and its ultimate destination. Under the program proposed by EPA, the CAR would be required to retain documents showing the CAR's compliance with the averaging requirements, including testing and shipping documents.

Example of Proposed Compliance Calculation for a Terminal Serving Only a Single Covered Area

The terminal in this example serves only a single covered area. As a result, compliance is based upon reformulated gasoline received, minus reformulated gasoline transferred to another covered area in bulk, plus or minus any credit transfers.

On day one of the compliance period the terminal received 100,000 gallons of reformulated gasoline, with the following characteristics: 2.7 weight percent oxygen; 1.2 volume percent benzene; 70.0 grams/mile of toxics; and 2.0 grams/mile of VOC (see Table VIII-I). The terminal operator calculated the totals for these parameters for this batch as follows:

TABLE VIII-I.—COMPLIANCE CALCULATION FOR A TERMINAL SERVING ONLY A SINGLE COVERED AREA

Batch	Volume	Units			
		Oxygen [1]	Benzene [2]	Toxics [3]	VOC [4]
1	100,000	270,000	120,000	7,000,000	200,000
2	100,000	230,000	80,000	6,500,000	170,000
3	100,000	190,000	100,000	5,500,000	150,000
4	100,000	0	50,000	5,040,000	154,000
Actual total	400,000	690,000	350,000	24,040,000	674,000
Complying Total		800,000	400,000	20,520,000	592,000

[1] Oxygen units (in weight percent-gallons) weight percent × gallons = 2.7 × 100,000 = 270,000 oxygen units.

[2] Benzene units (in volume percent-gallons) volume percent × gallons = 1.2 × 100,000 = 120,000 benzene units.
[3] Toxic units (in mg/mile-gallons) mg/mile × gallons = 70 × 100,000 = 7,000,000 toxic units.
[4] VOC units (in gm/mile-gallons) gm/mile × gallons = 2.0 × 100,000 = 200,000 VOC units.

The terminal operator received a total of three other shipments of reformulated gasoline during the compliance period, which had the following characteristics:

Batch	Gallons	Oxygen	Benzene	Toxics	VOC
2	100,000	2.3	0.8	70.0	2.00
3	100,000	1.9	1.0	55.0	1.50
4	100,000	0.0	0.5	50.4	1.54

The totals for these parameters were calculated using the approach described above (see Table VIII–I).

The terminal had no bulk transfers of gasoline to another covered area, so that the four batches of gasoline received constituted the total gasoline which was relevant for the reformulated gasoline compliance determination. To determine compliance, the CAR compared the total complying units for oxygen, benzene, toxics, and VOC, to the actual units for these parameters which resulted from the gasoline received.

Complying totals are calculated by multiplying the standards times the total volume in gallons. The standards are as follows:

oxygen—2.0 weight percent
benzene—1.0 volume percent
toxics—51.3 milligram per mile
VOC—1.48 gram per mile

In the example, the total volume is 400,000 gallons, resulting in the following complying totals:

oxygen = 2.0 × 400,000 = 800,000 units
benzene = 1.0 × 400,000 = 400,000 units
toxics = 51.3 × 400,000 = 20,520,000 units
VOC = 1.48 × 400,000 = 592,000 units

The actual totals are compared to these complying totals. In the case of oxygen, the actual total must be equal to or larger than the complying total, and for benzene, toxics, and VOC, the actual total must be equal to or less than the complying total. In the example, the actual oxygen is 690,000 units, which is 110,000 units less than the complying total. As a result, the CAR must obtain 110,000 oxygen credits generated by another CAR in the same covered area and averaging period in order to achieve compliance. The actual total benzene is 350,000 units, which is 50,000 units less than the complying total. As a result, the CAR may transfer benzene credits equal to 50,000 units discounted by a factor reflecting loss of a margin of safety, if any, to another CAR for use in the same covered area and averaging period (see Table VIII–1).

11. Compliance Determination for a Terminal Serving More Than One Covered Area

In the case of a terminal or a segregable portion thereof from which gasoline is dispensed into trucks serving more than one covered area, the credit accounting must occur on the basis of the relevant characteristics associated with individual truck loads of reformulated gasoline going to a particular covered area from a specific reformulated gasoline storage tank. To accomplish this, the specific characteristics of each truck load of gasoline must be determined, based on the weighted running average of the characteristics of the reformulated gasoline in the tank. The weighted running average of the relevant characteristics of the gasoline in the storage tank is calculated based upon the volume and characteristics of all gasoline which enters and leaves the tank. The running average would have to be recalculated each time new gasoline is added to the tank, based upon the volume and characteristics of the gasoline in the tank and of the gasoline added to the tank. The new running average could then be used for all gasoline dispensed from the tank until the next addition of gasoline to the tank.

Example of Compliance Calculation for a Terminal Serving More Than One Covered Area

The terminal in this example serves more than a single covered area. As a result, compliance is based upon reformulated gasoline dispensed into trucks, minus reformulated gasoline transferred to another covered area in bulk, plus or minus any credits transfers.

On day one of the compliance period the terminal tests its tank of 100,000 gallons of reformulated gasoline, and finds the following characteristics: 2.7 weight percent oxygen; 1.2 volume percent benzene; 70.0 milligrams/mile of toxics; and 2.0 grams/mile of VOC (see Table VIII–2).

On day two, a truck withdraws 8,000 gallons of gasoline to be delivered to Covered Area A. The terminal operator calculates the totals for these parameters for this shipment as follows: 21,600 oxygen units; 9,600 benzene units; 560,000 toxics units; and 16,000 VOC units. The terminal operator calculates the totals for these parameters for this shipment as follows:

TABLE VIII–2.—COMPLIANCE CALCULATION FOR A TERMINAL SERVING MORE THAN ONE COVERED AREA

Event	Storage tank					Gasoline shipped				
	Volume (Gallons)	Characteristics				Volume (Gallons)	Oxygen [1]	Benzene [2]	Toxics [3]	VOC [4]
		Oxygen	Benzene	Toxics	VOC					
Day 1, Initial Values	100,000	2.7	1.2	70.0	2.0					
Day 2, Shipment to Area A	92,000					8,000	21,600	9,600	560,000	16,000
Day 3, Shipment to Area B	84,000					8,000	21,600	9,600	560,000	16,000
Day 4, Bulk Receipt	100,000	2.3	0.2	35.0	1.00					
New Weighted Characteristics	184,000	2.5	0.65	50.9	1.45					
Day 5, Shipment to Area B						6,000	15,000	3,900	305,400	8,700

TABLE VIII-2.—COMPLIANCE CALCULATION FOR A TERMINAL SERVING MORE THAN ONE COVERED AREA—Continued

Event	Storage tank					Gasoline shipped				
	Volume (Gallons)	Characteristics				Volume (Gallons)	Oxygen [1]	Benzene [2]	Toxics [3]	VOC [4]
		Oxygen	Benzene	Toxics	VOC					
Area A:										
Total Shipped:						8,000	21,600	9,600	560,000	16,000
Total Allowed:							16,000	8,000	410,000	11,840
Net Credits:							5,600	(1,600)	(141,600)	(4,520)
Area B:										
Total Shipped:						14,000	36,600	12,900	865,400	24,700
Total Allowed:							28,000	14,000	718,200	20,720
Net Credits:							8,600	2,100	(147,200)	(3,980)

[1] Oxygen units (in weight percent-gallons) weight percent × gallons = 2.7 × 8,000 = 21,600 oxygen units
[2] Benzene units (in volume percent-gallons) volume percent × gallons = 1.2 × 8,000 = 9,600 benzene units
[3] Toxic units (in mg/mile-gallons) mg/mile × gallons = 70 × 8,000 = 560,000 toxic units
[4] VOC units (in gm/mile-gallons) gm/mile × gallons = 2.0 × 8,000 = 16,000 VOC units

On day four, the terminal operator receives a shipment of 100,000 gallons of reformulated gasoline with the following characteristics: 2.3 weight percent oxygen; 0.2 volume percent benzene; 35.0 milligrams/mile of toxics; and 1.00 grams/mile of VOC. This is the only shipment received during the compliance period.

After each new shipment of reformulated gasoline, the weighted average characteristics must be recalculated. The terminal operator calculates the weighted average characteristics for the gasoline in the tank using the following formula:

weighted average characteristic =
$((V_1 \times C_1) + (V_2 \times C_2))/(V_1 + V_2)$

Where

V_1 = volume in gallons in tank prior to new shipment;
C_1 = characteristic of gasoline in tank prior to new shipment;
V_2 = volume in gallons of new shipment; and
C_2 = characteristic of the gasoline in the new shipment.

Using this formula, the terminal operator calculates the weighted average oxygen characteristic as follows:

$((84{,}000 \times 2.7) + (100{,}000 \times 2.3)/(84{,}000 + 100{,}000) =$
$(226{,}800 + 230{,}000)/184{,}000 =$
$456{,}000/184{,}000 =$ 2.5 weight percent oxygen

This same formula is used to calculate the weighted average characteristics as follows:

Benzene—0.65 volume percent
Toxics—50.9 milligrams per mile
VOC—1.45 gram per mile

On day five, a truck withdraws 6,000 gallons of gasoline to be delivered to covered area B. The parameter totals for this shipment, calculated using the new weighted average characteristics, are 15,000 oxygen units; 3,900 benzene units; 305,400 toxics units; and 8,700 VOC units.

In this case, since the terminal serves more than one covered area, the relevant gasoline for each covered area is the gasoline which was delivered for use in each covered area.

To determine compliance for covered area A, the CAR compares the total complying units for oxygen, benzene, toxics, and VOC for covered area A, to the actual units for these parameters for the gasoline dispensed into trucks for delivery to area A.

Complying totals are calculated by multiplying the standards times the total volume in gallons. The standards are as follows:

oxygen—2.0 weight percent
benzene—1.0 volume percent
toxics—51.3 gram per mile
VOC—1.48 gram per mile

For covered area A, the total volume is 8,000 gallons, resulting in the following complying totals:

oxygen = 2.0 × 8,000 = 16,000 units
benzene = 1.0 × 8,000 = 8,000 units
toxics = 51.3 × 8,000 = 410,000 units
VOC = 1.48 × 8,000 = 11,840 units

The actual totals are compared to these complying totals. In the case of oxygen, the actual total must be equal to or larger than the complying total, and for benzene, toxics, and VOC, the actual total must be equal to or less than the complying total.

For covered area A, the actual total oxygen is 21,600 units, which is 5,600 units more than the complying total (see table VIII-2). As a result, the CAR may sell oxygen credits equal to 5,600 units as potentially discounted to reflect any loss in margins of safety to another CAR in the same covered area and averaging period. The actual total benzene is 9,600 units, which is 1,600 more than the complying total of 8,000 units. As a result, the CAR must obtain 1,600 benzene credits from another CAR for use in the same covered area and averaging period to achieve compliance. The actual total toxics is 560,000 units, which is more than the 410,000 units allowed; 141,600 toxic credits are needed to achieve toxics compliance. Again, the CAR must purchase 4,520 VOC credits since its actual total is 16,000 and its complying total is only 11,840 VOC units. By purchasing the above-stated credits, the CAR would be in compliance as to the reformulated gasoline delivered to covered area A.

For covered area B, compliance is determined in the same manner (see table VIII-2).

H. Sale of Only Reformulated Gasoline in a Covered Area

The Agency and the regulated industry are concerned that because conventional gasoline will be cheaper than reformulated gasoline, there will be a cost incentive to cheat by selling conventional gasoline in a covered area. To counteract that incentive, EPA proposes that persons at every point in the distribution network where reformulated gasoline is sold, supplied, offered for sale or supply, or transported must be able to demonstrate that the gasoline at that point is reformulated.

1. Conventional Gasoline Marker

EPA is proposing that all conventional gasoline be marked with a tracer by the refiner at the refinery or by the importer at the point of importation to allow its detection if it is sold in a covered area. Persons downstream of the refiner or importer would be required to conduct programs of quality assurance testing of both conventional gasoline for the presence of a marker and of

reformulated gasoline for the absence of a marker.

The tracer which EPA is proposing is phenolphthalein. This chemical has been chosen because it satisfies most of the requirements EPA believes are important for a tracer. Phenolphthalein, $C_{19}H_{14}O_4$, in its pure form is a white solid which is soluble in methanol, water and gasoline. Phenolphthalein is non-toxic, is legal for use in gasoline under section 211(f)(1) of the Clean Air Act, [7] and does not have an adverse impact on vehicle exhaust or evaporative emissions. It is easily tested, readily available to the industry, and easily introduced at the refinery in known concentrations.

Under EPA's proposal, phenolphthalein, which costs approximately $10 per pound, would be added to conventional gasoline at the rate of 100 parts per billion. At this rate, one pound of phenolphthalein would treat 50,000 barrels of gasoline, at a cost of $0.000004 per gallon.

The presence of phenolphthalein in gasoline may be detected in the field using a simple screening test, which involves adding one teaspoon of a pH negative water-based reagent (e.g., a mixture of washing soda and water) to a quart sample of gasoline. For gasoline which contains more than one percent ethanol, an additional step of adding one crystal of lye to the sample is necessary. A pink color of the water at the bottom of the sample indicates the presence of phenolphthalein. This screening test would allow detection of phenolphthalein in concentrations as low as 5 ppb, which allows detection in the field of as little as five percent marked conventional gasoline in reformulated gasoline.

An additional quantitative laboratory procedure is being proposed for phenolphthalein in gasoline. Under EPA's proposed scheme, the field color screen would be used to indicate the presence of the marker (and, therefore, the presence of conventional gasoline), and the laboratory procedure would be used to establish the precise concentration.

EPA is proposing that all persons in the gasoline distribution network be responsible for requirements relating to the marker, with the exception of retailers and wholesale purchaser-consumers not located in covered areas. As a consequence, EPA intends to conduct compliance inspections at all points in the gasoline distribution network. Specifically, gasoline refiners and importers will be inspected and audited to monitor compliance with the requirement that the marker was added to all conventional gasoline produced or imported. All persons downstream from refiners and importers will be inspected by EPA to monitor for the absence of the marker from reformulated gasoline, and with the exception of retailers and wholesale purchaser-consumers, the presence of the marker in conventional gasoline. These responsibilities, and the resulting liabilities and defenses for violations which are found, are discussed more fully below.

2. Blendstock, Export, and Storage Issues

Selling or dispensing conventional gasoline by any person for resale in any covered area without (a) segregating such gasoline from reformulated gasoline and (b) clearly marking such conventional gasoline as "conventional gasoline, not for sale to ultimate consumer in a covered area" is specifically prohibited by the section 211(k)(5) of the Clean Air Act. EPA therefore proposes that conventional gasoline be labeled as such as well as marked with a tracer (described above).

In certain limited situations, however, certain petroleum product which is not reformulated gasoline may not require the marker and might have a legitimate presence within a covered area. These limited situations include gasoline which is intended for export and product which is blendstock.

Gasoline which is intended for export and blendstocks are excluded from the reformulated gasoline requirements. Under the enforcement scheme being proposed, however, EPA will presume that all gasoline found within the United States is being offered for sale in the United States, unless the gasoline is segregated and the paperwork which accompanies the gasoline clearly indicates that the gasoline is solely for export. In addition, EPA is proposing that all petroleum product found at terminals be classified as "gasoline" and not as blendstock, unless the product is segregated, the accompanying paperwork clearly identifies the product as blendstock which does not comply with requirements for reformulated or conventional gasoline, and some aspect of the product's quality makes the product unsuitable for use as gasoline (e.g., the product's octane is outside the normal range for gasoline). These presumptions are necessary to prevent the exemptions from the requirements for exports and blendstocks from being misused.

Gasoline which is not reformulated but which is intended for sale outside any covered area may properly be present in a covered area if the gasoline was produced at a refinery within the covered area for shipment outside the covered area or is being trans-shipped through the covered area. EPA's proposal assumes that all gasoline found inside a covered area is intended for sale in that covered area, however, unless the gasoline is segregated, the accompanying paperwork clearly identifies the gasoline as conventional and not for sale in any covered area, and the gasoline contains the required marker. When violations are found at a retail outlet or wholesale purchaser-consumer facility, however, the above-described defenses will not be available.

EPA is seeking comments on the issues raised in this section, including the necessity of a marker for conventional gasoline and inspections at retail outlets and wholesale purchaser-consumer facilities.

I. Specific Responsibilities and Liabilities of Regulated Parties Under the Reformulated Gasoline Program

The reformulated gasoline program EPA is proposing imposes regulatory responsibilities on persons in the gasoline industry who fall generally into three categories:

Persons who produce or import gasoline (refiners and importers) are responsible for classifying gasoline as reformulated or conventional; for assuring that reformulated gasoline conforms to a certificate (including minimums and/or maximums, if required) and that the relevant characteristics are properly determined; and for adding the marker to and labeling to conventional gasoline as described above. Liability for violations of all except the labeling requirement rests with the refiner or importer only.

Persons who transport, store or sell gasoline (refiners, importers, blenders, distributors, resellers, retailers, wholesale purchaser-consumers and carriers) are responsible for assuring that only reformulated gasoline (which must be VOC-controlled in the high ozone season) is sold in covered areas; that gasoline classified as conventional has the marker; that gasoline classified as reformulated has no marker; and that the reformulated characteristics, as stated on the accompanying paperwork, is accurate (upstream of the point of credit accounting). If minimums and/or maximums are included in the program, these persons also are responsible for these standards. Liability for violations

[7] The Clean Air Act requires that additives to gasoline be substantially similar to those used in certifying vehicles. The term "substantially similar" has been defined at 56 FR 5352, February 11, 1991.

of these requirements rests with the facility where the violation is found, and for all persons upstream from that facility (as described below).

Persons who ensure that reformulated gasoline standards are met on average (the CAR) are responsible for assuring the stated characteristics of reformulated gasoline they receive are accurate; for assuring that reformulated gasoline is sold in the proper mix so that the averaged standards are in fact met on average in each covered area served by the CAR; and for properly accounting for credits transferred or received. Liability for violations of these requirements rests with the covered area responsible party only.

With respect to those regulatory responsibilities where potential liability exists for parties upstream from the facility found in violation, EPA's proposal includes presumptive liability both for the operator of the facility found in violation and for upstream parties. Under this approach, defenses would be available for each party with presumptive liability. This scheme is essentially the same as that adopted by EPA for the gasoline lead contamination, volatility, and diesel fuel sulfur content programs (40 CFR 80.23, 80.27, and 80.29).

EPA believes that the principal advantage of the presumptive liability approach is that it increases the likelihood of identifying the person who caused violation. EPA is concerned that conventional gasoline could be mixed with reformulated gasoline by any person in the gasoline distribution network, and that it would be difficult or impossible for EPA to identify the person responsible for causing this violation. To overcome this difficulty, those persons who actually handled the gasoline and who are in the best position to identify the cause of any violation, must have an incentive to be forthcoming with information. EPA believes that a presumptive liability scheme appropriately provides that incentive. It is also familiar both to EPA and to the industry and makes the most efficient use of EPA's resources. For the foregoing reasons, EPA is proposing a liability scheme for reformulated regulations based upon presumptive liability.

1. Refiners and Importers

Refiners and importers are responsible for the proper classification of all gasoline produced or imported as reformulated or conventional. For reformulated gasoline, refiners and importers are responsible for producing or importing gasoline which conforms to the certificate granted by EPA for that gasoline. If the certificate is for credit neutral gasoline, then every gallon must meet the applicable requirements. If the certificate is for credit-granting or requiring gasoline, then the relevant characteristics of the gasoline must be determined. This determination must be made separately for each batch of gasoline. The importance of correctly determining the relevant characteristics of each batch of gasoline is that these parameters of the gasoline must be known when the gasoline arrives at the covered area of its use, and EPA believes that the refiner, or importer's determination is the critical first step to this process. The shipping documents which accompany each batch of reformulated gasoline down the distribution chain must identify the gasoline as reformulated, and must specify the precise characteristics associated with the gasoline. In this manner, the person who brings the reformulated gasoline into a covered area and who is responsible for accounting for the characteristics associated with the gasoline, knows the characteristics which must be accounted for. Moreover, the producer or importer is responsible for producing or importing enough credit-generating gasoline to offset the deficit or for obtaining the necessary credits from another source.

For all gasoline classified as conventional, the refiner or importer is responsible for adding the proper marker. In addition, there are requirements dealing with the anti-dumping program, which are discussed more fully below.

The program EPA is proposing would include EPA inspections and audits of gasoline refiners and importers. The purposes of these inspections and audits would be to collect and analyze samples of reformulated gasoline stored at the refinery or import facility and to determine if the gasoline has been properly classified as reformulated and if the claimed characteristics are accurate. In addition, EPA would audit testing records for reformulated gasoline previously produced or imported for proper classification and characteristic determination.

EPA is proposing that refiners and importers be required to retain documents which demonstrate that appropriate sampling and testing was conducted to support claimed classifications and characteristics. EPA also is proposing that refiners retain documents which describe the production of reformulated gasoline as additional support for gasoline classification and characteristics. These documents could describe the physical and chemical properties of the crude oil which was used; the nature of the refining processes; and the physical and chemical properties of the constituents which are blended together to produce the gasoline.

Where a violation is found at a refinery or an import facility, the refiner or importer would be solely liable and would have no specified defense. EPA is proposing that the refiner or importer be presumptively liable in cases where gasoline produced or imported by the refiner or importer is found downstream from that party and is either improperly classified (marker absent from conventional or present in reformulated gasoline), which does not satisfy requirements for minimums and/or maximums (if required), or inaccurately reported as having characteristics which it does not in fact have. The rationale for this presumption was discussed above. Under EPA's proposal, the refiner or importer would be able to avoid liability if it could demonstrate that it did not cause the violation and produce test results conducted by the refiner or importer on the gasoline showing that the gasoline was properly classified and had the appropriate characteristics when it left the control of the refiner or importer.

In cases where gasoline identified by the corporate, trade or brand name of a gasoline refiner is improperly classified or for which the credit status is improperly stated, EPA is proposing that the named refiner be presumptively liable. EPA is proposing that this liability attach regardless of who actually produced or imported the gasoline (e.g., the named refiner would be presumptively liable where the gasoline was obtained by the named refiner from another refiner through an exchange agreement). In order to avoid liability in this situation, EPA is proposing that the named refiner must show the following:

(1) Records of test results for the gasoline when it was produced or imported showing the proper classification and characteristics;

(2) The violation was caused by action(s) of someone other then the refiner or its employees or agents; and

(3) The violation was caused by an act in violation of law (e.g., sabotage, vandalism); or

The violation was caused by an act which was in violation of a contractual obligation designed to prevent such violations which was imposed by the refiner on the party operating under the refiner's brand name, and despite reasonable efforts by the refiner (such as a periodic sampling and testing program) to assure compliance with the

contractual obligations and to prevent future violations; or

The violation was caused by the act of a party operating under the refiner's brand name but with whom the refiner did not have a contractual relationship, despite efforts by the refiner (such as a periodic sampling and testing) designed to assure that violations do not occur.

This proposed refiner's defense for violations found at branded facilities is closely modeled upon the enforcement schemes followed in the gasoline lead contamination, volatility, and diesel fuel sulfur content regulations, 40 CFR 80.22–29.

2. Distributors

EPA is proposing that gasoline distributors should be responsible for ensuring that gasoline sold, transported or stored by the distributor is properly characterized as either reformulated or conventional gasoline. Distributors would be prohibited from selling, transporting or storing:

(a) Conventional gasoline which does not have the required concentration of marker present;

(b) Reformulated gasoline that has greater than a certain concentration of marker present, or does not conform to maximum and/or minimum standards (if required); and/or

(c) Conventional gasoline for use in a covered area.

EPA is proposing that a distributor should be liable for prohibitions of the above requirements found at the distributor's facility. In addition, EPA is proposing that distributors should be liable for such violations found at facilities downstream from the distributor, which could include facilities operated by other distributors, carriers, retailers and/or wholesale purchaser-consumers.

In the case of reformulated gasoline which is sold, transported, or stored between the refinery or import facility and the terminal responsible for ensuring the proper mix of gasolines, EPA is proposing that distributors have the additional responsibility of ensuring that this gasoline conforms to the characteristics which are stated in the paperwork which accompanies the gasoline. In EPA's scheme, distributors would be liable for violations of this requirement found at the distributor's facility and for violations found downstream of the distributor through the averaging terminal.

The distributor could avoid liability if it could show:

(a) That it or its employees or agents did not cause the violation (e.g., by showing causation elsewhere);

(b) Evidence, such as invoices or bills of lading, that the gasoline met the regulatory requirements when it was received by the distributor, and evidence that the distributor did not alter the gasoline in any way; and

(c) Evidence of a quality assurance sampling and testing program carried out by the distributor to monitor the presence of the conventional gasoline marker, and when appropriate, the characteristics.

EPA is proposing that when gasoline found at a distributor's facility is improperly classified or the characteristics are not properly stated in the accompanying paperwork, persons upstream from the carrier would be presumptively liable for these violations. The upstream persons could include refiners, importers, blenders, carriers or distributors.

3. Carriers

Carriers are a sub-category of distributors that do not take title to the product they store or transport. As a result of this distinction, carriers traditionally have had liability presumptions and defenses which are different from other distributors under 40 CFR part 80 enforcement schemes (e.g., volatility, unleaded contamination, and diesel sulfur).

There are at least two options for ensuring that reformulated gasoline transported or stored by carriers conforms to the reformulated gasoline requirements. The traditional approach is to make carriers presumptively liable only for violations detected at the carrier's facility, unless the carrier is able to show that it did not cause the violation. Under this option, carriers would not be presumptively liable for violations found downstream from the carrier's facility, unless EPA is able to show the carrier in fact caused the violation.

A second option is to make carriers presumptively liable for violations detected downstream from the carrier. A carrier would be able to avoid liability if it can show it did not cause the violation, and, in addition, show evidence of an affirmative quality assurance program, such as periodic sampling and testing, to ensure that the gasoline it transports or stores conforms to the accompanying shipping documents. Under this option, carriers would not be required to sample and test every load or shipment of gasoline, but rather to conduct a periodic quality assurance program. In this manner, carriers would have an opportunity to detect gasoline tendered which does not conform to the shipping documents, to take appropriate steps to correct the documents (or inform the gasoline's recipient of the correct specifications), and to take actions to prevent future documentation errors. Such future actions could consist of requiring a particular shipper to produce independent test results to support the specifications documented for future gasoline tendered, or in extreme cases, the refusal to accept gasoline from a particular person.

The rationale for the traditional approach is that carriers normally do not alter the quality of the gasoline they transport or store—in fact, the regulatory definition of carrier requires that they not alter the quality of the gasoline. This approach was found to be most appropriate in the gasoline volatility program, in part because EPA is able to sample and test gasoline at any point downstream from the carrier to determine if the gasoline conforms to the standard. When violations are found, EPA normally is able to gather facts sufficient to establish who caused the violation, with the result that future violations are deterred.

Downstream detection of violations would not be possible in the reformulated gasoline program in most cases, however. Beginning at the point of fungible mixing, testing for the characteristics of any one of the reformulated gasolines in the mixture is not possible. As a result, the reformulated gasoline program has a greater need for quality controls than other EPA programs dealing with gasoline, such as gasoline volatility. This is especially true for the portions of the distribution network upstream from the point of credit accounting. In addition, the screening test for conventional gasoline marker is easy and inexpensive.

As a result, EPA believes that quality assurance programs by carriers are appropriate. EPA is proposing that at all points in the distribution network carriers should be responsible for monitoring gasoline classified as conventional for the proper concentration of marker, and for gasoline classified as reformulated for the absence of a marker. In addition, EPA is proposing that at points upstream from credit accounting, carriers be required to conduct quality assurance programs regarding the claimed characteristics of reformulated gasoline.

EPA is requesting comments as to the appropriate requirements for carriers.

4. Retailers and Wholesale Purchaser-Consumers

EPA is proposing that retailers and wholesale purchaser-consumers be prohibited from selling conventional gasoline which does not have the required marker present; reformulated gasoline which has greater than the allowed concentration of marker present (if required); and conventional gasoline for use in a covered area. EPA is proposing that a retailer or wholesale purchaser-consumer should be liable for violations of the above prohibitions found at a facility operated by this party.

Under other 40 CFR part 80 enforcement schemes, retailers and wholesale purchaser-consumers have been able to avoid liability by showing they did not cause the violation. EPA's proposal for reformulated gasoline adds the defense requirement that retailers conduct a quality assurance program of testing for the presence of the conventional gasoline marker. EPA believes this change is justified by the ease and low cost of the marker test, and the importance to the program of preventing conventional gasoline use in covered areas.

Under the unleaded contamination and volatility programs, the only tests for detecting violations in the field are both cumbersome and expensive. For example, volatility compliance screening requires equipment which costs approximately $10,000 and must be used by a trained operator. In contrast, the screening method being proposed for the conventional gasoline marker costs only pennies per test, and the procedure is relatively simple.

EPA is proposing that with respect to the conventional gasoline marker, the quality assurance defense requirement for retailers and wholesale purchaser-consumers be no different from that requirement for other parties. A retailer or wholesale purchaser-consumer in a covered area could avoid liability for conventional gasoline found at its facility by showing it did not cause the violation, and by showing evidence it had conducted the screening test for conventional gasoline marker subsequent to each receipt of gasoline.

J. Independent [Certified] Audits

Under the reformulated gasoline and anti-dumping programs, EPA is proposing that, as a part of periodic reports to EPA, each CAR, refiner or importer commission an audit of the information which forms the basis of the periodic report. This requirement is a new concept for EPA report filers, although other governmental agencies, e.g., the Securities and Exchange Commission, also require independent [certified] audits of reports filed. The "independent [certified] audits" being proposed are an outgrowth of EPA's experience with the lead phasedown program, which included averaging, credits, and periodic reports, and for which EPA-conducted audits are an essential part. Because the reformulated gasoline and anti-dumping programs are significantly more complex than is the lead phasedown program, EPA believes that audits are correspondingly more important than in lead phasedown. These audits are not intended as a substitute for enforcement audits conducted by EPA, but are intended to serve as a means of improving compliance with the reformulated gasoline program by identifying problem areas to the regulated parties. Such audits also assure parties that the records on which they base periodic reports will be reviewed and cross-checked for accuracy by a disinterested third party (as well as possibly by EPA); will lead to the correction of simple arithmetic errors; will aid in correcting misconceptions about regulatory requirements; and generally will deter the making of false reports.

EPA is proposing that audits be conducted quarterly, with the report submitted to EPA by the auditor within 60 days following the end of the quarter. Submission of the auditor's report is required, and failure to do so will constitute a reporting violation by the CAR. EPA will provide forms and procedures on conducting the audit and preparing the audit report. EPA believes that the costs to a regulated party of the audit will be reduced through the use of EPA specified forms and procedures.

EPA has experience in auditing the records of refiners, importers, and terminal operators. EPA recognizes that each CAR, refiner, or importer has a unique system of accounting and operating controls, and believes that auditors generally should be free to design an audit program to test the reports and required records to the extent required in each individual case. In order to maintain consistency within the audit process, however, EPA suggests the following credentials for the auditors to be chosen by the regulated parties, and provides the following minimum audit guidelines to be followed in each audit.

1. Credentials of Auditors

The proposed regulations require that the audits be conducted by Certified Public Accountants, and that audits are to be conducted in accordance with Generally Accepted Auditing Standards ("GAAS"). The first GAAS General Standard requires that "[t]he examination is to be performed by a person or persons having adequate technical training and proficiency as an auditor."

EPA's proposed regulations, in requiring that the audits be performed in conformity with GAAS, anticipate that the auditor will perform all of the required auditing procedures, including audit planning, review of internal administrative and operating controls, and other required procedures. EPA also expects that the auditor will document the audit procedures and findings within audit working papers, as required by GAAS.

An issue involving auditors is whether the auditor may be an employee of the company being audited. One option is to allow an audit to be conducted by an employee of the company being audited who is a CPA. This option has the advantage of being less expensive than hiring an outside auditor. Its disadvantage is that the company employee may not be as objective or unbiased as an auditor who is not a company employee. This would be particularly true if the company employee-auditor is the same person who assembles the information for and prepares the reports to EPA. The alternative option, of requiring that audits must be conducted by a non-company employee, has the advantage of ensuring a review of the procedures and practices of the company by a person who is more detached than a company employee.

EPA is seeking comments as to the appropriate credentials and company affiliation requirements for auditors.

2. Audit Guidelines in General

The proposed regulations contain a listing of the general types of standard industry records which are required to be included in the auditor's review and analysis procedures. The auditor, using his professional judgment, should devise audit procedures to correspond with the facts of each individual audit in light of the auditor's review of internal accounting, operating and administrative controls, to determine the extent of testing required. Notwithstanding this, EPA believes that certain procedures should be conducted during each audit to ensure consistency of approach and comparability of results.

Audits of all regulated parties should include a comprehensive review of the systems and procedures employed to assure compliance with the regulations. Such review should include a review of

the administrative, operating, and accounting controls established by the company. The documentation and audit procedures to be reviewed are of necessity different for refiners, importers or CARs. For refiners, the review would include reviewing the company laboratory procedures and controls, and for CARs, the Quality Assurance Program required by the regulations. This review should be performed prior to initiating any detailed auditing procedures by staff with significant experience in evaluating operating and technical procedures.

3. Audit Guidelines for Refiners and Importers

Regulatory Requirement: Records which show the quantity, classification (conventional or reformulated), and characteristics of gasoline produced or imported.

Relevant Records: Monthly summaries of gasoline produced or imported which account for the volume of each type of gasoline produced or imported. These documents are usually summarized from yield accounting reports, gasoline blending reports, or operations department scheduling reports. The volumes should be based on tank gauges or meter reports and temperature adjusted to 60 degrees fahrenheit. These documents usually delineate the type of product; i.e. unleaded regular, unleaded mid-range, or unleaded premium.

Audit Procedure: The auditor should reconcile total reported production or import volume of each type of gasoline for the winter and summer reporting periods by accumulating production and import data from yield reports, blending reports, or other available internal data. The auditor should verify the classification of products by reference to other available operational or accounting reports of product storage. The auditor should determine the procedures used for "cut-off" at the end of each month and perform tests to verify that only finished gasoline is included in the gasoline production or import volumes.

Regulatory Requirements: Test results which show that reformulated gasoline produced or imported satisfied the physical and chemical properties required by relevant certifications, and that the characteristics were accurately reported.

The auditor shall perform independent calculations to verify the proper accounting for physical and chemical factors specified in the regulations for oxygen, benzene (and if applicable, toxics and VOC characteristics). The auditor's report shall provide examples of these calculations.

The auditor shall perform independent calculations to verify the proper accounting for physical and chemical factors specified in the regulations for exhaust benzene, sulfur content, and driveability index for conventional gasoline produced or imported.

Relevant Records: The proposed regulations require that refiners and importers report the per gallon average oxygen and benzene (and if applicable, toxics and VOC emissions levels) for reformulated gasoline produced or imported. Further, in conformity with the anti-dumping provision of the regulations, reports to EPA must show conventional gasoline's average exhaust benzene and sulfur content characteristics in comparison with applicable "baseline" values. The determination of these factors will require that each value be determined by company or independent petroleum laboratory analysis for each gasoline blend or import, and for summaries to be prepared which contain calculations to average the amounts over each averaging period.

Audit Procedure: The auditor should obtain the averaging summaries and prove the arithmetic accuracy thereof. The auditor should select a representative sample from laboratory analysis reports of both reformulated and conventional gasoline blends or imports for detailed examination. The auditor should examine the laboratory reports for accuracy and reasonableness. Company laboratory reports should be compared with reports of independent petroleum laboratories.

Regulatory Requirement: Test results which show that conventional gasoline produced during the reporting period contained the marker identifying it as conventional gasoline.

Relevant Records: Laboratory reports.

Audit Procedure: The auditor should select a representative sample from laboratory analysis reports of conventional gasoline blends or imports for detailed examination. The auditor should examine the laboratory reports to determine the presence of the conventional gasoline marker. The auditor should consider taking physical samples of conventional gasoline and arranging for an independent petroleum laboratory to perform testing for the presence of the marker.

4. Audit Guidelines for Covered Area Responsible Parties

Regulatory Requirements: An audit of a CAR shall include the review and analysis of the following:

(1) Records which show the quantity and characteristics of reformulated gasoline entering the terminal and leaving the terminal in bulk;

(2) Records which show the destination, quantity and characteristics of truck loads of gasoline going to specific covered areas;

(3) Records which show the characteristics of gasoline in storage tanks from which trucks are loaded, and the calculations which formed the basis for claimed characteristics;

(4) Testing results for storage tanks when gasoline is added;

(5) Records showing the oxygenate type and amount which was blended.

Relevant Records: Terminal operators normally prepare daily operations summaries for the volumes of each tank's inventory balances (beginning and ending), including transfers in and transfers out. Daily reports are supported by pipeline meter tickets, truck tickets, and tank gauging reports. These daily reports are then summarized by month or quarter.

The chemical characteristics of the product stored or moved into or out of each tank are determined based on periodic laboratory analysis. In order to comply with the proposed regulations, the laboratory reports, or summaries thereof, currently being used must be revised to document more fully the characteristics of the reformulated gasoline, to provide a method of averaging these characteristics, and to segregate bulk and truck deliveries by covered area. If a terminal serves more than one covered area, breakdowns of what gasoline went to what areas will also be required. While EPA is not proposing the exact form of the detailed or summary reports, the prudent terminal operator will likely perform computer analysis and summarization of the data. These reports will also be the basis for calculating compliance with oxygen and benzene (and toxics and VOC standards, if applicable) and determining the amount of credits generated or required.

Audit Procedure: The auditor should prove and reconcile total reported receipts, bulk transfers, and deliveries to trucks with internal monthly and daily reports. Accumulation of the daily amounts to monthly totals should be checked. All volumes should be temperature adjusted to 60 degrees fahrenheit. The primary audit test should be a test for overstatement of volumes. The auditor should compare the monthly volume data with reports to other governmental agencies, other internal reports (financial statements, budgets, etc.). The auditor should verify

the classification of products by reference to other available operational or accounting reports of product storage. The auditor should determine the procedures used for "cut-off" at the end of each month and perform any other tests considered necessary to verify the volumes reported.

The auditor also should obtain the special laboratory analysis detailed reports and averaging summaries and check the arithmetic accuracy thereof. The auditor should select a representative sample from laboratory analysis reports of reformulated gasoline receipts and deliveries for detailed examination. The auditor should examine the laboratory reports for accuracy and reasonableness. Comparisons of company laboratory reports should be made with reports of independent petroleum laboratories. The auditor should consider taking physical samples of reformulated gasoline and arranging for an independent petroleum laboratory to perform testing of each factor. Results should be compared with company laboratory results. Independent calculations of compliance factors should be made, and the amount of credits earned or required should be verified.

The auditor should select a representative sample from bulk and truck delivery records. Detailed verification of the sample items should be performed by reviewing pipeline tickets, truck tickets, rack tickets, etc. The auditor should verify that the required transfer and distributors' certification procedures have been adhered to. Tank segregation and data regarding the specific covered area served by the terminal should be compared to delivery documentation.

Regulatory Requirement: Records which show the credit transfers to or from the CAR.

Relevant Documents: Contracts, letter agreements, invoices, or other documentation evidencing the transfer of credits.

Audit Procedure: The auditor should examine contracts or other evidence of the transfer of credits to or from the facility, confirm that transactions are dated before the close of the month in which reported, and that the credits are transferred to or from CARs within the same covered area.

5. Type and Form of Audit Report and Opinion

The proposed regulations require that the auditor's report must be on forms provided by EPA and shall consist of information regarding the records reviewed during the audit, relevant regulated personnel, the regulated party's physical plant, examples of calculations performed; and any discrepancies found.

The documentation gathered and the procedures completed during the audit will provide sufficient information to satisfy these requirements.

K. Length of Time for Records Retention

EPA's proposal for reformulated gasoline and anti-dumping requires that certain types of records be retained by regulated parties. For example CARs are required to retain documents showing compliance with averaging requirements, and refiners and importers are required to retain documents showing compliance with the anti-dumping averaging requirements and that reformulated gasoline produced or imported met certification requirements. Several options have been discussed for the required length of time supporting documents are retained, including two years, three years, and five years. The applicable statute of limitations for the reformulated gasoline and anti-dumping programs, 28 U.S.C. 2462, is five years, and is the time frame for which EPA generally audits. The advantage of a five year records-retention requirement is that EPA would be able to audit for the full relevant time period. The disadvantage of this option is the cost to regulated parties of maintaining records. EPA requests comments on the appropriate records retention requirement.

L. Product Transfer Documentation

EPA is proposing that on each occasion when physical custody or title of gasoline is transferred from one person to another, other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, that the documents which accompany the transfer include the following information:

1. The date of the transfer;
2. The name and address of the transferror;
3. The name and address of the transferee;
4. The volume of gasoline which is being transferred;
5. The proper identification of the gasoline as conventional or reformulated;
6. In the case of conventional gasoline, the following language: "Conventional gasoline, not for sale to any ultimate consumer in a covered area;"
7. The location of the gasoline at the time of the transfer; and
8. For reformulated gasoline which is in the gasoline distribution network between the refinery or import facility and the covered area terminal, the reformulated gasoline characteristics of the gasoline.

IX. Anti-Dumping Requirements

A. Background

Besides requiring reformulated gasoline in the covered ozone nonattainment areas, section 211(k) requires that gasoline in all other areas not be any more polluting than it was in 1990. Without such an "anti-dumping" provision, the potential exists for emissions from conventional gasoline to worsen as polluting fuel components are removed from and environmentally beneficial components are added to gasoline to be sold as reformulated gasoline. For example, the current national average benzene content of gasoline is about 1.5 volume percent in the summer. Since the benzene content of reformulated gasoline cannot exceed 1.0 volume percent, approximately 0.5 volume percent benzene could potentially be shifted, in part or entirely, to the conventional gasoline pool, increasing per gallon average benzene levels and subsequent emissions. Likewise, changes in the values of other conventional gasoline fuel parameters, due to the production of reformulated gasoline, could increase or decrease conventional gasoline emissions, depending on the parameters and the effect of each parameter on emissions.

The anti-dumping provisions will impact approximately 46–80 percent of annual nationwide gasoline consumption. This range represents, at the high end, no ozone nonattainment area opting into the reformulated gasoline program, and at the low end, all ozone nonattainment areas opting into the program.

The issues associated with the anti-dumping provisions and the proposed methods for implementing the anti-dumping provisions are presented below. First, the legal provisions provided in the Clean Air Act Amendments of 1990 are presented (section B). Next, anti-dumping emissions requirements are discussed, differentiated by high and nonhigh ozone season and by pollutant (section C). In this section, the effect on the anti-dumping regulations of other EPA regulations, namely the Phase II RVP program and the oxygenated fuels program, are discussed. Individual baseline determination, including the methodology to be used by refiners and importers, is discussed in section D. Finally, baseline data submission, auditor evaluation of data, and EPA

approval of individual baselines and their underlying data are discussed (section E). Anti-dumping enforcement issues are covered in section X. Comments, data and technical analyses regarding all aspects of the anti-dumping provisions and EPA proposal are requested.

B. Legal Provisions

Section 211(k)(8) provides that, beginning January 1, 1995 the conventional gasoline of a refiner, blender or importer cannot result in average per gallon emissions of VOCs, NO_x, carbon monoxide (CO) and toxic air pollutants in excess of such emissions attributable to the gasoline introduced into commerce in 1990 by that refiner, blender or importer. As will be discussed in section X, blenders are included in the Agency's definition of refiner, and hereafter in this section (IX), shall be referred to as refiners. When determining compliance with these requirements, no credit is to be provided for improvement in motor vehicle emissions control in vehicles sold after calendar year 1990. No baseline model year nor vehicle type is specified by the anti-dumping provisions.

Emissions are to be determined on an average per gallon, mass basis. In determining compliance with the prohibition against increased emissions, each of the four pollutants is to be considered separately. The only exception is that NO_x emission increases due to the use of oxygenates may be offset by equivalent or greater reductions in VOC, CO and toxic air pollutant emissions, alone or in combination, due to the use of the same oxygenates. For VOC and toxic air pollutant emissions, both exhaust and nonexhaust (evaporative, running loss, and refueling) emissions are considered in determining total emissions of each type of pollutant. Toxic air pollutants are hereafter referred to as 'toxics' emissions.

The 1990 baseline gasoline of each refiner or importer must be established in order to determine whether emissions from its post-1994 gasoline are greater than the emissions from its 1990 gasoline. If EPA determines that no adequate and reliable data exist regarding the composition of the 1990 gasoline sold by a refiner or importer, then for that refiner or importer the baseline gasoline as defined by section 211(k)(10)(B) must be substituted for the 1990 gasoline in determining compliance with the anti-dumping requirements.

Summertime (i.e., high ozone season) baseline gasoline is defined in detail by section 211(k)(10)(B)(i), but wintertime (i.e., nonhigh ozone season) baseline gasoline is left to the Administrator to determine based on 1990 industry average gasoline. Both of these fuels were discussed in sections II.C and II.D. The Act is silent as to the compliance periods over which to determine per gallon average emissions.

C. Anti-dumping Emission Requirements

1. Introduction

The effects of specific fuel parameters on VOC, NO_x and toxic emissions were discussed in sections III.B and III.C. Many of the same parameters can affect CO emissions. For consistency, EPA proposes to determine the emissions of conventional gasoline for anti-dumping purposes through the use of the reformulated gasoline program emission model described earlier.

The four pollutant emissions (VOC, NO_x, CO and toxics) are discussed below relative to the high ozone and nonhigh ozone seasons, because seasonal variations and other EPA regulations affect specific emissions. In light of these differences, it may be possible to determine, on a seasonal or year-round basis, that emissions of one or more pollutant(s) from conventional gasoline may or may not increase. For those emissions that are not expected to increase, it may be appropriate not to include coverage of these emissions in the anti-dumping requirements. Such an approach could result in cost savings without sacrificing environmental benefits. Comments on this approach are requested.

2. High Ozone Season

a. *Toxics.* Overall, toxic emissions are expected to decrease during the high ozone season due to Phase II RVP control of all gasoline. Reductions in nonexhaust VOC emissions will account for most of this decrease. The effects of Phase II RVP control on VOC emissions is discussed below in section b. However, reducing RVP will reduce nonexhaust toxic emissions less than it will reduce nonexhaust VOC emissions as discussed in section III.C.2. Also, the benzene and aromatic contents of conventional gasoline could vary widely, since they are not specifically regulated; both have large effects on toxic emissions. While nonexhaust toxic emissions are unlikely to increase given Phase II RVP control, increased benzene and/or aromatic fuel contents could significantly increase exhaust benzene emissions, as well as mitigate much of the nonexhaust toxic emission reductions, resulting from Phase II RVP. Additionally, other parameters which increase exhaust VOC emissions, discussed in section III.B.1, could also increase toxic exhaust emissions.

Given the potential for the toxics emissions of conventional gasoline to increase, notwithstanding Phase II RVP, the Agency believes that regulation of toxic emissions under the anti-dumping provisions is necessary to ensure that they do not increase after 1994. Thus, the Agency proposes and requests comments on the following six options for determining 1990 baseline toxic emissions and ensuring that post-1994 toxic emissions do not exceed baseline emissions. The six options generally are in order of increasing stringency and cost. That is, each succeeding option would lead to a greater confidence that toxics emissions will not increase by adding to the number of emission and/or fuel parameters which are specifically regulated. At the same time, the added constraints placed on refining by the increased regulation of fuel quality will likely cause the cost of gasoline refining to increase, even if refiners are only held to their baseline levels. The key issue is the likelihood of increased toxics emissions occurring, particularly through the fuel parameters which are not addressed by the less stringent options. Comments are specifically requested, then, on the likelihood of toxics emission increases occurring and through which fuel parameters, and on the incremental cost of compliance between the various scenarios. In all cases, toxic emissions would be determined using the same methodology as that described in section III.C above for reformulated gasoline certification.

Option 1: Limit the weight fraction of benzene in exhaust emissions (calculated as a function of both benzene and nonbenzene aromatics as in Section III.C.1. This option assumes that:

(1) Benzene is the predominant toxic;

(2) There is little likelihood that VOC exhaust emissions will increase; and

(3) Nonexhaust benzene emissions will not increase given RVP limits.

Option 2: Limit total exhaust benzene emissions by adding the effect of fuel parameters on exhaust VOC emissions to the effect of fuel parameters on the weight fraction of benzene in exhaust VOC emissions. The fuel parameters considered under this option are as described in sections III.B and III.C for the reformulated gasoline model. This option provides greater assurance that exhaust benzene emissions will not increase by not making the second assumption listed under Option 1 above.

Option 3: Limit total benzene emissions by including evaporative, running loss and refueling benzene

emissions in the total exhaust benzene determination in Option 2 above. The toxics reduction due to Phase II RVP controls would not be included in this determination in order to prevent these reductions from being offset by increases in exhaust toxic emissions. This option avoids having to make the second and third assumptions listed under Option 1 above.

Option 4: In addition to Options 1, 2 or 3 above, include emissions of the other four toxic air pollutants included in the section 211(k)(10)(C) definition of such pollutants. This option eliminates the need for the first assumption listed under Option 1 above, and also eliminates the need for the second and third assumptions as applicable to Options 2 and 3.

Option 5: Cap gasoline benzene and aromatics contents at baseline levels. This option assumes that the great majority of toxic emissions are related to these two fuel components, but that the relationship between these components is not sufficiently well known to allow trade-offs between the toxic emissions related to each of the components.

Option 6: Cap benzene, formaldehyde, acetaldehyde, and 1,3-butadiene emissions independently using the fuel-emission relationships developed for reformulated gasoline in sections III.B and III.C above. This option eliminates concerns about permitting trade-offs between increases in the emissions of one toxic and decreases in another.

b. *VOC.* Determination of the VOC emissions of conventional gasoline is complicated during the high ozone season by the Phase II RVP controls. These controls, which affect all fuels nationwide, limit RVP from May through mid-September, a time frame which essentially coincides with the reformulated gasoline/anti-dumping high ozone season (see section II.G). Phase I of this RVP regulation (54 FR 11868, March 22, 1989) affected the RVP of fuels from 1989–91. Phase II (55 FR 23658, June 11, 1990) takes effect in 1992, and thus will be in place in 1995 when the reformulated gasoline and anti-dumping regulations take effect.

The Phase I regulations have been implemented on a state-by-state basis (54 FR 11868). Under Phase I, fuel dispensed to motor vehicles in (primarily) ASTM Class C volatility areas has a maximum RVP limit of 10.5 psi; in (primarily) ASTM Class B volatility areas, the limit is 9.5 psi, and in (primarily) ASTM Class A volatility areas, 9.0 psi. The RVP limits established by the Agency do not strictly conform to the ASTM classes, hence the use of term "primarily". Nominal 10 percent ethanol blends are allowed to exceed the applicable limits by 1 psi.

In some cases, due to local, state or regional mandates, 1990 RVP limits were less than the Phase I limits as shown in Table IX–1. The states of the Northeast States for Coordinated Air Use Management (NESCAUM) (Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Rhode Island, and Vermont) and California, for instance, had a mandated RVP limit of 9.0 psi. Also shown in Table IX–1 are the 1990 average in-use RVP levels estimated using Southwest Research Institute[8] and Motor Vehicle Manufacturer Association [9] gasoline surveys.

TABLE IX–I.—JULY/AUGUST RVP COMPARISON

PADD [1]	States	1990 RVP standard	1990 RVP survey	Phase II RVP NA [2]	Phase II—standard	Phase II—survey [3]
I	CT, MA, ME, NH, NJ, NY, RI, VT	9.0	8.5	9.0	0.0	0.2
I	GA, NC, SC	9.5	8.4	7.8	−1.7	−0.9
I	DC, DE, FL, MD, PA, VA, WV	10.5	8.7	9.0	−1.5	0.0
II	KS, MO, OK, TN	9.5	8.6	7.8	−1.7	−1.1
II	IA, IL, IN, KY, MI, MN, NE, ND, OH, SD, WI	10.5	9.2	9.0	−1.5	−0.5
III	NM, Dallas	9.0	8.1	7.8	−1.2	−0.6
III	AL, AR, LA, MS, NM, TX	9.5	8.2	7.8	−1.7	−0.7
IV	CO, UT	9.5	8.6	7.8	−1.7	−1.1
IV	ID, MT, WY	10.5	9.2	9.0	−1.5	−0.5
V	AZ, CA	9.0	8.2	7.8	−1.2	−0.7
V	NV	9.5	8.0	7.8	−1.7	−0.5
V	OR	10.5	9.5	7.8	−2.7	−2.0
	WA	10.5	9.5	9.0	−1.5	−0.8

[1] Petroleum Administration for Defense District.
[2] Indicates Phase II requirement if area is an ozone nonattainment (NA) area.
[3] A compliance margin of 0.3 psi also subtracted from Phase II.

Under the Phase II regulations, fuel dispensed to motor vehicles in Class C areas and in Class A and B ozone attainment areas will have an RVP limit of 9.0 psi. In Class A and B ozone nonattainment areas, the RVP limit will be 7.8 psi. Thus many areas that were under Class B Phase I RVP limits in 1990 will only have to attain the Class C Phase II limits in 1992 and beyond. The differences between the Phase II and mandated 1990 RVP limits, and between the Phase II and 1990 in-use RVP levels, are shown in Table 1. In the latter calculation, 0.3 psi was subtracted from the Phase II value (or added to the in-use value) to account for a typical compliance margin associated with gasoline RVP measurement.[10]

The existence of EPA's Phase II RVP standards will assure that nonexhaust VOC emissions will not increase over 1990 levels. In the case of most areas, the applicable Phase II RVP limit is lower than the limit applicable in 1990. In those areas, a drop in VOC exhaust emissions will also occur. However, it is possible that other changes to gasoline composition could mitigate or eliminate the decrease in exhaust VOC emissions (although it is highly unlikely that any changes in gasoline composition could eliminate the combined decrease in exhaust and nonexhaust VOC emissions).

In the case of the NESCAUM states and California, the applicable Phase II limit for ozone attainment areas will be the same as the limit applicable in 1990. Obviously in these areas, a greater risk would exist that changes in fuel composition could result in increased

[8] Southwest Research Institute database, 1990.

[9] Motor Vehicle Manufacturer's Association. Motor Gasoline Survey, Summer, 1990.

[10] 40 CFR part 80.

VOC emissions. However, many of these states contain areas in which reformulated gasoline must be sold and thus would receive some spillover of reformulated gasoline which has a lower volatility than the Phase II standard. EPA also expects the states not covered by the reformulated gasoline program by operation of law (i.e., section 211(k)(10)(D)) to opt into the program. Thus, the anti-dumping requirements will not apply to these areas.

EPA believes that the Phase II RVP program is generally sufficient to control evaporative VOC emissions to 1990 or lower levels. However, this may not be the case for every refiner or importer. As noted earlier, the antidumping provision limits each refiner or importer to its 1990 level of VOCs and the other named pollutants. While as a general matter the Phase II RVP control will effectively ensure that post-1994 conventional gasoline have VOC emissions no greater than 1990 gasoline, EPA at this time cannot say that the RVP controls will have this affect for every refiner or importer. Indeed, some refiners were already beginning to reformulate their gasoline to achieve lower VOC and toxic emissions in 1990.

Without knowing more, EPA believes that the environmental benefits of regulating VOC emissions under the anti-dumping provision are marginal at best and not worth the administrative burden on the Agency or the industry. While EPA has concerns about the legal basis of exempting every refiner and importer from VOC controls, it nevertheless proposes to do so for the reasons given above. Comments are requested on this proposal. The Agency also proposes and requests comments on two other options for dealing with exhaust VOC emissions under the anti-dumping provisions:

Option 1: No direct limit on exhaust VOC emissions. Instead, this option would be dependent on: (1) The inclusion of total exhaust VOC emissions as a factor in controlling aggregate toxic emissions (see Options 2–6 in Section a. above) which results in the de facto control of exhaust VOC emissions; and (2) the RVP-related decrease in exhaust and nonexhaust VOC emissions countering any slight increase in exhaust VOC emissions that might occur under the toxics limit. Under this option it may be possible for exhaust VOC emissions to increase slightly as fuel parameters are varied to keep toxic emissions at or below baseline levels. The level of increase is expected to be minimal.

Option 2: Limit exhaust VOC emissions to 1990 levels via the reformulated gasoline emissions model (see section III.B). This option would insure that exhaust VOC emissions are maintained at or below baseline levels. The exhaust VOC reduction due to Phase II RVP controls would not be included in this determination in order to prevent these reductions from being offset by increases in exhaust toxic emissions.

c. *NOx.* NOx is a contributor to ozone formation during the high ozone season. Using MOBILE4, a drop in RVP from 10.5 to 9 psi causes a very slight reduction in NOx emissions of about one (1) percent. As a result, changes in other fuel parameters (oxygen, sulfur, aromatics, T90, and olefins) could permissibly cause a net increase in NOx emissions. These parameters and their effect on NOx emissions are discussed in section III.B. Under the antidumping provisions, increases in NOx emissions due to the use of oxygenates can be offset with reductions in emissions of the other three pollutants, but not if due to other fuel parameters. A review of the available data on the effect of oxygenates on VOC (section III.B) show that reductions in VOC emissions during the high ozone season will be more than sufficient to offset any NOx increases due to oxygenate use. Oxygenates' reductions in CO emissions are even larger than those for VOC emissions. For fuel parameters other than oxygenates, the Agency proposes to determine NOx emissions for anti-dumping purposes based on the reformulated gasoline NOx emissions model discussed in section III.B and IV.A. Comments are requested on this proposal, as well as on the likelihood that NOx emissions will increase in the summer (and the degree of such an increase), absent anti-dumping controls.

d. *CO.* Like exhaust VOC emissions, numerous fuel parameters affect CO emissions. However, oxygenate concentration has far and away the predominant effect. Preliminary EPA calculations show about a 7–9 percent reduction in CO emissions per one percent oxygen. As discussed below in the section on CO emissions outside of the high ozone season, EPA expects oxygenate use in antidumping areas to increase between 1990 and 1995, primarily because of the winter oxygenated-fuels program (required beginning in 1992 under section 211(m) of the Act). The increase in capacity that will be needed to produce oxygenates for the oxygenated gasoline and reformulated gasoline programs in the winter will not be idle during the rest of the year, since it is not economical to only operate during the winter. Thus, it is expected that total oxygenate use in the United States during the summer should be very close to that during the winter. Also, oxygenate use is likely to be more oriented towards anti-dumping areas in the summer than in the winter, since the year round reformulated gasoline oxygenate mandate is only 2.0 weight percent oxygen, while the wintertime oxygenated fuel mandate is 2.7 weight percent, which applies in 5 out of the 9 reformulated gasoline areas.

Overall, then, CO emissions in anti-dumping areas will in all likelihood be lower in 1995 than in 1990, even without a formal regulatory program. Again, the Agency is not currently in a position to say that CO emissions attributable to each refiner, blender or importer will in every case necessarily stay at or below 1990 levels as a result of the oxygenate requirement. Nevertheless, based on the analysis above, the Agency proposes to not regulate the CO emissions of conventional gasoline during the high ozone season. Except for New York City, little CO nonattainment occurs during the high ozone season, and therefore, EPA believes that this method of dealing with high ozone season CO emissions will not impact CO attainment during this period. As stated above, EPA expects summer oxygenate use to approximate winter oxygenate use, and thus those areas that may possibly have CO problems will likely receive oxygenated fuels. The Agency requests comments on this method of dealing with high ozone season CO emissions.

3. Nonhigh Ozone Season

a. *Toxics.* During the nonhigh ozone season, nonexhaust toxic emissions are expected to be negligible, as discussed in section II.A.4.d. Exhaust VOC emissions could, however, increase due to changes in the fuel parameters discussed in section III.B. Increased exhaust VOC emissions could, in turn, increase toxic emissions. Additionally, as discussed for high ozone season toxic emissions, changes in fuel benzene and aromatic content could increase toxic emissions, absent anti-dumping controls.

The Agency proposes the same options for toxic air pollutant control in the nonhigh ozone season as discussed for the high ozone season, excluding Option 3, since evaporative emissions are not expected to affect nonhigh ozone season toxic emissions.

b. *VOC.* Where the Act refers to VOC, NOx, CO and toxic emissions for anti-dumping purposes, it does not specify a seasonal basis for the determination of these emissions (i.e., summer, winter or year round). Both by its inclusion under section 211(k) ("Reformulated Gasoline for Conventional Vehicles") and the title

of its section 211(k)(8) ("Anti-dumping Rules"), the anti-dumping program is clearly intended to counteract the potentially environmentally detrimental effects of the reformulated gasoline program on areas outside of the reformulated gasoline program. Since no VOC control was mandated outside of the high ozone season for reformulated gasoline areas, there thus would be no need to counteract an effect in the areas outside of the reformulated gasoline program. EPA proposes that no VOC control be required as part of the anti-dumping program outside of the high ozone season. While the Agency believes that this was Congress' intent, it does nevertheless have concerns about the legal basis of this proposal. The Agency requests comments on this approach. In particular, for those that may suggest that VOC emissions should be controlled outside of the high-ozone season, EPA requests supporting rationale and information concerning the benefits that would occur with such control.

c. *NOx.* As was the case for the high ozone season, increases in NOx emissions due to oxygenates may be offset by reductions in emissions of the other three pollutants. However, changes in other fuel parameters could theoretically increase NOx emissions. Thus, NOx control may be necessary outside of the high-ozone season. The Agency proposes to determine NOx emissions for anti-dumping purposes based on the formula proposed in section III.B above, except that the factor indicating the effect of oxygenate concentration would be deleted. Comments are requested on this proposal, as well as on the likelihood that NOx emissions will increase in the winter (and the degree of such an increase), absent anti-dumping controls.

d. *CO.* Under section 211(m) of the Act, gasoline sold in CO nonattainment areas must have 2.7 weight percent oxygen. The control period for this requirement will likely be nominally November 1–February 28, with the possibility of shorter and longer periods for specific areas based on their seasonal need for CO control.[11]

The oxygenated fuel program affects approximately 32.5 percent of the annual nationwide fuel consumption. Half of this, or 16.8 percent of nationwide fuel consumption, is in the nine areas covered by the reformulated gasoline program. The potential reformulated gasoline opt-in areas which are also affected by the oxygenated fuels program represent another 9.4 percent of nationwide fuel consumption. Thus, CO nonattainment areas which are covered by the anti-dumping program represent 6.3 to 15.7 percent of annual nationwide fuel consumption, if all or no cities, respectively, opt into the reformulated gasoline program.

The total oxygen content of gasoline in the anti-dumping area will be the sum of (1) the oxygen required by the oxygenated fuels program in those CO nonattainment areas not in the reformulated gasoline program, (2) the spillover of reformulated gasoline into areas outside that program, and (3) the spillover of oxygenated fuel into areas outside that program. Even in the worse case, where oxygenate moves from where it is used currently to the reformulated gasoline and oxygenated fuels programs, EPA estimates that the average total oxygen content of gasoline in the anti-dumping area in 1995 will be greater than in 1990, even at an assumed spillover of as low as 10 percent. Estimates for spillover generally range from 10 to 25 percent as described in section XI.

EPA believes that oxygenate concentration is the single most important fuel parameter in determining CO emissions. Due to the oxygenated fuel program, anti-dumping CO nonattainment areas will receive gasoline with increased oxygen content, resulting in lower CO emissions than in 1990. There will also be more oxygen overall on average relative to 1990 in the entire anti-dumping area and average CO emissions for each refiner and importer will likely be lower than they were in 1990. CO emissions may be higher than 1990 levels in parts of the anti-dumping area due to local variations in oxygenate content. However, the Agency expects that CO levels generally will be at or below 1990 levels for most refiners and importers. EPA does not believe that the marginal environmental benefits of regulating CO emissions of conventional gasoline would be worth the cost and so proposes not to regulate them. The Agency is, however, concerned about the legal basis of this proposal. It requests comments on this and other aspects of this proposal.

D. Individual Baseline Determination

1. Introduction

Section 211(k)(8) requires that the anti-dumping regulations promulgated by EPA ensure that the conventional gasoline sold by each refiner or importer not result in emissions of four particular pollutants higher than the emissions attributable to the gasoline sold by that refiner or importer in 1990. Thus, the baseline against which compliance by each refiner or importer with the anti-dumping requirements is to be determined is the 1990 gasoline of that refiner or importer.

Section 211(k)(8) further provides that if EPA determines that no adequate or reliable data exist regarding the gasoline sold by a refiner or importer in 1990, the refiner or importer must use the statutory baseline gasoline fuel parameters (as found in section 211(k)(10)(B) for reformulated gasoline) as its baseline fuel parameters.

The Agency proposes to use an emission index to determine the level of each of those emissions (exhaust VOC, NOx, and/or toxics), which the Agency proposes to regulate for anti-dumping purposes, as discussed in section C. For instance, there could be a VOC index, a NOx index, and/or a toxics index. The index would be a mathematical equation (sum or product) incorporating the fuel parameters which affect each of the controlled emissions. The equations, portions of equations and relations of fuel parameters to emissions would be as determined for the reformulated gasoline program, sections III.B, III.C, and IV.A. The index (or indices) may have units (e.g., grams per mile) or may be unitless (e.g., fractional increase in NOx emissions). The value of the index would vary depending on fuel composition. Thus, for anti-dumping, a baseline emissions index for each of the controlled pollutants (VOC, NOx, and/or toxics) would be determined based on baseline fuel parameters. An emissions index for compliance determination would first be calculated using the fuel parameter values for the specific compliance period and then compared to the baseline index for each pollutant.

Detailed in sections 2, 3 and 4 below are the Agency's proposed methods for baseline determinations. Two types of refiner operational modes have been identified below, and the Agency is proposing different methods for determining baseline fuel parameters for each of the two types of operations. Data availability varies significantly between refiners and importers, as well as within these two groups. For instance, refiners who are typically called blenders are expected to have little data regarding the composition of their 1990 gasoline. Those refiners who produce gasoline in a refinery which produces blendstocks are expected to have much more information, because fuel composition can be determined from blendstock stream compositions.

[11] Discussed in "Proposed Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act" which also appears in today's **Federal Register**.

However, even for this latter group of refiners, data availability will vary by fuel parameter because of industry practice (e.g., T90 may be measured on every shipment because it is a pipeline specification, but aromatics may be measured only once a month to check on the performance of the reformer catalyst). The methods of baseline determination the Agency proposes are intended to make best use of available data while still attempting to prevent loopholes which allow "dumping" or unfair competitive situations. A method for the determination of an importer's individual baseline is also discussed. Section 5 discusses the combination of baselines for parties engaged in more than one refinery operational mode and/or importing. Section 6 details potential concerns for isolated distribution areas. Section 7 discusses possible limitations that may be imposed on the applicability of an individual baseline to increased gasoline volume. Comments are requested concerning any and all aspects of individual baseline determination.

2. Refinery Operational Mode 1: Production of Blendstocks

The Agency proposes to split refinery operations into two categories. The first category would be the production of gasoline in a refinery which produces gasoline blendstocks from raw materials which themselves could not be blended straight into gasoline. This would include all refineries, for example, where crude oil is converted into gasoline and other products. The second category (discussed in section 3 below) would be the production of gasoline in a refinery where gasoline blendstocks (including finished gasoline) are simply purchased and mixed to produce gasoline. This latter category of refinery operations includes refiners who are more commonly referred to as blenders. However, the Agency considers as exempt from the anti-dumping requirements those volumes of gasoline which are blends of two or more finished gasolines (with no other added components which are not finished gasolines) and those volumes of gasoline which are blends of only finished gasolines and oxygenates. EPA does not believe that blends of this nature will result in emission increases or air quality deterioration because (1) the finished gasolines would have been previously accounted for under a refiner's baseline, and (2) the addition of oxygenate could only possibly increase NOx emissions which, when due to oxygenate, can be offset by other pollutant emission reductions. Comments are requested on this consideration of these types of blends.

The Agency proposes the following hierarchical method for the determination of a refiner's individual baseline when the gasoline under consideration is produced at a refinery engaged in the production of gasoline blendstocks from crude oil, and the subsequent mixing of those blendstocks to form finished gasoline. This hierarchical method applies to each fuel parameter at each refinery separately, i.e., the best available data must be used to determine the baseline value of a fuel parameter.

Method 1: The required fuel parameters shall be determined from a volume weighing of a refiner's records of 1990 shipments of finished gasoline. It is expected that fuel parameters that are also subject to pipeline specifications (e.g., RVP, distillation curve, specific gravity) will be able to be determined by this method.

Method 2: The required fuel parameters shall be determined from a volume weighing of a refiner's 1990 blendstock composition data and 1990 production records. It is expected that benzene content will be able to be determined by this method.

Method 3: The required fuel parameters shall be determined from a volume weighing of a refiner's 1991 blendstock composition data and 1990 production records. The refiner will have to demonstrate that 1991 blendstock composition was substantially the same as in 1990. It is expected that aromatic and sulfur contents will be able to be determined by this method.

For Methods 2 and 3, blendstock data shall include volumes purchased or received through intracompany transfers. Additionally, for these two methods, the sum of all blendstock volumes considered must equal a very high percentage of total finished gasoline shipments. The Agency requests comments on the proposal that this percentage be at least 95.

The method is hierarchical in that if a refiner has data available for a baseline parameter determination by Method 1, then the value of that baseline parameter must be established using that method. If insufficient data is available for a Method 1 determination, but sufficient data exists for a Method 2 determination, then the refiner must use Method 2. If insufficient data is available for a Method 2 determination but sufficient data exists for baseline determination by Method 3, then Method 3 must be used. Finally, if the refiner has insufficient data for determination of a baseline by Method 3, the refiner must use the value of that parameter from the baseline gasoline defined for the reformulated gasoline program in determining the refiner's individual baseline emissions level.

EPA considers the data needed for Method 3, as well as that for Methods 1 and 2, to be reliable and adequate for the purposes of determining baselines for the anti-dumping program. While the data needed for Method 1 is obviously more reliable than that required for Method 3, the Agency considers reliance on the data for Method 3 appropriate for several reasons. First, it provides a fair approximation of 1990 gasoline. Second, EPA believes that use of the statutory baseline gasoline as the baseline for an individual refiner or importer should be avoided because of the adverse affects on the environment and competition such use of the statutory baseline could have.

For instance, most refiners can be expected to have a baseline which is lower than the statutory baseline (in terms of either one or more type of emission or a specific fuel parameter) using Method 1, 2, or 3. If these refiners could "choose" the statutory baseline instead, they would therefore be allowed to "dump" fuel components into their conventional gasoline to the statutory baseline level. Not only would this be environmentally detrimental, it would not be fair to a refiner who used Method 1, 2, or 3 and also had a baseline lower than the statutory baseline, but could not "choose" the statutory baseline. As explained below, gasoline produced in a refinery of this type will be subject to baseline determination by Method 1, 2, or 3 in a hierarchical fashion, to minimize the ability to "choose" the statutory baseline.

The Agency expects that all refiners engaged in refinery operations of this type will have sufficient data for a baseline determination (for gasoline produced in this type of refinery) by Method 1, 2 or 3 above. Because of this expectation, and for air quality and competitive concerns, the Agency proposes not to allow refiners engaged in refinery operations of this type to utilize the baseline gasoline composition for baseline emissions determination for gasoline produced in this type of refinery.

Comments are requested on the proposed breakdown of refinery operations into the two groups described above, the proposed hierarchy of baseline determination, the likely availability of data for each parameter by each method, and the

representativeness of the data obtained by each method to actual 1990 data.

EPA believes Congress chose 1990 as the year on which baseline determination would be based so that refiners could continue to operate under a status quo (i.e., basically a grandfather clause for conventional gasoline quality). An issue arises, however, concerning those refiners who (1) prior to passage of the Amendments, had made significant financial commitments to change their future gasoline quality or (2) experienced unusual operating circumstances in 1990 which made their 1990 gasoline unlike their production both before and after. In both cases, 1990 operations could be considered to be distinctly different from the status quo of that refiner. Thus, while EPA is concerned about the legal basis for providing this option, EPA requests comments on whether refiners who experienced either of the circumstances described above should be allowed to account for such circumstances in their baseline determination. If so, an option for modification of baseline determination is discussed below.

The Agency is considering as an option a modification for abnormal refinery operation in 1990 as follows:

Modification of Method 1, 2 or 3: If a refiner engaged in this type of refinery operation can show that major equipment was under construction in calendar year 1990 and/or that unusual circumstances precluded normal operation of one or more refinery process units, and that such circumstances caused baseline emissions of that refiner to have a significantly different value than if the situation had not existed, individual baseline determination by Method 1, 2 or 3 can be modified to reflect either or both of these circumstances. Modifications reflecting the impact of such circumstances on the individual baseline would be calculated using production records, laboratory analyses, engineering data, historical and comparative data, and refinery models (if confirmed by data), etc. Resulting modified baseline emissions could not exceed the emissions due to the CAA baseline gasoline. Under this option, the Agency is also considering two options for the determination of whether the circumstances described above significantly affect the resultant baseline emissions. These options depend on the fuel parameters and equations used to determine the emissions indices. In the first option, modifications would be considered significant if a five (5) percent difference between baseline emissions calculated with and without the modification resulted. In the second option, modifications would be considered significant if a five (5) percent difference between a parameter value calculated with and without the modification resulted.

Comments are requested on the legal basis for and the effect of this proposed modification of baseline determinations and the criteria which might be required to establish the right to modify a Method 1, 2 or 3 baseline determination as discussed above. For example, the Agency requests comments on a specific option whereby equipment would have had to have been inoperative for 60 days during 1990 for the situation to be considered abnormal. EPA is concerned about the legal basis for providing this option.

As a logical extension of the approach to baseline determination discussed above, the Agency proposes that should a refinery be sold, both the buyer's and seller's baselines would be calculated/recalculated to reflect the addition and subtraction, respectively, of the baseline fuel parameters and fuel volumes of that refinery. Likewise, should a refinery be permanently shut down, the refiner's baseline would be recalculated to reflect the subtraction of the baseline parameters of the refinery from the refiner's baseline. Finally, if a refinery not in operation in 1990 is started up by a refiner, the refiner's baseline would be recalculated to reflect the addition of the restarted refinery's volume of gasoline having the CAA baseline gasoline parameters. Comments are requested on this proposal.

3. Refinery Operational Mode 2: Purchase of Blendstocks

The Agency proposes an option requiring the use of Method 1 above for baseline fuel determination for gasoline produced in a refinery where gasoline blendstocks and/or finished gasoline are simply purchased (including intracompany transfers) and mixed to form finished gasoline. Most refiners engaged in this type of refinery operation are vernacularly called "blenders." Under this option, if such a refiner does not have the data required for a Method 1 determination, then that refiner would utilize the CAA baseline gasoline as its individual baseline for gasoline produced in such a refinery. EPA does not believe that Method 2 or 3 nor the modification mentioned above would be appropriate for gasoline produced in this type of refinery since blendstocks can vary greatly from week to week in both proportion, type, and composition. To do otherwise could create an incentive for such refiners to discover or develop 1990 and 1991 data on selected blendstocks that would yield a relatively high level of baseline emissions and it would be very difficult to confirm the accuracy of this data. Therefore, the use of any data other than that on finished gasoline composition would not yield a confident estimate of 1990 production composition and emissions.

For those refiners unable to establish a baseline under Method 1, the option discussed above could allow them to produce fuels that are actually the recipients of "dumped" components. For example, these refiners could purchase a gasoline that results in lower emissions than the CAA baseline gasoline and simply add higher emitting components until the emissions levels (as calculated based on the blend components) equals the CAA baseline gasoline emissions. Likewise, those refiners able to establish a baseline higher than the CAA baseline using Method 1 could blend a gasoline which meets the CAA baseline gasoline emissions limits with higher emitting, "dumped" components until the blend reached the higher baseline emissions limits applicable to those refiners.

EPA believes that allowing finished gasoline to be deteriorated by blending with "dumped" polluting components is inconsistent with Congress' intent in passing the anti-dumping provision. The Agency is therefore proposing an option that would allow the mixing of a finished gasoline and a blendstock if the blendstock was already certified as part of the total production of another refiner (a refiner which produces blendstocks). To illustrate, a refiner which produces blendstocks would segregate a high benzene and aromatic stream (e.g., reformate) and certify that the average emissions of all its gasoline production, including the reformate, was at or below its baseline emission level. This reformate could then be sold to another party and blended into a finished gasoline since its emission effect was already considered in the original refiner's certification. Comments are requested on this option.

4. Importers

The Agency proposes that persons importing refinery-finished gasoline produced in a refinery which operates in the same manner as those refineries described in section 2 utilize Method 1, 2 or 3, and possibly then, modifications to Method 1, 2 or 3, for baseline determination as outlined in section 2. This proposal requires the foreign refineries from which the gasoline is exported to establish baseline fuel parameters and associated emissions in the same way that domestic refiners

meeting the description of section 2 do. The Agency considers this approach to be fair, reasonable and practicable.

The Agency also proposes that those importers who import finished gasoline which is not refinery-finished gasoline as described above be subject to the baseline determination method outlined in section 3 for that gasoline which is not refinery-finished gasoline. Again, such an approach reasonably treats importers in the same manner as domestic refiners.

5. Multiple Modes of Operation

The Agency proposes and requests comments on the following two options for a refiner engaged in one or both of the refinery operational modes described in sections 2 and 3 above and/or engaged in importing refinery-finished gasoline.

Under the first option, each mode of operation (i.e., producing blendstocks, purchasing blendstocks, importing) would have a unique and separate baseline emissions level. All post-1994 gasoline from each mode of operation would be compared to its respective baseline. This option could allow the shifting of volumes of gasoline within a company, potentially allowing "dumping" since the different modes are considered separately.

Under the second option, a baseline emission level would be determined for each mode of operation (i.e., producing blendstocks, purchasing blendstocks, importing). The unique baseline emissions level of each mode of operation would then be volume-weighted to form one baseline for the refiner. This option may reduce potential dumping, since all the gasoline of a refiner contributes to that refiners' single baseline. Comments are requested on which of these two options should be promulgated.

6. Geographic Considerations

The anti-dumping provisions of the Act focus compliance on each refiner's and importer's total conventional gasoline production. As these entities are only restricted from selling their conventional gasoline only in reformulated gasoline areas, there appears to be only one anti-dumping area in the nation, that is, the sum of all those areas in which conventional gasoline can be sold. In other words, the restrictions apply to what is produced where it is produced and not on where it is sold.

In addition, section 211(k)(8) subjects "refiners, blenders or importers" to the anti-dumping requirements. The Act, however, does not define those terms, although they are easily read as meaning the overall entity that produces gasoline, not the individual production facilities owned by the entity.

However, there may be isolated geographic areas that could experience significantly worse air quality as a result of the "dumping" of emissions-increasing fuel components in those areas. For instance, Salt Lake City, Utah is an ozone nonattainment area which could opt into the reformulated gasoline program. The city is surrounded by an area that could not opt in and therefore would receive conventional gasoline. Additionally, the refineries in the area serve a very limited geographic area and little gasoline enters that market from outside of the area. Many of these refineries are owned by larger refiners with even larger production elsewhere. Thus, if Salt Lake City opts into the reformulated gasoline program, "dirty" fuel components could be removed to produce reformulated gasoline and be "dumped" into the conventional gasoline sold in the immediate surrounding area, if the refiners involved found it more economical to make up for the resulting increase in emissions by cleaning up their conventional gasoline produced elsewhere. The volume of gasoline in this area is probably only a small fraction of the entity's total volume. Hence, toxic emissions in the area outside St. Lake City could increase substantially, while emissions elsewhere decreased to a much smaller degree but over a much wider area. EPA believes such a result would not be consistent with the intent of the anti-dumping provisions.

EPA proposes that, if a party believes that significant increases in toxic emissions are occurring in the conventional gasoline area surrounding an opt-in area that is located in an isolated gasoline distribution system such as that described above, that party could petition EPA to establish an individual baseline for each refinery within that locality. If EPA found that localized dumping was occurring as described it would grant the petition, define refineries in the affect area as individual refiners and establish baselines for each refinery. The individual baselines determined would not be incorporated into refiners' baseline if those facilities were owned by a larger entity. The baseline of a larger entity owning a refinery in such an isolated area would not include the production of the isolated refinery. Comments concerning this option are requested.

7. Limitation on Individual Baseline Applicability

A refiner or importer with a higher than average baseline emissions level may be able to gain a competitive advantage over a refiner or importer with a lower baseline emissions level. EPA believes that the potential for anti-competitive impacts of the anti-dumping requirements is unavoidable. With respect to continuing current operations, such impacts are inherent in the Act's provision for individual baselines. However, the potential also exists for a refiner or importer with a high baseline emissions level to expand production by buying relatively "dirty" blendstocks and producing a certifiable gasoline which a refiner or importer with a lower baseline would not be allowed to produce. EPA believes that the anti-dumping requirements should not be allowed to create such an economic incentive to increase production of dirty gasoline.

To prevent this situation from occurring, the Agency proposes a number of options below. Any of the following options could apply to the gasoline of refiners engaged in the refinery operational mode discussed in section 2 above and to persons importing refinery-finished gasoline as discussed in section 4 above. The gasoline of refiners engaged in both refinery operational modes could be subject to all of the options below, substituting the word "volume" for the words "existing refinery capacity" in all instances. The gasoline of those refiners engaged solely in the refinery operational mode discussed in section 3 could be subject to Options 1, 3 or 4, with the word "volume" substituted for the words "existing refining capacity" in all instances.

Option 1: Limit application of a refiner's individual baseline to 1990 total volume; thus, the increment of post-1994 annual gasoline volume in excess of 1990 volume would be subject to the CAA baseline parameters, not the refiner's individual baseline. This prevents all growth of high-emitting gasoline due to inappropriate incentives.

Option 2: Limit application of a refiner's individual baseline to 1990 existing refining capacity; thus, the increment of post-1994 annual volume in excess of 1990 existing refining capacity would be subject to the CAA baseline parameters, not the refiner's individual baseline. This option allows refiners which may have operated at unusually low levels of capacity utilization to use their individual baseline until they return to their previous production

levels. At the same time, refiners who had consistently produced gasoline at lower than maximum capacity could take advantage of this room for growth to increase production of relatively inexpensive, high-emitting gasoline.

Option 3: Limit application of a refiner's individual baseline to 1990 existing refining capacity, with the following restrictions:

(1) For those refiners with baseline emission levels greater than that of the CAA baseline gasoline, the post-1994 increment of total volume in excess of 1990 existing refining capacity would be subject to the CAA baseline parameters.

(2) For those refiners with baseline emission levels lower than that of the CAA baseline gasoline, the post-1994 increment of total volume in excess of 1990 existing refining capacity would be subject to the refiner's individual baseline until the increment exceeded a certain percentage of 1990 existing refining capacity. The Agency proposes that this percentage be 10.0. Comments are requested. The post-1994 increment of total volume in excess of 110 percent of 1990 existing refining capacity would be subject to the CAA baseline parameters. This approach would provide some assurance that expanding throughput of existing capacity through the removal of bottle-necks, etc. would still be subject to the 1990 individual baseline while new capacity would receive the CAA baseline.

Option 4: Limit application of a refiner's individual baseline to 1990 existing refining capacity; the post-1994 increment of total volume in excess of 1990 existing refining capacity would be subject to the CAA or individual baseline parameters, whichever results in lower baseline emissions. This option would assure that no future capacity additions would result in deteriorating conventional gasoline. It also presumes that the conditions which led to the lower than average baseline in the first place will continue to apply to any increases in capacity.

EPA recognizes that Options 1, 2, and 3 would permit refiners with individual baselines lower than the CAA baseline to produce, in the case of any volume greater than its 1990 volume, gasoline that is dirtier than its 1990 gasoline. The Agency is suggesting these options out of concern for the inequitable competitive impact of the anti-dumping requirements on refiners that produced cleaner than average gasoline in 1990 in case the reasons for their lower than average baseline do not apply to increases in capacity. The Agency nevertheless is concerned about the legal basis for these options.

E. Individual Baseline Data Submission and Approval

1. Data Submission

The Agency is proposing to have individual baseline data, calculation methodology and documentation of modifications submitted to an auditor on or before March 31, 1992. EPA believes this is sufficient time for refiners and importers to gather and prepare the required data. Data submissions are required from all refiners engaged in the refinery operational mode described in section D.2 and refiners engaged in the refinery operational mode described in section D.3 utilizing a Method 1 baseline determination and importers. Those refiners who only produce gasoline in a refinery operating as described in section D.3. and subject to the CAA baseline gasoline parameters are not required to submit individual baseline data.

The auditor will verify the data submitted for accuracy. It is expected the auditor will use good engineering practice and representative refinery models for the purpose of data verification. EPA believes it important that the auditor be acceptable to all parties involved (i.e., auditor should have independence of judgment, be technically sound, etc.). One option would be to require the auditor to be EPA-certified. Another option could require the auditor to be independent of the submitter. A third option could require the auditor to be certified by an industry panel. Any combination of the above options could also be considered. The Agency is also proposing specific qualifications the auditor should be required to meet. Comments are requested on the use of an auditor for data verification, certification requirements the Agency should require the auditor to meet, methods to be used by an auditor for data verification, and the relationship of the auditor to the data submitter.

The Agency proposes that the minimum data submission requirements be as described in Option 1 or Option 2 below.

Option 1: Fuel parameters specified for emissions determination and obtained per Method 1, 2 or 3 shall have been measured and/or documented monthly for 12 months, and shall be averaged over the compliance period(s). Total volume of 1990 gasoline shipments shall be included. Raw data and calculation methodology shall be included, as well as documentation of modifications to Method 1, 2 or 3.

Option 2: Fuel parameters specified for emissions determination and obtained per Method 1 or 2 shall have been measured and/or documented monthly for at least 6 months, as long as each measurement is representative of a separate two (2) month period (e.g., on an every other month basis). Fuel parameters specified for emissions determination and obtained per Method 3 shall have been measured and/or documented monthly, beginning no later than July 1, 1991. For the purposes of utilizing Method 3 in baseline determination, fuel parameters obtained during this time frame shall be considered representative of 1991 data for a specific compliance period. Total volume of 1990 gasoline shipments shall be included. Raw data and calculation methodology shall be included, as well as documentation of modifications to Method 1, 2 or 3.

The Agency proposes to require a statement signed by the chief executive officer of the company, or his or her delegate, stating that insufficient or inadequate and unreliable data exists for baseline determination by Method 1 or Method 2, respectively, if an individual baseline is determined by Method 2 or Method 3, respectively.

2. EPA Approval

The Agency proposes that the auditor forward results of verification to EPA within three (3) months of receipt. EPA would publish individual baseline data in the **Federal Register** within two (2) months of receipt from the auditor without first evaluating it in order to benefit from public comment while the Agency evaluates the data. To minimize competitive effects due to the publishing of baseline data, the Agency proposes the following options regarding the form of baseline data published:

Option 1: Baseline emissions (baseline index) by refiner and importer. This would basically be a single number for each emission pollutant (exhaust VOC, NOx, toxics) which EPA decides to control under the anti-dumping provisions.

Option 1a: Baseline emissions (baseline index) by identified refinery. For importers, the identified refinery is the refinery in which the importer's refinery-finished gasoline, as discussed in section D.4., was produced.

Option 2: Fuel parameter averages by refiner and importer. For the pollutants (VOC, NOx, toxics) that EPA proposes to control, certain fuel parameters will be required for the calculation of baseline emissions; it is these parameters that would be published.

Option 2a: Fuel parameter averages by refinery and importer-identified refinery. The "importer-identified refinery" is the refinery in which the

importer's refinery-finished gasoline, as discussed in section D.4., was produced.

EPA would decide on the adequacy and reliability of submitted individual baseline data and notify the affected party within five (5) months of publication in the Federal Register. The Agency proposes to conduct investigations of potential baseline discrepancies in a confidential manner with EPA, the auditor and the refiner or importer. EPA's final determination of an individual baseline would be published in the Federal Register.

Comments concerning any aspect of the suggested methods for implementing these anti-dumping provisions, as well as comments on any issues not discussed, are requested.

X. Anti-Dumping Enforcement

A. Introduction

EPA has proposed in its anti-dumping program an averaging scheme that allows refiners and importers to average the toxics index of all conventional gasoline produced or imported during the averaging period across all facilities in the country operated by a single regulated party. As discussed earlier, EPA is considering monitoring NOx and VOCs in addition to the toxics index. EPA is proposing three options with respect to the length of the averaging period:

(1) Annual;

(2) Annual for toxics and summertime only for VOCs; or

(3) Two averaging periods corresponding to the two seasonal baseline periods.

The first option, an annual averaging period, has the primary advantages of ease of implementation with generally little or no potential for adverse air quality impact. This approach would substantially reduce the required record-keeping and allow greater production flexibility for the industry. A potential disadvantage to an annual averaging period is temporal or spatial "spikes" of high benzene levels, which could result from regulated parties producing some gasoline with very high benzene levels at certain times, to be offset by other gasoline having very low benzene levels at other times. An option for addressing this potential spiking problem is a per-gallon maximum benzene level for all conventional gasoline or only for certain isolated geographic areas, such as Salt Lake City, identified by the EPA as having potential susceptibility to benzene spiking.

The second averaging period option is a combination of an annual averaging period for the toxics index and a summertime only averaging period for VOCs.

The third averaging period option consists of two averaging periods corresponding to separate winter and summer baseline periods. The potential advantage of this option is that it would limit fluctuations in all constituents, including benzene, thus limiting the potential for spiking. The baselines could also be designed to limit the potential for further seasonal air pollution problems, such as ozone and CO. The disadvantages to this option are increased complexity and cost for both the industry and EPA, and potential difficulties of supply, distribution and turnover of product during the seasonal transitions.

EPA is considering as an option an averaging program that allows trading of credits. The legal basis for a credit trading program is questionable, since § 211(k)(8) provides that each refiner, importer and blender shall maintain the emissions performance of its 1990 gasoline. In any event, the major advantage of a credit program is added flexibility for regulated parties. The major disadvantage would be a greater likelihood of spatial or temporal hot spots and added complexity in implementing the anti-dumping program. Any such program could be implemented similar to the lead phasedown scheme. EPA also is considering as an option allowing parties to bank credits for use in subsequent averaging periods.

The anti-dumping enforcement program will consist of a combination of the following enforcement mechanisms to monitor compliance with the regulations, including: (1) Registration of regulated parties, (2) record keeping, (3) reporting, (4) company-commissioned audits, and (5) Agency audits. Based on its experience with lead phasedown enforcement, the Agency believes all these mechanisms are necessary to ensure compliance with the regulations. In that program, compliance improved dramatically when the Agency shifted from an enforcement program based merely on the review of periodic reports to one based on audits. Moreover, should the agency adopt any per gallon maximum/minimum requirements for gasoline in the anti-dumping program, a comprehensive field inspection program would be implemented similar to the volatility program, including a vicarious liability scheme (40 CFR 80.27–28; 54 FR 11868 (1989)).

B. Regulated Parties

Section 211(k)(8) of the Act provides that each refiner, blender, or importer is subject to the requirements of the anti-dumping provision. Under existing regulations, the Agency has included blender within the definition of "refiner" at 40 CFR 80.2. The proposed anti-dumping regulations follow this approach. However, a certain type of "blending" activity may occur which EPA believes should be regulated differently under the anti-dumping program. This blending involves the addition of an approved oxygenate (normally ethanol) to a finished gasoline (normally through splash blending at a terminal). EPA believes this type of blending should be excluded from anti-dumping requirements if (1) the gasoline is already considered in another party's baseline for anti-dumping purposes, and (2) provided that emissions of VOC and toxics from such a blend will not be greater than 1990 emissions from such a blend or from gasoline alone. As described earlier, Phase II RVP regulations will reduce the VOC emissions due to such blends. Even when the oxygenate used is ethanol, which when blended at a nominal 10 volume percent with gasoline can exceed the RVP limit by 1 psi, the Phase II RVP limit in Class C areas will be 10.0 psi, compared to the 11.5 psi limit existing in most Class C areas under Phase I RVP control. At greater than 9 psi, both exhaust and evaporative VOC emissions will be reduced with a reduction in RVP. Such blenders are exempt from antidumping requirements to the extent of the emission impact of the 1 psi RVP waiver. Oxygenate blending is differentiated from blending in which hydrocarbons are combined with other blending stocks or finished gasoline to produce a new finished gasoline. This type of non-oxygenate blending would be subject to the anti-dumping requirements.

C. Registration

The Agency is proposing that all refiners (see discussion of regulated parties above regarding treatment of blenders) and importers of conventional gasoline register with the Administrator prior to the averaging period in which the refiner or importer will produce or import conventional gasoline. Various options have been proposed for when registration must occur, including one or three months prior to the beginning of the averaging period. The purpose of a registration requirement is to allow the Agency to accurately identify all the refiners and importers of conventional gasoline and establish a data base for compliance monitoring. The program would also require timely notification to the Agency of any change in the status of such parties.

D. Record-keeping

The Agency is proposing that all refiners and importers of conventional gasoline maintain applicable records that describe the composition of gasoline produced or imported and subject to these requirements. The purpose of such a requirement is to document all tests, analyses and measurements for all components or properties necessary for the determination of compliance with the summer, winter or annual baselines. Retention of such documents by the appropriate parties would enable the tracing of conventional gasoline back to the appropriate refiner or importer, will allow the preparation of necessary reports, and will allow the production of documents necessary for more comprehensive audits by the Agency in order to determine compliance. EPA is proposing that such records be retained for an appropriate period of time (see records retention discussion, above).

E. Reports

The Agency is proposing that all refiners and importers of conventional gasoline be subject to a reporting requirement for every averaging period. The reports will generally include the total volume of gasoline subject to the anti-dumping requirements for the applicable averaging period and the calculated Toxics Index (NOx and/or VOCs). Clearly, the main purpose of such a reporting requirement is to confirm that all conventional gasoline sold meets the appropriate baseline requirements established for a particular refiner or importer. The Agency would carefully review these reports, confirm the calculations contained therein, and utilize this information in conjunction with any other information available to the Agency to select parties for comprehensive audits.

F. Company-Commissioned Audits

In addition to the reporting requirement, all refiners and importers will be required to submit periodic reports of an audit to the Agency. These required audits would be similar to those required for the reformulated gasoline enforcement (discussed in more detail in another section). The purpose of the audit is to confirm the accuracy of the record-keeping and reporting of the refiners and importers of conventional gasoline and to confirm each party's compliance with the applicable requirements. An audit that uncovers inconsistencies with Agency requirements would subject the respective party to an audit by the Agency to determine compliance with the anti-dumping regulations.

G. Agency Audits

The Agency is proposing as its primary enforcement mechanism, to conduct comprehensive audits of importers and refiners to help determine compliance with the gasoline composition requirements of the anti-dumping regulations. These audits would also review compliance with the registration, record-keeping, reporting and auditing requirements. Directed field inspections might be utilized in conjunction with an Agency audit, if evidence is revealed through an Agency audit that necessitates additional investigation. The Agency has found from its enforcement of the lead phasedown program that on-site audits are an extremely effective method of looking behind records and reports submitted to the Agency to determine a regulated party's compliance. Therefore, the Agency believes that this would be an effective approach for this program as well.

XI. Environmental Impacts

The Clean Air Act indicates that the primary purposes of reformulated gasoline are to reduce ozone-forming VOC emissions during the high ozone season and emissions of toxic air pollutants during the entire year. This section contains projections of the extent to which reformulated gasoline, as defined within this proposal, will achieve those reductions. Further, this section presents a qualitative description of the value of the reductions for the environment and public health.

For the purposes of this section, the same assumptions regarding baseline vehicles, in-use emissions, Stage II refueling controls, the use of Mobile4.1, and high ozone season temperature ranges will apply as in the preceding projections of baseline emissions and emissions from the formula fuel in sections III. A and D. For the sake of simplicity, only one modeling option, the comprehensive model, has been used in this analysis. The definition of enhanced I/M, which is being proposed for inclusion in an emissions model, and which will affect both the quantity of VOCs and toxics reduced, will be treated in this section as a range, defined by the 'low evap' and 'high evap' cases described in this proposal in section III.A.2.

The range of possible impacts of reformulated gasoline on VOC and toxic emission reductions is further expanded by three assumptions regarding the extent to which areas not originally covered by the reformulated gasoline provisions opt into the program. The first is the assumption that only the mandated nine areas will be affected; the second is that all serious ozone nonattainment areas will opt into the program; the third is that every one of the nation's 96 ozone nonattainment areas will be covered. All three cases are included in the summary of environmental impacts which are presented in this section.

While reformulated gasoline must be sold within those areas covered by the program's provisions, it is also expected that some reformulated gasoline will be sold outside of covered areas, due to characteristics of the gasoline distribution system. Estimates of gasoline "spillover" from different sources range from less than 10 percent all the way to 25 percent. It may or may not be appropriate to include the emission reductions caused by this spillover fuel with that within the covered areas, since the spillover areas may not be in nonattainment for ozone and they may be quite rural with a significantly different exposure (for toxics) per ton of emission. The approach followed below is to not include the emission reductions resulting from the spillover fuels.

A. High Ozone Season Environmental Impacts From Reformulated Gasoline

1. Projected Ozone Season Gasoline Reformulations

As stated in the Act, reformulated gasoline is required to achieve a minimum 15 percent reduction in ozone-season VOCs relative to baseline emissions, as discussed above in section III.D. For Class 8 ozone nonattainment areas, several options are being proposed (as discussed in section III.D.2): A 30 percent reduction relative to baseline gasoline, a 25 percent reduction, a 20 percent reduction, or a 15 percent reduction. For purposes of this section, VOC reductions will be discussed under the 30 percent and the 15 percent reduction options.

As described in section III.D.3, the standard for high ozone season toxics emissions, which is defined by the toxics reduction due the formula fuel relative to the baseline gasoline, is projected to be 15.5–18.8 percent.

Using, for this analysis, the comprehensive emission model described within this proposal, EPA projects that the following fuels will comply with the requirements for reformulated gasoline during the high ozone season.

	Class B: 15% VOC standard		
	Class C	Prior to Phase II	After Phase II
MTBE, vol%	11.0	11.0	11.0
Sulfur, ppm	273	273	273
Benzene, vol%	1.0	1.0	1.0
RVP, psi [1]	7.9–8.1	7.8	7.1–7.3
Aromatics, vol%	26.9	26.9	26.9

[1] The range in RVP levels is due to the two enhanced I/Mscenarios described earlier. The upper limit of the RVP range applies to the high emission case, while the lower limit applies to the low emission case.

In addition, the remaining fuel parameters are equal to those of the baseline gasoline. In deriving the above projection, EPA exercised some discretion in choosing which parameters to modify in order to attain the required emission reductions. The above choices were based on the belief that, beyond mandated benzene control and oxygenate content, RVP was the most cost effective source of VOC control and that sulfur was the most cost effective source of NOx control. The aromatics reduction shown was that estimated to occur from the use of oxygenate and simply represents the reoptimization of the refinery for the added volume and octane contained in the oxygenate and no additional aromatics control. In making the above projection, EPA utilized an MTBE blend, since Auto/Oil test data on the effects of other oxygenates has not yet been released.

2. Projected Winter Gasoline Reformulation

As described above, the minimum winter toxic emission standard for reformulated gasoline is a 15 percent reduction relative to the baseline winter gasoline. Using the emission models described within this proposal, EPA projects that the following fuel will comply with the requirements for reformulated gasoline during the winter (nonozone season).

Sulfur, ppm	270
Benzene, vol%	1.0
Aromatics, vol%	19.5
MTBE, vol%	11.0

Five of the nine mandated reformulated gasoline areas and a number of potential opt-in areas are also part of the oxygenated fuels program. Gasoline marketed in these areas will be required to have 2.7 percent oxygen for roughly four months each winter. Thus, these areas will already have more than enough oxygenate and sufficiently low aromatics per the above requirements. Thus, for four out of the seven months, reformulated gasoline will only have to be modified for benzene and sulfur as shown above.

B. VOC Reductions During the High Ozone Season

As stated above, a primary environmental goal of reformulated gasoline is to reduce ozone-forming VOCs during the high ozone season. The gasoline reformulations described above in section A.1 are projected to reduce VOC emissions from May 1 through September 30, 1995, by the following amount, given in tons:

Opt-in scenario	Class C	Class B: 15% VOC standard	
		Prior to Phase II	After Phase II
9 Cities Only	[1] 61–118	11–13	44–86
26 Serious & Worse	73–142	16–19	65–128
All Ozone Areas	126–242	32–38	129–251

[1] The range is bracketed by the low evap and high evap enhanced I/M scenarios described in Section III.A.4.c of this notice.

Reductions in VOC are environmentally significant because of the associated reductions in ozone formation and in secondary formation of particulate matter, and because of likely improvements in human welfare. The well-documented health effects of ozone in nonattainment areas, such as the cities in which reformulated fuels will be required, include acute respiratory impacts such as coughing fits, shortness of breath, and chest tightness. Reduced ozone concentrations may also reduce incidence of chronic lung disease. Reduction in the exposure to ambient concentrations of particulate matter is associated with reduction in morbidity and mortality. Human welfare benefits include improved agricultural yield, forest maintenance, worker productivity, avoidance of material damage, and enhanced visibility.

The specific calculation methodology and related assumptions on which EPA's evaluation of VOC mass reductions will be described more fully in the Regulatory Impact Analysis for this rulemaking.

C. Toxic Air Pollutant Reductions

As stated above, a primary environmental objective of the reformulated gasoline program is to reduce year round emissions of five major toxic air pollutants: Benzene, formaldehyde, acetaldehyde, 1,3-butadiene, and polycyclic organic matter. Reductions in emissions of toxic air pollutants are environmentally important because they carry significant benefits for human health and welfare. The description given here focuses primarily on effects of the ambient pollutants, however, note that air concentrations often move ultimately to soils and water, and exposure through these media may also increase human health risk and environmental consequences. A significant fraction of the toxic pollution found in the Great Lakes, for example, results from deposition of air toxics.

Each of the five toxic compounds of concern increases cancer risk in exposed human populations. The Regulatory Impact Analysis supporting this rulemaking will present the methodology for estimating the number of cancer cases avoided based on reductions in mass emissions of these compounds. The projected cancer incidence reductions attributable to the gasoline reformulations described above (section XI.A) are projected for the year 1995 as follows:

Opt-in scenario	Class C areas	Class B areas
9 Cities Only	1.3–2.0	0.9–1.4
Serious & Worse	1.6–2.4	1.3–2.1
All Ozone Areas	2.7–4.1	2.6–4.1

As in the analysis of cancer cases reduced during the high ozone season, EPA's unit risk factors and exposure factor for different types of emissions have been used to calculate projected 1995 cancer incidence reductions attributable to the gasoline reformulations described above during the winter months. For the nine cities, in oxy-fuel areas, cancer incidence would be reduced by 3.8–4.6, and outside the oxy-fuel areas, the reduction would be 3.4–4.0.

Noncancer human health impacts may also be associated with reductions of these five toxic compounds. Ambient exposure to these toxins may contribute to early mortality, disease incidence, and decrease in the quality of life. Adverse effects of the respiratory system, blood, reproductive system, and effects on the developing fetus are associated with inhalation exposure to benzene, 1,3-butadiene, POM, acetaldehyde, and formaldehyde.

XII. Economic Impacts

A. Cost of Reformulated Gasoline

1. Direct and Intrinsic Per Gallon Costs

Some of the costs associated with reformulating gasoline are direct costs which are reflected in higher prices at the pump. These include costs for the addition of oxygenates, and the control

of benzene, aromatics, sulfur, RVP levels and other parameters which refiners may adjust in order to meet program requirements. Factors influencing these costs include the potential for reducing aromatics and the octane value of added oxygenates.

There are also indirect or intrinsic costs associated with gasoline reformulation. The addition of oxygenate will reduce the fuel economy of reformulated gasoline, however this reduction would be mitigated to some degree by reducing RVP, which improves fuel economy. Additional costs include costs for vehicle testing, recordkeeping, and enforcement.

Some estimates exist on the cost of varying individual fuel parameters required to produce reformulated gasoline and on the other intrinsic costs associated with gasoline reformulation. EPA is still in the process of conducting its cost analyses. When the Agency has developed these cost projections, they will be placed in the Docket, announced in the **Federal Register**, and copies will be available to parties interested in receiving them.

2. Nationwide Costs

The annual nationwide costs for reformulated gasoline in ozone nonattainment areas are a direct function of the amount of fuel consumed in the areas (CMSAs and MSAs) requiring its use. The fuel consumption values listed in this analysis applied statewide fuel consumption figures from the Federal Highway Administration to 1988 Census population estimates, with the assumption that gasoline consumption is constant across a state. The projected 1995 nationwide gasoline consumption is 118 gallons per year.

In addition to the fuel consumed in the specific areas in which reformulated gasoline is required, it may be assumed that some reformulated gasoline will be sold outside of covered areas, due mainly to idiosyncrasies of the gasoline distribution system, in a phenomenon commonly referred to as 'spillover.' The extent of reformulated gasoline spillover has been estimated at anywhere between less than 10 and 25 percent. The gasoline consumption estimates presented here include a spillover rate of 15 percent.

Nationwide costs will also depend heavily to what extent nonattainment areas opt into the program. The following gasoline consumption estimates are presented for three scenarios: Nine cities only, opt-in by all areas designated as serious and worse, and opt-in by all 96 ozone nonattainment areas.

1995 Annual Gasoline Consumption

[billion gal/yr]

	9 cities only	Serious and worse	All ozone areas
Reformulated Gasoline in—			
Class B Areas	12.7	18.9	37.1
Class C Areas	17.4	21.0	36.0
Total	30.1	39.8	73.1

The nationwide cost projections are still under development and, along with estimates of the per gallon costs of reformulated gasoline, will be placed in the Docket, announced in the **Federal Register**, and made publicly available when they have been completed.

XIII. Public Participation

A. Comments

EPA desires full public participation in arriving at its final decisions, and therefore solicits comments on all aspects of this proposal from all interested parties. Wherever applicable, full supporting data and detailed analysis should be submitted to allow EPA to make maximum use of the comments. Commenters are especially encouraged to provide specific suggestions for changes to any aspects of the regulations that they believe need to be modified or improved. All comments should be directed to the EPA Air Docket, Docket No. A–91–02 (See "**ADDRESSES**").

As was discussed in the Summary of this rulemaking, EPA has attempted to develop this rulemaking via the process of negotiated rulemaking. Unfortunately, consensus was not reached on all elements of the program prior to the time this proposal had to be finalized. The participants in that process, including the Agency, have agreed to continue to meet through June 1991 in an attempt to reach consensus. If a consensus is reached through those meetings, a supplemental notice will be published.

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket.

Information covered by such a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further to notice the commenter.

B. Public Hearing

Any person desiring to testify at the public hearing (see "**DATES**") should notify the contact person listed above of such intent at least 7 days before the hearing date. Persons wishing to testify at the hearing should also provide an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. It is suggested that sufficient copies of the statement or material to be presented be brought to the hearing for distribution to the audience (suggested number of 300). In addition, a sign-up sheet will be available at the registration table the morning of the hearing for scheduling of the order of testimony. If consensus is reached through the negotiated rulemaking process and a supplemental notice is published as described above, the hearing scheduled for July 15 and 16, 1991 will be rescheduled if appropriate. Any changes to the dates for the hearing will be published in the supplemental notice.

The official record of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the EPA Air Docket, Docket No. A–91–02 (see "**ADDRESSES**").

The hearing will be conducted informally, and technical rules of evidence will not apply. Written transcripts of the hearing will be made and a copy thereof placed in the docket. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

XIV. Compliance with the Regulatory Flexibility Act

Section 605 of the Regulatory Flexibility Act requires EPA to determine whether a regulation will have a significant adverse economic impact on a substantial number of small business entities. As described below, the small business entities which will be affected by this rulemaking have been represented in the negotiated rulemaking processes which led, in substantial part, to this proposal. EPA hopes and expects that consensus will be reached through that process by June and that through that process the small entities affected will have concurred with the regulation.

The following organizations which represent in whole or in part the interests of affected small businesses were and are still formal participants in the negotiated rulemaking process: National Corn Growers Association, Renewable Fuels Association, Oxy-fuels Association, Rocky Mountain Refiners Association, National Council of Farmer Cooperatives, Society of Independent Gasoline Marketers of America, Petroleum Marketers of America Association, Independent Liquid Terminals Association, Association of Independent Refiners of America. EPA believes that the participation of these parties has assured adequate consideration of the special position of smaller entities in the marketplace.

XV. Statutory Authority

The statutory authority for the standards proposed today is granted to EPA by sections 114, 211 and 301 of the Clean Air Act, as amended; 42 U.S.C. 7414, 7545, and 7601.

XVI. Administrative Designation and Regulatory Analysis

Pursuant to Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. Major regulations have an annual effect on the economy in excess of $100 million, have a significant adverse impact on competition, investment, employment or innovation, or result in a major price increase. The Administrator has determined that reformulated gasoline will cost well in excess of $100 million per year and therefore should be classified as a major rule.

XVII. Reporting and Recordkeeping Requirements

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must obtain OMB clearance for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1591) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (PM–223); Washington, DC 20460 or by calling (202) 382–2740.

Public reporting burden for this collection is estimated to average: 818 hours response for refiners/importers of reformulated gasoline; 880 hours per response for refiners/importers/blenders of conventional gasoline; 690 hours per response for refiners/importers certifying reformulated blends (one-time cost); 620 hours per response for Control area regulated parties; and 115 hours per response for distributors and carriers, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (PM–223); Washington, DC 20503; and to the Office of Management and Budget, Washington, DC, 20503, Marked "Attention: Desk Officer for EPA." The final Rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 80

Fuel Additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: June 11, 1991.

William K. Reilly,

Administrator.

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

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

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

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

2. Section 80.2 is amended to add paragraphs (cc), (dd), (ee), (ff), (gg), (hh), (ii), (jj), (kk), and (ll) to read as follows:

§ 80.2 Definitions.

* * * * *

(cc) *Reformulated gasoline* means any gasoline whose formulation has been certified under § 80.35 and which contains less than five [OPTION: ten] parts per billion of phenolphthalein.

(dd) *Conventional gasoline* means any gasoline which has not been certified under § 80.35.

(ee) *Batch of reformulated gasoline* means a quantity of reformulated gasoline which has constant values of those physical and chemical properties which define reformulated gasoline.

(ff) *Covered area* means each of the geographic areas specified in § 80.46 in which only reformulated gasoline may be sold or dispensed to ultimate consumers.

(gg) *Covered area terminal* means a gasoline terminal at which reformulated gasoline is dispensed into trucks for transportation to retail outlets or wholesale purchaser-consumer facilities within any covered area.

(hh) *Covered area responsible party, or CAR* means any person who owns, leases, operates, controls or supervises a covered area terminal.

OPTION 1 for Paragraph (ii)

(ii) *Reformulated gasoline credit* means the unit of measure for the paper transfer of oxygen or benzene content resulting from reformulated gasoline which contains more than 2.0 weight percent of oxygen, or less than 1.0 volume percent benzene or results in emissions of less than [51.3] milligrams per mile for toxics or [1.48] milligram per mile for VOCs or [xx] ppm for NOx. Credits will be determined separately for each reformulated gasoline characteristic.

OPTION 2 for Paragraph (ii)

(ii) *Reformulated gasoline credit* means the unit of measure for the paper transfer of oxygen or benzene content or toxics or volatile organic compound (VOC) or NOx emissions effect resulting from reformulated gasoline which contains more than 2.0 weight percent of oxygen, or less than 1.0 volume percent benzene or results in emissions of less than [51.3] milligrams per mile for toxics or [1.48] milligram per mile for VOCs or [xx] ppm for NOx. Credits will be determined separately for each reformulated gasoline characteristic.

(jj) *Oxygenate* means any substance which, when added to gasoline, increases the oxygen content of that gasoline.

(kk) *Oxygenate blending facility* means any facility (including a truck) at which oxygenate is added to gasoline, and at which the quality or quantity of gasoline is not altered in any other manner.

(ll) *Oxygenate blender* means any person who owns, leases, operates, controls, or supervises an oxygenate blending facility.

Note: The following amendments are proposed to be added to subpart C as proposed elsewhere in this issue of the **Federal Register.**

3. A new § 80.35 is proposed to be added to subpart C to read as follows:

§ 80.35 Reformulated gasoline certification.

(a) In order for gasoline to be certified as reformulated, the refiner, importer, or

blender of the gasoline must obtain from the Administrator of EPA a certificate for that gasoline.

(b) In order to obtain the certification required by § 80.35(a), the refiner, importer, or blender of the gasoline must submit to the Administrator of EPA the following:

OPTION 1 for Paragraph (b)(1)

(1) In the case of gasoline the emissions performance of which is established through use of the emissions model described in § 80.36(a) or 80.37(a), a statement of the gasoline's specifications for each of the fuel parameters addressed in §§ 80.36 (a) and (c) and 80.37(a);

OPTION 2 for Paragraph (b)(1)

(1) In the case of gasoline the emissions performance of which is established through use of the emissions model described in § 80.36(a) or 80.37(a), a statement of the gasoline's specifications for each of the fuel parameters addressed in §§ 80.36 (a) and (c) and 80.37(a) plus the specifications for the other parameters defined for the relevant baseline gasoline; .

(2) In the case of gasoline the emissions performance of which is established through use of vehicle testing as specified in § 80.36(b) or § 60.37(b):

OPTION 1 for Paragraph (b)(2)(i)

(i) A statement of the gasoline's specifications for each of the fuel parameters addressed in §§ 80.36 (b) and (c) and 80.37(b); and

OPTION 2 for Paragraph (b)(2)(i)

(i) A statement of the gasoline's specifications for each of the fuel parameters addressed in §§ 80.36 (b) and (c) and 80.37(b) plus the specifications for the other parameters defined for the relevant baseline gasoline; and

(ii) A description of the vehicle testing program on which the statement made under paragraph (b)(2)(i) of this section is based, including:

(A) The vehicles used, including manufacturer, mileage, model year, model type, and vehicle identification number (VIN);

(B) The identity of the test facility; and

(C) The number of tests conducted and the results, both in the form of raw data and as summarized results;

OPTION 1 for Paragraph (b)(3) Introductory Text

(3) In the case of any gasoline which requires the use of oxygen and/or benzene credits to meet the requirements regarding oxygen and/or benzene specified by § 80.36 or § 80.37, a statement:

OPTION 2 for Paragraph (b)(3) Introductory Text

(3) In the case of any gasoline which requires the use of oxygen and/or benzene aromatic hydrocarbon, toxics, VOC, or NOx credits to meet the requirements regarding oxygen and/or benzene aromatic hydrocarbon, toxics, VOC, or NOx specified by § 80.36 or § 80.37, a statement:

(i) Specifying the source of the required credits, including:

(A) In the case of required credits generated as a result of reformulated gasoline produced or imported by the same refiner, importer, or blender which will produce or import the reformulated gasoline which requires credits, the identification of the certificate of the credit-generating reformulated gasoline; or

(B) In the case of the required credits generated as a result of reformulated gasoline produced or imported by another refiner, importer, or blender:

(*1*) The name and address of the refiner, importer, or blender who will produce the credit-generating reformulated gasoline;

(*2*) The identification of the certificate of the credit-generating reformulated gasoline; and

(*3*) A copy of an agreement which obligates the party who will produce or import the credit-generating reformulated gasoline to produce or import sufficient volumes of such gasoline and transfer sufficient numbers of credits to the party who will produce or import the credit-requiring reformulated gasoline; and

(ii) Representing that for each averaging period specified in § 80.55, sufficient credits will be generated or obtained from credit-generating gasoline produced or imported and sold during that period to permit the credit-requiring reformulated gasoline which is produced or imported and sold during that period to meet the requirements set forth in §§ 80.36 and 80.37.

(c) All submittals shall be signed by a responsible corporate officer of the refiner, importer, or blender.

(d) The Administrator of EPA will rule on petitions for certification within 180 days of receipt. If the Administrator fails to act within 180 days, the gasoline shall be deemed certified until the Administrator completes action on the petition.

OPTION 1 for Paragraph (e)(1)

(e)(1) The certification of any gasoline certified as meeting the requirements set forth in §§ 80.36 and 80.37 shall expire as of January 1, 2000.

OPTION 2 for Paragraph (e)(1)

(e)(1) The certification of any gasoline certified as meeting the requirements set forth in §§ 80.36 and 80.37 shall expire as of one year following promulgation by EPA of regulations revising one or both of the models set forth in § 80.36(a) or § 80.37(a); at expiration of credit purchase agreement.

(2) Any certification of a gasoline requiring credits to meet the requirements set forth in §§ 80.36 and 80.37 shall be conditioned upon sufficient credits being obtained to permit the gasoline to meet the requirements for each averaging period.

4. A new § 80.36 is proposed to be added to subpart C to read as follows:

§ 80.36 Reformulated gasoline requirements: high ozone season.

The Administrator shall certify that a gasoline is reformulated gasoline for sale or dispensing to the ultimate purchaser in the areas listed in § 80.38 between May 1 and September 15 [OPTIONS: Under a second option, these dates would be between May 1 and September 30. Under a third option, the high ozone season would be a specified period which differs for each covered area], inclusive, if it complies with the requirements of either paragraphs (a) and (c) of this section or paragraphs (b) and (c) of this section.

(a) *Certification via Fuel Specification.* In order for a gasoline to be qualified as being a reformulated gasoline under this paragraph (a), the requirements of paragraphs (a) (1), (2) and (3) of this section must be met. In addition, reformulated gasolines containing ethanol and/or methanol are considered to perform nonlinearly in a deteriorating fashion when blended with reformulated gasolines not containing either or both of these two components.

[Note: Within this section, only a single model is shown for all 9 areas. As an option, separate models for nonexhaust VOC and toxic emissions could be added for Class B areas.

The regulations shown in paragraphs (a) (1) through (3) of this section establish separate toxic emission standards for summer and winter reformulated gasolines by comparing the emission reduction of the formula fuel to the section 211(k)(3) 15 percent reduction requirement separately for summer and winter fuels. An option would be to compare a summer/winter weighted average of the emission reduction of the formula fuel to the section 211(k)(3)(B) 15% reduction

requirement to determine the minimum reduction requirement. This minimun may be translated into different summer and winter toxics reduction requirements. However, under this option, one of those requirements may be less than 15 percent.

Most of the baseline VOC, NOx and toxic emission values shown below were derived using a draft version of Mobile 4.1 with 8.7 RVP fuel and a diurnal temperature range of 72–96 F plus 2 extreme scenarios regarding the anticipated effects of enhanced I/M. Alternative temperatures indicative of Class B and C reformulated gasoline areas (or all reformulated gasoline areas) are being developed for possible use. Also, final Mobile 4.1 and enhanced I/M emissions would be substituted in the final rule.

(1) *Reduction in VOC Emissions:* The value of VOCRED must be 0.150 or greater, where:

BASEVOC=1.04 [OPTION: for the hiqh evap as opposed to the low evap scenario affectinq baseline emissions (described in section III.A.4.c of the preamble to these regulations) use 1.99 rather than 1.04] g/mi=Total VOC emissions using baseline gasoline.

OXCON=Oxygen content of gasoline in terms of weight fraction (as measured under § 80.39)

EXHVOC=Exhaust VOC emissions using the gasoline to be certified.

OPTION 1 Under Paragraph (a)(1)

[Comprehensive exhaust VOC model reflecting the effect of all fuel parameters]:

EXHVOC=0.50 [OPTION: for high evap as opposed to low evap case, use 0.58 rather than 0.50]×(1−0.010×OXCON)×(1−0.0060×(32−FAROM))×(1−0.0038×(330−T90))×(1−0.00042×(339−Sulfur)), where OXCON is assumed to be 2.7 where it otherwise would be greater than 2.7.

OPTION 2 Under Paragraph (a)(1)

[Simple exhaust VOC model reflecting the effect of only aromatics and oxygen content]:

EXHVOC=0.50 [OPTION: for high evap case, use 0.58]×(1−0.010×OXCON)×(1−0.0060×(32−FAROM)), where OXCON is assumed to be 2.7 where it otherwise would be greater than 2.7.

OPTION 3 Under Paragraph (a)(1)

[Under this third option, factors incorporating all fuel effects on exhaust VOC which can be substantiated in time for inclusion in the final rule would be added in the final rule.]

EVPVOC=Evaporative VOC emissions using the gasoline to be certified.

RLVOC=Running loss VOC emissions using the gasoline to be certified.

REFVOC=Refueling VOC emissions using the gasoline to be certified.

EVPVOC=0.25 [OPTION: for the high evap case, use 0.81]×(1−0.20×(8.7−RVP)/0.7)

RLVOC=0.22 [OPTION: for the high evap case, use 0.53]×(1−0.245×(8.7−RVP)/0.7)

REFVOC=0.07×(1−0.05×(8.7−RVP)/0.7)

[Note: The effect of RVP in the above 3 equations is based on Mobile4.0. Mobile4.1 would be used to determine these effects in the final rule.]

VOCREDM=(BASEVOC−EXHVOC−EVPVOC−RLVOC−REFVOC)/BASEVOC

VOCRED−VOCREDM

(2) *Reduction in NOx Emissions:* The value of NOXRED must be 0.000 or greater, where:

(i) For gasoline containing MTBE:

NOXREDM=((1−0.0088×OXCON)×(1+0.0003×(339−SULFUR))×(1+0.0049×(9.2−FOLE))×(1−0.00047×(32−FAROM))×(1−0.00047×(330−T90)))−1.0

NOXRED=NOXREDM

(ii) For gasoline containing ethanol:

NOXREDM=((1−0.04×OXCON/3.5)×(1+0.0003×(339 SULFUR))×(1+0.0049×(9.2−FOLE))×1−0.00047×(32−FAROM))×(1−0.00047×(330 T90)))−1.0

NOXRED=NOXREDM

Note: The 0.04 coefficient was derived from an EPA emission factor test program since none is available yet from the Auto Oil Program.

Future emissions data from the Auto Oil Program and other test programs would likely result in modifications to the factors included in paragraphs (a)(2) (i) through (ii) of this section if available in time for incorporation in the final rule. Separate factors may be developed for each oxygenate or a single factor based on oxygen content.

OPTION A1 for Paragraph (a)(3)

(3) *Reduction in Toxics Emissions.* [This option applies if separate toxic emission reduction standards are established for summer and winter fuels.]: the value of TOXRED must be 0.155 [OPTION: for the high evap case, use 0.188] or greater, where:

OPTION A2 for Paragraph (a)(3)

(3) *Reduction in Toxics Emissions.* [This option applies if a common toxic emission reduction standard is established for summer and winter fuels]: the value of TOXRED must be 0.150. or greater, where:

Note: Both values under OPTION Al for paragraph (a)(3) of this section were calculated utilizing the equations listed below in this section as well as those in paragraph (a)(1) of this section, along with formula fuel parameters equal to those of the baseline gasoline, except for 2.0 weight percent oxygen (in the form of 11.0 volume percent MTBE), 25 volume percent aromatics and 1.0 volume percent benzene. Baseline toxics emissions (as a fraction of exhaust and evaporative VOC emissions) were estimated from Auto Oil program results, except for those for vehicles failing EPA purge and tank pressure tests (and running loss and refueling emissions for both pass and fail vehicles), where the benzene fraction of VOC emissions was determined from a GM tank vapor model under representative situations.

BASEXVOC=0.50 [OPTION: for high evap case, use 0.58]

BASETOX=50.8 [OPTION: for the high evap case, use 67.5] milligrams per mile (baseline toxics emissions)

EXBDEN=Exhaust benzene emissions

EVPBEN=Evaporative benzene emissions

RLBEN=Running loss benzene emissions

REFBEN=Refueling benzene emissions

FORM=Formaldehyde emissions

ACET=Acetaldehyde emissions

POM=Emissions of polycyclic organic matter

BUTA=Emissions of 1,3-Butadiene

FBEN=Fuel Benzene in terms of volume percent (as determined under § 80.39

FAROM=Fuel aromatics in terms of volume percent (as determined under § 80.39

RVP=Reid vapor pressure (as measured under § 80.39

TOXREDM=(BASETOX−EXHBEN−EVPBEN−RLBEN−REFBEN−FORM−ACET−BUTA−POM)/BASETOX

TOXRED=TOXREDM

EXHBEN=EXHVOC×(1.077+0.9441×FBEN+0.1133×(FAROMFBEN))×10

POM=1.4

For non-MTBE containing fuels: [effect of oxygenate on formaldehyde, acetaldehyde, and 1,3-butadiene to be added later for non-MTBE fuels.]

EVPBEN=FBEN×((1.3758−0.080274×RVP)×EPVOC×3.2+(1.4448−0.080274×RVP)×EVPVOC×6.8)

RLBEN=FBEN×(1.14−0.080274×RVP)×RLVOC×10

REFBEN=FBEN×(0.72)×REFVOC×10

OPTION B1 for Paragraph (a)(3)

[Comprehensive toxics model for non-MTBE containing fuels]:

BUTA=5.56×BASEXVOC×

(1+0.0274×(OLEF−9.2))×
(1−0.0042×(FAROM−
32.0))×(1−0.0034×(330–T90))
FORM=[to be added for ethanol, ETBE and possibly other oxygenates along with EXHVOC, OLEF, FAROM, and T90 upon release of Auto/Oil data]
ACET=[to be added for ethanol, ETBE and possibly other oxygenates along with EXHVOC, OLEF, FAROM, and T90 upon release of Auto/Oil data]

OPTION B2 for Paragraph (a)(3)

[Simple toxics model for non-MTBE containing fuels]:
BUTA=5.56 X BASEXVOC
FORM=[to be added for ethanol, ETBE and possibly other oxygenates upon release of Auto/Oil data]
ACET=[to be added for ethanol, ETBE and possibly other oxygenates upon release of Auto/Oil data]

For gasoline containing MTBE;
EVPBEN=(FBEN)×(1.3758−
0.080274×(RVP)−0.0579×
(OXCON)/2.0)×EVPVOC×
0.32×10+(FBEN)×
(1.4448×0.080274×(RVP)−
0.0684×(OXCON)/2.0)×
EVPVOC×0.68×10
RLBEN=(FBEN)×(1.4448−
0.080274×(RVP)−
0.0684×(OXCON)/
2.0)×RLVOC×10
REFBEN=(FBEN)×(1.3972−
0.081507×(RVP)−0.0591×
(OXCON)/2.0)×0.07×10

OPTION C1 for Paragraph (a)(3)

[Comprehensive toxics model for MTBE-containing fuels]:
BUTA=5.56×BASEXVOC×
(1+0.0274×(OLEF−9.2))×
(1−0.0042×(FAROM−
32.0))×(1−0.0034×(330T90))
FORM=12.36×BASXVOEC×
(1+0.302×OXCON/2.7)×
(1−0.00941×(FAROM−
32.0))×(1−0.0033×(330–T90))
ACET=8.91×BASEXVOC×
(1−0.00825×(FAROM−
32.0))×(1−0.0029×(330−T90))

OPTION C2 for Paragraph (a)(3)

[Simple toxics model for MTBE-containing fuels (only effect of MTBE on formaldehyde)]:
BUTA=5.56×BASEXVOC
FORM=12.36×BASEXVOC×
(1+0.302×OXCON/2.7)
ACET=8.91×BASEXVOC

(b) *Certification by Emission Testing:* (1) A gasoline which falls outside of the fuel parameter range listed in paragraph (b) (2) of this section will be deemed certified by the Administrator if it meets the requirements for paragraph (c) of this section and has been tested under the procedures described in § 80.40 and the emissions measured according to those provisions meets the following criteria: VOCRED is greater or equal to 0.150, NOXRED is greater than or equal to 0.000, and TOXRED is greater than or equal to 0.155 [for the high evap case, use 0.188]. Such certification shall be deemed to apply to all fuel reformulations meeting the exact specifications of the gasoline which underwent testing, as well as all other reformulations which meet all of the following requirements: fuel benzene, olefin, sulfur and aromatics contents and T50, T90 and the driveability index may be lower than that of the test fuel, and the oxygen content may be higher than that of the test fuel (as these fuel parameters are required to be measured under § 80. 39).

OPTION 1 for Paragraph (b)(1)

[Under this option, additional requirements for the 90th or 95th percentile lower confidence limits of the measured emission reductions could be added which, for example, are 0.025 lower than the requirements for the mean emission reductions.]

(2)(i) Only fuels which lie outside of the following fuel parameter ranges (as these parameters are required to be determined in § 80.39) may be certified according to the provisions of paragraph (b) of this section:

Aromatics 20–45 volume percent
Olefins 5–20 volume percent
Sulfur 50–470 ppm
Ethanol 0–3.5 weight percent oxygen
MTBE 0–2.7 weight percent oxygen
T90 280–360 degrees F
RVP 7.8–10.0 (Class C areas)
7.0–9.0 (Class B areas)
Benzene 0.2–2.0 volume percent.

(ii) A fuel may be exempted from the prohibition contained in paragraph (b)(2)(i) of this section if: it reflects a change in a fuel parameter not listed in paragraph (b)(2)(i) of this section which is believed to have a significant emissions effect, and the emissions effect of the new fuel parameter is certified according to the provisions contained in § 80.42(a)(2).

(c) *Common Requirements under Either Certification Procedure.* To be certified fuel must contain no lead or other heavy metals (except those waived from this prohibition and listed in paragraph (c) of this section, have a benzene content of no more than 1.0 volume percent and have an oxygen content of 2.0 weight percent or greater (as these fuel parameters are required to be measured under § 80.39). Compliance with the benzene and oxygen content requirement may be demonstrated through application of credits.

5. A new § 80.37 is proposed to be added to Subpart C to read as follows:

§ 80.37 Reformulated gasoline requirements: outside of high zone season.

OPTION 1 for § 80.37 Introductory Text

The Administrator shall certify that a gasoline is reformulated for sale to the ultimate purchaser in areas listed in § 80.56 between September 16 and April 30, inclusive if it meets the requirements of § 80.36, or if it meets the requirements of § 80.36(c) and paragraph (a) of this section or if it meets the requirements of § 80.36(c) and paragraph (b) of this section.

OPTION 2 for § 80.37 Introductory Text

[Under this option, use October 1 through April 30 rather than September 16 through April 30]

OPTION 3 for § 80.37 Introductory Text

[Under this third option, use a specified period which differs for each covered area, rather than September 16 through April 30]

(a) *Certification via Fuel Specification.* To be certified the gasoline must meet the requirements of paragraph (c) of this section and:

(1) Have a value of TOXRED greater than or equal to 0.155 or 0.188, where:
TOXREDM=EXHBEN+BUTA+
FORM+ACET+POM
TOXRED=TOXREDM
and EXHBEN, BUTA, FORM, ACET, and POM are determined as in § 80.36(a)(3), and

(2) Have a value of NOXRED greater than or equal to 0.000, where NOXRED is determined as in § 80.36(a)(2).

[Note: The proposal for § 80.37(a) is to apply the fuel-emission relationships from the high ozone season model to the colder temperatures representative of periods outside of the high ozone season.]

(b) *Certification via Emission Testing:* A gasoline will be deemed certified by the Administrator if it meets the requirements of paragraph (c) of this section and has been tested under the procedures described in § 80.40 and the emissions measured according to those provisions meets the following criteria: VOCRED is greater or equal to 0.150, NOXRED is greater than or equal to 0.000, and TOXRED is greater than or equal to 0.155 [under the high evap case, use 0.188]. Such certification shall be deemed to apply to all fuel reformulations meeting the exact specifications of the gasoline which underwent testing, as well as all other

reformulations which meet all of the following requirements: fuel benzene, olefin, sulfur and aromatics contents and T50, T90 and the driveability index may be lower than that of the test fuel, and the oxygen content may be higher than that of the test fuel (as these fuel parameters are required to be measured under § 80. 39).

OPTION 1 for Paragraph (b)

[Under this option, additional requirements for the 90th or 95th percentile lower confidence limits of the measured emission reductions could be added which, for example, are 0.025 lower than the requirements for the mean emission reductions.]

6. A new § 80.38 is proposed to be added to subpart C to read as follows:

§ 80.38 Covered areas: reformulated gasoline.

The following areas are included in the reformulated gasoline program:

CMSA

Los Angeles
New York City
Philadelphia
Chicago
Houston

MSA

Milwaukee
Baltimore
Hartford
San Diego

7. A new § 80.39 is proposed to be added to subpart C to read as follows:

§ 80.39 Measurement of reformulated gasoline fuel parameters.

(a) *Reid Vapor Pressure (RVP).* Reid Vapor Pressure (RVP) shall be determined in accordance to the procedure described in part 80, appendices D and E.

(b) *Distillation Parameters.* The American Society of Testing Materials (ASTM) ASTM–86–82 distillation procedure will be used to determine the fuel parameters associated with the temperature of carryover. These are referred to as T10%, T50%, and T90%.

(c) *Benzene and Aromatics.* The aromatics content shall be measured in gasoline by gas chromatography identifying and quantifying each aromatic compound. Since each aromatic compound will be identified, benzene will be measured concurrently.

(1) An internal standard solution will be made with the following compounds. Also listed are the volume percent, Chemical Abstract Serial Number (CAS), atomic mass unit (amu) on which the detector must be set for at the correct retention time, retention times in minutes, and boiling point in °C.

4-methyl-2-pentanone, 50 vol%, CAS#108–10–1, 43.0 amu, 22.8 min., bp 118°

benzyl alcohol, 25 vol%, CAS#100–51–6, 108 amu, 61.7 min., bp 205°

1-octanol, CAS#111–87–5, 25 vol%, 56.0 amu, 76.6 min., bp 196°

(2) A calibration mixture must be made with a representative mixture of aromatic compounds in appropriate concentrations. The materials and concentrations used in the initial study for this method are listed below. Also listed is the Chemical Abstract Serial Number (CAS), atomic mass unit (amu) on which the detector must be set for at the correct retention time, retention times in minutes, and in some cases boiling point in °C. The standards are made in 224-trimethylpentane (iso-octane), CAS 540–84–1.

2.25 vol% benzene, CAS#71–43–2, 78 amu, 18.9 min., bp 80.1°

2.5 vol% methylbenzene, CAS#108–88–3, 91 amu, 25.5 min., bp 111°

2.25 vol% ethylbenzene, CAS#100–41–4, 91 amu, 34.1 min., bp 136.2°

5 vol% 1,3-dimethylbenzene/1,4-Dimethylbenzene, CAS#'s 108–38–3/106–42–3, 91 amu, 35.1 min., bp 136–138°

10 vol% 1,2-dimethylbenzene, CAS#95–47–6, 91 amu, 38.1 min., bp 144°

2.25 vol% (1-methylethyl)-benzene, CAS#620–14–4, 105 amu, 42.8 min.

2.25 vol% propylbenzene, CAS#103–65–1, 91 amu, 48.0 min., bp 159.2°

2.25 vol% 1-ethyl-2-methylbenzene, CAS#611–14–3, 105 amu, 49.3 min., bp 165°

2.25 vol% 1,2,4-trimethylbenzene, CAS#95–63–6, 105 amu, 50.9 min., bp 169°

2.25 vol% 1-ethyl-2-methylbenzene, CAS#611–14–4, 105 amu, 53.3 min., bp 165°

2.25 vol% 1,3-diethylbenzene, CAS#141–93–5, 119 amu, 56.6 min., bp 181°

2.25 vol% butylbenzene, CAS#104–51–8, 91 amu, 60.7 min., bp 183°

2.25 vol% 1-methyl-2-(1-methylethyl)-benzene, CAS#933–98–2, 119 amu, 63.9 min.

2.25 vol% 1-ethyl-3-methylbenzene, CAS#620–14–4, 105 amu, 64.2 min.

2.25 vol% 1-methyl-4-iso-propylbenzene, CAS#99–87–6, 119 amu, 69.0 min., bp 177°

2.25 vol% 2-ethyl-1, 3-dimethylbenzene, CAS#2870–04–4, 119 amu, 73.0 min.

2.25 vol% 2-methylpropylbenzene, CAS#538–93–2, 91 amu, 75.0 min.

2.25 vol% 1-methyl-3-(1-methylethyl)-benzene, CAS#535–77–3, 119 amu, 75.6 min.

2.25 vol% 1-methyl-3-propylbenzene, CAS#1074–43–7, 105 amu, 78.9 min.

2.25 vol% 2-ethyl-1,4-dimethylbenzene, CAS#1758–88–9, 119 amu, 83.2 min., bp 187°

2.25 vol% 1-methyl-4-(methylethyl)-benzene, CAS#934–80–9, 119 amu, 83.4 min.

2.25 vol% 1-ethyl-2,4-dimethylbenzene, CAS#874–41–9, 119 amu, 85.7 min.

2.25 vol% (1,1-dimethylethyl)-3-methylbenzene, CAS#27138–21–2, 133 amu, 87.3 min.

2.25 vol% 1-ethyl-2,3-dimethylbenzene, CAS#933–98–2, 119 amu, 88.7 min.

2.25 vol% 1-(1,1-dimethylethyl)-3-methylbenzene, CAS#175–38–3, 133 amu, 89.4 min.

2.25 vol% 1-ethyl-1,4-dimethylbenzene, CAS#874–41–9, 119 amu, 94.9 min.

2.25 vol% 2-ethyl-1,3-dimethylbenzene, CAS#2870–04–4, 119 amu, 100.9 min.

2.25 vol% 1-ethyl-3,5-dimethylbenzene, CAS#934–74–7, 119 amu, 102.5 min.

2.25 vol% 1,2,4,5-tetramethylbenzene, CAS#95–93–2, 119 amu, 115.9 min., bp 197°

2.25 vol% pentylbenzene, CAS#538–68–1, 91 amu, 116.0 min.

2.25 vol% naphthalene, CAS#91–20–3, 128 amu, 118.4 min., bp 198°

2.25 vol% 3,5-dimethyl-iso-butylbenzene, CAS#98–19–1, 147 amu, 118.5 min., bp 205.5°

(3) The performance standards will be determined from repeated measurement of the calibration mixture. The uncertainty in the measured aromatics percentages in the standard must be less than 0.02 vol% in the fuel at 95% confidence.

(d) *Oxygen and Oxygenate Content Analysis.*

(1) (i) The following single column direct injection gas chromatographic procedure shall be to qualify and quantify the oxygenate content of gasoline. The procedure's calibration range is 0.25 to 12.0 volume percent. Samples above this level should be diluted to fall within the specified range.

(ii) All oxygenated gasoline components (water, alcohols, ethers, etc.) may be assessed by this method.

(iii) The total concentration of oxygen in the gasoline, due to oxygenated components, may also be determined with this method by summation of all peak areas except for dissolved oxygen water. Sensitivities to each component oxygenate must be incorporated in the calculation.

(iv) Where trade names or specific products are noted in the method, equivalent apparatus and chemical reagents may be used. Mention of trade names or specific products is for the assistance of the user and does not constitute endorsement by the U.S. Environmental Protection Agency.

(2) A measured volume of a gasoline sample is spiked to introduce an internal standard, mixed, placed into a sealed ampule, and injected into a gas chromatograph (GC) equipped with an oxygenate flame ionization detector (OFID). After chromatographic resolution the sample components enter a cracker reactor in which they are stoichiometrically converted to carbon monoxide (in the case of oxygenates), elemental carbon, and hydrogen. The carbon monoxide then enters a methanizer reactor for conversion to water and methane. Finally, the methane is detected by a flame ionization detector (FID).

(3) (i) Samples should be collected and stored in containers which will protect them from changes in the oxygenated component contents of the gasoline, such as loss of volatile fractions of the gasoline by evaporation.

(ii) If samples have been refrigerated they should be brought to room temperature prior to analysis.

(iii) Gasoline is extremely flammable and should be handled cautiously and with adequate ventilation. The vapors are harmful if inhaled and prolonged breathing of vapors should be avoided. Skin contact should be minimized.

(4) (i) A GC equipped with an oxygenate flame ionization detector.

(ii) An autosampler for the GC is highly recommended.

(iii) A 60 m length × 0.32 mm ID 5.0 μm film thickness nonpolar capillary GC column (J&W DB–1 or equivalent).

(iv) An integrator or other acceptable system to collect and process the GC signal.

(v) A positive displacement pipet (200 μL) for adding the internal standard.

(5) Gasoline and many of the oxygenate additives are extremely flammable and may be toxic over prolonged exposure. Methanol is particularly hazardous. Persons performing this procedure must be familiar with the chemicals involved and all precautions applicable to each.

(i) Reagent grade oxygenates for internal standards and for preparation of standard solutions.

(ii) Supply of oxygenate-free gasoline for blank assessments and for preparation of standard solutions.

(iii) Calibration standard solutions containing known quantities of suspected oxygenates in gasoline.

(iv) Reference standard solutions containing known quantities of suspected oxygenates in gasoline.

(6) Calibration standard solutions (made in gasoline).

(i) (A) Reagent grade or better oxygenates (primarily methanol, absolute ethanol, t-butanol, and MTBE) are to be diluted with regular unleaded gasoline that has been previously determined by GC/OFID to be free of oxygenates. Newly acquired stocks of reagent grade oxygenates shall be analyzed for contamination by GC/FID and GC/OFID before use.

(B) Required calibration standards (% by volume in gasoline):

Oxygenate	Range (percent)	Number of standards (minimum)
Methanol	0.25–12.00	5
Ethanol	.25–12.00	5
t-Butanol	.25–12.00	5
MTBE	.25–15.00	5

(C) The standards should be as equally spaced as possible within the range and may contain more than one oxygenate. A blank for zero concentration assessments is also to be included. Additional standards should be prepared for other oxygenates of concern.

(ii) Precisely add an aliquot of an internal oxygenate standard (such as 0.20 mL of i-propanol) as an internal standard to 5.00 mL of each of the prepared standards. The addition of an internal standard reduces errors caused by variations in injection volumes. To ensure adequate method detection limits, the volume of the internal standard added should be minimized (such as 5% or less than the volume of the sample). Transfer approximately 2 mL of each of these solutions to vials compatible with the autosampler.

(iii) Based on chromatographic operating conditions (paragraph (d)(7)(i) of this section), determine the retention time of each component oxygenate by analyzing dilute aliquots either separately or in known mixtures. Approximate retention times for selected oxygenates under these conditions are as follows:

Oxygenate	Retention time (minutes)
Dissolved oxygen	5.50
Water	7.20
Methanol	9.10
Ethanol	12.60
Acetone	15.00
2-Propanol	15.70
t-Butanol	18.00
n-Propanol	21.10
MTBE	23.80
2-Butanol	26.30
i-Butanol	30.30
ETBE	31.10
n-Butanol	33.50
TAME	35.30
i-Pentanol	38.10

(iv) Determine the peak area of each oxygenate and of the internal standard. After dilution corrections, calculate the stoichiometric relative volume response factor of each oxygenate, relative to the internal standard as follows:

$$V_j = \frac{V_s \times PA_j \times 100}{PA_s \times S_j \times V_g}$$

where:

V_j = volume percent of oxygenate to be determined,

V_s = volume of internal standard added,

V_g = volume of gasoline sample taken,

PA_j = peak area of the oxygenate to be determined,

PA_s = peak area of the internal standard, and

S_j = relative volume response factor of each component (relative to the internal standard).

(v) Obtain a linear calibration curve by performing a least squares fit of the corrected component peak areas to the standard concentrations.

(7) (i) Gas Chromatograph operating conditions are detailed in this paragraph.

Oxygenate free helium carrier gas; 15 mL/min (1 bar):

Carrier gas split ratio; 1:10

Zero air FID fuel: 370 mL/min (2 bar)

Oxygenate free hydrogen FID fuel: 15 mL/min (2 bar)

Injector temperature: 250 °C

Cracker reactor temperature: sufficiently high enough temperature to ensure reduction of all hydrocarbons to the elemental states (i.e., $C_xH_{2x} \rightarrow C + H_2$, etc.)

FID temperature: 400°C

Oven temperature program: 50°C for 12 min, followed by 5°C/min to 70°C for 14 min, followed by 25 °C/min to 195 °C for 5 min.

(ii) Prior to analysis of any samples, inject a sample of non-oxygenated gasoline into the GC to test for hydrocarbon breakthrough overloading the cracker reactor. If breakthrough occurs, the OFID is not operating effectively and must be corrected before samples can be analyzed.

(iii) Add precisely the same quantity of the internal standard (as in paragraph (d)(6)(iv) of this section) to 5.00 mL of the gasoline sample. Transfer approximately 2 mL of this solution to a vial compatible with the autosampler.

(iv) Report the volume percent of each oxygenate. If the volume percent exceeds the calibrated range, dilute the sample to a concentration within the calibration range and repeat the procedures in paragraphs (d)(7) (ii) and (iii) of this section.

(v) Sufficient sample should be retained to permit reanalysis.

(8)(i) The laboratory shall routinely monitor the precision of its analyses. At a minimum this shall include:

(A) The preparation and analysis of laboratory duplicates at a rate of one per analysis batch or at least one per ten samples.

(B) Laboratory duplicates shall be carried through all sample preparation steps independently.

(C) The average range (absolute difference) for duplicate samples shall not exceed 0.4 volume % or the average relative range shall not exceed 8% where the relative range is defined as: 100% (range/((initial concentration + duplicate concentration)/2). The maintenance of control charts is one acceptable method for ensuring compliance with this specification. If the results of individual duplicate analyses differ by more than 0.5 volume %, or 10% average relative range, the results of the entire analysis batch should be considered suspect.

(ii) The laboratory shall routinely monitor the accuracy of its analyses. At a minimum this shall include:

(A) Independent reference standards shall be purchased or prepared from materials that are independent of the calibration standards.

(B) Independent reference standards shall be analyzed at a minimum of once per analysis batch or at least one per 100 samples.

(C) If the measured concentration of the reference samples is less than 10% or greater than 10% of the theoretical concentration, the results of the entire analysis batch shall be considered suspect. The maintenance of control charts is one acceptable method for ensuring compliance with this specification.

(e) *Fuel Sulfur.* (1)(i) The following spectrometric procedure shall be used to quantify the sulfur content of gasoline through the use of an inductively coupled plasma atomic emission spectrometer (ICP-AES).

(ii) The procedure's calibration range is 25 to 25,000 μg/L gasoline. Samples above this level should be diluted to fall within the specified range.

(iii) Where trade names or specific products are noted in the method, equivalent apparatus and chemical reagents may be used. Mention of trade names or specific products is for the assistance of the user and does not constitute endorsement by the U.S. Environmental Protection Agency.

(2) A gasoline sample is aspirated into an ICP–AES. The resultant atomic emission spectrum is monitored at 249.773 nm to determine the sulfur content of the fuel.

(3) (i) Samples shall be collected and stored in containers which will protect them from changes in the sulfur content of the gasoline, such as loss of volatile fractions of the gasoline by evaporation.

(ii) If samples have been refrigerated they should be brought to room temperature prior to analysis.

(iii) Gasoline is extremely flammable and should be handled cautiously and with adequate ventilation. The vapors are harmful if inhaled and prolonged breathing of vapors should be avoided. Skin contact should be minimized.

(4) An ICP–AES capable of efficiently resolving the 249.773 nm spectral line of sulfur; a quartz torch (Instruments SA cat.# 490.10.100 or equivalent) for gasoline analyses; a sample nebulizer (0.5 mL/min, Meinhard TR 50–C 0.5 or equivalent) with a spray chamber for gasoline analyses; a peristaltic pump for stable sample aspiration; an integrator or other acceptable system to collect and process the spectrometric signal; and a positive displacement pipet (200 μL) for spiking purposes shall be the required equipment.

(5) (i) Sulfur in gasoline (or oil) stock solution (Alpha Resources or equivalent) for spike analyses and for preparation of standard solutions.

(ii) Supply of sulfur-free gasoline for blank assessments and for preparation of standard solutions.

(iii) Calibration standard solutions containing known quantities of sulfur in gasoline.

(iv) Reference standard solutions containing known quantities of sulfur in gasoline.

(v) Ample supply of argon for generating the plasma.

(6) (i) Sulfur in gasoline (or oil) stock solutions are to be diluted with regular unleaded sulfur-free gasoline that has been previously determined by ICP–AES to be free of sulfur.

(ii) Five calibration standards are required from 25 to 2500 μg sulfur/L gasoline. The standards should be as equally spaced as possible within this range. A blank for zero concentration assessments is also to be included.

(iii) Obtain a linear calibration curve by performing a least squares fit of the component peak areas to the standard concentrations.

(7) (i) Adjust the argon plasma for stable burn while aspirating a blank (sulfur-free) sample of gasoline prior to calibration and analysis of samples.

(ii) After stabilization of the plasma, calibrate the instrument for sulfur using the 249.773 nm spectral line and analyze the samples.

(iii) Report the μg sulfur/L gasoline. If the concentration exceeds the calibrated range, dilute the sample to a concentration within the calibration range and repeat the procedures in paragraphs (e)(7) (i) and (ii) of this section.

(iv) Sufficient sample should be retained to permit reanalysis.

(8) (i) The laboratory shall routinely monitor the precision of its analyses. At a minimum this shall include:

(A) The preparation and analysis of laboratory duplicates at a rate of one per analysis batch or at least one per ten samples.

(B) Laboratory duplicates shall be carried through all sample preparation steps independently.

(C) EPA is seeking comment on what should be the average range (absolute difference) for duplicate samples and/or the upper limit of average relative range where the relative range is defined as: 100% (range/((initial concentration + duplicate concentration)/2). The maintenance of control charts is one acceptable method for ensuring compliance with this specification. EPA is seeking comments on appropriate values for these ranges.

(ii) The laboratory shall routinely monitor the accuracy of its analyses. At a minimum this shall include:

(A) The preparation and analysis of spiked samples at a rate of one per analysis batch or at least one per ten samples.

(B) Spiked samples shall be prepared by adding a volume of a standard to a known volume of sample. EPA is seeking comment on the proper background level of the sample and to what level the concentration of the sample should be increased. To ensure adequate method detection limits, the volume of the standard added to the sample should be minimized (such as 5% or less than the volume of the sample). The spiked sample shall be carried through the same sample preparation steps as the background sample.

(C) The percent recovery of the spiked sample shall be calculated as follows:

$$\% \text{ Recovery} = \frac{100\% \ (C_m(V_0 + V_1) - C_0V_0)}{C_sV_1}$$

where:
V_0 = Volume of sample (mL)
V_1 = Volume of spiking standard added (mL)
C_m = Measured concentration of spiked sample (μg sulfur/L gasoline)
C_0 = Measured background concentration of sample (μg sulfur/L gasoline)
C_s = Known concentration of spiking standard (μg sulfur/L gasoline)

(D) If the percent recovery of any individual spiked sample is less than 10% or greater than 10% of the theoretical concentration the results and the analysis technique should be considered suspect. The maintenance of control charts is one acceptable method or ensuring compliance with this specification.

(E) Independent reference standards shall be analyzed at a minimum of once per analysis batch or at least one per 100 samples.

(F) Independent reference standards shall be prepared from materials that are independent of the calibration standards.

(G) If the measure concentration of the reference samples is less than 10% or greater than 10% of the theoretical concentration, the results of the entire analysis batch shall be considered suspect. The maintenance of control charts is one acceptable method for insuring compliance with this specification.

(f) *Olefins.* Olefins shall be determined using the Fluorescence Indicator Absorption (FIA) method as defined by the American Society of Testing Materials in ASTM–D1319–88.

(g) *Phenolphthalein.* (1) Testing for the presence of phenolphthalein in gasoline is accomplished by extraction of phenolphthalein with water at pH 12. If the water layer turns pink, it indicates the presence of phenolphthalein.

(2) The test solution (reagent) is prepared by adding two (2) tablespoons of washing soda (Na_2CO_2) is to one (1) quart of water. Add two (2) teaspoons of the reagent to one (1) quart of gasoline in a clear container 80% filled. Shake the container for thirty (30) seconds and allow the mixture to settle for several minutes. A pink water layer on the bottom indicates the presence of phenolphthalein in the gasoline.

(3) Gasohols (those containing more than one (1) percent ethanol) react differently when the washing soda reagent is added. After mixing, small particles of a white solid appear on the bottle walls, and the water layer is noticeably larger in volume. When this occurs, add one small crystal of lye (NaOH) to the container, and shake again. The lower layer will now turn pink if phenolphthalein is present.

(4) The quantification of phenolphthalein in the gasoline by a chromatographic laboratory procedure will determine the fraction of conventional gasoline in the tank of reformulated gasoline.

(h) Other procedures with similar capabilities to those detailed in this section will be allowed provided they comply with the quality control requirements and are approved by the Administrator.

8. A new § 80.40 is proposed to be added to subpart C to read as follows:

§ 80.40 Reformulated gasoline certification: vehicle testing.

(a) The provisions of this section apply only if a fuel's parameters fall outside of the range of parameters and the range of their values covered by the exhaust emission models as expressed in § 80.36(b)(2) and § 80.37(b) for high ozone season fuels and non-high ozone season fuels, respectively; or if testing will provide greater statistical confidence than exists for the model expressed in § 80.36 and § 80.37.

(b) To demonstrate compliance with the requirements of § 80.36(b) the following requirements apply:

(1) Exhaust emissions shall be measured per the requirements of this section and § 80.41 through § 80.45 and § 80.47 through § 80.52.

(2) Evaporative, running loss, and refueling VOC and toxics emissions shall be estimated as outlined in § 80.36(a)(1). An ASTM D86 distillation curve and other relevant data shall be submitted to the Administrator to demonstrate the appropriateness of using this estimation technique. If the fuel supplier can submit proof that the RVP, distillation, benzene, oxygenate, or other characteristics of the fuel fall outside of the ranges or factors considered in § 80.36(a), then evaporative, running loss, and refueling VOC and toxics emissions shall be measured per the requirements of this section and § 80.41 through § 80.45 and § 80.47 through § 80.52.

(c) To demonstrate compliance with the requirements of § 80.37(b) the requirements of § 80.46 apply.

(d) The following statistical requirements shall be observed to demonstrate compliance with the requirements of 80.36(b) and 80.37(b).

OPTION 1 for Paragraph (d)(1)

(1) VOCRED, TOXRED, and NOXRED as calculated in § 80.52 must meet the requirements of § 80.36(b) and § 80.37(b)

OPTION 2 for Paragraph (d)(1)

(1) Require the lower 90 or 95% confidence limit of VOCRED, TOXRED, and NOXRED to meet the requirements of § 80.36(b) and § 80.37(b).

OPTION 3 for Paragraph (d)(1)

(1) Require the upper 90 or 95% confidence limit of VOCRED, TOXRED, and NOXRED to meet the requirements of § 80.36(b) and § 80.37(b).

OPTION 1 for Paragraph (d)(2)

(2) The lower confidence limit (90% confidence interval) reduction of VOCRED, TOXRED, and NOXRED to be no lower than the requirements of § 80.36(b) less 0.025 [OPTION: some other fraction] and § 80.37(b) less 0.025 [OPTION: some other fraction]

OPTION 2 for Paragraph (d)(2)

(2) No additional statistical requirement if vehicle selection is highly specified to ensure acceptable test data. Additional vehicles must be tested until the test results from an additional five vehicles has no significant impact on the mean emission reduction estimates.

9. A new § 80.41 is proposed to be added to subpart C to read as follows:

§ 80.41 Fuels: reformulated gasoline certification.

(a) The fuels to be tested for reformulated gasoline certification include the candidate fuel and the baseline fuels for the corresponding certification season, or the candidate-baseline fuel. All fuels shall be lead-free and contain detergents per paragraph (a)(3)(iii) of this section.

(1) The candidate reformulated fuel, (candidate fuel), is defined to be the fuel for which a fuel supplier petitions EPA to certify for sale. The candidate fuel must be specified with at least the same level of detail as in paragraph (a)(2)(i) of this section, and this information must be submitted to the Administrator.

OPTION 1 for Paragraph (a)(2)

(2) The baseline test fuels are to be blended to the specifications below.

OPTION 2 for Paragraph (a)(2)

(2) The baseline test fuels are to be blended to the specifications below. In addition, if the measured values for the parameters result in more than a two percent increase in exhaust VOC based on the model relative to the mean required values for the parameters, the fuel is unacceptable to test.

OPTION 3 for Paragraph (a)(2)

(2) The baseline test fuels are to be blended to the specifications below. The emissions model is then used to adjust the emission measurements on the baseline fuel to account for the differences between the values of the

fuel parameters measured, and their required mean values.

(i) Summer baseline fuel properties and tolerances:

API Gravity	57.4±0.3
Sulfur, ppm wt	339±25
Benzene, wt%	1.82±0.3
RVP, psi	8.7±0.3
Octane, (R+M)/2	87.3±0.3
10%, F	128±5
50%, F	218±5
90%, F	330±5
End Point, F	415±20
Aromatics, vol%	32.0±2.7
Olefins, vol%	9.2±2.5
Saturates, vol%	58.8

(ii) Winter baseline properties and tolerances:

Sulfur, ppm wt	340±25
Benzene, wt%	1.64±0.3
RVP, psi	12.9±0.3
Octane, (R+M)/2	87.3±0.3
50%, F	199±5
90%, F	332±5
Aromatics, vol%	26.3±2.7
Olefins, vol%	11.9
Oxygen, wt%	0.52±0.5

(iii) The candidate-baseline fuel is defined to be the candidate fuel with the single fuel parameter (or set of fuel parameters if they all result from changing a single fuel parameter and are a natural consequence of that original change) adjusted to the baseline fuel level(s).

(iv) Measurement procedures for the fuel parameters in paragraphs (a)(2) (i) and (ii) of this section are as defined in § 80.39 or as follows. API gravity must be measured using the ASTM D1689 technique; RVP must be measured using the ASTM D4953–89 technique; Octane must be measured using the ASTM D2699 and D2700 techniques; and the distillation points must be measured using ASTM D86.

(3) The formula fuel must meet the same specifications as the baseline fuel, (as detailed in paragraph (a)(2) of this section), with the exception of only the following changes.

(i) The benzene content must not exceed 1.0% by volume.

(ii) The aromatic hydrocarbon content must not exceed 25% by volume.

OPTION 1 for paragraph (a)(3)(iii)

(iii) The detergent additive Technolene by Chevron or an equivalent approved by the Administrator must be contained to prevent the accumulation of deposits in engines or vehicle supply systems.

OPTION 2 for Paragraph (a)(3)(iii)

(iii) [This requirement may be updated in the future if Technolene no longer fulfills EPA's requirements for nationwide additive performance.]

(iv) The oxygen content must equal or exceed 2.0% by weight except as otherwise required.

10. A new § 80.42 is proposed to be added to subpart C to read as follows:

§ 80.42 General test procedure requirements for reformulated gasoline certification.

(a) One of two test procedures must be followed:

(1) Fuel certification testing in which the candidate fuel and the summer baseline fuel must be tested for high ozone season fuel certification.

(i) In the exhaust emissions test procedure VOC, NOx, and toxics emission measurements are required.

(ii) In the evaporative, running loss, and refueling emission test procedures VOC and toxics emission measurements are required.

(2) Parameter certification testing in which the candidate fuel and the candidate baseline fuel must be tested for high ozone season fuel certification.

(i) In the exhaust emissions test procedure VOC, NOx, and toxics emission measurements are required.

(ii) In the evaporative, running loss, and refueling emission test procedures VOC and toxics emission measurements are required.

(b) For high ozone season fuel certification observe the general requirements per § 86.130–94 of this chapter.[1]

(c) Engine starting and restarting per 40 CFR 86.136–90.

11. A new § 80.43 is proposed to be added to subpart C to read as follows:

§ 80.43 Vehicle preparation.

The requirements in this section apply to a testing program in support of certification of a high-ozone season reformulated gasoline. Except as provided for in § 80.49, general preparation of vehicles being tested must follow procedures detailed in § 86.131–90 of this chapter as modified by the FRM for enhanced evaporative emission control). If vehicles are to undergo evaporative, running loss, and refueling emissions testing then requirements of § 86.131–94 of this chapter [2] apply.

12. A new § 80.44 is proposed to be added to Subpart C to read as follows:

§ 80.44 Vehicle preconditioning: high ozone season fuels.

(a)(1) Initial vehicle preconditioning and preconditioning between tests with different fuels shall follow the procedures detailed in paragraph (a)(2) of this section.

(2) General vehicle handling requirements per 40 CFR 86.132–90.[3]

(i) Prior to preceding with the preconditioning procedure detailed in paragraph (a)(2)(ii) of this section, the vehicle must be soaked in accordance with requirements in [the final evaporative emissions rule].[4] Proposed initial soak at controlled temperatures for a minimum of 6 hours.

(ii) The following preconditioning schedule must be observed.

[Note: Procedure used in Auto-Oil program]

(A) 60 minute canister purge (48 CFH).

(B) Drain and 3 gallon fill with new fuel batch.

(C) Start engine and idle for one minute.

(D) Drain and 40% fill with new fuel batch (cold fill).

(E) Diurnal heat build.

(F) LA 4 preconditioning cycle.

(G) Engine off 5 minute soak.

(H) Start engine and idle for one minute.

(I) Engine off, soak for one minute.

(J) Start engine or idle for one minute.

(K) Engine off soak for one minute.

(L) Drain and 40% fill (room temperature).

(M) LA4 preconditioning sequence per 40 CFR 86.132–90; [with revisions per final evaporative emissions rule].[5]

(b) The preconditioning procedure contained in 40 CFR 86.132–90 must be observed for preconditioning vehicles between tests using the same fuel.

13. A new § 80.45 is proposed to be added to subpart C to read as follows:

§ 80.45 Vehicle test procedures for reformulated gasoline: high ozone season.

OPTION 1 for Paragraph (a)

(a) The test sequence for certification of high ozone season reformulated gasoline is as follows:

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[1] The NPRM, "Control of air pollution from new motor vehicles and new motor vehicle engines: evaporative emission regulations for gasoline and methanol fueled light duty vehicles, light duty trucks and heavy duty engines," was published in the **Federal Register** (55 FR 1914, Jan. 19, 1990; 55 FR 49914, Dec. 3, 1990). The agency expects to publish this proposal as a final rule in November 1991.

[2] See footnote 1 to § 80.42(b).

[3] See footnote 1 to § 80.42(b).

[4] See footnote 1 to § 80.42(b).

[5] See footnote 1 to § 80.42(b).

OPTION 2 for Paragraph (a)

(a) [The test sequence may be revised according to requirements of final evaporative emissions regulation].[6]

(1) Prepare vehicles per § 80.43.

(2) Initial preconditioning per § 80.44(a)(2). Vehicle refueled randomly with either the summer baseline fuel or candidate fuel as defined in § 80.41.

(3) Exhaust emissions tests, dynamometer procedure per § 86.137–90 of this chapter.

(i) Benzene and 1–3 Butadiene measured per § 80.47.

(ii) Formaldehyde and Acetelaldehyde measured per § 80.48.

(4) Diurnal emissions test per [final evaporative emissions regulation],[7] if performed.

(i) Seven diurnal emissions tests are required. If after the first three diurnal emissions tests, two consecutive diurnal emissions measurements are within 10 percent of each other, additional tests may be omitted, and the results assumed constant at the higher of the two previous diurnal emission values.

(ii) Benzene measured per § 80.47.

(5) (i) Running loss test [per final evaporative emissions regulation],[8] if performed.

(ii) Benzene measured per § 80.47.

(6) (i) Hot soak and permeation loss test [per final evaporative emissions regulation],[9] if performed.

(ii) Benzene measured per § 80.47.

OPTION 1 for Paragraph (a)(7)

(7) Refueling emissions test per final on-board refueling regulation, if performed [Final rule expected November 1991, Proposed rule published 52 FR 31164].

OPTION 2 for Paragraph (a)(7)

(7) Refueling emissions test, if performed, per EPA short test proposed 41 FR 48044, November 1, 1976.

OPTION 3 for Paragraph (a)(7)

(7) (i) Refueling emissions test per some non-SHED based test other than the EPA short test proposed 41 FR 48044, November 1, 1976.

(ii) Benzene measured per § 80.47.

(8) Preconditioning between test fuels according to § 80.44(a)(2), vehicle fueled with the opposite fuel to that selected in paragraph (a)(2) of this section.

(9) Repeat testing procedures detailed in paragraphs (a) (3) through (7) of this section.

14. A new § 80.46 is proposed to be added to subpart C to read as follows:

§ 80.46 Vehicle test procedures for reformulated gasoline: outside of high ozone season.

(a) Fuel producers may submit a petition to the Administrator to request testing requirements applicable for the certification of reformulated gasolines to be sold outside of the high ozone season. The Administrator will have six months from the date of receipt of the petition to provide appropriate test requirements. The requirements will be consistent with those expressed in § 80.42 through § 80.45, and § 80.47 through § 80.52 for the certification of high ozone season fuels. Fuels to be tested include the candidate fuel and the winter baseline fuel or candidate-baseline fuel as defined in § 80.41.

OPTION 1 for Paragraph (b)

(b) For non-high ozone season fuel certification, the test procedures shall be adjusted to reflect appropriate non-high ozone season temperatures and conditions.

OPTION 2 for Paragraph (b)

(b) For non-high ozone season fuel certification, testing shall take place at the same temperatures and conditions as required for high ozone season fuels.

15. A new § 80.47 is proposed to be added to subpart C to read as follows:

§ 80.47 Measurement methods for benzene and 1,3-butadiene emissions.

(a) Sampling for benzene and 1,3-butadiene must be accomplished by bag sampling as used for total hydrocarbons determination. This procedure is detailed in § 86.109 of this chapter.

(b) Benzene and 1,3-butadiene must be analyzed by gas chromatography. Expected values for benzene and 1,3-butadiene in bag samples for the baseline fuel are 4.0 ppm and 0.30 ppm respectively. At least three standards ranging from at minimum 50% to 150% of these expected values must be used to calibrate the detector. An additional standard of at most 0.01 ppm must also be measured to determine the required limit of quantification as described in paragraph (d) of this section.

(c) The sample injection size used in the chromatograph must be sufficient to be above the laboratory determined limit of quantification (LOQ) as defined in paragraph (d) of this section for at least one of the bag samples. A control chart of the measurements of the standards used to determine the response, repeatability, and limit of quantitation of the instrumental method for 1,3-butadiene and benzene must be reported.

(d) As in all types of sampling and analysis procedures, good laboratory practices must be used.

[Note: These practices were described in a report published in Analytical Chemistry (a periodical detailing scientific understanding of analytical procedures) in December 1983 (v 55, n 14, pages 2210 to 2218).]

Reporting reproducibility control charts and limits of detection measurements are integral procedures to assess the validity of the chosen analytical method. The repeatability of the test method must be determined by measuring a standard periodically during testing and recording the measured values on a control chart. The control chart shows the error between the measured standard and the prepared standard concentration for the periodic testing. The error between the measured standard and the actual standard indicates the uncertainty in the analysis. The limit of detection (LOD) is determined by repeatedly measuring a blank and a standard prepared at a concentration near an assumed value of the limit of detection. If the average concentration minus the average of the blanks is greater than three standard deviations of these measurements, then the limit of detection is at least as low as the prepared standard. The limit of quantitation (LOQ) is defined as ten times the standard deviation of these measurements. This quantity defines the amount of sample required to be measured for a valid analysis.

(e) Other sampling and analytical techniques will be allowed if they can be proven to have equal specificity and equal or better limits of quantitation. Data from alternative methods that can be demonstrated to have equivalent or superior limits of detection, precision, and accuracy may be accepted by the Administrator with individual prior approval.

16. A new § 80.48 is proposed to be added to subpart C to read as follows:

§ 80.48 Measurement methods for formaldehyde and acetaldehyde emissions.

(a) Formaldehyde and acetaldehyde will be measured by drawing exhaust samples from heated lines through either 2,4-Dinitrophenylhydrazine (DNPH) impregnated cartridges or impingers filled with solutions of DNPH in acetonitrile (ACN) as described in § 86.109 and § 86.140 for formaldehyde analysis. Diluted exhaust sample volumes must be at least 15 L for impingers containing 20 ml of absorbing solution (using more absorbing solution in the impinger requires proportionally more gas sample to be taken) and at least 4 L for cartridges. As required in 86.109, two impingers or cartridges must be connected in series to detect

[6] See footnote 1 to § 80.42(b).
[7] See footnote 1 to § 80.42(b).
[8] See footnote 1 to § 80.42(b).
[9] See footnote 1 to § 80.42(b).

breakthrough of the first impinger or cartridge.

(b) In addition, sufficient sample must be drawn through the collecting cartridges or impingers so that the measured quantity of aldehyde is sufficiently greater than the minimum limit of quantitation of the test method for at least a portion of the exhaust test procedure. The limit of quantitation is determined using the technique defined in § 80.47(d).

(c) Each of the impinger samples are quantitatively transferred to a 25 mL volumetric flask (5 mL more than the sample impinger volume) and brought to volume with ACN. The cartridge samples are eluted in reversed direction by gravity feed with 6 mL of ACN. The eluate is collected in a graduated test tube and made up to the 5 mL mark with ACN. Both the impinger and cartridge samples must be analyzed by HPLC without additional sample preparation.

(d) The analysis of the aldehyde derivatives collected is accomplished with a high performance liquid chromatograph (HPLC). Standards consisting of the hydrazone derivative of formaldehyde and acetaldehyde are to be used to determine the response, repeatability, and limit of quantitation of the HPLC method chosen for acetaldehyde and formaldehyde.

(e) Other sampling and analytical techniques will be allowed if they can be proven to have equal specificity and equal or better limits of quantitation. Data from alternative methods that can be demonstrated to have equivalent or superior limits of detection, precision, and accuracy may be accepted by the Administrator with individual prior approval.

17. A new § 80.49 is proposed to be added to subpart C to read as follows:

§ 80.49 General test fleet requirements: reformulated gasoline certification.

(a) The test fleet must consist of only 1989–91 MY vehicles which are technologically equivalent to 1990 MY vehicles. To be technologically equivalent vehicles must have closed-loop systems and possess adaptive learning.

(b) No maintenance on, or replacement of, any vehicle component is permitted unless otherwise noted. Vehicle maintenance and replacement of components is allowed when it is judged to be necessary from the standpoint of operator safety. All vehicle maintenance procedures must be reported to the Administrator.

(c) Vehicles must be tested in an "as received condition" unless otherwise noted. No maintenance or modification is allowed.

18. A new § 80.50 is proposed to be added to subpart C to read as follows:

§ 80.50 Test fleet requirements for exhaust emissions testing.

OPTION 1 for Paragraph (a)

(a) Candidate vehicles which conform to the emission performance requirements defined below are to be obtained directly from the in-use fleet and tested in their as-received condition.

OPTION 2 for Paragraph (a)

(a) Candidate vehicles are to be obtained from the in-use fleet and their emission control hardware selectively disabled to result in test vehicles which conform to the emission performance requirements defined below.

OPTION 1 for Paragraph (b)

(b) Candidate vehicles for the test fleet must be screened for their exhaust VOC emissions with the federal test procedure as detailed in 40 CFR part 86, using gasoline conforming to requirements detailed in 40 CFR 86.113–90. The results are used in accordance with the requirements in § 80.51 to place the vehicles within their respective emitter groups.

OPTION 2 for Paragraph (b)

(b) Candidate vehicles for the test fleet must be screened for their exhaust VOC emissions with the IM240 short test procedure. The results from the IM240 are converted into comparable results from the standard exhaust FTP to place the vehicles within their respective emitter groups.

OPTION 1 for Paragraph (c) Introductory Text

(c) On the basis of pretesting in paragraph (b) of this section the test fleet is subdivided into three emitter groups: the normal emitter group, the high emitter group, and the very high and super emitter group.

OPTION 2 for Paragraph (c) Introductory Text

(c) On the basis of pretesting in paragraph (b) of this section, only normal emitting vehicles can be selected for the test fleet.

(1) Each vehicle in the normal emitter group has an exhaust VOC emissions rate which is less than or equal to twice the applicable emissions standard.

(2) Each vehicle in the high emitter group has an exhaust VOC emissions rate which is greater than two times, and less than four times the applicable VOC emissions standard.

OPTION 1 for Paragraph (c)(3)

(3) Each vehicle in the very high and super emitter group has an exhaust VOC emissions rate which is greater than four times the applicable standard. There is no upper bound on the VOC emissions rate for vehicles within this group.

OPTION 2 for Paragraph (c)(3)

(3) [If disablement is permitted, then the very high and super emitter group will be divided into two groups, with super emitters having exhaust VOC emissions greater than 10 g/mi.]

OPTION 1 for Paragraph (d) Introductory Text

(d) The test vehicles in each emitter group must conform to the requirements of paragraphs (d) (1), (2), (3), and (4) of this section.

OPTION 2 for Paragraph (d) Introductory Text

(d) [Very narrowly define the test fleet in order to simplify the statistical compliance criteria: Specify which vehicles are to be LDTs, specify which vehicles types are representative of which emitter category, specify the number of tests and number of vehicles. etc.].

OPTION 1 for Paragraph (d)(1)

(1) Test vehicles in each emitter group must be selected from Table 1. Table 1 is arranged in order of descending vehicle priority, such that the order in which vehicles are assigned to an emitter group sub-fleet to satisfy the minimum fleet size requirements must conform to the order in Table 1 (e.g., a five vehicle fleet must consist of the first five vehicles listed in Table 1 and a ten vehicle fleet must consist of the first ten vehicles listed in Table 1).

OPTION 2 for Paragraph (d)(1)

(1) [Crudely specify the fraction of the test fleet (based on 1990 sales) to consist of the various fuel injection types, catalyst types, EGR, Air, and Manufacturers, without specifying which technologies are grouped together as in Table 1.]

TABLE 1 : TEST VEHICLE CHARACTERISTICS

Vehicle No.	Fuel system	Catalyst	Air injection	GR	Manufacturer
1	Multi	3W	No Air	EGR	General Motors.
2	Multi	3W	No Air	No EGR	Ford
3	TBI	3W	No Air	EGR	General Motors
4	Multi	3W	No Air	EGR	Honda
5	Multi	3W+OX	Air	EGR	Ford
6	Multi	3W	Air	EGR	Toyota
7	Multi	3W	No Air	No EGF	General Motors
8	TBI	3W	No Air	EGR	Chryster
9	Multi	3W	No Air	EGR	Ford
10	TBI	3W	Air	EGR	General Motors
11	TBI	3W+OX	Air	EGR	Chrysler
12	TBI	3W	No Air	No EGR	Honda
13	Multi	3W	No Air	EGR	Toyota
14	Multi	3W	No Air	No EGR	Chrysler
15	TBI	3W	No Air	EGR	Ford
16	Carb	3W+OX	Air	EGR	Toyota
17	Multi	3W	No Air	EGR	General Motors
18	Multi	3W+OX	Air	EGR	General Motors
19	Multi	3W	No Air	EGR	Nissan
20	Multi	3W	No Air	No EGR	Mazda
21	TBI	3W	No Air	EGR	General Motors

Legend:
Fuel system:
Multi=Multi-point fuel injection
TBI=Throttle body fuel injection
Carb=Carburetted
Catalyst:
3W=3-Way catalyst
3W+OX=3-Way catalyst plus an oxidation catalyst
Air Injection:
Air=Air injection
EGR=Exhaust gas recirculation

(2) If more vehicles are tested than the minimum number of vehicles within an emitter group, additional vehicles are added to the fleet according to the priority assigned in Table 1, beginning with the next vehicle not already included in the group. The vehicles in the test fleet must be represented in the priority indicated, and must possess the characteristics indicated in the table. If the end of the table is reached in adding vehicles to the fleet and additional vehicles are desired then they shall be added beginning with vehicle number one, and must be added to the fleet in accordance with their order in Table 1.

(3) The number of vehicles required in each emitter group must conform to the requirements of paragraphs (d)(3) (i), (ii), and (iii) of this section.

(i) The normal emitter group must consist of at least the first 12 [OPTION: 5 vehicles if the second statistical compliance option under § 80.40(d)(1) is utilized] vehicles from the Table 1. If more vehicles are tested, the vehicles must be added in the order indicated by the table beginning with vehicle number 13.

(ii) The high emitter group shall consist of at least the first 6 [OPTION: 2 vehicles if the second statistical compliance option under § 80.40(d)(1) is utilized] vehicles from Table 1. If more vehicles are tested the vehicles must be added in the order indicated by the table beginning with vehicle number 7.

(iii) The very high and super emitter group will consist of at least the first 7 [OPTION: 3 vehicles if the second statistical compliance option under § 80.40(d)(1) is utilized] vehicles from Table 1. If more vehicles are tested, the vehicles must be added in the order indicated by the table beginning with vehicle number 8.

(4) For emitter group sub-fleets of from 5 to 9 vehicles there must be 70±11% LDVs and 30±11% LDTs. For emitter group sub-fleets 10 vehicles or larger, there must be 70±9.5% LDVs, & 30±9.5% LDTs. LDTs include light-duty trucks class 1 (LDT1), and light-duty trucks class 2 (LDT2) up to 8500 lbs GVWR.

19. A new § 80.51 is proposed to be added to subpart C to read as follows:

§ 80.51 Test fleet requirements for evaporative and running loss, and refueling emissions testing.

(a) The test vehicles for evaporative, running loss, and refueling emissions testing must conform to the requirements of § 80.49.

(b) *Evaporative and running loss emission test fleet requirements.* (1) The test fleet is to consist of a subset of the vehicles specified in § 80.50. A minimum of 10 properly maintained vehicles must be tested, and a minimum of 10 malfunctioning vehicles as defined in paragraph (b)(3) of this section. Vehicles 1 through 10 in Table 1 of § 80.50(c) must be selected first. These vehicles can be selected from any emitter group as specified in § 80.50(b). If more vehicles are tested, the additional vehicles must be chosen from Table l, in the order presented beginning with vehicle number 11.

(2) Vehicles which are to be tested in proper operating condition may have evaporative system hoses, and fittings which are judged to interfere with normal operation replacedwith parts conforming to the original manufacturer's specifications.

OPTION 1 for Paragraph (b)(3) Introductory Text

(3) Vehicles which are to be tested with a simulated evaporative system malfunction must be modified in the following manner just prior to the diurnal heat build.

OPTION 2 for Paragraph (b)(3) Introductory Text

(3) [Require pretesting of in-use vehicles to obtain vehicles which are representative of mal-maintained and/or tampered vehicles with high emissions.]

OPTION 3 for Paragraph (b)(3) Introductory Text

(3) [Require no testing of disabled vehicles, but rather to model their emissions per § 80.36.]

(i) 40±9.9 % of the vehicles must have their evaporative canister(s) disconnected at the canister fitting.

(ii) 60±9.9 % must have their fuel tank(s), and filler tube cap(s) removed.

(4) No other vehicle modifications are permitted unless otherwise required.

(c) The test fleet for refueling loss emission testing must consist of a subset of the vehicles specified in paragraph § 80.50. A minimum of 5 vehicles with

properly maintained evaporative and refueling systems must be tested. Vehicles 1 through 5 in Table 1 of § 80.50(c) must be selected first. These vehicles can be selected from any emitter group as specified in paragraph § 80.50(b). If more vehicles are tested, the additional vehicles must be chosen from Table 1, in the order presented beginning with vehicle number 6.

20. A new 80.52 is proposed to be added to subpart C to read as follows:

§ 80.52 Calculations to determine reformulated gasoline emission reductions.

(a) To determine compliance with the requirements in § 80.40(b), the VOC emissions reduction (VOCRED), air toxic emissions reduction (TOXRED), and the NOx emissions reduction (NOXRED) for the candidate fuel are calculated according to the procedure detailed in this section.

(1) The average VOC emissions reduction, (VOCRED), shall be calculated according to the following procedure:

(i) If the candidate fuel is tested in comparison with the baseline fuel the following procedure is observed.

VOCRED=VOCREDF

VOCREDF=The VOC reduction value as calculated according to paragraph (a)(1)(iii) of this section.

(ii) If the candidate fuel is tested for fuel parameter certification in comparison with the candidate-baseline fuel then the following procedure is observed.

VOCRED=1−((1−VOCREDM)×(1−VOCREDP))

VOCREDP=The VOC reduction value as calculated according to paragraph (a)(1)(iii) of this section.

VOCREDM=The VOC reduction value calculated according to § 80.36 for the candidate-baseline fuel relative to the baseline fuel.

(iii) The VOC reduction values (VOCREDF AND VOCREDP) shall be calculated according to the following procedure. The calculation illustrated below is for VOCREDF. For VOCREDP substitute VOCREDP for VOCREDF.

VOCREDF=(MTOTVOC−CTOTVOC)÷MTOTVOC

CTOTVOC=The candidate fuel's total VOC emissions relative to the reference fuel as calculated in § 80.52 (b).

MTOTVOC=(1.99 g/mile), [Note: MOBILE4.1 total VOC emission value]

(2) The average air toxic emission reduction, (TOXRED), shall be calculated according to the following procedure:

(i) If the candidate fuel is tested in comparison with the baseline fuel the following procedure is observed.

TOXRED=TOXREDF

TOXREDF=The air toxic emission reduction value as calculated according to paragraph (a)(2)(iii) of this section.

(ii) If the candidate fuel is tested for fuel parameter certification in comparison with the candidate baseline fuel then the following procedure is observed.

TOXRED=1−((1−TOXREDM)×(1−TOXREDP))

TOXREDP=The air toxic emission reduction value as calculated according to paragraph (a)(2)(iii) of this section.

TOXREDM = The air toxic emission reduction value calculated according to § 80.36 for the candidate baseline fuel relative to the baseline fuel.

(iii) The air toxic emission reduction values (TOXREDF AND TOXREDP) shall be calculated according to the following procedure. The calculation illustrated below is for TOXREDF. For TOXREDP substitute TOXREDF for TOXREDF.

TOXREDF=(MTOTTOX−CTOTTOX)÷MTOTTOX

CTOTTOX=The candidate fuel's total air toxics emissions relative to the reference fuel as calculated in paragraph (c) of this section.

MTOTTOX=(62.10 mg/mile), [Note: MOBILE4.1 total air toxic emission value]

(3) The average NOx emissions reduction, (NOXRED), shall be calculated according to the following procedure:

(i) If the candidate fuel is tested in comparison with the baseline fuel the following procedure is observed.

NOXRED=NOXREDF

NOXREDF=The NOx reduction value as calculated according to paragraph (a)(3)(iii) of this section

(ii) If the candidate fuel is tested for fuel parameter certification in comparison with the candidate baseline fuel then the following procedure is observed.

NOXRED=1−((1−NOXREDM)×(1−NOXREDP))

NOXREDP=The NOx reduction value as calculated according to paragraph (a)(3)(iii) of this section.

NOXREDM=The NOx reduction value calculated according to § 80.36 for the candidate baseline fuel over the baseline fuel.

(iii) The NOx reduction values (NOXREDF AND NOXREDP) shall be calculated according to the following procedure. The calculation illustrated below is for NOXREDF. For NOXREDP substitute NOXREDP for NOXREDF.

NOXREDF=(MTOTNOX−CTOTNOX)÷MTOTNOX

CTOTNOX=The candidate fuel's total NOx emissions relative to the reference fuel as calculated in paragraph (d) of this section.

MTOTNOX=(0.82 g/mile), [Note: MOBILE4.1 total NOx emission value]

(b) The candidate fuel total VOC emissions value which is compared to the prescribed MOBILE4.1 value (MTOTVOC) in paragraph(a)(1) of this section to determine the average percent reduction in emissions (VOCRED), is calculated as detailed below.

[Note: The exhaust VOC emissions are summed for all emitter groups (normal, high, very high and super). The evaporative VOC emissions are summed for the pass, purge fail, and pressure fail groups. The running loss VOC emissions are also summed for the pass, purge fail, and pressure fail groups. These sums are added to the refueling VOC emissions to produce the value of the candidate fuel total VOC emissions.]

CTOTVOC=EXHVOC+EVPVOC+RLVOC+REFVOC

CTOTVOC=Candidate fuel total VOC emissions

EXHVOC=The total exhaust VOC emissions for all of the emitter groups as calculated in paragraph (b)(1) of this section.

EVPVOC=The total evaporative VOC emissions for all of the emitter groups as calculated in paragraph (b)(2) of this section.

RLVOC=The total running loss VOC emissions for all of the emitter groups as calculated in paragraph (b)(3) of this section.

REFVOC=The total refueling VOC emissions for all of the emitter groups as calculated in paragraph (b)(4) of this section.

(1) The total exhaust VOC emissions for all of the emitter groups is calculated as follows:

EXHVOC=(CEXHNVOC÷REXHNVOC)×(MEXHNVOC)+(CEXHHVOC÷REXHHVOC)×(MEXHHVOC)+(CEXHSVOC÷REXHSVOC)×(MEXHSVOC)

EXHVOC=The total exhaust VOC emissions for all emitter groups

CEXHNVOC=The average exhaust VOC emissions from the normal emitter group, using the candidate fuel as calculated per § 80.52(e).

CEXHHVOC=The average exhaust VOC emissions from the high

emitter group, using the candidate fuel as calculated per § 80.52(e).

CEXHSVOC=The average exhaust VOC emissions from the very high and super emitter group, using the candidate fuel as calculated per § 80.52(e).

REXHNVOC=The average exhaust VOC emissions from the normal emitter group, using the reference [baseline or candidate-baseline] fuel as calculated per § 80.52(e).

REXHHVOC=The average exhaust VOC emissions from the high emitter group, using the reference [baseline or candidate baseline] fuel as calculated per § 80.52(e).

REXHSVOC=The average exhaust VOC emissions from the very high and super emitter group, using the reference [baseline or candidate-baseline] fuel as calculated per § 80.52(e).

MEXHNVOC=(0.29 g/mile)=MEXHVOC×(0.49), [Note: (Exhaust VOC contribution for the normal emitters)=(MOBILE4.1 total exhaust VOC value)×(Fraction of total emissions inventory attributed to normal emitters)].

MEXHHVOC=(0.13 g/mile)=MEXHVOC×(0.23), [Note: (Exhaust VOC contribution for the high emitters)=(MOBILE4.1 total exhaust VOC value)×(Fraction of total emissions inventory attributed to high emitters)].

MEXHSVOC=(0.16 g/mile)=MEXHVOC×(0.28), [Note: (Exhaust VOC contribution for the very high and super emitters)=(MOBILE4.1 total exhaust VOC value)×(Fraction of total emissions inventory attributed to very high and super emitters)].

MEXHVOC=(0.58 g/mile), [Note: MOBILE4.1 total exhaust VOC value].

(2) The total evaporative VOC emissions is calculated as follows:

EVPVOC=(CEVPPVOC÷REVPPVOC)×(MEVPPVOC)
+(CEVPCVOC÷REVPCVOC)×(MEVPCVOC)
+(CEVPTVOC÷REVPTVOC)×(MEVPTVOC)

EVPVOC=The total evaporative VOC emissions.

CEVPPVOC=The average evaporative VOC emissions from the passing group, using the candidate fuel as calculated per § 80.52 (e).

CEVPCVOC=The average evaporative VOC emissions from the purge test fail group, using the candidate fuel as calculated per § 80.52 (e).

CEVPTVOC=The average evaporative VOC emissions from the pressure test fail group, using the candidate fuel as calculated per § 80.52(e).

REVPPVOC=The average evaporative VOC emissions from the passing group, using the reference [baseline or candidate baseline] fuel as calculated per § 80.52 (e).

REVPCVOC=The average evaporative VOC emissions from the purge test fail group, using the reference [baseline or candidate baseline] fuel as calculated per § 80.52 (e).

REVPTVOC=The average evaporative VOC emissions from the pressure test fail group, using the reference [baseline or candidate baseline] fuel as calculated per § 80.52 (e).

MEVPPVOC=(0.16 g/mile), [Note: Evaporative VOC contribution for the passing group].

MEVPCVOC=(0.18 g/mile), [Note: MOBILE4.1 evaporative VOC contribution for the purge test fail group].

MEVPTVOC=(0.47 g/mile), [Note: MOBILE4.1 evaporative VOC contribution for the pressure test fail group].

[Note: MOBILE4.1 total evaporative VOC value=(0.81 g/mile)]

(3) The total running loss VOC emissions is calculated as follows:

RLVOC=(CRLPVOC÷RRLPVOC)×(MRLPVOC)+(CRLCVOC÷RRLCVOC)×(MRLCVOC)+(CRLTVOC÷RRLTVOC)×(MRLTVOC)

RLVOC=The total evaporative VOC emissions.

CRLPVOC=The average running loss VOC emissions from the passing group, using the candidate fuel as calculated per § 80.52 (e).

CRLCVOC=The average running loss VOC emissions from the purge test fail group, using the candidate fuel as calculated per § 80.52 (e).

CRLTVOC=The average running loss VOC emissions from the pressure test fail group, using the candidate fuel as calculated per § 80.52 (e).

RRLPVOC=The average running loss VOC emissions from the passing group, using the reference [baseline or candidate baseline] fuel as calculated per § 80.52 (e).

RRCVOC=The average running loss VOC emissions from the purge test fail group, using the reference [baseline or candidate baseline] fuel as calculated per § 80.52 (e).

RRLTVOC=The average running loss VOC emissions from the pressure test fail group, using the reference [baseline or candidate baseline] fuel as calculated per § 80.52 (e).

MRLPVOC=(0.22 g/mile), [Note: MOBILE4.1 running loss VOC contribution for the passing group].

MRLCVOC=(0.18 g/mile), [Note: MOBILE4.1 running loss VOC contribution for the purge test fail group].

MRLTVOC=(0.13 g/mile), [Note: MOBILE4.1 running loss VOC contribution for the pressure test fail group].

[Note: MOBILE4.1 total running loss VOC value=(0.53 g/mile)].

(4) The total refueling loss VOC emissions is calculated as follows:

REFVOC=(CREFVOC÷RREFVOC)×(MREFVOC).

REFVOC=The total refueling loss VOC emissions.

CREFVOC=The average refueling loss VOC emissions using the candidate fuel, as calculated per § 80.52 (e).

RREFVOC=The average refueling loss VOC emissions using the reference [baseline or candidate baseline] fuel, as calculated per § 80.52 (e).

MREFVOC=(0.07 g/mile), [Note: MOBILE4.1 refueling loss VOC contribution]

(c) The candidate fuel total air toxic emissions value which is compared to the prescribed MOBILE4.1 value (MTOTTOX) in paragraph (a)(2) of this section, to determine the percent reduction in emissions (TOXRED), is calculated as detailed below. [Note: The exhaust benzene, 1–3 butadiene, formaldehyde, and acetaldehyde emissions are summed for each emitter group, (normal, high, very high and super). The evaporative benzene emissions are summed for the pass, purge fail, and pressure fail groups. The running loss benzene emissions are also summed for the pass, purge fail, and pressure fail groups. These sums are added to the refueling benzene emissions, and the POM constant to produce the value of the candidate fuel total air toxic emissions.]

CTOTTOX=EXHBEN+EVPBEN+RLBEN+REFBEN+BUTA+FORM+ACET+POM

CTOTTOX=Candidate fuel total air toxic emissions

EXHBEN=The average exhaust benzene emissions as calculated in paragraph (c)(1) of this section.

EVPBEN=The average evaporative benzene emissions as calculated in paragraph (c)(2) of this section.

RLBEN=The average running loss benzene emissions as calculated in paragraph (c)(3) of this section.

REFBEN=The average refueling loss benzene emissions as calculated in paragraph (c)(4) of this section.

BUTA=The average 1–3 butadiene emissions as calculated in paragraph (c)(5) of this section.

FORM = The average formaldehyde emissions as calculated in paragraph (c)(6) of this section.

ACET = The average acetaldehyde emissions as calculated in paragraph (c)(7) of this section.

POM = (1.4 mg/mile), [**Note:** Polycyclic organic matter emissions taken as constant].

(1) The total exhaust benzene emission value for all of the emitter groups is calculated as follows. This procedure is valid for calculations involving the reference fuel, [baseline or candidate baseline fuel].

EXHBEN = (CEXHNBEN ÷ REXHNBEN) × (MEXHNBEN) + (CEXHHBEN ÷ REXHHBEN) × (MEXHHBEN) + (CEXHSBEN ÷ REXHSBEN) × (MEXHSBEN)

EXHBEN = The total exhaust benzene emission for all three emitter groups.

CEXHNBEN = The average exhaust benzene emissions from the normal emitter group, using the candidate fuel as calculated per § 80.52 (e).

CEXHHBEN = The average exhaust benzene emissions from the high emitter group, using the candidate fuel as calculated per § 80.52 (e).

CEXHSBEN = The average exhaust benzene emissions from the very high and super emitter group, using the candidate fuel, as calculated per § 80.52 (e).

REXHNBEN = The average exhaust benzene emissions from the normal emitter group, using the reference fuel as calculated per § 80.52 (e).

REXHHBEN = The average exhaust benzene emissions from the high emitter group, using the reference fuel as calculated per § 80.52 (e).

REXHSBEN = The average exhaust benzene emissions from the very high and super emitter group, using the reference fuel, as calculated per § 80.52 (e).

MEXHNBEN = (16.98 mg/mile) = MEXHBEN × (0.49), [(**Note:** Exhaust benzene contribution for the normal emitters) = (Total exhaust benzene value) × (Fraction of total emissions inventory attributed to normal emitters)]

MEXHHBEN = (7.97 mg/mile) = MEXHBEN × (0.23), [(**Note:** (Exhaust benzene contribution for the high emitters) = (Total exhaust benzene value) × (Fraction of total emissions inventory attributed to high emitters)].

MEXHSBEN = (9.70 mg/mile) = MEXHBEN × (0.28), [**Note:** (Exhaust benzene contribution for the very high and super emitters) = (Total exhaust benzene value) × (Fraction of total emissions inventory attributed to very high and super emitters)].

MEXHBEN = (34.65 mg/mile) [**Note:** Total exhaust benzene value]

(2) The total evaporative benzene emission is calculated as follows. This procedure is valid for calculations involving the reference fuel, [baseline or candidate baseline fuel].

EVPBEN = (CEVPPBEN ÷ REVPPBEN) × (MEVPPBEN) + (CEVPCBEN ÷ REVPCBEN) × (MEVPCBEN) + (CEVPTBEN ÷ REVPTBEN) × (MEVPTBEN)

EVPBEN = The total evaporative benzene emission

CEVPPBEN = The average evaporative benzene emissions from the passing group, using the candidate fuel as calculated per § 80.52 (e).

CEVPCBEN = The average evaporative benzene emissions from the purge test fail group, using the candidate fuel as calculated per § 80.52 (e).

CEVPPBEN = The average evaporative benzene emissions from the pressure test fail group, using the candidate fuel as calculated per § 80.52 (e).

REVPPBEN = The average evaporative benzene emissions from the passing group, using the reference fuel, as calculated per § 80.52 (e).

REVPCBEN = The average evaporative benzene emissions from the purge test fail group, using the reference fuel ascalculated per § 80.52 (e).

REVPTBEN = The average evaporative benzene emissions from the pressure test fail group, using the reference fuel as calculated per § 80.52 (e).

MEVPPBEN = (1.71 mg/mile) = MEVPBEN × (0.19), [**Note:** (Evaporative benzene emission contribution for the passing group) = (Total evaporative benzene value) × (Fraction of evaporative emissions attributed to the passing group)].

MEVPCBEN = (2.07 mg/mile) = MEVPBEN × (0.23), [**Note:** (Evaporative benzene emission contribution for the purge test fail group) = (Total evaporative benzene value) × (Fraction of evaporative emissions attributed to the purge fail group)].

MEVPTBEN = (5.21 mg/mile) = MEVPBEN × (0.28), [**Note:** (Evaporative benzene emission contribution for the pressure test fail group) = (Total evaporative benzene value) × (Fraction of evaporative emissions attributed to the pressure fail group)].

MEVPBEN = (8.99 mg/mile), [**Note:** (Total evaporative benzene value)].

(3) The total running loss benzene emission is calculated as follows. This procedure is valid for calculations involving the reference fuel, [baseline or candidate baseline fuel].

RLBEN = (CRLPBEN ÷ RRLPBEN) × (MRLPBEN) + (CRLCBEN ÷ RRLCBEN) × (MRLCBEN) + (CRLTBEN ÷ RRLTBEN) × (MRLTBEN)

RLBEN = The total running loss benzene emission.

CRLPBEN = The average running loss benzene emissions from the passing group, using the candidate fuel as calculated per § 80.52(e).

CRLCBEN = The average running loss benzene emissions from the purge test fail group, using the candidate fuel as calculated per § 80.52(e).

CRLTBEN = The average running loss benzene emissions from the pressure test fail group, using the candidate fuel as calculated per § 80.52(e).

RRLPBEN = The average running loss benzene emissions from the passing group, using the reference fuel, as calculated per § 80.52(e).

RRLCBEN = The average running loss benzene emissions from the purge test fail group, using the reference fuel as calculated per § 80.52(e) .

RRLTBEN = The average running loss benzene emissions from the pressure test fail group, using the reference fuel as calculated per § 80.52(e).

MRLPBEN = (2.48 mg/mile) = MRLBEN × (0.41), [**Note:** (Running loss benzene emission contribution for the passing group) = (Total evaporative benzene value) × (Fraction of running loss emissions attributed to the passing group)].

MRLCBEN = (2.06 mg/mile) = MRLBEN × (0.34), [**Note:** (Running loss benzene emission contribution for the purge test fail group) = (Total evaporative benzene value) × (Fraction of running loss emissions attributed to the passing group)].

MRLTBEN = (1.51 mg/mile) = MRLBEN × (0.25), [**Note:** (Running loss benzene emission contribution for the pressure test fail qroup) = (Total evaporative benzene value) × (Fraction of running loss emissions attributed to the passing group)].

MRLBEN = (6.05 mg/mile), [**Note:** Total evaporative benzene value].

(4) The total refueling loss benzene emission is calculated as follows. This procedure is valid for calculations

involving the reference fuel, [baseline or candidate baseline fuel].

REFBEN = (CREFBEN ÷ RREFBEN) × (MRFFBEN).

REFBEN = The total refueling loss benzene emission.

CREFBEN = The average refueling loss benzene emission using the candidate fuel, as calculated per § 80.52(e).

RREFBEN = The average refueling loss benzene emission using the reference fuel, as calculated per § 80.52(e).

MREFBEN = (0.74), [Note: Refueling loss benzene contribution].

(5) The total 1–3 butadiene emission value for all of the emitter groups, (normal, high, very high and super), is calculated as follows. This procedure is valid for calculations involving the reference fuel, [baseline or candidate baseline fuel].

BUTA = (CNBUTA ÷ RNBUTA) × (MNBUTA) + (CHBUTA ÷ BHBUTA) × (MHBUTA) + (CSBUTA ÷ BSBUTA) × (MSBUTA)

BUTA = The total 1–3 butadiene emission for all three emitter groups.

CNBUTA = The average 1–3 butadiene emission from the normal emitter group, using the candidate fuel as calculated per § 80.52(e).

CHBUTA = The average 1–3 butadiene emission from the high emitter group, using the candidate fuel as calculated per § 80.52(e).

CSBUTA = The average 1–3 butadiene emission from the very high and super emitter group, using the candidate fuel as calculated per § 80.52(e).

RNBUTA = The average 1–3 butadiene emission from the normal emitter group, using the reference fuel as calculated per § 80.52(e).

RHBUTA = The average 1–3 butadiene emission from the high emitter group, using the reference fuel as calculated per § 80.52(e).

RSBUTA = The average 1–3 butadiene emission from the very high and super emitter group, using the reference fuel, as calculated per § 80.52(e).

MNBUTA = (1.11 mg/mile) = MBUTA × (0.49), [Note: (1–3 butadiene emission contribution for the normal emitters) = (Total 1–3 butadiene emission value) × (Fraction of total emissions inventory attributed to normal emitters)].

MHBUTA = (0.52 mg/mile) = MBUTA × (0.23), [Note: (1–3 butadiene emission contribution for the high emitters) = (Total 1–3 butadiene emission value) × (Fraction of total emissions inventory attributed to high emitters)].

MSBUTA = (0.63 mg/mile) = MBUTA × (0.28), [Note: (.1–3 butadiene emission contribution for the very high and super emitters) = (Total 1–3 butadiene emission value) × (Fraction of total emissions inventory attributed to very high and super emitters)].

MBUTA = (2.26 mg/mile), [Note: Total 1–3 butadiene emission value].

(6) The total formaldehyde emission value for all of the emitter groups, (normal, high, very high and super), is calculated as follows. This procedure is valid for calculations involving the reference fuel, [baseline or candidate baseline fuel].

FORM = (CNFORM ÷ RNFORM) × (MNFORM) + (CHFORM ÷ RHFORM) × (MHFORM) + (CSFORM ÷ RSFORM) × (MSFORM)

FORM = The total formaldehyde emission for all three emitter groups.

CNFORM = The average formaldehyde emission from the normal emitter group, using the candidate fuel as calculated per § 80.52(e).

CHFORM = The average formaldehyde emission from the high emitter group, using the candidate fuel as calculated per § 80.52(e).

CSFORM = The average formaldehyde emission from the very high and super emitter group, using the candidate fuel as calculated per § 80.52(e).

RNFORM = The average formaldehyde emission from the normal emitter group, using the reference fuel as calculated per § 80.52(e).

RHFORM = The average formaldehyde emission from the high emitter group, using the reference fuel as calculated per § 80.52(e).

RSFORM = The average formaldehyde emission from the very high and super emitter group, using the reference fuel, as calculated per § 80.52(e).

MNFORM = (2.30 mg/mile) = MFORM × (0.49) [Note: (Formaldehyde emission contribution for the normal emitters) = (Total formaldehyde emission value) × (Fraction of total emissions inventory attributed to normal emitters)].

MHFORM = (1.08 mg/mile) = MFORM × (0.23) [Note: (Formaldehyde emission contribution for the high emitters) = (Total formaldehyde emission value) × (Fraction of total emissions inventory attributed to high emitters)].

MSFORM = (1.32 mg/mile) = MFORM × (0.28) [Note: (Formaldehyde emission contribution for the very high and super emitters) = (Total formaldehyde emission value) × (Fraction of total emissions inventory attributed to very high and super emitters)].

MFORM = (4.70 mg/mile) = [Note: Total formaldehyde emission value].

(7) The total acetaldehyde emission value for all of the emitter groups (normal, high, very high and super), is calculated as follows. This procedure is valid for calculations involving the reference fuel [baseline or candidate baseline fuel].

ACET = (CNACET ÷ RNACET) × (MNACET) + (CHACET ÷ RHACET) × (MHACET) + (CSACET ÷ RSACET) × (MSACET)

ACET = The total acetaldehyde emission for all three emitter groups.

CNACET = The average acetaldehyde emission from the normal emitter group, using the candidate fuel as calculated per § 80.52(e).

CHACET = The average acetaldehyde emission from the high emitter group, using the candidate fuel as calculated per § 80.52(e).

CSACET = The average acetaldehyde emission from the very high and super emitter group, using the candidate fuel as calculated per § 80.52(e).

RNACET = The average acetaldehyde emission from the normal emitter group, using the reference fuel as calculated per § 80.52(e).

RHACET = The average acetaldehyde emission from the high emitter group, using the reference fuel as calculated per § 80.52(e).

RSACET = The average acetaldehyde emission from the very high and super emitter group, using the reference fuel, as calculated per § 80.52(e).

MNACET = (1.62 mg/mile) = MACET × (0.49) [Note: (Acetaldehyde emission contribution for the normal emitters) = (Total acetaldehyde emission value) × (Fraction of total emissions inventory attributed to normal emitters)].

MHACET = (0.76 mg/mile) = MACET × (0.23) [Note: (Acetaldehyde emission contribution for the high

emitters)=(Total acetaldehyde emission value)×(Fraction of total emissions inventory attributed to high emitters)].

MSACET=(0.93 mg/mile)=MACET×(0.28) [**Note:** (Acetaldehyde emission contribution for the very high and super emitters)=(Total acetaldehyde emission value)×(Fraction of total emissions inventory attributed to very high and super emitters)].

MACET=(3.31 mg/mile) [**Note:** (Total acetaldehyde emission value)].

(d) The candidate fuel NO_x emissions reference value which is compared to the prescribed MOBILE4.1 value (MTOTNOX) in paragraph (a)(3) of this section, to determine the percent reduction in emissions. (NOXRED), is calculated as detailed below. [**Note:** The NO_x emission values for all three emitter groups is summed to produce the candidate fuel total NO_x reference value. This procedure is valid for calculations involving the reference fuel (baseline or candidate baseline fuel).]

CTOTNOX=(CNNOX÷RNNOX)×(MNNOX)+(CHNOX÷RHNOX)×(MHNOX)+(CSNOX÷RSNOX)×(MSNOX)

CTOTNOX=The total candidate fuel NO_x emissions value.

CNNOX=The average of NO_x emissions from the normal emitter group, using the candidate fuel as calculated per § 80.47(e).

CHNOX=The average of NO_x emissions from the high emitter group, using the candidate fuel as calculated per § 80.47(e).

CSNOX=The average of NO_x emissions from the very high and super emitter group, using the candidate fuel as calculated per § 80.52(e).

RNNOX=The average of NO_x emissions from the normal emitter group, using the reference [baseline or candidate baseline] fuel as calculated per § 80.52(e).

RHNOX=The average of NO_x emissions from the high emitter group, using the reference [baseline or candidate baseline] fuel, as calculated per § 80.52(e).

RSNOX=The average of NO_x emissions from the very high and super emitter group, using the reference [baseline or candidate baseline] fuel, as calculated per § 80.52(e).

MNNOX=(0.402 g/mile)=MNOX×(0.49) [**Note:** (NO_x emissions contribution for the normal emitter group)=(MOBILE4.1 total NO_x emission value)×(Fraction of total emissions inventory attributed to normal emitters)].

MHNOX=(0.188 g/mile)=MNOX×(0.23) [**Note:** NO_x emissions contribution for the high emitter group=(MOBILE4.1 total NO_x emission value)×(Fraction of total emissions inventory attributed to high emitters)].

MVHSNOX=(0.230 g/mile)=MNOX×(0.28) [**Note:** (NO_x emissions contribution for the very high and super emitter group)=(MOBILE4.1 total NO_x emission value)×(Fraction of total emissions inventory attributed to very high and super emitters)].

MNOX=(0.82 g/mile) [**Note:** MOBILE4.1 total NO_x emission value].

(e) Calculations of average emissions values shall follow the procedure detailed in paragraphs (e)(1) through (e)(2).

(1) The following applies for exhaust, running loss, and refueling emissions testing. For each pollutant, the emissions measurements are totaled for the group of vehicles under consideration. These totals are divided by the number of vehicles within the group, to produce the average emission value used in the calculations in paragraphs (a) through (d) of this section.

(2)(i) The total evaporative emissions (TOTEVAP) for each pollutant and each vehicle tested, is calculated as follows:

TOTEVAP=(4.37×HS+DI)÷28.39

HS=Hot soak and permeation loss emission.

DI=Diurnal emissions calculated in paragraph (e)(2)(ii) of this section.

(ii) The total diurnal emission is calculated from the 7 separate diurnal emissions measurements as follows:

TOTDI=(0.43×PDI)+(0.34×FDI)+(0.078×DDI)+(0.037×TDI)+(0.021×WDI)+(.014×XDI)+(.008×YDI)+(.003×ZDI)

TOTDI=Total diurnal VOC emissions.

PDI=Emission measurement from partial diurnal test.

FDI=Emission measurement from full diurnal test.

DDI=Emission measurement from double diurnal test.

TDI=Emission measurement from triple diurnal test.

WDI=Emission measurement from fourth diurnal test.

XDI=Emission measurement from fifth diurnal test.

YDI=Emission measurement from sixth diurnal test.

ZDI=Emission measurement from seventh diurnal test.

OPTION 1 for Paragraph (f)

(f) The standard deviation shall be calculated according to the procedure in this paragraph. A Monte Carlo type approach shall be employed whereby a random number generator of the standard normal variate is used to randomly select the standard deviation coinciding with the means for each of the emission categories to calculate the total VOC, NO_x, and total toxics emissions from the candidate fuel. The upper and/or lower confidence limits shall be determined based on 1000 random samplings of this data.

OPTION 2 for Paragraph (f)

(f) [Calculate the combined variances with an analytical method whereby the variances are summed with weightings appropriate for each emission subcategory. Employ a standard student t-test to determine 90 percent confidence limits around the mean emissions reduction.]

21. Section 80.53 is added and reserved.

§ 80.53 [Reserved]

22. Section 80.54 is added and reserved.

§ 80.54 [Reserved]

23. Section 80.55 is added to read as follows:

§ 80.55 Averaging periods.

OPTION 1 for § 80.55

The averaging periods for determining compliance with these regulations and for determining credits or debits for reformulated gasoline shall consist of each calendar month.

OPTION 2 for § 80.55

The averaging period for oxygen and benzene content and VOCs, toxics and NO_x emissions performance shall be each calendar year.

OPTION 3 for § 80.55

The averaging period for oxygen and benzene content and VOCs, toxics and NO_x emissions performance shall be each calendar quarter.

OPTION 4 for § 80.55

The averaging period for oxygen, benzene, toxics and NO_x emissions performance shall be each calendar year. The averaging period for VOC performance shall be the period April 1 through September 30 of each calendar year.

24. Section 80.56 is added to read as follows:

§ 80.56 Geographic scope of covered areas.

The requirements of the reformulated gasoline program apply to each of the following areas:

(a) Los Angeles-Anaheim-Riverside, California CMSA:

Counties of Los Angeles, Orange, Riverside, San Bernadino, and Ventura.

(b) Houston-Galveston-Brazoria, Texas CMSA:

Counties of Brazoria, Galveston, Harris, Fort Bend, Liberty, Montgomery, and Waller.

(c) New York-Northern New Jersey-Long Island, Connecticut CMSA:

New York: Counties of Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, Westchester, Orange and Putnam.

New Jersey: Counties of Bergen, Passaic, Hudson, Hunterdon, Middlesex, Somerset, Monmouth, Ocean, Essex, Morris, Sussex, and Union.

Connecticut: Counties of Fairfield, New Haven, Litchfield, and Stamford.

(d) Baltimore, Maryland MSA:

Counties of Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Annes, and the cities of Annapolis and Baltimore.

(e) Chicago-Gary-Lake County, Illinois-Indiana-Wisconsin CMSA:

Illinois: Counties of Cook, Du Page, Kane, Kendall, and Joliet.

Indiana: Counties of Lake and Porter.

Wisconsin: Kenosha County.

(f) San Diego, California MSA:

San Diego County.

(g) Philadelphia-Wilmington-Trenton CMSA:

Delaware: New Castle County.

Pennsylvania: Counties of Bucks, Chester, Delaware, Montgomery, and the city of Philadelphia.

Maryland: Cecil County.

New Jersey: Counties of Burlington, Camden, Gloucester, Mercer, Cumberland, and Salem.

(h) Hartford-New Britain-Middletown, Connecticut CMSA:

Counties of Hartford, Middlesex, Tolland and New London.

(i) Milwaukee-Racine, Wisconsin CMSA:

Counties of Milwaukee, Ozaukee, Racine, Waukesha, and Washington.

In addition to the nine covered areas listed in paragraphs (a) through (i) of this section, any of the ozone nonattainment areas may be included on the petition of the governor of the state in which the area is located.

25. Section 80.57 is added to read as follows:

§ 80.57 Calculation of reformulated gasoline characteristics.

All volume measurements in this section shall be adjusted to 60 degrees Fahrenheit, as determined by API gravity. Furthermore, the percentage of oxygen by weight contained in a gasoline blend, based upon its percentage oxygenate by volume, shall exclude denaturants and other nonoxygen-containing components.

OPTION 1 for § 80.57 Introductory Text

The characteristics of reformulated gasoline consist of the values of five distinct per gallon parameters—oxygen, benzene, toxics, volatile organic compounds (VOC) and NOx.

OPTION 2 for § 80.57 Introductory Text

The characteristics of reformulated gasoline consist of the values of four distinct per gallon parameters—oxygen, benzene, toxics, and volatile organic compounds (VOC).

OPTION 3 for § 80.57 Introductory Text

The characteristics of reformulated gasoline consist of the values of three distinct per gallon parameters—oxygen, benzene, and toxics.

OPTION 4 for § 80.57 Introductory Text

The characteristics of reformulated gasoline consist of the values of two distinct per gallon parameters—oxygen and benzene.

OPTION 5 for § 80.57 Introductory Text

The characteristics of reformulated gasoline consist of two distinct per gallon values—oxygen and benzene content.

OPTION 6 for § 80.57 Introductory Text

The characteristics of reformulated gasoline consist of three distinct per gallon values—oxygen and benzene content and toxics.

OPTION 7 for § 80.57 Introductory Text

The characteristics of reformulated gasoline consist of four distinct per gallon values—oxygen and benzene content, and toxics and VOC value.

OPTION 8 for § 80.57 Introductory Text

The characteristics of reformulated gasoline consist of five distinct per gallon values—oxygen and benzene content, and toxics, VOC and NO_x value.

(a) Per gallon oxygen content shall be determined by determining the weight percent oxygen of a representative sample of gasoline, using the method set forth in § 80.39 (d). The total oxygen content associated with a batch of gasoline is calculated by multiplying the weight percent oxygen content times the volume.

(b) Per gallon benzene content shall be determined by determining the volume percent benzene of a representative sample of a batch of gasoline by the method set forth in § 80.39 (c). The total benzene content associated with a batch of gasoline is calculated by multiplying the volume percent benzene content times the volume.

OPTION for Paragraph (c)

(c) Per gallon values for toxics, VOC and NOx emissions shall be established through use of the emissions model at § 80.36(a) or § 80.35(b). The model yields the per gallon toxics, VOC and NOx emissions values, in milligrams per mile for VOC and toxics, and in ppm for NOx. The vehicle testing methodology, at § 80.36(b) or § 80.37(b) is an alternative means of determining per gallon toxics, VOC and NOx emissions values. The total toxics, VOC and NOx emissions values associated with a batch of gasoline is calculated by multiplying the per gallon values times the volume.

26. Section 80.58 is added to read as follows:

§ 80.58 Requirements of refiners and importers.

(a) *Standards.* Every refiner or importer must comply with the following requirements for each gallon of gasoline produced or imported after December 1, 1994:

(1) Every gallon of gasoline shall be designated by the refiner or importer as either reformulated or conventional gasoline.

(2) Gasoline classified as reformulated shall conform to a certificate issued under § 80.35.

(3) The reformulated gasoline characteristics of each gallon of reformulated gasoline produced or imported shall be determined by the refiner or importer pursuant to § 80.57.

(4) For any gasoline produced or imported which is not designated as reformulated gasoline, the refiner or importer shall add 100 ppb of phenolphthalein and conduct the test, as specified in § 80.39(g), for the presence of phenolphthalein. Gasoline which contains this marker shall be considered conventional gasoline not intended to be a part of the reformulated gasoline program.

(5) In the case of reformulated gasoline produced pursuant to a certificate issued under § 80.35 that requires credit-generated gasoline to be produced in a certain ratio to credit-

requiring gasoline, the refiner shall ensure that the credit-generating and requiring gasolines are produced in the proper ratio or in a ratio that results in more credits than debits being generated.

(b) *Record keeping.* (1) For all gasoline produced or imported, the refiner or importer shall maintain the following records:

(i) Results of the tests required in § 80.57; and

(ii) The volume of gasoline associated with each of the above test results using the method normally employed at the refinery or import facility for this purpose; and

(iii) In the case of reformulated gasoline produced pursuant to a certificate issued under § 80.35 that requires credit-generating gasoline to be produced in a certain ratio to credit-requiring gasoline, if the credit-generating gasoline is being produced by another refiner or importer, the name of that refiner and importer and a copy of the agreement between the refiners and importers to produce sufficient quantities of credit-generating gasoline.

OPTION 1 for Paragraph (b)(2)

(2) For a period of five years from the date the gasoline is produced or imported, every refiner or importer shall retain the documents required in § 80.57(e)(1) and deliver such documents to the Administrator of EPA upon the request of the Administrator or the Administrator's designated representative.

OPTION 2 for Paragraph (b)(2)

(2) For a period of three years from the date the gasoline is produced or imported, every refiner or importer shall retain the documents required in § 80.57(e)(1) and deliver such documents to the Administrator of EPA upon the request of the Administrator or the Administrator's designated representative.

OPTION 3 for Paragraph (b)(2)

(2) For a period of two years from the date the gasoline is produced or imported, every refiner or importer shall retain the documents required in § 80.57(e)(1) and deliver such documents to the Administrator of EPA upon the request of the Administrator or the Administrator's designated representative.

27. Section 80.59 is added to read as follows:

§ 80.59 Controls applicable to covered area responsible parties.

Every covered area responsible party must comply with the following requirements beginning January 1, 1995:

(a) *Year round standard.* (1) During each averaging period, all gasoline dispensed into trucks for delivery shall achieve on average the following standards, as determined separately for each covered area:

(i) An oxygen content (by weight) of at least 2.0 percent;

(ii) A benzene content (by volume) of not more than 1.0 percent; and

OPTION for Paragraph (a)(1)(iii)

(iii) An emissions effect value for toxics of not more than [51.3] milligrams per mile.

OPTION for Paragraph (a)(1)(iv)

(iv) An emissions effect value for NO_x of not more than xx ppm.

OPTION 1 for paragraph (b)

(b) *High ozone season standard.* During each averaging period which begins between April 1 and September 30, all reformulated gasoline dispensed into trucks for delivery to the covered area shall achieve on average, in addition to the standards in paragraph (a) of this section, an emissions effect for volatile organic compounds of not more than 1.75 [1.48] gram per mile.

OPTION 2 for Paragraph (b)

(b) *High ozone season standard.* During each averaging period which begins between April 1 and September 30, all reformulated gasoline dispensed into trucks for delivery to the covered area shall achieve on a per-gallon basis, in addition to the standards in paragraph (a) of this section, an emissions effect for volatile organic compounds of not more than 1.75 [1.48] gram per mile.

OPTION for Paragraph (c)

(c) *Per-gallon standards.* Additionally, all gasoline dispensed into trucks for delivery to the covered area shall achieve on a per-gallon basis the following minimum or maximum standards for:

OPTION 1 for Paragraph (c)(1)

(1) An oxygen content (by weight) of at least 1.5 percent;

OPTION 2 for Paragraph (c)(1)

(1) An oxygen content (by weight) of at least 2.0 percent;

OPTION 3 for Paragraph (c)(1)

(1) An oxygen content (by weight) of at least 1.0 percent;

OPTION 1 for Paragraph (c)(2)

(2) A benzene content (by volume) of not more than 1.5 percent; and

OPTION 2 for Paragraph (c)(2)

(2) A benzene content (by volume) of not more than 2.0 percent; and

OPTION for Paragraph (c)(3)

(3) An emissions effect for toxics of not more than [55.0] milligrams per mile.

(d) *Compliance calculation.* To determine compliance with the standards in § 80.59 (a) and (b), the covered area responsible party shall, for each averaging period and for each covered area:

(1) Calculate the total volume of reformulated gasoline;

OPTION 1 for Paragraph (d)(2)

(2) Calculate the complying total content of oxygen and benzene by multiplying the total volume times the applicable standard;

OPTION 2 for Paragraph (d)(2)

(2) Calculate the complying total content of oxygen and benzene and the total complying value for toxics, VOC and NOx by multiplying the total volume times the applicable standard;

OPTION 1 for Paragraph (d)(3)

(3) Calculate the actual total content of oxygen and benzene by adding the batch values for these parameters for all of the batches which comprise the total volume;

OPTION 2 for Paragraph (d)(3)

(3) Calculate the actual total content of oxygen and benzene and the actual total value for toxics, VOC and NOx by adding the batch values for these parameters for all of the batches which comprise the total volume;

(4) For each parameter, compare the actual total with the complying total;

OPTION 1 for Paragraph (d)(5)

(5) If the actual total oxygen is greater than the complying total, or if the actual total benzene is less than the complying totals, credits for these parameters are generated:

OPTION 2 for Paragraph (d)(5)

(5) If the actual total oxygen is greater than the complying total, or if the actual total benzene, toxics, or VOC, or NOx is less than the complying totals, credits for these parameters are generated:

(i) The total number of oxygen credits which may be used or traded to another CAR is calculated by multiplying the oxygen total calculated in § 80.57 by [100-factor to be determined] percent;

(ii) The total number of benzene credits which may be used or traded to another CAR is calculated by multiplying the benzene total calculated in § 80.57 by [100-factor to be determined] percent;

OPTION for Paragraph (d)(5)(iii)

(iii) The total number of VOC credits which may be used or traded to another CAR is calculated by multiplying the VOC total calculated in § 80.57 by [100-factor to be determined] percent;

OPTION for Paragraph (d)(5)(iv)

(iv) The total number of toxic credits which may be used or traded to another CAR is calculated by multiplying the toxic total calculated in § 80.57 by [100-factor to be determined] percent;

OPTION for Paragraph (d)(5)(v)

(v) The total number of NOx credits which may be used or traded to another CAR is calculated by multiplying the NOx total calculated in § 80.57 by [100-factor to be determined] percent;

OPTION 1 for Paragraph (d)(6)

(6) If the actual total oxygen is less than the complying total, or if the benzene totals are greater than the complying totals, credits for these parameters are required in order to achieve compliance.

OPTION 2 for Paragraph (d)(6)

(6) If the actual total oxygen is less than the complying total, or if the benzene, toxic, VOC, or NOx totals are greater than the complying totals, credits for these parameters are required in order to achieve compliance.

(e) *Testing of gasoline received.* For each batch of reformulated gasoline that is received at a covered area terminal, the CAR shall:

OPTION 1 for Paragraph (e)(1)

(1) Establish the reformulated gasoline characteristics of the batch by conducting sampling and testing of each of the physical and chemical properties specified for the batch in accordance with the procedures in § 80.39; and

OPTION 2 for Paragraph (e)(1)

(1) Establish the reformulated gasoline characteristics of the batch from the paperwork which accompanied the gasoline from the refinery or import facility, as confirmed through a periodic sampling and testing program.

(2) Determine the volume of the batch using the method normally employed at the terminal for this purpose.

(f) *Compliance determination for a terminal which does not receive any reformulated gasoline involving credits.* In the case of a covered area terminal or a segregable portion thereof from which only credit-neutral reformulated gasoline (gasoline which meets all reformulated gasoline standards on a per-gallon basis and for which no credits are claimed) is dispensed into trucks during an averaging period, the covered area responsible party shall be required to:

OPTION 1 for Paragraph (f)(1)

(1) Periodically sample and test reformulated gasoline received for compliance with the reformulated gasoline standards, and;

OPTION 2 for Paragraph (f)(1)

(1) Sample and test every batch of reformulated gasoline received for compliance with the reformulated gasoline standards, and;

OPTION 1 for Paragraph (f)(2)

(2) Retain for five years the product transfer documentation for each batch of gasoline received and documents which show the results of the testing required in paragraph (f)(1), of this section

OPTION 2 for Paragraph (f)(2)

(2) Retain for three years the product transfer documentation for each batch of gasoline received and documents which show the results of the testing required in paragraph (f)(1), of this section

OPTION 3 for Paragraph (f)(2)

(2) Retain for two years the product transfer documentation for each batch of gasoline received and documents which show the results of the testing required in paragraph (f)(1), of this section

(g) *Compliance determination for terminal serving only a single covered area.* In the case of a covered area terminal or a segregable portion thereof from which reformulated gasoline is dispensed into trucks serving only a single covered area during an averaging period, compliance with the averaged standards in § 80.49 (a) and (b) shall be based upon:

(1) The sum of the volumes and associated reformulated gasoline characteristics of all batches of reformulated gasoline received at the covered area terminal; plus

(2) The sum of the oxygenate added to reformulated gasoline at the terminal, whether through tank or truck blending; minus

(3) The sum of the volumes and associated reformulated gasoline characteristics of all batches of reformulated gasoline which are transferred in bulk (as opposed to truck loads) out of the terminal; adjusted by

(4) The number and type of credits which are transferred to or received from another covered area responsible party.

(h) *Compliance determination for terminal serving more than one covered area.* In the case of a covered area terminal or a segregable portion thereof from which reformulated gasoline is dispensed into trucks serving more than one covered area, the covered area responsible party shall determine compliance with the averaged standards in § 80.59 (a) and (b) using the following methodology.

(1) Calculate for each gasoline storage tank the running weighted reformulated gasoline characteristics, which accounts for the volume and characteristics of all reformulated gasoline which enters and leaves the storage tank, and all oxygenate which is added to the tank:

(i) Determine the volume and characteristics of reformulated gasoline entering the storage tank using the methodology in § 80.57;

(ii) Determine the oxygenate added to the storage tank;

(iii) Determine the volume and characteristics of reformulated gasoline which leaves the storage tank by being dispensed into a truck, the volume to be determined using the method normally used at the terminal for this purpose, and the characteristics to be determined based upon the weighted average characteristics at the time gasoline is dispensed into the truck; and

(iv) Determine the volume and characteristics of gasoline which leaves the storage tank by means other than by being dispensed into a truck (e.g., by bulk transfer), the volume to be determined using the method normally used at the terminal for this purpose, and the characteristics to be determined using the methodology of § 80.57;

(2) For each occasion when reformulated gasoline is dispensed into a truck, determine the volume and characteristics of the gasoline dispensed based upon the running weighted reformulated gasoline characteristics of the gasoline storage tank(s) from which the truck receives gasoline, any oxygenate added to the truck, and the covered area(s) of use for the gasoline;

(3) Calculate the total of the volume and characteristics of reformulated gasoline going to each covered area, and determine compliance with the average standards in § 80.59 (a) and (b) based upon these separate totals and the number and type of credits which are transferred to or received from another covered area responsible party.

OPTION 1 for Paragraph (i)(1) Introductory Text

(i) *Credit transfers.* (1) Compliance with the averaged standards specified in § 80.59 (a) and (b) may be achieved through the transfer of oxygen and benzene credits, collectively called reformulated gasoline credits, provided that:

OPTION 2 for Paragraph (i)(1) Introductory Text

(1) Compliance with the averaged standards specified in § 80.59 (a) and (b) may be achieved through the transfer of oxygen, benzene, toxics, VOC or NOx credits, collectively called reformulated gasoline credits, provided that:

(i) The credits are generated in the same covered area as they are used;

(ii) The credits are generated in the same averaging period as they are used;

OPTION 1 for Paragraph (i)(1)(iii)

(iii) The credit transfer agreement is made no later than the final day of ten days following the end of the averaging period in which the reformulated gasoline credits are generated; and

OPTION 2 for Paragraph (i)(1)(iii)

(iii) The credit transfer agreement is made no later than the final day of fifteen days following the end of the averaging period in which the reformulated gasoline credits are generated; and

(iv) The credits are properly created.

(2) No party may transfer any credits to the extent such a transfer would result in the transferor having a negative credit balance at the conclusion of the averaging period for which the credits were transferred. Any credits transferred in violation of this paragraph are improperly created credits.

(3) In the case of credits which were improperly created, the following provisions apply:

(i) Improperly created credits may not be used to achieve compliance, regardless of a credit transferee's good faith belief that it was receiving valid credits;

(ii) The transfer of improperly created credits constitutes a violation of these requirements, for which the transferor will be deemed to be in violation; and

(iii) Where any credit transferor has in its balance at the conclusion of any averaging period both credits which were properly created and credits which were improperly created, the properly created credits will be applied first to any credit transfers before the transferor may apply any credits to achieve its own compliance.

OPTION for Paragraph (j)

(j) Banking and withdrawal of credits. Compliance with the averaged standards specified in § 80.59 (a) and (b) may be achieved through the use of credits generated in an averaging period and used in a subsequent averaging period ("banked credits") subject to the following requirements:

(1) *Banking of credits.* A control area responsible party may bank credits in an amount equal to the total credits generated, as calculated pursuant to § 80.59(d), minus any credits used by that CAR to achieve compliance or transferred by that CAR in the same averaging period.

OPTION 1 for Paragraph (j)(2)

(2) *Withdrawal of reformulated characteristics credits.* During the averaging period following a credit-generating averaging period, a control area responsible party may withdraw banked credits. Such credits may be used by the control area responsible party to demonstrate compliance with the requirements of § 80.59 (a) and (b), or may be transferred by the control area responsible party for such use within the same covered area by another control area responsible party. A credit shall be considered to be withdrawn when it is so used or transferred by the control area responsible party that banked it.

OPTION 2 for Paragraph (j)(2)

(2) *Withdrawal of reformulated characteristics credits.* During the calendar year in which credits are created, a control area responsible party may withdraw banked credits. Such credits may be used by the control area responsible party to demonstrate compliance with the requirements of § 80.54 (a) and (b), or may be transferred by the control area responsible party for such use within the same covered area by another control area responsible party. A credit shall be considered to be withdrawn when it is so used or transferred by the control area responsible party that banked it.

(k) *Record keeping.* (1) Each covered area responsible party shall retain the following documentation:

(i) Transfer documentation, described in § 80.61 (a) and (b), for all reformulated gasoline received into and transferred out of the terminal in bulk;

OPTION 1 for Paragraph (k)(1)(ii)

(ii) Documentation of the volume, sampling and testing results for each batch of reformulated gasoline which was received at the terminal, and for each batch of reformulated gasoline which was transferred from the terminal in bulk;

OPTION 2 for Paragraph (k)(1)(ii)

(ii) Documentation of the volume, sampling and testing results for every 10th batch of reformulated gasoline which was received at the terminal, and for each batch of reformulated gasoline which was transferred from the terminal in bulk;

(iii) Documentation of the volume and type of oxygenate blended with reformulated gasoline at the terminal, whether in bulk or in trucks;

(iv) Certifications received from distributors of the covered area to which reformulated gasoline is delivered;

(v) In the case of a terminal serving more than one covered area, documents which state the calculated net characteristics for each tank on each occasion such characteristics change; and

(vi) Documentation of the volume and characteristics of each truck load of gasoline transported to each covered area.

OPTION 1 for Paragraph (k)(2)

(2) The CAR shall retain the transfer documentation required by paragraph (k)(1) of this section for a period of five years from the date the gasoline is produced or imported, and shall deliver such documents to the Administrator of EPA upon the Administrator's request.

OPTION 2 for Paragraph (k)(2)

(2) The CAR shall retain the transfer documentation required by paragraph (k)(1) of this section for a period of three years from the date the gasoline is produced or imported, and shall deliver such documents to the Administrator of EPA upon the Administrator's request.

OPTION 3 for Paragraph (k)(2)

(2) The CAR shall retain the transfer documentation required by paragraph (k)(1) of this section for a period of two years from the date the gasoline is produced or imported, and shall deliver such documents to the Administrator of EPA upon the Administrator's request.

(l) *Registration of covered area responsible party.*

OPTION 1 for Paragraph (l)(1) Introductory Text

(1) Three months in advance of any averaging period in which a person will meet the definition of covered area responsible party, such person shall register as a covered area responsible party with the Administrator of EPA. This registration shall be on forms

prescribed by the Administrator, and shall include the following information:

OPTION 2 for Paragraph (l)(1) Introductory Text

(1) One month in advance of any averaging period in which a person will meet the definition of covered area responsible party, such person shall register as a covered area responsible party with the Administrator of EPA. This registration shall be on forms prescribed by the Administrator, and shall include the following information:

(i) The name and business address of the covered area responsible party;

(ii) The address and physical location of each of the covered area responsible party's covered area terminals; and

(iii) The address and physical location where documents which are required to be retained by this part will be kept by the covered area responsible party.

(2) Within thirty days of any occasion when the registration information previously supplied by a covered area responsible party becomes incomplete or inaccurate, the covered area responsible party shall submit updated registration information to the Administrator.

(m) *Reports*—(1) *Reports by terminals serving only one covered area.* For each covered area terminal or a segregable portion thereof at which reformulated gasoline is dispensed into trucks serving only a single covered area during an averaging period, each covered area responsible party shall submit to the Administrator of EPA a report for each averaging period which contains the following information for each such covered area terminal or segregable portion thereof:

(i) For each batch of reformulated gasoline received, the total volume and its associated reformulated gasoline characteristics;

(ii) For each bulk transfer of reformulated gasoline out of the terminal, the total volume and its associated characteristics;

(iii) For each batch of reformulated gasoline intended for oxygenate blending, the total volume and its associated characteristics when entering the terminal and the type and volume of oxygenate added to the batch;

(iv) The total volume of reformulated gasoline dispensed into trucks;

(v) The name of the covered area to which the reformulated gasoline is delivered, and

(vi) For the total accountable reformulated gasoline (reformulated gasoline received plus oxygenate added minus bulk transfers out of the terminal):

OPTION 1 for Paragraph (m)(1)(vi)(A)

(A) The complying total content of oxygen and benzene complying total values (as calculated under § 80.59(d));

OPTION 2 for Paragraph (m)(1)(vi)(A)

(A) The complying total content of oxygen and benzene and the complying total value for toxics, VOC and NOx emissions (as calculated under § 80.59(d));

OPTION 1 for Paragraph (m)(1)(vi)(B)

(B) The actual total content of oxygen and benzene (as calculated under § 80.59(d));

OPTION 2 for Paragraph (m)(1)(vi)(B)

(B) The actual total content of oxygen and benzene and the actual total value for toxics, VOC and NOx emissions (as calculated under § 80.59(d));

OPTION 1 for Paragraph (m)(1)(vi)(C)

(C) The number of credits generated as a result of actual total oxygen being greater than the complying total, or the actual benzene totals being less than the complying totals;

OPTION 2 for Paragraph (m)(1)(vi)(C)

(C) The number of credits generated as a result of actual total oxygen being greater than the complying total, or the actual benzene, or toxics, VOC or NOx emissions totals being less than the complying totals;

OPTION 1 for Paragraph (m)(1)(vi)(D)

(D) The number of credits required as a result of actual total oxygen being less than the complying total, or the actual benzene totals being greater than the complying totals.

OPTION 2 for Paragraph (m)(1)(vi)(D)

(D) The number of credits required as a result of actual total oxygen being less than the complying total, or the actual benzene, toxics, VOC or NOx totals being greater than the complying totals.

(2) *Reports by terminals serving more than one covered area.* For each covered area terminal or a segregable portion thereof at which reformulated gasoline is dispensed into trucks serving more than one covered area during an averaging period, each covered area responsible party shall submit to the Administrator of EPA a report for each averaging period which contains the following information for each such covered area terminal:

(i) The number of gasoline storage tanks from which reformulated gasoline is dispensed into trucks serving more than one covered area, and for each such storage tank, supply the following information:

(A) The capacity;

(B) The grade of gasoline stored;

(C) The identification number of the storage tank;

(D) For each occasion when reformulated gasoline is placed into the storage tank, the volume and reformulated gasoline characteristics of the gasoline so placed;

(E) For each bulk transfer of reformulated gasoline out of the storage tank, the volume and reformulated gasoline characteristics of the gasoline so transferred;

(F) The total volume of reformulated gasoline placed into the storage tank;

(G) The types and volumes of oxygenates added to the storage tank;

(H) For all reformulated gasoline and oxygenates placed into the tank minus bulk transfers out of the tank:

OPTION 1 for Paragraph (m)(2)(i)(H)*(1)*

(1) The complying total content of oxygen and benzene;

OPTION 2 for Paragraph (m)(2)(i)(H)*(1)*

(1) The complying total content of oxygen and benzene and the complying total value for toxics, VOC and NOx emissions;

OPTION 1 for Paragraph (m)(2)(i)(H)*(2)*

(2) The actual total content of oxygen and benzene;

OPTION 2 for Paragraph (m)(2)(i)(H)*(2)*

(2) The actual total content of oxygen and benzene and the actual total value for toxics, VOC and NOx emissions;

(ii) For each covered area to which gasoline is transported from the covered area terminal or segregable portion thereof, supply the following information:

(A) The name of the covered area to which the reformulated gasoline is delivered;

(B) The total volume of reformulated gasoline dispensed into trucks;

(C) For the total accountable reformulated gasoline (reformulated gasoline dispensed into trucks):

OPTION 1 for Paragraph (m)(2)(ii)(C)*(1)*

(1) The complying total content of oxygen and benzene;

OPTION 2 for Paragraph (m)(2)(ii)(C)*(1)*

(1) The complying total content of oxygen and benzene and the complying total value for toxics, VOC and NOx emissions;

OPTION 1 for Paragraph (m)(2)(ii)(C)*(2)*

(2) The actual total content of oxygen and benzene;

OPTION 2 for Paragraph (m)(2)(ii)(C)*(2)*

(2) The actual total content of oxygen and benzene and the actual total value for toxics, VOC and NOx emissions;

(3) The types and volumes of oxygenates added;

OPTION 1 for Paragraph (m)(2)(ii)(C)*(4)*

(4) The number of credits generated as a result of actual total oxygen being greater than the complying total, or the actual benzene totals being less than the complying totals;

OPTION 2 for Paragraph (m)(2)(ii)(C)*(4)*

(4) The number of credits generated as a result of actual total oxygen being greater than the complying total, or the actual benzene, toxics, VOC or NOx emissions totals being less than the complying totals;

OPTION 1 for Paragraph (m)(2)(ii)(C)*(5)*

(5) The number of credits required as a result of actual total oxygen being less than the complying total, or the actual benzene totals being greater than the complying totals.

OPTION 2 for Paragraph (m)(2)(ii)(C)*(5)*

(5) The number of credits required as a result of actual total oxygen being less than the complying total, or the actual benzene, toxics, VOC or NOx emissions totals being greater than the complying totals.

(3) *Credit transfers.* (i) For any reformulated gasoline credits which are transferred from or to another covered area responsible party, supply the following information:

(A) The names and addresses of the transferor and transferee of the credits; and

(B) The number(s) and type(s) of credits which are transferred.

OPTION 1 for Paragraph (m)(3)(ii)

(ii) Each transfer of reformulated gasoline credits must be supported by documentation adequate to show that both the transferor and the transferee of the credits agreed to the transfer of such credits, and that such agreement was reached no later than the final day of the averaging period in which the reformulated gasoline credits are generated.

OPTION 2 for Paragraph (m)(3)(ii)

(ii) Each transfer of reformulated gasoline credits must be supported by documentation adequate to show that both the transferor and the transferee of the credits agreed to the transfer of such credits, and that such agreement was reached no later than ten days following the conclusion of the averaging period in which the reformulated gasoline credits are generated.

OPTION 3 for Paragraph (m)(3)(ii)

(ii) Each transfer of reformulated gasoline credits must be supported by documentation adequate to show that both the transferor and the transferee of the credits agreed to the transfer of such credits, and that such agreement was reached no later than fifteen days following the conclusion of the averaging period in which the reformulated gasoline credits are generated.

(4) Such other information which EPA may require.

OPTION for Paragraph (m)(5)

(5) *Credit banking report information.* [Note: If credit banking is allowed, the following additional report items would be necessary.] Any control area responsible party who has credits to bank at the end of an averaging period or who makes use of credits during an averaging period shall submit to the Administrator, as an additional part of the report, the following information:

(i) The number of credits held by the control area responsible party at the beginning of the averaging period for which the report is submitted;

(ii) The number of credits held by the control area responsible party at the close of the averaging period for which the report is submitted.

(iii) The number of credits held by the reporting control area responsible party and used to demonstrate compliance with the requirements of § 80.59 (a) and (b) for the averaging period;

(iv) The number of credits held by the reporting control area responsible party and transferred to the account of another control area responsible party during the averaging period;

(v) The number of credits transferred from another control area responsible party to the reporting control area responsible party and used to demonstrate compliance with the requirements of § 80.59 (a) and (b) for the averaging period;

(vi) The number of credits transferred from another control area responsible party in the averaging period to the reporting control area responsible party during the averaging period; and

(vii) Supporting documentation adequate to show the agreement between control area responsible parties as to the transfer of the credits.

(6) *Report submission.* The reports required by § 80.59(m) shall be:

(i) Submitted on forms and following procedures specified by the Administrator of EPA;

OPTION 1 for Paragraph (m)(6)(ii)

(ii) Submitted to the Administrator of EPA within fifteen days following the conclusion of each averaging period; and

OPTION 2 for Paragraph (m)(6)(ii)

(ii) Submitted to the Administrator of EPA within thirty days following the conclusion of each averaging period; and

(iii) Signed and certified as correct by the owner or a responsible corporate officer of the refiner or importer.

(7) In the case of a covered area terminal or a segregable portion thereof at which only reformulated gasoline which does not involve credits is dispensed, the reporting specified in paragraphs (m) (1) through (5) of this section are not required.

OPTION 1 for Paragraph (m)(8) Heading

(8) Independent audit requirement.

OPTION 2 for Paragraph (m)(8) Heading

(8) Independent certified audit requirement.

OPTION 1 for Paragraph (m)(8)(i)

(i) In addition to the reports required by paragraphs (m) (1) through (5) of this section, each covered area responsible party shall cause to be submitted to the Administrator of EPA the report of an audit, to be conducted in accordance with the requirements of § 80.60, within sixty days following the conclusion of every calendar quarter.

OPTION 2 for Paragraph (m)(8)(i)

(i) In addition to the reports required by paragraphs (m) (1) through (5) of this section, each covered area responsible party shall cause to be submitted to the Administrator of EPA the report of an audit, to be conducted in accordance with the requirements of § 80.60, annually.

OPTION 3 for Paragraph (m)(8)(i)

(i) In addition to the reports required by paragraphs (m) (1) through (5) of this section, each covered area responsible party shall cause to be submitted to the Administrator of EPA the report of an audit, to be conducted in accordance with the requirements of § 80.60, every six months.

(ii) The audit report required in paragraph (m)(8)(i) of this section shall be submitted to EPA by the auditor.

(iii) Failure of the auditor to submit the required report will constitute a violation of the reporting requirement by the covered area responsible party.

28. Section 80.60 is added to read as follows:

OPTION 1 for § 80.60 Heading

§ 80.60 Independent audits.

OPTION 2 for § 80.60 Heading

§ 80.60 Independent certified audits.

OPTION 1 for Paragraph (a)

(a) An independent audit shall consist of a review of the information used by a party to prepare required reports to the Administrator of EPA, for accuracy and completeness. Audits also shall include a review of activities for conformance with reformulated gasoline regulatory requirements generally.

OPTION 2 for Paragraph (a)

(a) An independent certified audit shall consist of a review of the information used by a party to prepare required reports to the Administrator of EPA, for accuracy and completeness. Audits also shall include a review of activities for conformance with reformulated gasoline regulatory requirements generally.

OPTION 1 for Paragraph (b)

(b) An independent audit shall be conducted by a Certified Public Accountant.

OPTION 2 for Paragraph (b)

(b) An independent certified audit shall be conducted by a Certified Public Accountant.

OPTION 3 for Paragraph (b)

(b) An independent audit shall be conducted by a Certified Public Accountant who is not an employee of the regulated party.

OPTION 4 for Paragraph (b)

(b) An independent certified audit shall be conducted by a Certified Public Accountant who is not an employee of the regulated party.

(c) Auditors are required to exercise due diligence in conducting the audit in accordance with generally accepted auditing standards. Auditors also are required to comply with the general code of conduct and ethics as prescribed by the state in which they are licensed and the American Institute of Certified Public Accountants.

OPTION 1 for Paragraph (d) Introductory Text

(d) An independent audit conducted of a refiner or importer shall include the review and analysis of the following:

OPTION 2 for Paragraph (d) Introductory Text

(d) An independent certified audit conducted of a refiner or importer shall include the review and analysis of the following:

(1) Records which show the quantity, classification (conventional or reformulated), and characteristics of gasoline produced or imported;

(2) Test results which show that gasoline produced or imported satisfied the physical and chemical properties required by relevant certifications, and that all the characteristics were accurately stated;

(3) The auditor shall perform independent calculations to verify the proper accounting for physical and chemical factors specified in the regulations for oxygen, benzene, toxics, VOC and NOx characteristics. The auditor's report shall provide examples of these calculations.

(e) An independent audit conducted of a covered area responsible party shall include the review and analysis of the following:

OPTION for Paragraph (e) Introductory Text

(e) An independent certified audit conducted of a covered area responsible party shall include the review and analysis of the following:

(1) Records which show the quantity and characteristics of reformulated gasoline entering the terminal and leaving the terminal in bulk;

(2) Records which show the destination, quantity and characteristics of truck loads of reformulated gasoline going to specific covered areas;

(3) Records which show the characteristics of gasoline in storage tanks from which trucks are loaded, and the calculations which formed the basis for claimed characteristics;

(4) Testing results for storage tanks when additional gasoline is added; and

(5) Records showing the oxygenate type and amount which was blended.

(f) The auditor's report shall be submitted on forms provided by EPA and shall consist of the following items:

(1) A description and the location of all records reviewed during the audit;

(2) The names and positions of all persons responsible for preparing the regulated party's report to EPA, including persons who gathered information, operational personnel, and officers;

(3) The location and a description of the refinery, import facility, or terminal audited, including, its operating procedures and structures of internal controls;

(4) Specific reports which were audited, accompanied by examples of calculations performed in the conduct of the audit;

(5) Summaries or replications of records which support the auditor's findings, analyses, and conclusions; and

(6) A complete list of all discrepancies that the auditor found during the conduct of the audit.

29. Section 80.61 is added to read as follows:

§ 80.61 Additional controls and prohibitions.

(a) *Product transfer documentation.* For each occasion when any person transfers custody or title to any gasoline, other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, the transferor shall provide to the transferee documents which include the following information:

(1) The name and address of the transferor;

(2) The name and address of the transferee;

(3) The volume of gasoline which is being transferred;

(4) The proper identification of the gasoline as conventional or reformulated;

(5) In the case of conventional gasoline, the following language: "Conventional gasoline, not for sale to any ultimate consumer in a covered area";

(6) In the case of reformulated gasoline or reformulated gasoline blendstock for which oxygenate blending is intended, the type and amount of oxygenate which must be added, and the notation that the product is blendstock which may not be used or sold as reformulated until the required oxygenate has been a added;

(7) The location of the gasoline at the time of the transfer;

(8) For reformulated gasoline which is in the gasoline distribution network between the refinery or import facility and the covered area terminal, the reformulated gasoline characteristics of the gasoline; and

(9) When the transferor and/or transferee is a CAR, the EPA-assigned registration number of that person.

(b) *Distributor's certification of destination.* On each occasion when reformulated gasoline is dispensed into a truck at a covered area terminal, the distributor to whom the gasoline is transferred shall provide to the covered area responsible party a certification which identifies the covered area to which the gasoline will be delivered.

(c) *Prohibited activities.*

OPTION 1 for Paragraph (c)(1)(i)

(1)(i) No refiner, importer, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer may manufacture, sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transportation of gasoline represented as reformulated and intended for sale or use in any covered area which does not meet the definition of reformulated gasoline, or which has characteristics which are not properly stated in the documents which accompany such gasoline.

OPTION 2 for Paragraph (c)(1)(i)

(1)(i) No refiner, importer, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer may manufacture, sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transportation of gasoline represented as reformulated and intended for sale or use in any covered area which does not meet the definition of reformulated gasoline, or which has characteristics which are not properly stated in the documents which accompany such gasoline. Gasoline represented as reformulated which does not meet the minimum standards for oxygen or exceeds the maximum standards for benzene.

OPTION 3 for Paragraph (c)(1)(i)

(1)(i) No refiner, importer, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer may manufacture, sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transportation of gasoline represented as reformulated and intended for sale or use in any covered area which does not meet the definition of reformulated gasoline, or which has characteristics which are not properly stated in the documents which accompany such gasoline. Gasoline represented as reformulated which does not meet the minimum standards for oxygen or exceeds the maximum standards for benzene and toxics.

OPTION 4 for Paragraph (c)(1)(i)

(1)(i) No refiner, importer, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer may manufacture, sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transportation of gasoline represented as reformulated and intended for sale or use in any covered area which does not meet the definition of reformulated gasoline, or which has characteristics which are not properly stated in the documents which accompany such gasoline. Gasoline represented as reformulated which does not meet the minimum standards for oxygen or exceeds the maximum standards for benzene, toxics, VOC and NO_x.

(ii) No refiner, importer, carrier, distributor, or reseller, may manufacture, sell or offer for sale, dispense, supply, or offer for supply, store, transport or cause the transportation of gasoline represented as conventional which does not contain at least 100 ppb of phenolphthalein.

(iii) Gasoline shall be presumed to be intended for sale or use in a covered area unless:

(A) Product transfer documentation accompanying such gasoline clearly indicates the gasoline is intended for sale or use only outside any covered area; or

(B) The gasoline is contained in the storage tank of a retailer or wholesale purchaser-consumer within a non-covered area.

(2) *Liability for violations of the prohibited activities.* Where the gasoline contained in any storage tank at any facility owned, leased, operated, controlled or supervised by any refiner, importer, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer is found in violation of the prohibitions described in paragraph (C)(1) of this section, the following persons shall be deemed in violation:

(i) The refiner, importer, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer who owns, leases, operates, controls or supervises the facility where the violation is found; and

(ii) Each refiner, importer, distributor, reseller, and carrier who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.

(3) *Defenses for prohibited activities.* (i) In any case in which a refiner, importer, carrier, distributor, reseller, retailer, or wholesale purchasers-consumer would be in violation under paragraph (c) of this section, it shall be deemed not in violation if it can demonstrate:

(A) That the violation was not caused by the regulated party or its employee or agent;

(B) Documents which accompany the gasoline which contain the information required by § 80.61(a), and which indicate the gasoline met relevant requirements; and

(C) A quality assurance sampling and testing program carried out by the regulated party, as described in § 80.61(c)(4).

OPTION for Paragraph (c)(3)(i)(C):

(C) If performance trading is not allowed, a retailer or wholesale purchaser-consumer would need only to show documentation on its invoices stating the gasoline met the reformulated gasoline program requirements, instead of a quality assurance program.

(ii) Where a violation is found at a facility which is operating under the corporate, trade or brand name of a refiner, that refiner must show, in addition to the defense elements required by paragraph (c)(3)(i) of this section that the violation was caused by:

(A) An act in violation of law (other than the Act or this part), or an act of sabotage or vandalism;

(B) The action of any reseller, distributor, ethanol blender, carrier, or a retailer or wholesale purchaser-consumer supplied by any of these persons, in violation of a contractual undertaking imposed by the refiner designed to prevent such action, and despite periodic sampling and testing by the refiner to ensure compliance with such contractual obligation; or

(C) The action of any carrier or other distributor not subject to a contract with the refiner but engaged by the refiner for transportation of gasoline, despite specification or inspection of procedures and equipment by the refiner which are reasonably calculated to prevent such action.

(iii) In this paragraph (c)(3), the term "was caused" means that the party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(4) *Quality Assurance Program.* (i) In order to demonstrate an acceptable quality assurance program, a party must present evidence:

(A) That it has conducted screen tests for the presence of the conventional gasoline marker, as described in § 80.39(g), subsequent to each receipt of gasoline, which are reflected in documents which state the results of the tests;

(B) That the party's screen test results were consistent with all product transfer documents;

(C) That on each occasion when the conventional gasoline marker was found in gasoline represented to be reformulated, or no marker was found in gasoline represented to be conventional:

(*1*) The party immediately ceased selling, offering for sale, dispensing,

supplying, offering for supply, storing, transporting, or causing the transportation of the violating product;

(2) The product was tested by an independent laboratory to confirm the presence or absence of the marker; and

OPTION 1 for Paragraph (c)(4)(i)(C)(3)

(3) If the lab test results showed that the gasoline contained an improper concentration of the marker for the category of gasoline, the party promptly remedied the violation (such as by removing the violating product or adding more complying product until the proper concentration of the marker is achieved); or

OPTION 2 for Paragraph (c)(4)(i)(C)(3)

(3) If the lab test results showed that the gasoline did not meet the emissions performance standards, the party promptly remedied the violation (such as by removing the violating product; or

(4) If, on the basis of the lab test results, the gasoline is found not to be in violation, the party may treat the gasoline as complying product.

(ii) In addition to the requirements of paragraph (c)(4)(i) of this section, an acceptable quality assurance program for reformulated gasoline which is in the gasoline distribution network between the gasoline refiner and the covered area terminal, must include periodic sampling and testing to determine if the reformulated gasoline has characteristics which are consistent with the product transfer documentation.

§ 80.62 [Reserved]

30. Section 80.62 is added and reserved.

§ 80.63 [Reserved]

31. Section 80.63 is added and reserved.

§ 80.64 [Reserved]

32. Section 80.64 is added and reserved.

33. A new § 80.65 is proposed to be added to Subpart C to read as follows:

§ 80.65 Compliance with conventional gasoline requirements.

Any refiner or importer of conventional gasoline shall meet the following requirements for the conventional gasoline it produces or imports during each compliance period:

OPTION 1 for Paragraph (a)

(a) The average toxics emissions index (as determined in § 80.70 of the conventional gasoline must be less than or equal to the baseline toxics emissions index (as determined in § 80.68) of that refiner or importer for that compliance period.

OPTION 2 for Paragraph (a)

(a) [In the case that toxic emissions and exhaust VOC emissions are both regulated, substitute "average toxics emissions index and average exhaust VOC emissions index" for "average toxics emissions index" in paragraph (a) of this section.]

OPTION 3 for Paragraph (a)

(a) [In the case that toxic emissions and NOx emissions are both regulated, substitute "average toxics emissions index and average NOx emissions index" for "average toxics emissions index" in paragraph (a) of this section.]

OPTION 4 for Paragraph (a)

(a) [In the case that toxic emissions, exhaust VOC emissions and NOx emissions are all regulated, substitute "average toxics emissions index, average exhaust VOC emissions index and average NOx emissions index" for "average toxics emissions index" in paragraph (a) of this section.]

OPTION 1 for Paragraph (b)

(b) [If EPA requires that each refinery in an area have an individual baseline, then the average toxics emissions index (as determined in § 80.70) of the conventional gasoline of a refinery in that area must be less than or equal to the baseline toxics emissions index (as determined in § 80.68 of that refinery for that compliance period.]

31. A new § 80.66 is proposed to be added to subpart C to read as follows:

§ 80.66 Individual baseline toxics emissions index determination.

(a) Gasoline produced in a refinery engaged in the production of gasoline blendstocks from crude oil, and the subsequent mixing of those blendstocks to form finished gasoline, shall have the fuel parameter values required to determine its individual baseline toxics emissions index as outlined in § 80.68, determined by Method 1, 2 or 3 as follows:

(1) *Method 1:* The fuel parameters required for the calculation of the baseline toxics emissions index shall be determined from a refiner's records of 1990 shipments of finished gasoline as shown below:

$$Xavg = \frac{(X1 \times V1) + (X2 \times V2) + \ldots + (Xn \times Vn)}{V1 + V2 + \ldots + Vn}$$

where Xavg=baseline value of parameter X
i=separate 1990 shipment of finished gasoline
Xi=parameter value of shipment i
Vi=volume of shipment i
n = total number of shipments

(2) *Method 2:* The fuel parameters required for the calculation of the baseline toxics emissions index shall be determined from a refiner's records of 1990 blendstock composition data and 1990 production records as shown below:

$$Xavg = \frac{(X1 \times V1) + (X2 \times V2) + \ldots + (Xn \times Vn)}{V1 + V2 + \ldots + Vn}$$

where Xavg=baseline value of parameter X
i=batch of blendstock
Xi=1990 parameter value of i
Vi=1990 volume of i
n=total number of batches of blendstocks

OPTION for Paragraph (a)(2)(i)

(i) Total gasoline production (sum of Vi) must be within five (5) percent [OPTION: other than 5 percent] of total volume of 1990 finished gasoline shipments.

OPTION for Paragraph (a)(2)(ii)

(ii) Blendstock data shall include volumes purchased or received through intracompany transfers.

(3) *Method 3:* If a refiner can provide documentation which shows its 1991 blendstock composition to be substantially similar to its 1990 blendstock composition, the fuel parameters required for the calculation of the baseline toxics emissions index shall be determined from a refiner's records of 1991 blendstock composition data and 1990 production records as shown below:

$$Xavg = \frac{(X1xV1) + (X2xV2) + \ldots + (XnxVn)}{V1 + V2 + \ldots + Vn}$$

where Xavg=baseline value of parameter X
i=batch of blendstock
Xi=1991 parameter value of i
Vi=1990 volume of i
n=total number of batches of blendstocks

OPTION 1 for Paragraph (a)(3)(i)

(i) Total gasoline production (sum of Vi) must be within five (5) percent [OPTION: other than 5 percent] of total volume of 1990 finished gasoline shipments.

OPTION 2 for Paragraph (a)(3)(ii)

(ii) If a refiner can demonstrate that for a given refinery, 1991 operations are substantially similar to 1990 operations, including crude types refined, intermediate feedstocks and

blendstocks purchased or transferred, and process operating conditions, that refiner may sample 1991 finished gasoline to establish the individual baseline of gasoline, produced in a refinery operating as described in (a) of this section, in accordance with Method 3.

OPTION 1 for Paragraph (a)(4)

[Note: If a modification of Method 1, 2 or 3 as described in (a)(4) of this section is allowed, then the fuel parameter values required to determine individual baseline toxics emissions index as outlined in § 80.68 shall be determined based on the modification of Method 1, 2 or 3.]

(4) Modification of Method 1, 2 or 3: If a refiner had major equipment under construction in calendar year 1990 and/or experienced unusual circumstances which precluded normal operation of one or more refinery process units, determination of baseline fuel parameters by Method 1, 2 or 3 shall be modified to reflect these circumstances. Modifications reflecting the impact of said circumstance on the individual baseline shall require documentation as described in § 80.67(c)(3). [OPTION: Under this provision, a modification is deemed to have been "significant" if at least a five (5) percent [OPTION: other than 5 percent] difference exists between the baseline toxics emissions index calculated with and without the modification.]

OPTION 2 for Paragraph (a)(4)

[Substitute "fuel parameter baseline value" for "baseline toxics emissions index" in paragraph (a)(4) of this section.]

(b)(1) If a refiner has the data required for a Method 1 baseline determination, that refiner shall use Method 1.

(2) If a refiner has insufficient data for a Method 1 determination, but has sufficient data for a Method 2 baseline determination, that refiner shall use Method 2.

(3) If a refiner has insufficient data for a Method 1 or Method 2 determination, that refiner shall use Method 3.

(c) The protocol detailed in paragraph (b) of this section for the determination of the fuel parameter values required for the calculation of the baseline toxics emissions index shall apply to each fuel parameter at each refinery individually for gasoline produced at a refinery operating as described in paragraph (a) of this section. That is, Method 1 might be used for one fuel parameter while Methods 2 and 3 might be used for others.

(d)(1) Imported refinery-finished gasoline shall have its baseline toxics emissions index determined in accordance with paragraphs (a) through (c) of this section using information from the refinery or refineries that produced the gasoline and any other provisions that apply to refiners engaged in the production of gasoline from a refinery operating as described in paragraph (a) of this section.

(2) Imported gasoline which is other than refinery-finished gasoline shall be subject to the baseline determination applicable to gasoline produced in a refinery operating as described in paragraph (h) of this section.

OPTION for Paragragh (e)

(e) EPA shall, if petitioned, establish separate baseline emission indices for refineries providing conventional gasoline to areas with a limited distribution system and which experience increased toxics emissions due to an ozone nonattainment area opting into the reformulated gasoline program. The baselines of such refineries are not to be included in the baseline determination of a refiner who also has a refinery or refineries outside of this area. [OPTION for additional language to be added to paragraph (e): If all of a refiner's refineries are located in one of the geographic area(s) listed in § 80.65(a)(2), then that refiner shall determine a baseline which includes all of that refiner's refineries.]

OPTION 1 for Paragraph (f)

(f) A refiner, engaged in the production of gasoline from the refinery operational mode as described in paragraph (a) of this section or the production of gasoline from a refinery where gasoline blendstocks and/or finished gasoline are simply purchased and mixed to form a finished gasoline or both and/or the importation of the same shall consider each mode of operation as distinct, determining a baseline toxics emissions index for each mode of operation.

OPTION 2 for Paragraph (f)

(f) [Substitute "shall distinguish between modes of operation to determine a baseline toxics emissions index for each mode, but shall have a final individual baseline toxics emissions index which is the weighted average of the modes of operation" for "shall consider each mode of operation as distinct, determining a baseline toxics emissions index for each mode of operation" in OPTION 1 for paragraph (f).]

(g) A refiner's baseline toxics emissions index shall be recalculated under the following circumstances:

(1) A refinery is purchased, sold, merged or acquired by the refiner. The refiner's baseline shall be recalculated to reflect the addition or subtraction of the baseline fuel parameters and fuel volumes of that refinery.

(2) A refinery is permanently shut down by the refiner. The refiner's baseline shall be recalculated to reflect the subtraction of the baseline parameters of the refinery from the refiner's baseline.

(3) A refinery not in operation in 1990 is started up by the refiner. The refiner's baseline shall be recalculated to reflect the addition of that restarted refinery's volume of gasoline with the statutory baseline gasoline parameters.

OPTION 1 for Paragraph (h)

(h) Refiners solely engaged in the production of gasoline from a refinery where gasoline blendstocks and/or finished gasoline are simply purchased and blended to form finished gasoline, who do not have the data needed to use Method 1 shall utilize the fuel parameters specified in § 80.41, for the high ozone and non-high ozone season baseline fuels, in determining the baseline toxics emissions index as outlined in § 80.68. In the case of an annual averaging period as described in § 80.69, the value of a fuel parameter in a season shall be weighted by the number of days in the season (high ozone or non-high ozone). The corresponding weighted parameter values of each season shall be combined to form a single baseline fuel parameter value.

OPTION 2 for Paragraph (h)

(h) [Substitute "blend only those blendstocks and finished gasoline which have been certified as conforming to another refiner's or an importer's baseline" for "utilize the fuel parameters specified in § 80.41 for the high ozone and non-high ozone season baseline fuels, in determining the baseline toxics emissions index as outlined in § 80.68. In the case of an annual averaging period as described in § 80.69, the value of a fuel parameter in a season shall be weighted by the number of days in the season (high ozone or non-high ozone). The corresponding weighted parameter values of each season shall be combined to form a single baseline fuel parameter value" in OPTION 1 for paragraph (h).]

(i) Refiners using Method 1, 2 or 3 and importers must follow the process outlined in § 80.7 to obtain approved baseline values.

OPTION 1 for Paragraph (j)

(j) The applicability of the individual baseline of refiners engaged in the production of gasoline from a refinery

operating as described in paragraph (a) of this section and importers shall be limited to its 1990 total volume; that is, in post-1994, the increment of a refiner's or importer's total annual volume of gasoline produced or imported in excess of its 1990 total volume would be subject to the statutory baseline, not its individual baseline.

OPTION 2 for Paragraph (j)

(j) [Substitute "existing refining capacity; that is, in post-1994, the increment of a refiner's or importer's total volume in excess of its 1990 existing refining capacity would be subject to the statutory baseline parameters, not its individual baseline" for "total volume; that is, in post-1994, the increment of a refiner's or importer's total annual volume of gasoline produced or imported in excess of its 1990 total volume would be subject to the statutory baseline, not its individual baseline" in option 1 for paragraph (j).]

OPTION 3 for Paragraph (j)

(j) [Substitute "existing refining capacity, with the following restrictions: For any refiner or importer with a baseline toxics emissions index greater than the index calculated using the statutory baseline, the post-1994 increment of its total volume in excess of its 1990 existing refining capacity would be subject to the statutory baseline. For any refiner or importer with a baseline toxics emissions index lower than the index calculated using the statutory baseline, the post-1994 increment of its total volume in excess of its 1990 existing refining capacity would be subject to the refiner's individual baseline until the increment exceeded 10 percent [OPTION: other than 10 percent] of its 1990 existing refining capacity. The post-1994 increment of its total volume in excess of 110 percent [OPTION: other than 110 percent] of 1990 existing refining capacity would be subject to the statutory baseline" for "total volume; that is, in post-1994, the increment of a refiner's or importer's total annual volume of gasoline produced or imported in excess of its 1990 total volume would be subject to the statutory baseline, not its individual baseline" in option 1 for paragraph (j).]

OPTION 4 for Paragraph (j)

(j) [Substitute "volumes equal or less than its 1990 existing refining capacity; the post-1994 increment of its total volume in excess of its 1990 existing refining capacity shall be subject to the statutory or individual baseline, whichever results in lower baseline emissions" for "its 1990 total volume; that is, in post-1994, the increment of a refiner's or importer's total annual volume of gasoline produced or imported in excess of its 1990 total volume would be subject to the statutory baseline, not its individual baseline" in option 1 for paragraph (j).]

OPTION 1 for paragraph (k)

(k) The applicability of the individual baseline of refiners engaged in the production of gasoline from a refinery operating as described in paragraph (h) of this section shall be limited such that after 1994, the increment of its total volume in excess of its 1990 total volume would be subject to the statutory baseline, not the refiner's individual baseline.

OPTION 2 for Paragraph (k)

(k) [Substitute "for any refiner with a baseline toxics emissions index greater than the index calculated using the statutory baseline, the post-1994 increment of its total volume in excess of its 1990 volume would be subject to the statutory baseline. For any refiner with a baseline toxics emissions index lower than the index calculated using the statutory baseline, the post-1994 increment of its total volume in excess of its 1990 volume would be subject to the refiner's individual baseline until the increment exceeded 10 percent [OPTION: other than 10 percent] of its 1990 volume. The post-1994 increment of its total volume in excess of 110 percent [OPTION: corresponding percent] of its 1990 volume would be subject to the statutory baseline" for "after 1994, the increment of its total volume in excess of its 1990 total volume would be subject to the statutory baseline, not the refiner's individual baseline" in option 1 for paragraph (k).]

OPTION 3 for Paragraph (k)

(k) [Substitute "the post-1994 increment of its total volume in excess of its 1990 volume would be subject to the statutory or individual baseline, whichever results in lower baseline emissions" for "after 1994, the increment of its total volume in excess of its 1990 total volume would be subject to the statutory baseline, not the refiner's individual baseline" in option 1 for paragraph (k).]

OPTION 1 for § 80.66

[In the case that toxic emissions and exhaust VOC emissions are both regulated, substitute "average toxics emissions index and average exhaust VOC emissions index" for "average toxics emissions index" throughout § 80.66]

OPTION 2 for § 80.66

[In the case that toxic emissions and NOx emissions are both regulated, substitute "average toxics emissions index and average NOx emissions index" for "average toxics emissions index" throughout § 80.66.]

OPTION 3 for § 80.66

[In the case that toxic emissions, exhaust VOC emissions and Nox emissions are all regulated, substitute "average toxics emissions index, average exhaust VOC emissions index and average NOx emissions index" for "average toxics emissions index" throughout § 80.66]

35. A new § 80.67 is proposed to be added to subpart C to read as follows:

§ 80.67 Individual baseline data submission and approval.

(a) Individual baseline data shall be submitted for verification to an auditor on or before March 31, 1992.

(1) The auditor shall:

(i) Be EPA-certified;

OPTION 1 for Paragraph (a)(1)(i)

(i) [Substitute "independent of the submitter and EPA-certified" for "EPA-certified".]

OPTION 2 for Paragraph (a)(1)(i)

(i) [Substitute "certified by EPA and an industry panel" for "EPA-certified".]

(ii) Have experienced personnel familiar with petroleum refining processes, computational procedures, and methods of product analyses;

(iii) Possess adequate resources to perform the auditing tasks in a timely manner; and

(iv) Have expertise in conducting the auditing process, including skills for effective data gathering, protection of trade secrets, and data analysis.

(2) The auditor-submitted audit plan shall be incorporated into EPA standard audit procedures, and shall contain the following:

(i) Developed test plans for gathering necessary data;

(ii) Steps to verify data and evaluate potential for any abuses of the anti-dumping regulations in §§ 80.65 through 80.76;

(iii) Analysis of data and reporting of results; and

(iv) Procedures to protect trade secret data, including, but not limited to: manufacturing processes, formulas, commercial data and blendstocks.

(b) Minimum data requirements are described in paragraphs (b) (1) and (2) of this section. Raw data and calculation methodology shall be included as part of the baseline data submission, as well as

documentation of modifications to Method 1, 2 or 3.

(1) Fuel parameters specified for emissions determination per § 80.68 and obtained per Method 1 or 2 shall have been measured and documented monthly for 12 months and shall be averaged over the period[s] described in § 80.69.

(2) Fuel parameters specified for emissions determination per § 80.68 and obtained per Method 3 shall have been measured and/or documented monthly, beginning not later than July 1, 1991.

(c) Refiners and importers shall submit the following:

(1) For a Method 1 baseline determination, volumes of shipped finished gasoline and the fuel parameter values of those volumes, and the method used to convert this data to the final baseline fuel parameter values.

(2) For a Method 2 or 3 baseline determination, unit production and composition data of all refinery process units (by refinery if a refiner has more than one refinery), the method used to convert this data to the final baseline fuel parameter values, and a statement signed by the chief executive officer of the company, or designee, stating that insufficient or inadequate and unreliable data exists for baseline determination of that parameter in that refinery by Method 1 (for a Method 2 determination) or Method 2 (for a Method 3 determination).

OPTION for Paragraph (c)(3)

(3) Use of the provisions for modifications to Method 1, 2 or 3 for the reasons listed in § 80.66 (a) (4) shall be subject to the following constraints and reporting requirements:

(i) The refiner or importer shall report 1990 individual baseline gasoline parameters required for baseline toxics emissions index determination on a "with modification" and "without modification" basis.

(ii) The refiner or importer shall identify the capital project(s) and/or facility outage(s) that caused the abnormal operation.

(iii) Only the following shall be considered to be work-in-progress capital projects during 1990:

(A) Gasoline production units placed in service or modified in 1990, or

(B) Gasoline production units under construction in 1990 wherein long lead-time process equipment had been placed on order.

(iv) Major facility outages during 1990 shall consist of longer than normal shutdowns for repair, fires or explosions, all of which shall have disrupted the usual operation of gasoline production equipment for more than 60 days.

(v) For each significant incident meeting the criteria of paragraphs (c) (3) (iii) and/or (iv) of this section, the refiner must provide supporting detail concerning shifts in gasoline volume and attendant gasoline properties such that:

(A) an auditor having reasonable refining knowledge could analyze the change and verify the reasonableness of the change; and

(B) the net impact on the 1990 gasoline baseline for the refiner could be adjusted based on this data.

(vi) Data furnished to support paragraph (c) (3) (v) of this section shall include "typical" operating conditions and gasoline component properties for each of the process units that manufactures a gasoline component and was either incomplete construction or suffered an unusual outage during 1990.

OPTION for Paragraph (c)(3)(vii)

(vii) For gasoline blendstock producing units placed in service either after November 15, 1990, started up in 1990 or experiencing unusual operation in 1990, samples shall be collected, analyzed for paraffins, olefins, aromatics and benzene, and properly stored monthly for calendar year 1991.

OPTION 1 for Paragraph (c)(3)(viii)

(viii) For the situation where a gasoline-producing facility was under construction during 1990, but streaming and reliable operation could not be established soon enough to allow gathering of adequate data during 1991, the refiner shall proceed with paragraph (c) (3) (v) of this section using estimated data for the gasoline streams affected. Such estimated properties and resultant calculations to support a modified baseline must be reconciled by the refiner with actual operating data within six (6) months of streaming the facility. Such reconciliation must be provided to the auditor who will verify that the refiner's original estimate for the facility was reasonably accurate.

OPTION 2 for Paragraph (c)(3)(viii)

(viii) [Under this option, substitute "resulted in a baseline toxics emissions index within five (5) percent [OPTION: other than 5 percent] of the baseline toxics emissions index based on actual operation" for "was reasonably accurate" in OPTION 1 for paragraph (c)(3)(viii).]

OPTION 1 for Paragraph (c)(3)(ix)

(ix) If auditor determines through the process described in paragraph (c) (3)(viii) of this section that the estimate was not reasonably accurate, the refiner shall use the refinery's post-audit data to recalculate a modified baseline.

OPTION 2 for Paragraph (c)(3)(ix)

(ix) [Substitute "exceeded a five (5) percent [OPTION: other than 5 percent] difference in the baseline toxics emissions index based on actual operation" for "was not reasonably accurate" in OPTION 1 for paragraph (c)(3)(ix).]

OPTION 3 for Paragraph (c)(3)(ix)

(ix) [Substitute "exceeded a five (5) percent [OPTION: other than 5 percent] difference in the fuel parameter value based on actual operation" for "was not reasonably accurate" in OPTION 1 for paragraph (c)(3)(ix).]

(d) Auditor will forward results of verification to EPA within three (3) months of receipt.

OPTION 1 for Paragraph (e)

(e) EPA will publish individual baseline data in the **Federal Register** within two (2) months of receipt from the auditor, and will request comments. Data will be unevaluated by EPA, and will be in the form of toxics emissions index by refiner or importer.

OPTION 2 for Paragraph (e)

[Substitute "refinery or importer-identified refinery" for "refiner or importer" in OPTION 1 for paragraph (e).]

OPTION 3 for Paragraph (e)

(e) [Substitute "fuel parameter average by refiner or importer" for "toxics emissions index by refiner or importer" in OPTION 1 for paragraph (e).]

OPTION 4 for Paragraph (e)

(e) [Substitute "fuel parameter average by refinery or importer-identified refinery" for "toxics emissions index by refiner or importer" in OPTION 1 for paragraph (e).]

(f) EPA shall confirm an individual baseline and notify the affected party within five (5) months of publication in the **Federal Register** if:

(1) The results of the audit are satisfactory, and

(2) Any public comments do not conclude differently from the audit.

(g) Investigations by EPA of potential baseline discrepancies shall be conducted confidentially with auditor and refiner or importer.

OPTION 1 for § 80.67

[In the case that toxic emissions and exhaust VOC emissions are both regulated, substitute "average toxics

emissions index and average exhaust VOC emissions index" for "average toxics emissions index" throughout § 80.67.]

OPTION 2 for § 80.67

[In the case that toxic emissions and NOx emissions are both regulated, substitute "average toxics emissions index and average NOx emissions index" for "average toxics emissions index" throughout § 80.67.]

OPTION 3 for § 80.67

[In the case that toxic emissions, exhaust VOC emissions and NOx emissions are all regulated, substitute "average toxics emissions index, average exhaust VOC emissions index and average NOx emissions index" for "average toxics emissions index" throughout § 80.67.]

36. A new § 80.68 is proposed to be added to subpart D to read as follows:

§ 80.68 Toxics emission index calculation.

(a) The toxics emission index shall be determined by the equation(s) listed below. For baseline determination, the fuel parameter values required for calculation of an index shall be the average parameter value as outlined in § 80.66.

(1) The toxics emission index (TOXIND) or indices (TOXIND1 and TOXIND2 or TOXIND1, TOXIND2, TOXIND3 and TOXIND4), as appropriate, of any finished gasoline shall be determined by the following equation:

OPTION 1 for Paragraph (a)(1)

$$TOXIND = 1.077 + (0.9441 \times FBEN) + \{0.1133 \times (FAROM - FBEN)\}$$

where FBEN = Fuel benzene in terms of volume percent (as determined under § 80.39)
FAROM = Fuel aromatics in terms of volume percent (as determined under § 80.39.)

OPTION 2 for Paragraph (a)(1)

$$TOXIND = EXHBEN \times \{(1 + 0.00042 \times [SULFUR - 339]) \times (1 + 0.0038 \times [T90 - 330])\}$$

where EXHBEN = exhaust benzene emissions, g/mi, as determined in § 80.36(a)(3)
SULFUR, T90, ... = Fuel values of these parameters (as determined under § 80.39)

Note: Include other fuel parameters as emissions effects of those parameters are discovered and incorporated into the reformulated gasoline exhaust toxics emissions model.]

OPTION 3 for Paragraph (a)(1)

$$TOXIND = EXHBEN + EVPBEN + RLBEN + REFBEN$$

where EXHBEN = exhaust benzene emissions, g/mi, as determined in § 80.36(a)(3)
EVPBEN = evaporative benzene emissions, g/mi, as determined in § 80.36(a)(3)
RLBEN = running loss benzene emissions, g/mi, as determined in § 80.36(a)(3)
REFBEN = refueling benzene emissions, g/mi, as determined in § 80.36(a)(3)

OPTION 4 for Paragraph (a)(1)

$$TOXIND = EXHBEN + EVPBEN + RLBEN + REFBEN + FORM + ACET + BUTA$$

where EXHBEN = exhaust benzene emissions, g/mi, as determined in § 80.36(a)(3)
EVPBEN = evaporative benzene emissions, g/mi, as determined in § 80.36(a)(3)
RLBEN = running loss benzene emissions, g/mi, as determined in § 80.36(a)(3)
REFBEN = refueling benzene emissions, g/mi, as determined in § 80.36(a)(3)
FORM = formaldehyde emissions, g/mi, as determined in § 80.36(a)(3)
ACET = acetaldehyde emissions, g/mi, as determined in § 80.36(a)(3)
BUTA = 1,3-butadiene emissions, g/mi, as determined in § 80.36(a)(3)

OPTION 5 for Paragraph (a)(1)

$$TOXIND1 = FBEN$$
$$TOXIND2 = FAROM$$

where FBEN = Fuel benzene in terms of volume percent (as determined under § 80.39)
FAROM = Fuel aromatics in terms of volume percent (as determined under § 80.39)

OPTION 6 for Paragraph (a)(1)

$$TOXIND1 = EXHBEN + EVPBEN + RLBEN + REFBEN$$
$$TOXIND2 = FORM$$
$$TOXIND3 = ACET$$
$$TOXIND4 = BUTA$$

where EXHBEN = exhaust benzene emissions, g/mi, as determined in § 80.36(a)(3)
EVPBEN = evaporative benzene emissions, g/mi, as determined in § 80.36(a)(3)
RLBEN = running loss benzene emissions, g/mi, as determined in § 80.36(a)(3)
REFBEN = refueling benzene emissions, g/mi, as determined in § 80.36(a)(3)
FORM = formaldehyde emissions, g/mi, as determined in § 80.36(a)(3)
ACET = acetaldehyde emissions, g/mi, as determined in § 80.36(a)(3)
BUTA = 1,3-butadiene emissions, g/mi, as determined in § 80.36(a)(3)

OPTION for Paragraph (a)(2)

(2) The VOC emissions index [VOCIND] of any finished gasoline shall be determined by the following equation:

$$VOCIND = EXHVOC \times \{1 + 0.00042 \times [SULFUR - 339]) \times (1 + 0.0038 \times [T90 - 330])\}$$

where EXHVOC = exhaust VOC emissions, g/mi, as determined in § 80.36(a)(3)
SULFUR, T90, ... = Fuel values of these parameters (as determined under § 80.39)

[Note: Include other fuel parameters as emissions effects of those parameters are discovered and incorporated into the reformulated gasoline exhaust VOC emissions model.]

OPTION for Paragraph (a)(3)

(3) The NOx emission index [NOxIND] of any finished gasoline shall be determined by the following equation:

$$NOxIND = 1 + 0.0003 \times [SULFUR - 339]$$

where SULFUR = Fuel sulfur content (as determined under § 80.39)

[Note: Include other fuel parameters as emissions effects of those parameters are discovered.]

(b) [Reserved]

§ 80.69 [Reserved]

37. Section 80.69 is added and reserved.

38. Section 80.70 is added to read as follows:

OPTION 1 for § 80.70

§ 80.70 Anti-dumping averaging periods.

(a) The Summer averaging period shall consist of the period May 1 through August 31.

(b) The Winter averaging period shall consist of the period September 1 through April 30.

(c) In 1995 only, the period January 1, 1995 through April 30, 1995 shall constitute a Winter averaging period.

OPTION 2 for § 80.70

§ 80.70 Anti-dumping averaging periods.

The averaging period shall be January 1 through December 31 for each calendar year beginning 1995.

39. Section 80.71 is added to read as follows:

§ 80.71 Anti-dumping controls applicable to refiners and importers.

OPTION 1 for Paragraph (a)

(a) *Summer Standards.* As of January 1, 1995, no person shall produce or import conventional gasoline during the

Summer averaging period that exceeds on average the summertime baseline toxics emissions index applicable to that person as calculated under § 80.68.

OPTION 2 for Paragraph (a)

(a) [Replace "toxics" with "toxics and exhaust VOC".]

OPTION 3 for paragraph (a)

(a) [Replace "toxics" with "toxics and NOx".]

OPTION 4 for paragraph (a)

(a) [Replace "toxics' with "toxics, exhaust VOC and NOx".]

OPTION 1 for Paragraph (b)

(b) *Winter standards.* As of January 1, 1995, no person shall produce or import conventional gasoline during the Winter averaging period, that exceeds on average the wintertime baseline toxics emissions index applicable to that person as calculated under § 80.68.

OPTION 2 for Paragraph (b)

(b) [Replace "toxics", with "toxics and exhaust VOC".]

OPTION 3 for Paragraph (b)

(b) [Replace "toxics" with "toxics and NOx".

OPTION 4 for Paragraph (b)

(b) [Replace "toxics" with "toxics, exhaust VOC and NOx".]

OPTION 5 for paragraph (b)

(b) *Winter standards.* As of January 1, 1995, no person shall produce or import during each calendar year conventional gasoline that exceeds on average the annual baseline toxics emissions index applicable to that person as calculated under § 80.68.

OPTION 6 for Paragraph (b)

(b) [Replace "toxics" with "toxics and exhaust VOC".]

OPTION 7 for Paragraph (b)

(b) [Replace "toxics" with "toxics and NOx".]

OPTION 8 for Paragraph (b)

(b) [Replace "toxics" with "toxics, exhaust VOC and NOx".]

OPTION 1 for Paragraph (c)

(c) The summertime and wintertime baseline toxics emissions index applicable to a person shall be calculated using the methodology set forth in § 80.68. The average toxics emissions index of conventional gasoline for purposes of determining compliance with the requirements herein shall be calculated using the toxics emissions index for each batch of gasoline produced or imported during the averaging period using the formula below:

OPTION 2 for Paragraph (c)

(c) [Replace "summertime and wintertime" with "annual".]

OPTION 3 for Paragraph (c)

(c) [Replace "toxics" with "toxics and exhaust VOC".]

OPTION 4 for Paragraph (c)

(c) [Replace "toxics" with "toxics and NOx".]

OPTION 5 for paragraph (c)

(c) [Replace "toxics" with "toxics, exhaust VOC and NOx".]

Average Toxics Emissions Index =

$$\frac{(TI_1 \times V_1) + (TI_2 \times V_2) \ldots + (TI_n \times V_n)}{V_1 + V_2 \ldots + V_n}$$

where TI_1 = Toxics emissions Index for a batch of gasoline calculated using the methodology in 80.68

V_1 = the volume of gasoline in a batch

n = the number of batches of gasoline

Note: Similar calculations would be followed for exhaust VOC and NOx.

40. Section 80.72 is added to read as follows:

§ 80.72 Anti-dumping record keeping.

For each batch of conventional gasoline which it produces or imports on or after January 1, 1995, a person shall:

OPTION 1 for Paragraph (a)

(a) Determine the toxics emissions index using the methodology described in § 80.68;

OPTION 2 for Paragraph (a)

(a) [Replace "toxics" with "toxics and exhaust VOC".]

OPTION 3 for Paragraph (a)

(a) [Replace "toxics" with "toxics and NOx".]

OPTION 4 for Paragraph (a)

(a) [Replace "toxics" with "toxics, exhaust VOC and NOx".]

OPTION 1 for Paragraph (b)

(b) Obtain copies of the documents which state the results of tests performed to determine the level of each of the physical and chemical properties utilized in determining the toxics emissions index;

OPTION 2 for Paragraph (b)

(b) [Replace "toxics" with "toxics and exhaust VOC".]

OPTION 3 for Paragraph (b)

(b) [Replace "toxics" with "toxics and NOx".]

OPTION 4 for Paragraph (b)

(b) [Replace "toxics" with "toxics, exhaust VOC and NOx".]

(c) Determine the volume of the batch of gasoline using the method normally employed at the refinery or import facility for this purpose;

(d) Obtain documents which state the results of the volume determinations required in paragraph (c) of this section; and

OPTION for Paragraph (e)

(e) Obtain records which document the creation and the transfer of credits as described in § 80.74.

OPTION 1 for Paragraph (f)

(f) For a period of five years from the date the gasoline is produced or imported, retain the documents required in this section and deliver such documents to the Administrator of EPA upon the Administrator's request.

OPTION 2 for Paragraph (f)

(f) [Replace "five years" with "three years".]

OPTION 3 for Paragraph (f)

(f) [Replace "five years" with "two years".]

41. Section 80.73 is added to read as follows:

§ 80.73 Registration of persons for anti-dumping purposes.

OPTION 1 for Paragraph (a) Introductory Text

(a) Three months in advance of any averaging period during which a person will produce or import any conventional gasoline, such person shall register with the Administrator of EPA. This registration shall be on forms prescribed by the Administrator, and shall include the following information:

OPTION 2 for Paragraph (a) Introductory Text

(a) [Replace "Three months" with "One month".]

(1) The name and business address of the person;

(2) The address and physical location of each refinery and import facility at which conventional gasoline will be produced or imported by the person; and

(3) The address and physical location where documents which are required to be retained by §§ 80.65 through 80.76 will be kept by the person.

(b) Within thirty days of any occasion when the registration information previously supplied by a person becomes incomplete or inaccurate, the

person shall submit updated registration information to the Administrator.

42. Section 80.74 is added to read as follows:

OPTION for § 80.74:

§ 80.74 Credits and trading.

OPTION 1 for § 80.74 Introductory Text

Compliance with the requirements specified in §§ 80.71 (a) and (b) may be achieved through the transfer of toxics emissions index credits, collectively called anti-dumping credits, provided that:

OPTION 2 for § 80.74 Introductory Text

[Replace "toxics" with "toxics and exhaust VOC".]

OPTION 3 for § 80.71 Introductory Text

[Replace "toxics" with "toxics and NOx".]

OPTION 4 for § 80.74 Introductory Text

[Replace "toxics" with "toxics, exhaust VOC and NOx".]

(a) The credits must be generated in the same averaging period as they are used;

OPTION 1 for Paragraph (b)

(b) The credit transfer agreement is made no later than the final day of the averaging period in which the anti-dumping credits are generated; and

OPTION 2 for Paragraph (b)

(b) [Replace "the final day of" with "ten days following".]

OPTION 3 for Paragraph (b)

(b) [Replace "the final day of" with "fifteen days following".]

(c) Credits generated or required for each averaging period shall be determined by the following calculation:

OPTION 1 for Paragraph (c)(1)

(1) Calculate the complying total toxics emissions index by multiplying the applicable 1990 baseline toxics index times the number of gallons of gasoline produced and imported for the averaging period.

OPTION 2 for Paragraph (c)(1)

(1) [Replace "toxics" with "toxics and exhaust VOC".]

OPTION 3 for Paragraph (c)(1)

(1) [Replace "toxics" with "toxics and NOx".]

OPTION 4 for Paragraph (c)(1)

(1) [Replace "toxics" with "toxics, exhaust VOC and NOx".]

OPTION 1 for Paragraph (c)(2)

(2) Calculate the actual total toxics emissions index by multiplying the average toxics index, calculated pursuant to § 80.66, times the total number of gallons of gasoline produced and imported during the averaging period.

OPTION 2 for Paragraph (c)(2)

(2) [Replace "toxics" with "toxics and exhaust VOC".]

OPTION 3 for Paragraph (c)(2)

(2) [Replace "toxics" with "toxics and NOx".]

OPTION 4 for Paragraph (c)(2)

(2) [Replace "toxics" with "toxics, exhaust VOC and NOx".]

OPTION 1 for Paragraph (c)(3)

(3) Subtract the actual total toxics index from the complying total toxics index.

OPTION 2 for Paragraph (c)(3)

(3) [Replace "toxics" with "toxics and exhaust VOC".]

OPTION 3 for Paragraph (c)(3)

(3) [Replace "toxics" with "toxics and NOx".]

OPTION 4 for Paragraph (c)(3)

(3) [Replace "toxics" with "toxics, exhaust VOC and NOx".]

(4) If the result of the calculation in paragraph (c)(3) of this section is positive, this result is the number of credits which are available for transfer to others.

(5) If the result of the calculation in paragraph (c)(3) of this section is negative, this result is the number of credits which are required to achieve compliance with the requirements of § 80.71.

43. Section 80.75 is added to read as follows:

§ 80.75 Anti-dumping reports.

(a) For each averaging period in which a person produced or imported any conventional gasoline during any averaging period, the person shall submit to the Administrator of EPA a report which contains the following information:

(1) The total gallons of conventional gasoline that person produced or imported during the averaging period;

OPTION 1 for Paragraph (a)(2)

(2) The average toxics emissions index, and the calculations used to derive the index of the total volume of conventional gasoline the person produced or imported during the averaging period;

OPTION 2 for Paragraph (a)(2)

(2) [Replace "toxics" with "toxics and exhaust VOC".]

OPTION 3 for Paragraph (a)(2)

(2) [Replace "toxics" with "toxics and NOx".]

OPTION 4 for Paragraph (a)(2)

(2) [Replace "toxics" with "toxics, exhaust VOC and NOx".]

(3) The total credits utilized during the average period plus the names of the parties involved in the transfer of credits, and the number of credits transferred; and

(4) Such other information as EPA may require.

(b) The report required by paragraph (a) of this section shall be:

(1) Submitted on forms and following procedures specified by the Administrator of EPA;

(2) Submitted to the Administrator of EPA within fifteen days following the conclusion of each averaging period; and

(3) Signed by the owner or a responsible corporate officer of the refiner or importer business.

(c) In addition to the reports required by this paragraph, each person who produces or imports conventional gasoline during an averaging period shall cause to be submitted to the Administrator of EPA the report of an audit, to be conducted in accordance with the requirements of § 80.70, within sixty days following the conclusion of every averaging period.

(1) The audit report required in this paragraph (c) shall be submitted to EPA by the auditor.

(2) Failure of the auditor to submit the required report will constitute a violation of the reporting requirement by the person who produced or imported conventional gasoline.

[**Note:** Additional reporting requirements will be necessary in § 80.75 if maximum benzene content is required.]

44. Section 80.76 is added to read as follows:

OPTION for § 80.76

§ 80.76 Anti-dumping prohibited activities.

(a) *Prohibited activity.* (1) No refiner, importer, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer may manufacture, sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transportation of conventional gasoline

which contains more than [a specified] percent content of benzene.

(2) *Liability for violations of the prohibited activities.* Where the gasoline contained in any storage tank at any facility owned, leased, operated, controlled or supervised by any retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or importer is found in violation of the prohibition described in paragraph (a)(1) of this section, the following persons shall be deemed in violation:

(i) The retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or importer who owns, leases, operates, controls or supervises the facility where the violation is found; and

(ii) Each refiner, importer, distributor, reseller, and carrier who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.

(b) *Defenses for prohibited activity.* (1) In any case in which a refiner, importer, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer would be in violation under paragraph (a) of this section, it shall be deemed not in violation if it can demonstrate:

(i) That the violation was not caused by the regulated party or its employee or agent;

(ii) Documents which accompany the gasoline which contain the information required by § 80.61(a), and which indicate the gasoline met relevant requirements; and

(iii) A quality assurance sampling and testing program carried out by the regulated party.

(2) Where a violation is found at a facility which is operating under the corporate, trade or brand name of a refiner, that refiner must show, in addition to the defense elements required by paragraph (b)(1) of this section, that the violation was caused by:

(i) An act in violation of law (other than the Act or this part), or an act of sabotage or vandalism;

(ii) The action of any reseller, distributor, ethanol blender, carrier, or a retailer or wholesale purchaser-consumer supplied by any of these persons, in violation of a contractual undertaking imposed by the refiner designed to prevent such action, and despite periodic sampling and testing by the refiner to ensure compliance with such contractual obligation; or

(iii) The action of any carrier or other distributor not subject to a contract with the refiner but engaged by the refiner for transportation of gasoline, despite specification or inspection of procedures and equipment by the refiner which are reasonably calculated to prevent such action.

(3) In this paragraph (b)(3), the term "was caused" means that the party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

[FR Doc. 91-15729 Filed 7-2-91; 10:22 am]

BILLING CODE 6560-50-M

federal register

Tuesday
July 9, 1991

Part IV

Department of Health and Human Services

Social Security Administration

20 CFR Part 404

Revised Medical Criteria for Determination of Disability, Cardiovascular System; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960-AA99

Revised Medical Criteria for Determination of Disability, Cardiovascular System

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: Medical criteria for evaluating disability and blindness are found in the Listing of Impairments (the Listing) in appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The Listing describes, for each of the 13 major body systems, impairments that are considered severe enough to prevent a person from doing any gainful activity. Part A of the Listing contains medical criteria that apply to persons age 18 and over and to persons under age 18 if the disease processes have a similar effect on adults and younger persons. Part B of the Listing contains medical criteria that apply only to evaluating impairments of children under age 18.

When parts of the Listing were last revised and published in the **Federal Register** on December 6, 1985 (50 FR 50068), we indicated in the preamble that medical advancements in disability evaluation and treatment and program experience would require that the Listing be periodically reviewed and updated. Accordingly, we published termination dates ranging from 4 to 8 years for each of the specific body system listings. These dates currently appear in the introductory paragraphs of the Listing and the extension for the expiration date for part A of the cardiovascular regulation appears in the **Federal Register** of December 5, 1989 (54 FR 50233). We are now proposing revisions to update the cardiovascular system listings in 4.00 (part A) and 104.00 (part B) and to extend the effective date of these revised listing for 4 years from the date of their publication in final form.

DATES: To be sure that your comments are considered, we must receive them no later than September 9, 1991.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 966-0512.

SUPPLEMENTARY INFORMATION: The Social Security Act (the Act) provides, in title II, for the payment of disability benefits to workers insured under the Act. Title II also provides child's insurance benefits for persons who became disabled before age 22 and widow's and widower's insurance benefits based on disability for widows/widowers and surviving divorced spouses of insured individuals. In addition, the Act provides, in title XVI, for supplemental security income (SSI) payments to persons who are disabled and have limited income and resources. For workers insured under title II, for children of workers insured under title II who become disabled before age 22, and for adults claiming SSI benefits based on disability, disability means inability to engage in any substantial gainful activity. For entitlement to benefits as a disabled widow or widower or surviving divorced spouse under title II, disability means that the level of severity of the impairment or combination of impairments prevents any gainful activity. For eligibility for SSI benefits as a disabled child under age 18, disability means that the impairment is of comparable severity to an impairment which would make an adult (a person age 18 or older) disabled. Under both the title II and title XVI programs, disability must be by reason of a medically determinable physical or mental impairment or combination of impairments which can be expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months. To the extent that Medicare and Medicaid eligibility are based on title II and title XVI (SSI) eligibility, these proposed regulations also affect the Medicare and Medicaid programs.

The Listing contained in appendix 1 to subpart P of part 404 is incorporated by reference in subpart I of part 416. The Listing is divided into part A and part B. The medical criteria in part A are applied in evaluating impairments of persons age 18 or over. The criteria in part A may also be applied in evaluating impairments in children under age 18 if the disease processes have a similar effect on adults and younger persons. part B contains medical criteria for evaluating impairments of persons under age 18 where the criteria in part A do not give appropriate consideration to the particular effects of the disease processes in childhood. In evaluating disability for a person under age 18, we first use the criteria in part B, and if the criteria in part B do not apply, we use the criteria in part A. (See §§ 404.1525 and 416.925.)

The basic concept of the proposed revised listings is to put less emphasis on disease labeling, or diagnosis, and to emphasize the impact of impairment(s) on a person's ability to perform gainful activity or, in the case of a child, on the child's ability to perform age-appropriate activities. By age-appropriate activities, we mean performance of developmental skills or activities that conform with expected norms for the chronological age of the child at the time we make a comparison. A description of age-appropriate activities for children up to age 5 years may be found in references such as the current edition of Nelson: *Textbook of Pediatrics*, Behrman and Vaughan; W.B. Saunders. A description of age-appropriate activities for children ages 4½ to 14½ years may be found in references such as the current edition of Bruininks-Oseretsky Test of Motor Proficiency, Robert H. Bruininks, Circle Pines, MN: American Guidance Service. Age-appropriate activities for individuals 14½ to 18 are not unlike those of young adults (e.g., school, work); therefore, specific references for a description of age-appropriate activities are unnecessary.

The proposed revisions to the cardiovascular system listings in part A, with the exception of those relating to the evaluation of peripheral arterial disease, were developed with the assistance of representatives from medical professional groups, including the American Medical Association, the American College of Physicians, the American College of Cardiology, the American Academy of Family Physicians, and the National Medical Association, and with the help of Federal and State representatives who have expertise in the evaluation of disability claims involving cardiovascular impairments. The representatives from the above professional organizations endorsed the changes being proposed in these rules. A representative from Mended Hearts, a group representing individuals with

heart disease, also participated in discussions on the cardiac listing revisions. Proposed revisions to the criteria for the evaluation of peripheral arterial disease and all of the part B criteria were developed with the assistance of medical consultants from our Office of Disability.

Although these proposed regulations reflect advances in the evaluation and treatment of cardiovascular impairments, all of the techniques, tests, procedures, etc., cited in these proposed regulations are generally available and have been published in the cumulative list of new or improved diagnostic techniques in the notices section of the **Federal Register** (51 FR 19413, May 29, 1986). The cardiovascular system listings, as amended by these proposed changes, will no longer be effective 4 years after the date of publication of the final regulations.

Revisions to Part A of Appendix 1

4.00 Cardiovascular System

We have reorganized the introductory portions of the cardiovascular listings to facilitate their use. Proposed 4.00A is new and contains two considerations of particular importance in applying the cardiovascular criteria.

First, this listing recognizes that, prior to assessment of the impairment, most individuals usually have received the benefit of a medically prescribed program of progressive physical activity. Second, it points out that a longitudinal clinical record of 3 months of observations and therapy prescribed by the treating physician are usually necessary to assess the severity and expected duration of the impairment. This approach emphasizes the importance of treatment, prescribed by the treating source, prior to assessment of the severity and duration of the impairment.

The discussion in 4.00A has been moved to 4.00B and replaced with an introductory discussion. There are two types of changes in listing 4.00B which lists the major types of cardiac impairments. First, we have revised the language for the three types of currently listed impairments to expand their scope and to conform to current clinical concep.s. Second, a category has been added to address congenital heart disease since more individuals with this condition are living into adulthood.

A new listing 4.00C on documentation requirements consolidates and augments the guides presently in listings 4.00 F, G, H, and I. We have expanded the discussion in 4.00C1b on the needed descriptions of protocols for various types of exercise tests, including treadmill, bicycle, and arm ergometry. An important policy change in 4.00C2a is the new provision for the purchase of an exercise test when a program physician (whenever possible one experienced in the care of patients with cardiovascular disease) has found that performance of the test presents no significant risk to the individual, and there is no timely exercise test of record. This change recognizes the increased use of and reliance on exercise tests by physicians in clinical practice in the care of cardiac patients. The exercise test is one of the most useful, widely available tests to identify individuals with heart disease who are so functionally limited that they cannot work. *Guidelines*, 8 J. Amer. Coll. Card., 726–28; Haskell, et al., *Task Force II: Determination of Occupational Capacity in Patients with Ischemic Heart Disease, (Consensus Conference Task Force II)*, 14 J. Amer. Coll. Card., 1025, 1030, 1033 (1989). There was agreement from all the Cardiovascular Panel members on the usefulness of the exercise test for assessing an individual's capacity for exertional activities. (When individuals with heart disease are incapacitated or symptomatic at rest and either have not or cannot undergo the exercise test, other findings are incorporated in the listing.) The increased use of the exercise test in determining whether a claimant's impairment meets the listing criteria in these proposed rules is consistent not only with current medical thinking, but also with our overall objective of placing greater emphasis on the impact of an impairment(s) on a person's ability to work and less emphasis on diagnosis of an impairment.

In connection with our expanded policy for purchasing exercise tests and echocardiograms or radionuclide tests, we have also added a requirement to 4.00C2a and 4.00C3 that before purchasing any tests where exercise is involved, a program physician, preferably one experienced in the care of patients with cardiovascular disease, should review the clinical record to determine whether the test presents a significant risk to the individual. This requirement recognizes that technically sophisticated medical reports of record need to be reviewed by a physician to assess potential risk to exercise testing.

It should be noted that notwithstanding the reliance we will place on the results of exercise tests under the proposed new listings, we will not rely exclusively on the results of these tests at any step in the sequential evaluation process. At the listing step (meets/equals), we will consider all available medical evidence (signs, symptoms, laboratory findings). If we find that the listing criteria involving the results of an exercise test are met, we will make a meets determination of allowance. If we cannot, we will then, upon consideration of all the medical evidence, determine if another cardiovascular or other listing is met. If no other listing is met, we will again consider all the medical evidence to determine if the set of findings is medically equivalent in severity to any listing. If so, we will make an equals determination of allowance. For example, if the evidence of ischemic heart disease (which includes an exercise test) does not meet any listing criteria, we will determine if any listing, including the listings involving exercise tests, is equaled. In these cases, an equals decision may still be made even though the results of the exercise test do not meet the requirements in the listing. As a case in point, if there is evidence of ischemia and/or cardiac irregularities with symptoms precipitated by stress in the workplace and documented by ambulatory electrocardiogram recordings, an equals decision could follow. If we find after considering all the medical evidence that a claimant's impairment(s) does not meet or equal a listing, we will then continue through the sequential evaluation process to determine if, based upon all the evidence, the claimant can be found disabled. In short, the proposed listings do not alter in any way our policy under sections 404.1520 and 416.920 of our regulations of making individualized disability assessments and of considering all of the available and relevant evidence when evaluating claims for benefits based on disability in accordance with sections 223(d)(5)(b) and 1614(a)(3)(G) of the Act.

The proposed 4.00C2b will replace the present 4.00G2. We have removed the requirement that the targeted heart rate should not be less than 85 percent of maximum predicted heart rate during exercise testing since the proposed listings do not use the exercise test for diagnosis but rather for functional evaluation.

We have moved the discussion in the present 4.00I to 4.00C3 and have expanded the discussion on the use of echocardiograms and radionuclide studies. Current criteria state that the results are considered but are not determinative. The proposed criteria explain that there are several imaging techniques, including two-dimensional echocardiography which can provide a reliable estimate of ejection fraction, and these tests are included in the proposed listing criteria. Moreover,

purchase of these tests will now be permitted in selected cases, e.g., when other information available is not adequate to assess the severity of ventricular dysfunction or myocardial ischemia.

Listing 4.00D discusses treatment (medical, surgical and/or a prescribed program of progressive physical activity) and its relationship to functional status. Proposed 4.00D states that evaluation should usually be deferred for a period of up to 3 months to assess the effect of treatment. This listing expands the criteria presently in 4.00J for evaluation 3 months after cardiac surgery and provides guides for evaluation postangioplasty.

In proposed listing 4.00E, we address clinical syndromes presently discussed in 4.00B, C, D, E and K. We have added a discussion on chronic heart failure with and without congestion. Because congestion (fluid retention) is now often controlled by potent diuretic medications, we propose elimination of the requirement for the presence of congestion.

We are moving the material on hypertensive vascular disease, now in listing 4.00C, to 4.00E2 and are retitling this new listing "Hypertensive cardiovascular disease."

The proposed listing 4.00E3, on ischemic heart disease, combines and expands the guides presently in listing 4.00D and E. The terminology "chest pain of cardiac origin" has been reworded, for clarity, to "discomfort of myocardial ischemic origin." This revision also recognizes that the discomfort may be precipitated by emotion as well as exertion. Descriptions of noncoronary conditions which may cause ischemic discomfort and noncardiac chest conditions which may produce symptoms mimicking that of myocardial ischemia have been added to help in the evaluation of chest discomfort. This proposed listing also indicates that chest discomfort of nonischemic origin may result from other cardiac conditions, such as pericarditis and mitral valve prolapse.

The discussion of peripheral arterial disease presently in listing 4.00K will be moved to listing 4.00E4.

4.01 Category of Impairments, Cardiovascular

4.02 Chronic Heart Failure

We are changing the title of listing 4.02 from "congestive" to "chronic" heart failure and adding a requirement that the individual be on a treatment regimen prescribed by the treating source. Because overt fluid retention is now often medically controlled at rest, even in the presence of chronic failure, we are removing the requirement that peripheral or pulmonary edema be present on physical or laboratory examination. We are adding provisions for purchasing an exercise test in cases where less than the class IV functional criteria of the New York Heart Association are present.

4.03 Hypertensive Cardiovascular Disease

We propose to change the title of this listing from hypertensive vascular disease, but propose no change in the content.

4.04 Ischemic Heart Disease

Listing 4.04A criteria on evaluating ischemic heart disease when there is a recent exercise test of record will be amended to exclude nonspecific rhythm/conduction disturbance and expanded to include blood pressure response and imaging techniques in current use. When an exercise test has not been performed and cannot be purchased because performance of the test would present a significant risk to the individual, evaluation will proceed under a proposed new 4.04B and C. We propose that the 4.04B and C criteria apply when purchase of an exercise test would pose a significant risk to the claimant. Listings 4.04B and C are also descriptive of individuals who may be too impaired to perform exercise and are symptomatic at rest. The new 4.04B and C criteria will require demonstration of cardiac functional loss resulting from heart disease.

4.05 Recurrent Arrhythmias

Listing 4.05 has been expanded and the title has been changed from "recent" to "recurrent" to make clear that the arrhythmia is persistent and not a transient event. The new criteria specify that arrhythmias related to reversible causes are excluded as a basis for meeting the listing and add a requirement that resting or ambulatory (Holter) electrocardiography demonstrating the arrhythmia be coincident with occurrence of syncope.

4.06 Symptomatic Congenital Heart Disease

We propose to add listing 4.06 on congenital heart disease because more individuals with this condition are living into adulthood.

4.07 Valvular Heart Disease

The new listing provides references to other listings to be used to evaluate rheumatic and syphilitic valvular heart disease. It replaces the present 4.09 listing.

4.08 Cardiomyopathies

The new listing provides references to other listings to be used to evaluate cardiomyopathies. It replaces the present 4.09 listing.

4.09 Cardiac Transplantation

This is a new listing providing for disability for 1 year following a heart transplant.

4.10 Aneurysm of Aorta or Major Branches

This proposed new listing, the present 4.11, has been broadened to encompass all neurological complications from aneurysm, not just syncopal episodes. Also added is a list of common causes of aneurysms.

4.11 Chronic Venous Insufficiency

This is the present listing 4.12.

4.12 Peripheral Arterial Disease

This is the present listing 4.13.

Revisions to Part B (Childhood Portion) of Appendix 1

104.00 Cardiovascular System

We propose to revise and expand the introductory material to improve and facilitate its use.

Listing 104.00A will continue to emphasize that cardiovascular disorders and impairments must be substantiated on the basis of medical evidence. Because not all forms of cardiac disease are necessarily disabling, this introduction will include guidance regarding specific congenital and acquired heart conditions that can be frequently associated with disabling impairments during childhood. We are including a statement that the evaluation of an impairment should include consideration of the adverse effects of the disorder on the child's growth and development.

We propose to expand listing 104.00B to include documentation and evaluation requirements with emphasis on obtaining medical evidence from sources experienced in providing pediatric cardiac services. Reference is made to obtaining results of studies which may have been performed using technologies, e.g., two-dimensional and Doppler echocardiography and radionuclide ventriculograms, for evaluating the presence and severity of cardiovascular disorders. Explicit guidance is also provided that the Social Security Administration will not purchase cardiac catheterization studies. Emphasized is the importance of requesting data and reports of cardiac catheterization, if available.

Listings 104.00 C and D are new and will provide guidelines to be used in the evaluation of infants and children with congenital heart disease under listing 104.06. Listing 104.00C is based on the general principle that disability is to be determined on the basis of functional impairment. However, in evaluating very young infants with congenital heart disease, the need for cardiac surgery in the first year can reasonably be presumed to represent the presence of a listing-level cardiac impairment which can be expected to last for many months following surgical treatment. In these cases, the child will be considered disabled until the child is 24 months old. Listing 104.00D provides a definition of congenital heart impairment for the purposes of this listing and cites examples of cardiac defects that usually result in a listing-level impairment in the first year of life.

A new listing 104.00E on chronic heart failure is being added and is meant to emphasize the clinical and laboratory findings that document impairment due to heart failure. The use of imaging techniques is cited in demonstrating the presence of cardiomegaly or ventricular dysfunction.

Listing 104.00F, valvular heart disease, is being added to describe the circumstances under which an impairment is likely to be present and the necessary documentation requirements.

The present listing 104.00E on rheumatic fever will be retitled "Rheumatic heart disease," and renumbered 104.00G.

104.01 Category of Impairments, Cardiovascular

The proposed revisions to the Part B cardiovascular listings maintain structural and content comparability with Part A to the extent applicable.

104.02 Chronic Heart Failure

We are removing the term "congestive" from the title of listing 104.02. Because of pharmacological and clinical advances in controlling overt pulmonary and systemic congestion (fluid retention), heart failure can be present in the absence of signs of heart failure.

This listing criteria under proposed 104.02A stress the importance of demonstrating functional impairment. However, we are requiring the presence of either cardiomegaly or ventricular dysfunction as described in the proposed introduction in listing 104.00E.

A new listing 104.02B has been developed to provide for the evaluation of the infant and young child whose major manifestation of chronic heart failure is a failure to gain weight that necessitates extraordinary and extended feeding measures. Proposed listing 104.02C provides references to the listing on growth impairment. It has been included to permit evaluation of height and growth failure under the cardiovascular listing.

Removed from the new listing 104.02 are the tables currently in 104.02 A and B for tachycardia and tachypnea. These tables were removed because they are not useful for assessing functional impairment.

104.03 Hypertensive Cardiovascular Disease

The table entitled "Elevated Blood Pressure," designated Table III in the current listing 104.03, has been updated using values currently recommended by the American Academy of Pediatrics. The new table is unnumbered.

104.05 Recurrent Arrhythmias

We propose to drop the criteria in listing 104.05C for exercise intolerance because, if present, such intolerance would most likely be manifested in association with chronic heart failure as described under the revised listing 104.02. The proposed 104.05C provides that the need for long-term pacemaker management can constitute a listing level impairment. Cardiac syncope, presently in 104.07, is covered in proposed listings 104.05A and 104.06B3.

104.06 Congenital Heart Disease

New listing 104.06 (currently 104.04) is renamed "Congenital heart disease" because it is to be used for both cyanotic and acyanotic congenital conditions. The term "palliative" as applied to cardiac impairment or surgical procedures is no longer particularly meaningful in evaluating impairment severity. For this reason, the current 104.04A criterion, which refers to palliative surgery, has been omitted from the proposed congenital heart disease listing 104.06. The revised surgical criterion in the new 104.06A permits more appropriate evaluation of cardiac impairment. Twelve months of age has been chosen as the upper age limit for the criterion as the majority of congenital conditions described are known to result in life-threatening cardiac impairment or death within that time period. Twenty-four months of age is recommended as an appropriate age at which to consider continuing disability review in order to allow most infants the necessary postoperative time for stabilization and resumption of expected growth and development patterns for age.

The criteria under the proposed 104.06B represent criteria that were previously included under 104.04B and C. Cardiac syncope, presently in 104.07, is in proposed 104.06B3 and 104.05A. Listings 104.06C, D, E, and F are included to maintain content comparability with part A, listing 4.04. The present listing for hemoptysis (104.08) has been deleted. This condition will be evaluated under the proposed 104.06E. Listing 104.06G is a new criterion that has been included to evaluate manifestations of symptomatic, acyanotic, congenital heart disease with ventricular dysfunction.

104.07 Valvular Heart Disease

This new listing provides a criterion for critical aortic stenosis and provides references to the other listings which may apply. The present listing 104.07 has been moved to 104.05 and 104.06B3.

104.08 Cardiomyopathies

This new category provides criteria for use of the results of imaging techniques and provides references to other relevant listings for evaluating function in cardiomyopathy.

104.09 Heart Transplantation

Children who have had heart transplants will be considered disabled for 1 year postsurgery or until age 24 months, whichever is the later event.

104.13 Chronic Rheumatic Fever or Rheumatic Heart Disease

This listing has been renumbered from the present 104.09. Added is a provision for finding a child disabled for 18 months after established onset of impairment when the specified medical findings are present.

104.14 Hyperlipidemia

This new listing has been proposed on the basis that there are forms of this disorder that can result in major organ complications and cause disabling impairment or early death.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because implementation will not result in additional costs of $100 million and other threshold criteria for a major rule are not met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations will impose no new reporting or recordkeeping requirements subject to

clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they primarily affect only individuals who are receiving title II or title XVI benefits because of disability.

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

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: April 23, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 404 of chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

PART 404—[AMENDED]

1. The authority citation for subpart P 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 the 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.

Subpart P, Appendix 1—[Amended]

2. Section 4.00, Cardiovascular System, of part A of appendix 1 to subpart P of part 404 (20 CFR part 404) is revised to read as follows:

4.00 Cardiovascular System

A. *Introduction.* The criteria listed below for evaluating impairments resulting from heart disease are based on symptoms, physical signs, laboratory test abnormalities, and response to a regimen of therapy prescribed by the treating source. A longitudinal clinical record covering a period of not less than 3 months of observations and therapy is usually necessary for the assessment of severity and expected duration of cardiovascular impairment. Whenever there is such evidence, the clinical record must include a description of therapy prescribed by the treating source and response. Prior to the assessment of impairment, most individuals usually have received the benefit of a medically prescribed program of progressive physical activity accompanied by relevant educational and psychological support. It is important to document the prescribed therapy and response because individuals who have had a period of bedrest or inactivity may be deconditioned and will do poorly on exercise testing.

B. *Cardiac impairment* results from one or more of four consequences of heart disease:

1. Chronic heart failure or ventricular dysfunction.

2. Discomfort or pain due to myocardial ischemia, with or without necrosis of heart muscle.

3. Syncope due to inadequate cerebral perfusion from any cardiac cause such as obstruction of flow or disturbance in rhythm or conduction resulting in inadequate cardiac output.

4. Central cyanosis (due to right-to-left shunt), arterial desaturation, or pulmonary vascular disease.

Impairment from diseases of arteries and veins may result from disorders of the vasculature in the central nervous system (11.04 A, B), eyes (2.02–2.04), kidney (6.02), extremities (4.11–4.12), and other organs.

C. *Documentation.* Each individual's file must include sufficiently detailed reports on history, physical examinations, laboratory studies, and the prescribed therapy and response to allow an independent reviewer to assess the severity and duration of the cardiovascular impairment.

1. *Electrocardiography.*

a. An original or legible copy of the 12-lead electrocardiogram (ECG) obtained at rest must be submitted, appropriately dated and labeled, with the standardization inscribed on the tracing. Alteration in standardization of specific leads (such as to accommodate large QRS amplitudes) must be identified on those leads.

(1) Detailed descriptions or computer-averaged signals without original or legible copies of the ECG as described in subsection 4.00Cla are not acceptable.

(2) The effects of drugs or electrolyte abnormalities must be considered as possible noncoronary causes of ECG abnormalities of ventricular repolarization, i.e., those involving the ST segment and T wave. If available, predrug (especially digitalis glycoside) ECG should be submitted.

(3) The term "ischemic" is used in 4.04A to describe an abnormal ST segment deviation. Nonspecific repolarization abnormalities should not be confused with "ischemic" changes.

b. Electrocardiograms obtained in conjunction with treadmill, bicycle, or arm exercise tests should meet the following specifications:

(1) ECGs should include the original calibrated ECG tracings or a legible copy.

(2) A 12-lead baseline ECG must be recorded in the upright position before exercise.

(3) A 12-lead ECG should be recorded at the end of each stage of exercise, at the time the ST segment abnormalities reach or exceed the criteria for abnormality described in 4.04A or the individual experiences chest discomfort or other abnormalities, and also when the exercise test is terminated.

(4) If ECG documentation of the effects of hyperventilation is obtained, the posthyperventilation ECG should be deferred until at least 10 minutes after the exercise test because metabolic changes of hyperventilation may alter the physiologic and ECG response to exercise.

(5) Postexercise ECGs should be recorded at 1, 2, 3, 5, and 10 minutes during recovery in accordance with the Guidelines for Exercise Testing, report of Joint American College of Cardiology/American Heart Association Task Force, Sept. 1986, Circulation 74, 653A–667A or J. AM. Coll. Cardiol; 8, 723–738 or the Exercise Testing Standards Book (70–041–B), American Heart Association (1979).

(6) All resting, exercise, and recovery ECG strips must have a standardization inscribed on the tracing. The ECG strips should be labeled to indicate the times recorded and the relationship to the stage of the exercise protocol. The speed and grade (treadmill test) or work rate (bicycle or arm ergometric test) should be recorded. The highest level of exercise achieved, blood pressure levels during testing, and the reason(s) for terminating the test (including limiting signs or symptoms) must be recorded. Whether or not the individual was allowed to support the body weight partially on the treadmill handrails should be recorded since this support on the handrails may extend exercise duration and lead to overestimation of functional capacity. The original 20-point Borg scale intensity rating of perceived exertion [SCAND. J. REHAB. MED., 2, 92 (1970)], if obtained, should be reported. If this perception is initially 9 or more, the initial workload is too high; the protocol should be modified and the exercise test repeated. If the highest perceived exertion does not exceed 15, symptom-limited effort is not obtained.

2. *Exercise tests.*

a. It is well recognized by medical experts that exercise testing is the best tool currently available for assessing functional capacity in individuals with a

cardiovascular impairment. Although valid exercise tests are not the exclusive means SSA uses for assessing the severity of heart disease, they are, when available, the primary basis for evaluating functional capacity under this listing. Exercise test reports, when available, must be included in the file. Purchase of an exercise test may also be appropriate. Before purchasing an exercise test, a program physician must review the pertinent history, physical examinations, and laboratory tests to determine whether obtaining the test would present a significant risk to the individual. Whenever available, the program physician who will perform this review will be one with experience in the care of patients with cardiovascular disease. Purchase may be indicated for functional assessment when there is no contraindication to exercise testing and there is no timely test of record. An exercise test is generally considered timely for 12 months after the date performed, provided there has been no change in clinical status that may alter the severity of the cardiac impairment.

b. Methodology:

(1) When an exercise test is purchased, it should be a "sign- or symptom-limited" test characterized by a progressive multistage regimen. The protocol should begin at a workload perceived to be less than 9 on the Borg Scale [(SCAND. J. REHAB. MED., 2, 92 (1970)] and take at least 6 minutes to reach the equivalent of walking on the treadmill at a speed of 1.7 mph at a 10% grade, which should be maintained for at least 3 minutes [cited in the literature as 5 METs, estimated from external workload and not necessarily by measurement of oxygen uptake—see 1986 references listed under 4.00C1b(5)].

(2) The exercise test should be paced to the capabilities of the individual and be supervised by a physician. With a treadmill test, the speed, grade (incline) and duration of exercise must be recorded for each exercise test stage performed. Other exercise test protocols or techniques that are used should utilize similar workloads.

(3) Levels of exercise should be described in terms of workload and duration of each stage, e.g., treadmill speed and grade, or bicycle ergometer work rate in kpm/min or watts.

(4) Normally, systolic blood pressure and heart rate increase gradually with exercise. A decrease in systolic blood pressure during exercise below the usual resting level is often associated with ischemia-induced left ventricular dysfunction resulting in decreased cardiac output. Some individuals (because of deconditioning or apprehension) with increased sympathetic responses may increase their systolic blood pressure and heart rate above their usual resting level just before and early into exercise. This occurrence may limit the ability to assess the significance of an early decrease in systolic blood pressure and heart rate if exercise is discontinued shortly after initiation.

(5) Changes in diastolic blood pressure should be noted. A decrease in peripheral vascular resistance at high workload may result in a decrease in diastolic and systolic blood pressures with no decrease in pulse pressure. Conversely, an increase in diastolic blood pressure with low workloads, together with a decrease in systolic blood pressure and decrease in pulse pressure, indicates an increase in peripheral vascular resistance to compensate for inadequate cardiac output.

(6) The exercise laboratory physical environment, staffing, and equipment should meet the standards for adult exercise test laboratories in accordance with the references cited in 4.00C1b(5). A precise description of the exercise protocol that was employed must always be provided.

c. Risk factors in exercise testing: Exercise testing should not be purchased for individuals who have the following: Unstable progressive angina pectoris, a history of acute myocardial infarction within the past 3 months, New York Heart Association (NYHA) class IV heart failure, cardiac drug toxicity, uncontrolled serious arrhythmia (including uncontrolled atrial fibrillation), uncontrolled severe systemic arterial hypertension, recent aortic dissection, arterial dissection after coronary angioplasty, recent pulmonary embolism, or an acute illness. In recent pulmonary embolism, or an acute illness. In addition, an exercise test should not be purchased for individuals for whom the performance of the test is considered to constitute a significant risk even in the absence of any of the above risk factors, by a program physician. Whenever available, the program physician who will perform this review will be one with experience in the care of patients with cardiovascular disease. In defining risk, the program physician will give great weight to the treating physicians' opinions and will generally not override them. In those limited situations in which the program physician does override the treating source's opinion, the reasons will be documented.

d. In order to permit maximal, attainable restoration of functional capacity, exercise testing should not be purchased until 3 months after an acute myocardial infarction, surgical myocardial revascularization, or other open-heart surgical procedures. Furthermore, purchase of an exercise test should be deferred for 3 months after percutaneous transluminal coronary angioplasty because restenosis with ischemic symptoms may occur within a few months of angioplasty.

e. Other limitations to exercise test interpretation include the presence of noncoronary or nonischemic factors that may influence the hemodynamic and ECG response to exercise, such as hypokalemia or other electrolyte abnormality, hyperventilation, vasoregulatory deconditioning, prolonged periods of physical inactivity, significant anemia, left bundle branch block pattern on the ECG (and other conduction abnormalities such as Wolff-Parkinson-White conduction) and other heart diseases or abnormalities (particularly valvular heart disease). Digitalis glycosides may cause ST segment abnormalities at rest, during and after exercise. Digitalis or other drug-related ST segment displacement, present at rest, may become accentuated with exercise and make ECG interpretation difficult, but such drugs do not invalidate an otherwise normal exercise test. Diuretic-induced hypokalemia and left ventricular hypertrophy may also be associated with repolarization changes and behave similarly. Finally, treatment with beta blockers slows the heart rate more at near-maximal exertion than at rest; this limits apparent chronotropic capacity.

f. Evaluation: Exercise testing is evaluated on the basis of the work level at which the test becomes abnormal (e.g., ischemic "threshold") as documented by onset of signs and symptoms and any ECG abnormalities listed in 4.04A. When a treating or other examining physician has not performed an exercise test and there are no reported significant risks to testing (4.00C2c), a statement is required from the treating or examining physician explaining why it was not done or should not be done before deciding whether an exercise test should be purchased.

3. *Other studies.*

Information from 2-dimensional and Doppler echocardiographic studies of ventricular size and function as well as radionuclide (thallium ^{201}) myocardial "perfusion" or radionuclide (technetium 99^{M}) ventriculograms (RVG or MUGA) may be useful. These techniques can provide a reliable estimate of ejection fraction. In selected cases, these tests may be purchased after a medical history and physical examination, report

of chest x-rays, ECGs, and other appropriate tests have been evaluated. Purchase should be considered when other information available is not adequate to assess whether the individual may have severe ventricular dysfunction or myocardial ischemia and there is no significant risk involved (follow 4.00C2a guides).

The recording of properly calibrated ambulatory ECGs for analysis of ST segment signals with a concomitantly recorded symptom and treatment log may permit more adequate evaluation of chest discomfort during activities of daily living, but the significance of these data has not been established. This information (including selected segments of both the ECG recording and summary report of the patient diary) may be submitted for the record.

4. *Cardiac catheterization* will not be purchased by the Social Security Administration.

a. Coronary arteriography (by catheter)—If results of such testing are available, the report should be obtained and considered as to the quality and type of data provided and its relevance to the evaluation of the impairment. A copy of the report of the cardiac catheterization and ancillary studies should also be obtained. The report should provide information citing the method of assessing coronary arterial lumen diameter and the nature and location of obstructive lesions. Drug treatment at baseline and during the procedure should be provided. Coronary artery spasm induced by intracoronary catheterization is not to be considered evidence of ischemic disease. Some individuals with significant coronary atherosclerotic obstruction have collateral vessels that supply the myocardium distal to the arterial obstruction so that there is no evidence of myocardial damage or ischemia, even with exercise. When available, quantitative computer measurements and analyses should be considered in the interpretation of severity of stenotic lesions.

b. Left ventriculography (by catheter)—The report should describe the wall motion of the myocardium with regard to any areas of hypokinesis, akinesis or dyskinesis, and the overall contraction of the ventricle as measured by the ejection fraction. Measurement of chamber volumes and pressures may be useful. When available, quantitative computer analysis provides precise measurement of segmental left ventricular wall thickness and motion. There is often a poor correlation between left ventricular function at rest and functional capacity for physical activity.

D. *Treatment* (medical, surgical, or a prescribed program of progressive physical activity) and relationship to functional status:

1. The amount of function restored and the time required for improvement after treatment vary with the nature and extent of the disorder, the type of treatment and other factors. Depending upon the timing of this treatment in relation to the alleged onset date of disability, impairment evaluation usually should be deferred for a period of up to 3 months to permit consideration of treatment effects.

2. Exercise test results are required unless significant risks are associated with such testing (see 4.00C2c). However, the results of such tests will not be the exclusive means used to assess the severity of the individual's heart disease. See 4.00C2a.

3. The usual time after myocardial infarction, valvular and/or revascularization surgery for adequate assessment of the results of treatment is considered to be 3 months. If an exercise test is performed by a treating source within a week or two after angioplasty, and there is no significant change in clinical status during the 3 month period after the angioplasty that would invalidate the implications of the exercise test results, the exercise test results may be used to reflect functional capacity during the period in question. However, if the test was done immediately following an acute myocardial infarction or during a period of protracted inactivity, the results should not be projected to 3 months even if there is no change in clinical status.

4. An individual who has undergone cardiac transplantation will be considered under a disability for one year following the surgery because, during the first year, there is a greater likelihood of rejection of the organ and recurrent infection. Records should be obtained from the treating source concerning endocardial biopsies which are performed regularly and frequently during the first few months following transplantation to detect and assess the degree of rejection and the need for increased dosage of potent drugs to suppress the immune system. After the first year posttransplantation, continuing disability evaluation will be based upon residual impairment as shown by symptoms, signs, and laboratory findings. Absence of symptoms, signs, and laboratory findings indicative of cardiac dysfunction will be included in the consideration of whether medical improvement (as defined in §§ 404.1579 (b)(1) and (c)(1), 404.1594 (b)(1) and (c)(1), or 416.994 (b)(1)(i) and (c)(1)(i), as appropriate) has occurred.

E. *Clinical syndromes.*

1. Chronic heart failure (ventricular dysfunction) is considered in these listings as one category whatever its etiology, i.e., atherosclerotic, hypertensive, rheumatic, pulmonary, congenital or other organic heart disease. Chronic heart failure may manifest itself by:

a. Pulmonary or systemic congestion; or

b. Symptoms of limited cardiac output, such as weakness, fatigue, or intolerance of physical activity.

For the purpose of 4.02A, pulmonary and systemic congestion are not considered to have been established unless there is evidence of fluid retention, such as hepatomegaly or ascites, or peripheral or pulmonary edema of cardiac origin. However, the findings of fluid retention need not be present at the time of adjudication since congestion may be controlled with medication. Chronic heart failure due to limited cardiac output is not considered to have been established for the purpose of 4.02B unless symptoms occur with ordinary daily activities, i.e., activity restriction as manifested by a need to decrease activity, pace or to rest intermittently, and are associated with one or more physical signs or abnormal laboratory studies listed in 4.02B. These studies include exercise testing with ECG and blood pressure recording and/or appropriate imaging techniques, such as 2-dimensional echocardiography or radionuclide or contrast ventriculography. The exercise criteria are outlined in 4.02B2. In addition, other abnormal symptoms, signs, or laboratory test results that lend credence to the impression of ventricular dysfunction should be considered.

2. For the purposes of listing 4.03, hypertensive cardiovascular disease is evaluated by reference to the specific organ system involved (heart, brain, kidneys, or eyes). The presence of organic impairment must be established by appropriate physical signs and laboratory test abnormalities as specified in 4.02 or 4.04, or for the body system involved.

3. Ischemic (coronary) heart disease may result in an impairment due to myocardial ischemia and/or ventricular dysfunction or infarction. For the purposes of listing 4.04, the clinical determination that discomfort of myocardial ischemic origin (angina pectoris) is present must be supported by objective evidence as described under 4.00C1, 2, 3, or 4.

a. Discomfort of myocardial ischemic origin (angina pectoris) is discomfort that is precipitated by effort and/or emotion and promptly relieved by sublingual nitroglycerin, other rapidly acting nitrates, or rest. Typically the discomfort is located in the chest (usually substernal) and described as crushing, squeezing, burning, aching or oppressive. Sharp, sticking or cramping discomfort is considered less common or atypical. Discomfort occurring with activity or emotion should be described specifically as to timing and usual inciting factors (type and intensity), character, location, radiation, duration and response to nitrate therapy or rest.

b. So-called anginal equivalent may be localized to the neck, jaw(s) or hand(s) and has the same precipitating and relieving factors as typical chest discomfort. Isolated shortness of breath (dyspnea) is not considered an anginal equivalent for purposes of adjudication.

c. Variant angina of the Prinzmetal type, i.e., rest angina with transitory ST segment elevation on ECG, may have the same significance as typical angina, described in 4.00E3a.

d. Chest discomfort of myocardial ischemic origin is usually caused by coronary artery disease. However, ischemic discomfort may be caused by noncoronary artery conditions, such as critical aortic stenosis, hypertrophic cardiomyopathy, pulmonary hypertension, or anemia.

These conditions should be distinguished from coronary artery disease, since the evaluation criteria, management, and prognosis (duration) may differ from that of coronary artery disease.

e. Chest discomfort of nonischemic origin may result from other cardiac conditions such as pericarditis and mitral valve prolapse. Noncardiac conditions may also produce symptoms mimicking that of myocardial ischemia.

These conditions include gastrointestinal tract disorders, such as esophageal spasm, esophagitis, hiatal hernia, biliary tract disease, gastritis, peptic ulcer, and pancreatitis, and musculoskeletal syndromes, such as chest wall muscle spasm, costochondritis, cervical or dorsal arthritis. Hyperventilation may also mimic ischemic discomfort. Such disorders should be considered before concluding that chest discomfort is of myocardial ischemic origin.

4. Peripheral Arterial Disease

The level of impairment is based on the symptomatology, physical findings, Doppler studies before and after a standard exercise test, or angiographic findings.

The requirements for evaluating peripheral arterial disease in listing 4.12B are based on the ratio of the systolic blood pressure at the ankle to the systolic blood pressure at the brachial artery, determined at the same time. Techniques for obtaining ankle systolic blood pressures include Doppler, plethysmographic studies, or other techniques.

Listing 4.12B1 provides for determining that the listing is met when the resting ankle/brachial systolic blood pressure ratio is less than 0.50. Listing 4.12B2 provides additional criteria for evaluating peripheral arterial impairment on the basis of exercise studies when the resting ankle/brachial systolic blood pressure ratio is 0.50 or above. The decision to obtain exercise studies should be based on an evaluation of the existing clinical evidence, but exercise studies are rarely warranted when the resting ankle-over-brachial systolic blood pressure ratio is 0.80 or above. The results of exercise studies should describe the level of exercise, e.g., speed and grade of the treadmill settings, the duration of exercise, symptoms during exercise, the reasons for stopping exercise if the expected level of exercise was not attained, blood pressures at the ankle and other pertinent sites measured after exercise, and the time required to return the systolic blood pressure toward or to the pre-exercise level. When an exercise Doppler study is purchased by the Social Security Administration, the requested exercise must be on a treadmill at 2 mph on a 12 percent grade for 5 minutes. Exercise studies should not be performed on individuals for whom exercise is contraindicated.

Application of the criteria in listing 4.12B may be limited in individuals who have marked calcific (Monckeberg's) sclerosis of the peripheral arteries or marked small vessel disease associated with diabetes mellitus.

4.01 Category of impairments, cardiovascular system.

4.02 *Chronic heart failure,* of any specified etiology while on a regimen of prescribed treatment, associated with:

A. Recurrent or persistent fatigue, dyspnea, and orthopnea at rest with documented functional class IV NYHA Criteria [The Criteria Committee of the New York Heart Association, Inc., Diseases of the Heart and Blood Vessels: Nomenclature and Criteria for Diagnosis, 6th edition, Little, Brown (Boston, 1964)]; and documented cardiac enlargement by appropriate imaging techniques (as outlined in 4.00C3);

Or

B. Recurrent fatigue and dyspnea with documented functional class III NYHA criteria (reference in 4.02A); and

1. Documented cardiac enlargement by appropriate imaging techniques (see 4.00C3) or ventricular dysfunction manifested by S_3, abnormal wall motion, or reduced global ejection fraction by appropriate imaging techniques; and

2. Markedly symptomatic exercise intolerance at a workload equivalent to 5 METs or less (see references in 4.00C1b(5) and 4.00C2b), or, in rare instances, stopping exercise at less than this level of work because of:

a. Three or more consecutive ventricular premature beats; or

b. Failure to increase systolic blood pressure by 10 mmHg, or decrease in systolic pressure below the usual resting level (see 4.00C2b); or

c. Signs attributable to inadequate cerebral perfusion, such as ataxic gait or mental confusion;

Or

D. Cor pulmonale fulfilling the criteria in 4.02 A or B.

4.03 *Hypertensive cardiovascular disease.* Evaluate under 4.02 or 4.04, or under the criteria for the affected body system (2.02 through 2.04, 6.02, or 11.04A, or B).

4.04 *Ischemic heart disease* with chest discomfort, occurring repeatedly, associated with myocardial ischemia, as described in 4.00E3, while on a regimen of prescribed treatment. With:

A. Symptom- and sign-limited exercise test demonstrating at least one of the following manifestations at a workload equivalent to 5 METS or less (see references in 4.00C1b(5) and 4.00C2b):

1. Horizontal or downsloping depression, in the absence of digitalis glycoside therapy and/or hypokalemia, of the ST segment of at least –0.10 millivolts (–1.0mm) in at least 3 consecutive complexes that are on a level baseline in any lead (other than aVR) and that have a typical ischemic time course of development and resolution (progression of horizontal or downsloping ST depression with exercise, and persistence of depression of at least –0.10 millivolts for at least 1 minute of recovery); or

2. An unsloping ST junction depression, in the absence of digitalis glycoside therapy and/or hypokalemia, in any lead (except aVR) of at least —0.2 millivolts or more for at least 0.08 seconds after the J junction and persisting for at least 1 minute of recovery; or

3. At least 0.1 millivolt (1 mm) ST elevation above resting baseline during both exercise and 3 or more minutes of

recovery in ECG leads with low R and T waves in the leads demonstrating the ST segment displacement; or

4. Failure to increase systolic pressure by 10 mmHg, or decrease in systolic pressure below usual clinical resting level (see 4.00C2b); or

5. Documented reversible radionuclide "perfusion" (thallium ^{201}) defect at an exercise level equivalent to 5 METs or less (see 4.00C1b(5) and 4.00C2b);

Or

B. Documented functional class IV NYHA criteria (see reference in 4.02A); and an evaluating program physician, preferably one experienced in the care of patients with cardiovascular disease, has concluded that performance of exercise testing would present a significant risk to the individual; and impaired myocardial function is documented by evidence (as outlined under 4.00C3 or 4.00C4b) of hypokinetic, akinetic, or dyskinetic myocardial free wall or septal wall motion with left ventricular ejection fraction of 30 percent or less;

Or

C. Documented functional class III NYHA criteria (see reference in 4.02A); and an evaluating program physician, preferably one experienced in the care of patients with cardiovascular disease, has concluded that the performance of exercise testing would present a significant risk to the individual; and

1. Impaired myocardial function is documented by evidence (as outlined under 4.00C3 or 4.00C4b) of hypokinetic, akinetic, or dyskinetic myocardial free wall or septal wall motion with left ventricular ejection fraction of 30 percent or less; and

2. Angiographic evidence (obtained independent of Social Security disability evaluation) reveals:

a. 50 percent or more narrowing of a nonbypassed left main coronary artery; or

b. 70 percent or more narrowing of another nonbypassed coronary artery; or

c. 50 percent or more narrowing involving a long (greater than 1 cm) segment of a nonbypassed coronary artery; or

d. 50 percent or more narrowing of at least 2 nonbypassed coronary arteries; or

e. Total obstruction of a bypass graft vessel.

4.05 *Recurrent arrhythmias,* not related to reversible causes such as electrolyte abnormalities or digitalis glycoside or antiarrhythmic drug toxicity, resulting in uncontrolled repeated episodes of cardiac syncope and arrhythmia despite prescribed treatment, documented by resting or ambulatory (Holter) electrocardiography coincident with the occurrence of syncope.

4.06 *Symptomatic congenital heart disease* (cyanotic or acyanotic) with documented functional class III or class IV NYHA criteria (see reference in 4.02A), and documented by appropriate imaging techniques (as outlined under 4.00C3) or cardiac catheterization. With:

A. Cyanosis at rest and:

1. Hematocrit of 55 percent or greater, or

2. Resting arterial pO_2 of 65 Torr or less at an altitude of 4,000 feet or less (at levels greater than 4,000 feet above sea level, pO_2 of 60 Torr or less);

Or

B. Intermittent right-to-left shunting resulting in cyanosis on exertion (e.g., Eisenmenger's physiology) and with arterial pO_2 of 65 Torr or less at an altitude of 4,000 feet or less (at levels greater than 4,000 feet above sea level, pO_2 of 60 Torr or less) at a workload equivalent to 5 METs or less (see references in 4.00C1b(2) and 4.00C2b);

Or

C. Chronic heart failure with evidence of ventricular dysfunction as described in 4.02;

Or

D. Recurrent arrhythmias as described in 4.05;

Or

E. Pulmonary vascular obstructive disease with a mean pulmonary arterial pressure elevated to at least 70 percent of the mean systemic arterial pressure.

4.07 *Valvular heart disease* documented by appropriate imaging techniques or cardiac catheterization. Evaluate under the criteria in 4.02, 4.04, 4.05, or 11.04.

4.08 *Cardiomyopathies documented* by appropriate imaging techniques or cardiac catheterization. Evaluate under the criteria in 4.02, 4.04, 4.05, or 11.04.

4.09 *Cardiac transplantation.* Consider under a disability for one year following surgery; thereafter, reevaluate by reference to 4.02–4.08.

4.10 *Aneurysm of aorta* or major branches, due to any cause (e.g., atherosclerosis, cystic medial necrosis, Marfan syndrome, trauma) demonstrated by an appropriate imaging technique, with:

A. Acute or chronic dissection not controlled by prescribed medical or surgical treatment;

Or

B. Chronic heart failure as described under 4.02;

Or

C. Renal failure as described under 6.02;

Or

D. Neurological complications as described under 11.04.

4.11 *Chronic venous insufficiency* of a lower extremity with incompetency or obstruction of the deep venous system, associated with superficial varicosities, extensive brawny edema, stasis dermatitis, and recurrent or persistent ulceration which has not healed following at least 3 months of prescribed medical or surgical therapy.

4.12 *Peripheral arterial disease.* With:

A. Intermittent claudication with failure to visualize (on arteriogram obtained independent of Social Security disability evaluation) the common femoral or deep femoral artery in one extremity;

Or

B. Intermittent claudication with marked impairment of peripheral arterial circulation as determined by Doppler studies showing:

1. Resting ankle/brachial systolic blood pressure ratio of less than 0.50; or

2. Decrease in systolic blood pressure at the ankle on exercise (see 4.00E4) of 50 percent or more of pre-exercise level and requiring 10 minutes or more to return to pre-exercise level;

Or

C. Amputation at or above the tarsal region due to peripheral vascular disease.

Subpart P, Appendix 1—[Amended]

3. Listing 104.00, Cardiovascular System, of part B of appendix 1 to subpart P of part 404 (20 CFR Part 404) is revised to read as follows:

104.00 Cardiovascular System

A. General

Cardiovascular disorders, either congenital or acquired, along with the associated impairment(s), must be established and substantiated by medical evidence.

Examples of congenital defects include: abnormalities of cardiac septation, such as ventricular septal defect or atrioventricular (AV) canal; abnormalities resulting in cyanotic heart disease, such as tetralogy of Fallot or transposition of the vessels; valvular defects or obstructions to ventricular outflow, including pulmonary or aortic stenosis and/or coarctation of the aorta, and major abnormalities of ventricular development, including hypoplastic left heart syndrome or pulmonary tricuspid atresia with hypoplastic right ventricle. Acquired heart disease may be due to cardiomyopathy, rheumatic heart disease, kawasaki syndrome or other etiologies. Recurrent arrhythmias,

severe enough to cause functional impairment, may be seen with congenital or acquired heart disease or more rarely in children with structurally normal hearts.

Evidence must be provided in sufficient detail to permit an independent medical reviewer to evaluate the severity of the impairment. The criteria for evaluating impairment severity are based on symptoms, physical signs, pertinent laboratory test results, and response to prescribed treatment.

Evaluation should include a consideration of adverse effects on the child's growth and development as described under the Growth impairment and Mental retardation listings, 100.02, and 112.05, respectively. A longitudinal clinical record covering a period of not less than 3 months of observations and therapy is usually necessary for the assessment of severity and expected duration unless the child is a neonate.

Evaluation may also involve consideration of a child's ability to perform age-appropriate activities. A description of age-appropriate activities for children up to age 5 years may be found in references such as the current edition of Nelson: *Textbook of Pediatrics*, Behrman and Vaughan; W. B. Saunders. A description of age-appropriate activities for children ages 4½ to 14½ years may be found in references such as the current edition of Bruininks-Oseretsky Test of Motor Proficiency, Robert H. Bruininks, Circle Pines, MN: American Guidance Service. Age-appropriate activities for individuals age 14½ to 18 are not unlike those of young adults (e.g., school, work); therefore, references for age-appropriate activities are not necessary.

B. Documentation and Evaluation

Documentation must include reports of the results of a complete pediatric cardiac history, physical findings, and appropriate supporting or confirmatory laboratory data. Data should be obtained preferably from an office or center experienced in pediatric cardiac assessment. The actual electrocardiographic tracing (or adequately marked photocopy) and echocardiogram report with a copy of relevant echocardiographic views must be included.

Results of additional studies necessary to substantiate the diagnosis or document the severity of the impairment, including 2-dimensional and Doppler echocardiography, and radionuclide ventriculograms should be obtained as appropriate according to Part A, listing 4.00C3.

Cardiac catheterization will not be purchased by the Social Security Administration. If the results of catheterization are otherwise available, they should be obtained.

C. Relationship of Treatment to Functional Status

In general, conclusions about the severity of a cardiovascular impairment cannot be made on the basis of type of treatment rendered or anticipated. The overall clinical and laboratory evidence, including the treatment plan(s) or results, should be persuasive that a listing-level impairment exists.

However, the most life-threatening forms of congenital heart disease and cardiac impairment almost always require surgical treatment within the first year of life to prevent early death. Therefore, in these cases, the presence of a listing-level impairment can usually be found on the basis of planned or actual cardiac surgery.

A child who has undergone surgical treatment for life-threatening heart disease will be found under a disability for a specified period of time as noted (listings 104.06A and 104.09) because of the uncertainty during that period concerning outcome or long-term results. After the specified period, continuing disability evaluation will be based upon residual impairment which will be evaluated by reference to appropriate listing sections, and medical improvement decisions will be based upon a consideration of the clinical course following treatment and comparison of symptoms, signs, and laboratory findings preoperatively and after the specified period. (See section 404.1594(c)(1) or section 416.994(c)(1)(i), as appropriate.)

D. Congenital Heart Disease

A congenital heart impairment that is life-threatening and will require or has resulted in surgical treatment within the first year of life is considered to meet listing requirements.

Congenital defects that usually lead to impairment in the first year of life and require surgery in most instances, include, but are not limited to, the following: Hypoplastic left heart syndrome; critical aortic stenosis with neonatal heart failure; critical coarctation of the aorta, with or without associated anomalies; complete AV canal defects; transposition of the great arteries; tetralogy of Fallot; and pulmonary atresia with intact ventricular septum.

Additional, but rarer, defects which may lead to early mortality and may require multiple surgical interventions include single ventricle, tricuspid atresia, and multiple ventricular septal defects.

Respiratory impairment may result from patent ductus arteriosus in the premature infant. Such cases should be evaluated under the Respiratory listing, 103.00ff.

Pulmonary vascular obstructive disease can cause cardiac impairment in young children. When a large or nonrestrictive septal defect or ductus is present, pulmonary artery mean pressures of at least 70 percent of mean systemic levels are used as a criterion of impairment. In the absence of such a defect, impairment may be present at lower levels of pulmonary artery pressure, in the range of at least 50 percent of mean systemic levels.

E. Chronic Heart Failure

Chronic heart failure may manifest itself by pulmonary or systemic venous congestion including cardiomegaly and hepatomegaly or symptoms of limited cardiac output such as weakness or fatigue, or a need for cardiotonic drugs. Fatigue or exercise intolerance in an infant may be manifested by prolonged feeding time associated with signs of cardiac impairment including excessive respiratory effort and sweating. Other manifestations of chronic heart failure during infancy include slow weight gain and repeated lower respiratory tract infections. Cardiomegaly or ventricular dysfunction must be present and can be demonstrated by imaging techniques, such as echocardiography and radionuclide studies.

F. Valvular Heart Disease

Valvular heart disease requires documentation by appropriate imaging techniques, including Doppler echocardiogram studies or cardiac catheterization if catheterization results are available from a treating source. Impairment is usually associated with critical aortic stenosis in a newborn child, persistent heart failure, or valve replacement and ongoing anticoagulant therapy in prepubertal children, age 16 years or less.

G. Rheumatic Heart Disease

The diagnosis as used in this section should be made in accordance with the revised Jones criteria. (Reference: Jones Criteria (Revised) for Guidance in the Diagnosis of Rheumatic Fever. Circulation 32:664, 1965.)

104.01 Category of Impairments, Cardiovascular System.

104.02 *Chronic heart failure*, documented by clinical and laboratory findings as described in listing 104.00E, and one of the following:

A. Recurrent or persistent dyspnea, orthopnea, and fatigue or markedly decreased exercise tolerance. (In an infant, prolonged feeding time with excessive respiratory effort and sweating may be a manifestation of exercise intolerance);

Or

B. Failure of appropriate weight gain requiring prolonged increased caloric feeding by nasogastric tube or continuous infusion;

Or

C. Growth failure as described in listing 100.02A and B.

104.03 *Hypertensive cardiovascular disease* with persistently elevated blood pressure for age (see Table following 104.03C), and one of the following:

A. Impaired renal function, as described in 106.02;

Or

B. Cerebrovascular damage, as described in 111.06;

Or

C. Chronic heart failure as described in 104.02.

TABLE—ELEVATED BLOOD PRESSURE

Age group	Systolic or Diastolic	
	Over (mmHg)	Over (mmHg)
Under 1 month	95	
1 month–2 years	112	74
3–5 years	116	76
6–9 years	122	78
10–12 years	126	82
13–15 years	136	86
16–18 years	142	92

104.05 *Recurrent arrhythmias,* such as persistent or recurrent heart block, repeated symptomatic tachyarrhythmias or bradyarrhythmias or long QT syndrome arrhythmias. An arrhythmia must be appropriately documented on resting or ambulatory electrocardiogram, be persistent despite prescribed treatment, and not be related to reversible causes such as electrolyte abnormalities or digitalis glycoside or antiarrhythmia drug toxicity. With:

A. Cardiac syncope coincident with the documented arrhythmia;

Or

B. Chronic heart failure as described in 104.02;

Or

C. Electronic pacemaker therapy for at least a continuous 12-month period.

104.06 *Congenital heart disease* with one of the following:

A. For infants under 12 months of age at the time of filing, with life-threatening congenital heart impairment that will or has required surgical treatment, consider the infant to be under a disability until 24 months of age; thereafter, evaluate impairment severity with reference to listings 104.02–104.08.

Or

B. Persistent chronic hypoxemia as manifested by:

1. Arterial O_2 saturation of less than 90 percent in room air, or pO_2 of less than 60 Torr at rest; or

2. Hematocrit of 55 percent or greater on two or more evaluations within a 3-month period; or

3. Hypercyanotic spells, syncope, recurrent hemoptysis, or other incapacitating symptoms directly related to documented cyanotic heart disease; or

4. Exercise intolerance with increased cyanosis on exertion;

Or

C. Chronic heart failure as described in 104.02;

Or

D. Recurrent arrhythmias as described in 104.05;

Or

E. Secondary pulmonary vascular obstructive disease with a mean pulmonary arterial pressure elevated to at least 70 percent of the mean systemic arterial pressure;

Or

F. Congenital or valvular stenosis or regurgitation as described in 104.00F and 104.07;

Or

G. Symptomatic acyanotic heart disease with ventricular dysfunction resulting in significant restriction of age-appropriate activities or inability to complete age-appropriate tasks (see 104.00A);

Or

H. Growth failure as described in listing 100.02A and B.

104.07 *Valvular heart disease.*

A. Evaluate according to criteria in listing 104.02, 104.05, 111.06, or 11.04;

Or

B. Critical aortic stenosis in newborn.

104.08 *Cardiomyopathies* (documented by appropriate imaging techniques, including echocardiography or cardiac catheterization, if catheterization results are available from a treating source). Impairment must be associated with an ejection fraction of 50 percent or less and significant left ventricular dilatation using standardized age-appropriate echocardiographic ventricular cavity measurements. Evaluate under the criteria in listings 104.02, 104.05, or 111.06.

104.09 *Cardiac transplantation* (for any reason). Consider under a disability for 1 year following surgery or until age 24 months, whichever is the later event; thereafter, evaluate residual impairment according to 104.02 to 104.08.

104.13 *Chronic rheumatic fever or rheumatic heart disease:* Consider under a disability for 18 months from the established onset of impairment with one of the following:

A. Persistence of rheumatic fever activity for 6 months or more which is manifested by significant murmur(s), cardiac enlargement or ventricular dysfunction, and other abnormal laboratory findings, as for example, an elevated sedimentation rate;

Or

B. Evidence of chronic heart failure as described under 104.02;

Or

c. Recurrent arrhythmias as described under 104.05.

104.14 *Hyperlipidemia:* Documented Type II homozygous hyperlipidemia with repeated plasma cholesterol levels of 500 mg/ml or greater; with

A. Myocardial ischemia as required in the criteria in listing 4.04B or 4.04C;

Or

B. Significant aortic stenosis documented by Doppler echocardiographic techniques or cardiac catheterization;

Or

C. Major disruption of normal life activities by repeated hospitalizations for plasmaphoresis or other prescribed therapies including liver transplant;

Or

D. Recurrent pancreatitis complicating hyperlipidemia.

[FR Doc. 91–16047 Filed 7–8–91; 8:45 am]

BILLING CODE 4190–11–M

federal register

Tuesday
July 9, 1991

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 28 and 52
Federal Acquisition Regulation; Performance and Payment Bonds; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 28 and 52

[FAR Case 91-27]

Federal Acquisition Regulation; Performance and Payment Bonds

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering revisions to parts 28 and 52 to further standardize polices governing bonding. The principal changes would add standard clauses when performance or payment bonds are required and a standard form, Performance and Payment Bonds—Other than Construction. Other miscellaneous changes are also being made.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 9, 1991, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405. Please cite FAR Case 91-27 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501-4547 in reference to this FAR case. For general information, contact Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR Case 91-27.

SUPPLEMENTARY INFORMATION:

A. Background

This particular change adds two clauses, pertaining to bonds, to the FAR. The FAR contains guidance in 28.102 and 28.103 on the use of performance and payment bonds for both construction and non-construction, but no clauses. Standard clauses when using performance and payment bonds are proposed. In addition, the provision at 52.228-1, Bid Guarantee, was revised to include the penal amount for bid guarantees.

Other revisions include the addition of a performance bond form for other than construction at 28.106-1 and addition of a phrase to 28.105 and 28.106-2.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it applies to the internal operating procedures of the Government. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.*, (FAR case 91-27) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 28 and 52:

Government procurement; Performance and payment bonds.

Dated: June 28, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 28 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 28 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 28—BONDS AND INSURANCE

2. Section 28.101-1 is amended by revising its heading to read as follows:

28.101-1 Policy.

* * * * *

3. Section 28.101-2 is revised to read as follows:

28.101-2 Solicitation provision.

(a) The contracting officer shall insert the provision at 52.228-1, Bid Guarantee, in solicitations and contracts that contain a requirement for a bid guarantee. A provision substantially the same as this may be used for negotiated contracts. The contracting officer, as appropriate, may set a period of time for the return of executed bonds other than 10 days. This clause may be appropriately modified for use in connection with construction solicitations and contracts when the agency has specified that only separate bid bonds are acceptable in accordance with 28.101-1(b).

(b) The contracting officer shall determine the amount of the bid guarantee for insertion in the provision at 52.228-1. The amount shall be adequate to protect the Government from loss should the successful bidder fail to execute further contractual documents and bonds as required. The bid guarantee amount shall be at least 20 percent of the bid price but shall not exceed $3 million. When the penal sum is expressed as a percentage, a maximum dollar limitation may be stated.

28.101-3 [Removed and reserved]

4. Section 28.101-3 is removed and reserved.

5. Section 28.102-3 is revised to read as follows:

28.102-3 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at 52.228-XX, Performance and Payment Bonds—Construction, in solicitations and contracts for construction that contain a requirement for performance and payment bonds if the resultant contract is expected to exceed the small purchase limitation. The penal amount of the performance bond may be decreased in accordance with 28.102-2(a). Where the provision at 52.228-1 is not included in the solicitation, the contracting officer shall set a period of time for return of executed bonds.

28.103-2 [Amended]

6. Section 28.103-2 is amended by removing paragraph (b) and redesignating existing paragraphs (c) and (d) as (b) and (c) respectively.

28.103-3 [Amended]

7. Section 28.103-3 is amended by removing paragraphs (b) and (c) and redesignating existing paragraph (d) as (b).

8. Section 28.103-4 is added to read as follows:

28.103-4 Contract clause.

(a) The contracting officer shall insert a clause substantially the same as the clause at 52.228-XX, Performance and Payment Bonds—Other than Construction, in solicitations and contracts that contain a requirement for both payment and performance bonds. The contracting officer shall determine the amount of each bond for insertion in the clause. The amount shall be

adequate to protect the interest of the Government. The contracting officer shall also set a period of time (normally 10 days) for return of executed bonds. Alternate I shall be used when only performance bonds are required.

9. Section 28.105 is revised to read as follows:

28.105 Other types of bonds.

The head of the contracting activity, or as otherwise specified in agency regulations, may approve using other types of bonds in connection with acquiring particular supplies or services. These types include advance payment bonds and patent infringement bonds.

10. Section 28.106–1 is amended by revising paragraph (b) to read as follows:

28.106–1 Bonds and bond related forms.

* * * * *

(b) SF XX, Performance Bond for Other Than Construction Contracts (see 28.103–4 and 28.106–3(b)).

* * * * *

11. Section 28.106–2 is amended by revising paragraph (a) to read as follows:

28.106–2 Substitution of surety bonds.

(a) A new surety bond covering all or part of the obligations on a bond previously approved may be substituted for the original bond if approved by the head of the contracting activity, or as otherwise specified in agency regulation.

* * * * *

12. Section 28.106–3 is amended by revising paragraph (b) to read as follows:

28.106–3 Additional bond.

* * * * *

(b) When additional coverage is furnished in whole or in part by a new surety, agencies shall use Standard Form 25, Performance Bond, Standard Form XX, Performance Bond for Other Than Construction, or Standard Form 25–A, Payment Bond.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

13. Section 52.228–1 is amended by—

a. Revising the introductory paragraph;

b. Revising the date in the provision heading;

c. Revising paragraphs (b), (c), and (d) of the provision;

d. Redesignating the existing paragraph (e) of the provision as paragraph (f) and adding a new paragraph (e);

e. Removing the words "(End of clause)" and inserting in their place "(End of provision)"; and

f. Removing the two parenthetical derivation lines following "(End of clause)".

The revised and added text reads as follows:

52.228–1 Bid guarantee.

As prescribed in 28.101–2(a), insert the following provision in solicitations and contracts:

Bid Guarantee (Date)

* * * * *

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, (e.g., bid bond) with good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantee, other than bid bonds, (1) to unsuccessful bidders as soon as practicable after the opening of bids, and (2) to the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

(c) The amount of the bid guarantee shall be _____ percent of the bid price or *dollar value*, whichever is less.

(d) Unless otherwise specified in the bid, the bidder will allow 60 days for acceptance of its bid.

(e) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder (unless another time period is specified), the Contracting Officer may terminate the contract for default.

* * * * *

(End of provision)

14. Section 52.228–XX is added to read as follows:

52.228–XX Performance and payment bonds—construction.

As prescribed in 28.102–3, insert a clause substantially as follows:

Performance and Payment Bonds—Construction (Date)

Unless the resulting contract is for $25,000 or less, the successful offeror (bidder) shall be required to furnish performance and payment bonds to the Contracting Officer as follows:

(a) Performance Bonds: (Standard Form 25).

(1) The penal amount of performance bonds shall be 100 percent of the original contract price.

(2) The Government may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Government may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment Bonds: (Standard Form 25–A).

(1) The penal amount of payment bonds shall equal—

(i) Fifty (50) percent of the contract price if the contract price is more than $1 million;

(ii) Forty (40) percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) $2.5 million if the contract price is more than $5 million.

(2) If the original contract price is $5 million or less, the Government may require additional protection if the contract price is increased. The penal amount of the total protection shall meet the requirement of subparagraph (b)(1) of this clause.

(3) The Government may secure additional protection by directing the Contractor to increase the penal sum of the existing bond or to obtain an additional bond.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified under 52.228–1, or otherwise by the Contracting Officer, but in any event, before starting work.

(d) Surety companies acceptable to the Government are identified by the Department of Treasury in Treasury Circular 570 and listed in the **Federal Register**.

(End of clause)

15. Section 52.228–XX is added to read as follows:

§ 52.228–XX Performance and payment bonds other than construction.

As prescribed in 28.103–4(a), insert a clause substantially as follows:

Performance and Payment Bonds—Other Than Construction (Date)

(a) The Contractor shall furnish a performance bond for the protection of the Government in an amount equal to _____ percent of the contract price and a payment bond in an amount equal to _____ percent of the contract price. As used herein, the term "contract price" means the total amount of the contract for the term of the contract (excluding options to extend the term of the contract, if any).

(b) The Contractor shall furnish all executed bonds to the Contracting Officer, within _____ days, but in any event, before starting work.

(c) The Government may require additional performance bond protection when the contract price is increased. The Government may secure additional protection by directing the contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(d) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, or, in accordance with

Treasury Department regulations, certain bonds or notes of the United States.

(End of clause)

Alternate I (Date). In solicitations and contracts requiring performance bonds only, substitute paragraph (a) as follows:

(a) The offeror to whom the award is made shall furnish a performance bond for the protection of the Government in an amount equal to _____ percent of the contract price. As used herein, the term "contract price" means the total amount of the contract for the term of the contract (excluding options to extend the term of the contract, if any).

PART 53—FORMS

16. Section 53.228 is amended by redesignating existing paragraphs (n) and (o) as (o) and (p) and adding a new paragraph (n) to read as follows:

53.228 Bonds and insurance.

* * * * *

(n) *SF XX (Rev. XX/XX). Performance and Payment Bonds—Other Than Construction* (See 28.103–4).

* * * * *

17. A copy of proposed SF XX is set forth below.

BILLING CODE 6820–34–M

PERFORMANCE BOND FOR OTHER THAN CONSTRUCTION CONTRACTS (See instructions on reverse)	DATE BOND EXECUTED (Must be same or later than date of contract or option)	FORM APPROVED OMB NO.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION
SURETY(IES) (Name(s) and business address(es))	PENAL SUM OF BOND MILLION(S) / THOUSAND(S) / HUNDRED(S) / CENTS CONTRACT DATE / CONTRACT NO. OPTION DATE / OPTION NO.

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal: (1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during either the base term or an option term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

The guaranty for a base term covers the initial period of performance of the contract and any extensions thereof excluding any options to extend the term of the contract. The guaranty for an option term covers the period of performance for the option being exercised and any extensions thereof.

The failure of a surety to renew a bond for any option term shall not result in a default of any bond previously furnished covering any base or option term.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL

SIGNATURE(S)	1. (Seal)	2. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1. (Seal)	2. (Seal)
NAME(S) (Typed)	1.	2.

CORPORATE SURETY(IES)

SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

SF XX

CORPORATE SURETY(IES) (Continued)

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

BOND PREMIUM ▶	RATE PER THOUSAND $	TOTAL $

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorization person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of the approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)". In the space designated "SURETY(IES)" on the face of the form insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

GSA DC-891100073

SF XX (BACK)

[FR Doc. 91-16109 Filed 7-8-91; 8:45 am]
BILLING CODE 6820-34-C

federal register

Tuesday
July 9, 1991

Part VI

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1205

Cotton Research and Promotion Order; Rule, Proposed Rule, and Notice

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN-91-004]

Amendment to the Procedure for the Conduct of Referenda in Connection with Cotton Research and Promotion Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is making final the proposed amendments to the Procedure for the Conduct of Referenda in Connection with Cotton Research and Promotion Orders published in the Federal Register on May 3, 1991. The amendments add provisions for importer participation in such referenda. These amendments are made pursuant to the provisions of the Cotton Research and Promotion Act Amendments of 1990 which made importers subject to the Act. Referenda among cotton producers and cotton importers are required by the Act to implement, amend, continue, suspend, or terminate the Order or any of its provisions.

EFFECTIVE DATE: July 9, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald H. Read, 202–447–2145.

SUPPLEMENTARY INFORMATION: A proposed rule detailing the changes to the Procedure for the Conduct of Referenda in Connection with Cotton Research and Promotion Orders was published on May 3, 1991, in the Federal Register (56 FR 20378).

This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "non-major" since it does not meet the criteria for a major regulatory action contained in the Order.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this action on small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

In the proposed rule it was estimated that 35,000 producers are presently subject to the Cotton Research and Promotion Order. It was also estimated that 10,000 importers may become subject to the Order. Further investigation by this agency along with input from the Agricultural Stabilization and Conservation Service (ASCS) of the USDA and the United States Customs Service has resulted in different estimates.

The estimate of 35,000 cotton producers was the result of examining Cotton Board records to determine the number of producers who are identified in assessment collection reports. While 35,000 cotton producers are identified in the Cotton Board reports, the agency has determined that this number is far short of the total number of producers who were engaged in the production of cotton during the 1990 crop year, the representative period designated for this referendum, and who are eligible to vote. ASCS records of cotton producers indicate that there are approximately 210,000 persons who are cotton producers as that term is used in the Act and the regulations. Such persons include those who share in a cotton crop, or the proceeds thereof, including landlords, cash tenants, sharecroppers and others. This number does not include the 650 collecting handlers who are subject to the Order but are not eligible to vote in referenda concerning the Order. The 35,000 figure originally obtained from the Cotton Board only represents those producers who were actually responsible for paying the assessments under the Order and not all the persons who are engaged in the production of cotton. Assessments are paid on all Upland cotton produced in the United States. The differences in producer numbers merely reflect the various arrangements that exist relevant to paying the assessments.

Importers eligible to vote in a referendum are those importers who, during a 12-month period ending not later than 90 days prior to the conduct of the referendum, imported a value of cotton in excess of the de minimis value of $220.99 per line item entry. The estimate in the proposed rule of 10,000 importers who may become subject to the Order and would be eligible to vote was based on a review of U.S. Customs Service records of importers importing cotton-containing products during the 12 month period January 1, 1990, to December 31, 1990. Such estimate represents importers who imported cotton-containing products which are identified by approximately 700 Harmonized Tariff Schedule (HTS) numbers and which contain cotton having a value in excess of the de minimis figure of $220.99 per line item entry. According to our information, the assessments that would be collected on the products classified under those numbers would represent 97 percent of the total assessments that could be collected if all cotton containing HTS categories were assessed. It is anticipated that the remaining cotton-containing HTS product classifications (other than the 700) would be exempted from assessment by the rules and regulations implementing the Order. However, importers of those products would also be eligible to vote if, during the 12-month period January 1, 1990, to December 31, 1990, they imported these products, and such products contained a value of cotton in excess of the de minimis value per line item entry. These importers would be in addition to the original estimate of 10,000 importers who may become subject to the Order and who are eligible to vote. The approximately 10,000 importers who have already been identified by the agency as being eligible to vote based on review of U.S. Customs Service records will be mailed ballots by ASCS. Other importers who feel they are eligible to vote and who do not receive a ballot by July 12, 1991, should request a ballot from the U.S. Department of Agriculture, ASCS, Attn: CGRD, P.O. Box 2415, Washington, DC 20013. Such request should include the weight and HTS number of cotton containing products imported during the period January 1, 1990, to December 31, 1990, having an estimated cotton content value in excess of the de minimis value of $220.99 per line item entry. A copy of Customs Form 7501—"Entry Summary" would serve the purpose of identifying the weight and HTS number of the product and should be included with the request for a ballot. The value of the cotton content by line item entry can be approximated by applying the following formula: Estimate of the percentage of cotton in the product x net weight in kilograms of the imported product x $1.446 = total cotton value. The value of imported cotton for the purpose of the referendum was calculated to be $1.446 per kilogram. The importer is eligible to vote only if the total cotton value is in excess of $220.99 per line item entry.

The majority of producers and importers would be classified as small businesses under the criteria established by the Small Business Administration.

This final rule amends the Procedure for the Conduct of Referenda in Connection with the Cotton Research and Promotion Order to provide for the participation of importers of cotton and cotton-containing products in referenda. The amendments add procedures for importers to vote in the referenda to the current procedures which apply to cotton producers. The inclusion of importers in referenda is in accordance with the Cotton Research and Promotion Act Amendments of 1990. Under this final rule, producers and importers will have an opportunity to submit referendum ballots. The economic

impact of this rule is not expected to be significant.

Accordingly, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) and section 3504(h) of that Act, the information and paperwork requirements contained in this subpart have been submitted to OMB for review. It is estimated that approximately 210,000 producers and 10,000 to 15,000 importers will be eligible to vote in a referendum. It is estimated that an average of .10 hours will be required to complete each ballot. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Agricultural Marketing Service, USDA.

This final rule amends the Procedure for the Conduct of Referenda in Connection with the Cotton Research and Promotion Order (7 CFR 1205.200–1205.210) to: (1) Include terminology pertaining to importers of cotton in the definitions; (2) set forth the responsibilities of agencies involved in conducting referenda; (3) establish voting eligibility of importers; (4) establish voting procedures for importers; (5) revise procedures for canvassing of ballots; (6) revise procedures for reporting the results of referenda; (7) provide for the disposition of ballots and records; and (8) provide for additional instructions and forms. In addition, language has been inserted in this final rule to clarify the fact that these rules also apply to amendments of the Order or provisions thereof.

The Cotton Research and Promotion Act Amendments of 1990 (subtitle G of title XIX of the Food, Agriculture, Conservation and Trade Act of 1990, Pub. L. 101–624, November 28, 1990) require the Secretary of Agriculture to conduct a referendum among persons who have been cotton producers during a representative period, as determined by the Secretary, and persons who are importers of cotton and who, during a 12-month period ending not later than 90 days prior to the conduct of the referendum, imported a quantity of cotton (expressed in terms of value or weight) in excess of the de minimis quantity, if any, established by the Secretary. The referendum is for the purpose of determining if a majority of those voting approve the proposed amendment to the Order issued by the Secretary after a notice and opportunity for public comment. The proposal would implement the provisions of the Cotton Research and Promotion Act Amendments of 1990. The Secretary is to announce the results of the referendum within 30 days after the date of such referendum. The referendum will be conducted on a date to be announced by the Secretary. Referenda of cotton producers and cotton importers would also be necessary as specified by the Act to implement, amend, continue, suspend, or terminate the Order or any of its provisions.

The Agricultural Marketing Service issued an invitation to submit comments on proposed amendments to the Procedure for the Conduct of Referenda in Connection with Cotton Research and Promotion Orders in the May 3, 1991, **Federal Register** (56 FR 20378). Seven respondents representing importers and cotton growers submitted comments. Five respondents representing importers expressed opposition to specific amendments. Two respondents representing growers expressed support for some of the amendments and concern over others.

The substantive comments made by the respondents are discussed in the following paragraphs. The discussion is organized by the following topics: Definitions, Voting Eligibility, and General Comments.

Definitions

As proposed, § 1205.201(q)(1) defined the term *importer* as "any person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States" and the term *import* as any such entry. This is the same definition which appears in the Act and in the proposed Order amendment. Two comments were received objecting to this definition of *importer* because brokers were not excluded by the definition and would be subject to the assessment. Brokers sometimes function as the *importer of record* for an ultimate consignee. The respondents thought the consignee should be responsible for paying the assessment and eligible to vote in referenda. The *importer of record*, identified by Customs documents who meets the requirements of the definition of the term *importer*, regardless of whether it is the broker or the consignee, will be responsible for the assessment and will also be eligible to vote. We understand the concern of the respondents, but have retained the proposed definition to remain consistent with the Act and the Order. Also, our definition of importer is not inconsistent with regulations of the U.S. Customs Service, the agency which will be collecting importer assessments. Those regulations state, in part, that an importer is the person primarily liable for the payment of any duties, and may be the importer of record or the consignee.

Voting Eligibility

Five of the written comments received concerned the proposed provisions for Voting Eligibility, § 1205.203.

One comment pertaining to the eligibility of the consignee to vote in referenda is addressed above in the discussion on definitions.

One of the respondents noted that voting eligibility for importers should be based on imports of cotton products over a minimum period of three years instead of the 12 month period prescribed in the proposed rule. It was stated that importers of textiles and textile products have no vested interest in the fiber composition of their imports except to meet the demands of the market. Unlike producers who grow cotton year after year, importers may import man-made fiber or silk products one year and cotton products the next. Therefore, importer eligibility to vote in referenda should be based on cotton products imported over at least a three year minimum representative period. The Cotton Research and Promotion Act Amendments of 1990 provide that importers voting in the referendum include importers of cotton who, during a 12-month period ending not later than 90 days prior to the conduct of the referendum, imported a quantity (expressed in terms of value or weight) of cotton in excess of the de minimis quantity (if any) established by the Secretary. This requirement of the Act cannot be changed by regulations.

Two of the comments expressed concern that the proposed rules only allow one vote per importer irrespective of the quantity of cotton imported. They suggested the votes be weighted to reflect the value of cotton imported. The proposed rule of one vote per entity also applies to cotton producers regardless of the volume of cotton produced. In addition, the Act provides that approval or disapproval of the proposed Order in a referendum will be determined by a majority of producers and importers voting in the referendum.

Two of the commenters stated that the de minimis value of $220.99 was too low. One of the respondents indicated that it should be at least $250 to equal the informal entry of textiles or apparel. The de minimis value of $220.99 per line item

entry represents the value of the cotton content of the entry whereas customs establishes the informal entry value on the total value of the entry. The proposed assessment would not apply to the value of the imported product as a whole. Only the cotton content of the product would be subject to assessment, and the assessment would be based on a bale equivalent value. In this regard the proposed assessment is specific to cotton, whether in raw form or in products. The establishment of the de minimis values will be discussed in greater detail under "Rules and Regulations" to be published in the **Federal Register** as soon as possible and the public will again be invited to comment.

One comment objected that the proposed rules allow each individual member of a qualified partnership one vote while apparently not allowing the subsidiaries of importing entities comparable voting rights. The commenter concluded that this provision appears to discriminate against the importers. The provision in proposed § 1205.203 for allowing more than one vote for qualifying partnerships applies to producers and importers alike. Large corporate producers are allowed one vote in the referendum, on an equal basis to the single vote of small producers. A producer who holds ownership in multiple farms in multiple locations is only allowed one vote.

The comment was not sufficiently specific in the reference to "subsidiaries of importing entities" for the agency to discern the type of business relationships to which the commenter was referring. Any "subsidiary" which is recognized as operating competitively as a separate business entity, as opposed to being a geographic extension of a large corporation, and meets the requirements in § 1205.203, will be eligible to vote in the referendum, regardless of ownership by a large conglomerate.

General Comments

One commenter stated that before finalizing any rule or holding a referendum, the Department should conduct a study to confirm the number of importers of Upland cotton-containing products who would be eligible to participate in a referendum. The means of conducting the study and results of the study should be placed in the **Federal Register** for comment. The agency has identified the United States Customs Service as the most capable source of providing an accurate list of importers of cotton and cotton-containing products. The agency will utilize the media and other means of public information to assure that producers and importers are aware of the pertinent details of the referendum.

One comment stated that the only equitable method for determining whether a fee should be imposed on imported cotton products would be through a bifurcated referendum, whereby importers would vote on whether a fee should be imposed on imported products, and producers would vote on whether a fee should be imposed on domestic cotton. The Act specifies a combined referendum for both cotton importers and producers, so this is not an option the agency can consider.

One commenter expressed support for the provisions of the Act and stated that it is essential that the referendum be conducted in a time-frame which allows assessment of the 1991 crop. The referendum cannot be conducted until the rulemaking process relevant to the Order amendment is complete, but the agency is making every effort to conduct it as soon as possible.

Three commenters requested additional general information on voter eligibility, a listing of the Harmonized Tariff Schedule (HTS) import product category numbers that will be assessed and the date of the referendum. Many specific questions concerning voter eligibility have been discussed elsewhere in this document. The date of the referendum has not been determined at this time, but will be published in a **Federal Register** announcement as soon as it becomes available. The details on HTS categories which would be subject to assessment are forthcoming in a proposed rule with request for comment.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exist for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. In order to implement the proposed Order amendments in a timely fashion, it is necessary that this rule concerning the conduct of referenda be effective on the date of publication.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1205 is amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority for part 1205 is revised to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. Section 1205.200 is revised to read as follows:

§ 1205.200 General.

Referenda for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of a Cotton Research and Promotion Order, the amendment of an order or an order provision, or the termination or suspension of such an order, is approved or favored by producers and importers, if subject to an order, and referenda for the purpose of ascertaining whether producers and importers approve or favor the continuation of the provisions of the proposed amendment to the Order implementing the Cotton Research and Promotion Act Amendments of 1990 shall, unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

3. Section 1205.201 is amended by revising paragraphs (a) and (n) and adding paragraphs (q), (r) and (s) to read as follows:

§ 1205.201 Definitions.

(a) *Act* means the Cotton Research and Promotion Act, as amended (7 U.S.C. 2101–2119; Pub. L. 89–502, 80 Stat. 279, as amended).

* * * * *

(n) *Upland cotton* means all cultivated varieties of Gossypium hirsutum L.

* * * * *

(q)(1) *Importer* means any person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States.

(2) *Import* means any such entry.

(r) *Cotton* means all Upland cotton harvested in the United States or imports of Upland cotton, including the Upland cotton content of the products derived thereof. The term "cotton" shall not, however, include any entry of imported cotton by an importer which has a value or weight less than the de minimis value established by the Secretary or industrial products as that term is defined by regulation.

(s) *Customs Service means the United States Customs Service of the United States Department of Treasury.*

4. Section 1205.202 is amended by revising paragraphs (a)(2) and (a)(3), and adding paragraphs (a)(5) and (c) to read as follows:

§ 1205.202 Agencies through which a referendum shall be conducted.

(a) * * *

(2) Give producers and importers reasonable advance notice of the referendum.

(i) by utilizing without advertising expense, available media of public information (including, but not being limited to, press and radio facilities) to announce the dates, places, or methods of voting, and other pertinent information,

(ii) by such other means as the Administrator may deem advisable.

(3) Provide ballots and related material to be used in the referendum to ASCS. The ballots

(i) shall provide for recording essential information for ascertaining whether the person voting is an eligible voter, and

(ii) may provide for recording the total amount of cotton produced by the producer or the total amount of cotton imported by the importer during the appropriate representative period.

* * * * *

(5) Make available to importers through ASCS instructions on voting, an appropriate ballot and, except in the case of a referendum on the termination or suspension of an Order, a summary of the terms and conditions of the Order. The instructions on voting shall explain the appropriate method to be used in determining the amount of cotton imported during the representative period and shall specify whether such amount is to be entered on the ballot by the voter, subject to the following terms and conditions:

(i) The amount of cotton imported by an importer shall be determined from records of imports made available to the Administrator of AMS from the United States Customs Service or from another source determined by the Administrator.

(ii) For importer entities in which more than one importer is eligible to vote, the vote cast by each importer shall represent only the amount in weight or value of cotton imported by each eligible voter.

(iii) If an eligible importer is engaged in importation of cotton as more than one importer entity, such voter is entitled to only one vote but any vote cast by such voter shall represent the total amount, in weight or value, of cotton that is the voters share of cotton imported from each such importer entity: Provided, that only the importer entities for which records are maintained by the Customs Service or other source determined by the Administrator shall be considered unless the voter, prior to the expiration of the referendum period, establishes to the satisfaction of the Administrator the voters share, in weight or value, of the imported cotton.

* * * * *

(c) *Customs Service.* The Customs Service provides data to ASCS which identifies importers who import a value of cotton above the de minimis value of cotton established by the Secretary.

5. Section 1205.203 is amended by revising paragraph (a), by redesignating paragraph (b)(1) as paragraph (b)(1)(i), by designating the undesignated paragraph immediately preceding paragraph (b)(2) as paragraph (b)(1)(ii), and by revising newly designated paragraph (b)(1)(i) to read as follows:

§ 1205.203 Voting eligibility.

(a) *Special eligibility requirements.* Each person who was engaged in the production of Upland cotton during the representative period and each person who was an importer of cotton and who, during a 12 month period ending not later than 90 days prior to the conduct of the referendum, imported a value of cotton in excess of the de minimis value of $220.99 per line item entry shall be eligible to vote in a referendum.

(b) *General eligibility requirements.* (1)(i) A person may qualify as an eligible voter by meeting the eligibility requirements, but no such person shall be entitled to more than one vote regardless of the number of importing entities or Upland cotton farms in which the person is interested or the number of communities, counties, or states in which are located firms in which such person is interested: Provided, however, That the individual members of a qualified partnership shall each have one vote, but the partnership as such shall not have a vote and an individual who qualifies as an eligible voter by reason of that individual's separate farming or importing operations will be entitled to one vote even though that person is interested in an organization such as (but not limited to) a corporation which is also eligible as a voter and entitled to one vote. A person who, as a guardian, administrator, executor, or trustee engages in the production of Upland cotton or the importation of cotton will be eligible to vote in such fiduciary capacity if, in such capacity, that person qualifies as an eligible voter.

* * * * *

6. Section 1205.204 is revised to read as follows:

§ 1205.205 Voting.

(a) *Place of voting.* The ASCS county office serving the county in which the producer's farm is located shall be the producer's polling place. The U.S. Department of Agriculture, ASCS, Washington, DC 20013 shall be the polling place for all cotton importers.

(b) *Register of eligible voters.* The county committee shall establish a register of known eligible producer voters prior to the referendum. The ASCS Kansas City Management Office shall establish a register of known eligible importer voters prior to the referendum.

(c) *Mailing of ballot to eligible voters.* Ballots shall be mailed by ASCS to all known eligible voters. Ballots may be obtained by producer voters from the appropriate ASCS county office and ballots may be obtained by importers from the U.S. Department of Agriculture, ASCS, Attn: CGRD, P.O. Box 2415, Washington, DC 20013.

(d) *Returning ballot to polling place.* Each person to whom a ballot is issued by mail or in person shall only be allowed to vote in the referendum by completing and signing the ballot, placing it in an envelope, and delivering or mailing it to the appropriate polling place. In order to be eligible for tabulation, voted ballots must be received at the polling place during the period established for holding the referendum. A ballot shall be considered to have been received during the referendum period if:

(1) In the case of the ballot delivered to the polling place, it was received in the office prior to the close of the work day on the final day of the referendum period, or

(2) in the case of a mailed ballot, it was postmarked not later than midnight of the final day of the referendum period and was received in the polling place prior to the start of canvassing the ballots.

(e) *Placing of ballots in ballot box.* Nothwithstanding the fact that a ballot(s) may be later challenged by the county committee or a representative of ASCS, envelopes containing ballots received at the polling place during the referendum period shall remain unopened and shall be placed immediately in a ballot box provided by the county executive director for producers and ASCS office for importers. Such ballot box shall be arranged so that ballots cannot be read or moved without breaking the seal on the container.

(7) Section 1205.205 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1250.205 Canvass of ballots.

(a) *Canvassing procedure.* Canvassing of returned ballots shall take place as soon as possible after the opening of the ASCS offices on the fifth day following the close of the referendum period. Such canvassing shall be in the presence of at least one member of the county committee for producer ballots or a representative of ASCS for importer ballots and shall be open to the public.

The canvassing and ballots shall be handled in such a manner that no member of the public may see how any person voted in the referendum. The county committee member or representative of the ASCS shall supervise the opening of the sealed ballot box, the opening of the envelopes containing the ballots and a determination as to:

(1) The number of eligible voters favoring the Order and where necessary, the amount of cotton represented by them,

(2) The number of eligible voters disapproving the Order and, where necessary, the amount of cotton represented by them,

(3) The number of ballots cast by voters found to be ineligible to vote in the referendum, and

(4) The number of spoiled ballots.

The ballots determined to be spoiled or cast by ineligible voters shall not be considered as approving or disapproving the Order, and the persons who cast such ballots shall not be regarded as participating in the referendum.

* * * * *

(c) *Challenge of ballots.* A producer ballot may be challenged by the member of the county committee and the importer ballot may be challenged by the representative of the ASCS. Before a challenged ballot is either counted or declared invalid, a determination shall be made by the county committee member or representative of the ASCS as to the eligibility of the voter to vote in the referendum.

8. Section 1205.206 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 1205.206 Reporting results of referendum.

* * * * *

(c) The Deputy Administrator, state and county operations, ASCS or a designee shall transmit a written summary of ballots showing the results of the referendum of importers to the Director, Cotton Division, Agricultural Marketing Service, Washington, DC, 20250 and maintain one copy of the summary where it will be available for public inspection for a period of 5 years following the end of the referendum period.

(d) The Director of the Cotton Division, AMS, shall prepare and submit to the Secretary a report as to the results of the referendum. The Secretary shall announce the results of the referendum within 30 days after the date of such referendum.

9. Section 1205.208 is amended by revising the heading, designating the current text paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 1205.208 Disposition of ballots and records.

* * * * *

(b) The representative of the ASCS shall seal the voted ballots, challenged ballots found to be ineligible, spoiled ballots, register sheets, and summary sheets for importers in one or more envelopes or packages, plainly marked with the identification of the referendum, and place them under lock and key in a safe place for a period of 45 calendar days after the referendum period. If no notice to the contrary is received by the end of such time, the voted ballots and challenged ballots shall be destroyed, but the registers and summary sheets shall be filed for a period of 5 years.

10. Section 1205.210 is revised to read as follows:

§ 1205.210 Additional instructions and forms.

The Deputy Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart for the use of state and county committees or ASCS in conducting a referendum. Such additional instructions may include procedures for county and state committees or ASCS to report and announce the results of the preliminary count of the votes.

Dated: July 3, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 91-16275 Filed 7-5-91; 2:36 pm]

BILLING CODE 3410-02-M

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Part 1205

[CN-91-003]

Amendment to the Cotton Research and Promotion Order

AGENCY: Agricultural Marketing Service, Department of Agriculture.

ACTION: Proposed amendment to order.

SUMMARY: This proposed amendment to the Cotton Research and Promotion Order would, if approved by a majority of producers and importers voting in a referendum, amend the Order to provide for: (1) Importer representation on the Cotton Board; (2) the assessment of imported cotton and cotton products; (3) an increase in the amount the Secretary of Agriculture can be reimbursed for conduct of a referendum from $200,000 to $300,000; (4) reimbursement of government agencies that assist in administering the collection of assessments on imported cotton and cotton products; and (5) termination of the right of producers to demand a refund of assessments.

The Cotton Research and Promotion Act Amendments of 1990 require that, after notice and opportunity for public comment, a proposed amendment to the Order implementing the provisions of the Act be issued. Such proposed Order amendment can only become effective if it is approved by a referendum vote, as required by the Act.

FOR FURTHER INFORMATION CONTACT: Craig Shackleford, (202) 447-2259.

SUPPLEMENTARY INFORMATION: This proposed amendment to the Cotton Research and Promotion Order has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a non-major rule under Executive Order 12291 since it does not meet the criteria for a major regulatory action contained in that order.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this proposed action on small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

When discussing the probable affect of the proposed rule on small entities, in the proposal published April 10, 1991, in the **Federal Register** (56 FR 14482-14487), it was estimated that 35,000 producers and 650 collecting handlers are presently subject to the Cotton Research and Promotion Order and that an estimated 10,000 importers would become subject to the Order. Further investigation by this agency along with input from the Agricultural Stabilization and Conservation Service of the USDA (ASCS) has shown a different number of producers.

The estimate of 35,000 cotton producers was the result of examining Cotton Board records to determine the number of producers who are identified in assessment collection reports. While 35,000 cotton producers are identified in Cotton Board records, the agency has determined that this number is far short of the total number of producers who are engaged in the production of cotton and who are therefore subject to the Order. ASCS records of cotton producers indicate that there are approximately 210,000 persons who are cotton producers as that term is used in the Act and the regulations. Such persons include those who share in a cotton crop, or the proceeds thereof, including landlords, cash tenants, sharecroppers and others. This number does not include the 650 collecting handlers who are subject to the Order but are not eligible to vote in referenda concerning the Order. The 35,000 figure obtained from the Cotton Board only represents those producers who were actually responsible for paying the assessments under the Order and not all the persons who are engaged in the production of cotton. Of course, an assessment is paid on all cotton produced in the United States. The differences in producer numbers merely reflect the various arrangements that exist relevant to paying the assessments.

In arriving at the estimated number of importers who would be subject to the Order, in the proposal of April 10, 1991, the agency used information provided by the cotton industry. Since that time the agency has also reviewed Customs Service records and has determined the number of importers who imported cotton and cotton-containing products which would be subject to assessment, during the 12-month period January 1, 1990 through December 31, 1990. These records indicate that this number is approximately 10,000. Importers are those persons who enter, or withdraw from warehouses, cotton for consumption in the customs territory of the United States. The imports of cotton that would be subject to assessment under the regulations implementing the Order would be those which satisfy one of approximately 700 classification numbers under the Harmonized Tariff Schedule (HTS), and which have an Upland cotton content value in excess of the de minimis value as established by regulation. This value was published in the proposed amendments to the referendum procedures and is $220.99 per line item entry. The majority of these producers, handlers, and importers would be classified as small businesses under criteria established by the Small Business Administration.

Under this proposed amendment refunds to producers would be eliminated. Therefore, it is estimated that $41,075,853, for 1991, collected by handlers from producers would not be subject to refunds. At current refund rates of approximately 34 percent, $13,965,790 of the estimated $41,075,853 would be retained by the Research and Promotion program. The change in the estimated numbers of producers subject to the Order from 35,000 to 210,000 would have no affect on these figures. The economic impact of the proposed elimination of refunds is not expected to be significant. It is expected that assessments from imports would total $6,785,816, including reimbursements, and that the total program would generate an estimated total of $47,861,669 based on 1991 forecast. The economic impact of an assessment on importers is not expected to be significant. The economic impact of the other amendments to the Order as described in the preamble is also not expected to be significant. Furthermore, the Research and Promotion program is expected to benefit producers, handlers and importers by expanding and maintaining new and existing markets.

The proposed amendment would also impose reporting and recordkeeping burdens on importers. This burden should average less than .25 hours per year. Therefore, the economic impact is not expected to be significant.

Accordingly, the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. chapter 35) and section 3504(h) of the PRA, the information collection and recordkeeping requirements for domestic handlers and producers contained in this subpart, and the domestic handler reporting and refund application forms used by the Board under the information collection provisions and the recordkeeping requirements were previously approved by OMB and assigned control number 0581-0115 under the PRA.

The agency intends to rely on Customs Service records to satisfy most information collection and reporting

requirements concerning importers of cotton needed to effectuate the terms of the proposed amendment, thus minimizing the reporting burden. Periodically, certain information related to specific imports may be required for proper administration of the Order. The nature of such information would be specified in rules and regulations issued pursuant to this proposed Order. Based on comparable Research and Promotion programs, it would require approximately 10 minutes for an importer to complete a reporting form and approximately 10 minutes to complete a reimbursement application. There would be an estimated 1,000 importers per year subject to these information collection requirements. Reporting forms and applications would be filed on a monthly basis yielding an estimated annual burden of 4080 hours. Importers would be expected to maintain and make available to the Secretary such books and records as necessary to carry out the provisions of the Order and regulations. Importers would be required to retain such records for at least two years beyond the marketing year of their applicability.

In addition, importer organizations may direct a request to the Secretary for certification of eligibility to participate in nominating members to represent cotton importers on the Cotton Board. It is anticipated that two organizations will respond with an average reporting burden of two hours per response.

Producers and importers would also have an opportunity to submit referendum ballots. The estimated number of respondents for this form is 200,000 with an estimated average reporting burden .10 hours per response.

Individual producers and importers nominated for the Board would be required to submit a membership background information sheet. Information sheets have been previously approved by OMB and assigned OMB control number 0505–0001. The estimated number of respondents is 32 per year. Each respondent would submit one response when nominated, with an estimated average reporting burden of 0.5 hour per response.

This proposed Order amendment would, subject to approval in a referendum, amend the Cotton Research and Promotion Order to provide for: (1) Importer representation on the Cotton Board by an appropriate number of persons, as determined by the Secretary of Agriculture, who import cotton and or cotton products into the United States on which assessments are paid, and are selected by the Secretary from nominations submitted by importer organizations certified by the Secretary; (2) assessments and supplemental assessments on imported cotton and cotton content of imported products at rates determined in the same manner as for U.S. cotton. Under this proposal, the rate of assessment and supplemental assessment for imported cotton would be substantially the same as the rates applicable to domestically produced cotton. Such rates are currently one dollar per bale and six tenths of one percent of the value of the cotton. For the purpose of supplemental assessments on imported cotton, a value would be placed on imported cotton and cotton content of imported cotton products based on an average of historical cotton prices. It is anticipated that the value of imported cotton would be set annually based on a 12 month average of prices received by domestic producers. Conversion factors established by the Secretary would be used to determine the cotton content of each imported product identified by a classification category under the Harmonized Tariff Schedule for the purpose of determining the assessments. These factors and classification categories would be specified in rules and regulations issued to implement the Order; (3) an increase in the amount that the Secretary of Agriculture can be reimbursed for conducting any referendum from $200,000 to $300,000; (4) reimbursement to agencies of the federal government that assist in administering the import provisions for a reasonable amount of the expenses incurred by that agency in connection therewith; and (5) termination of the producer's right to demand a refund of assessments. In addition, the authority citation for part 1205 is amended for clarity.

These amendments are being proposed pursuant to the Cotton Research and Promotion Act Amendments of 1990 (subtitle G of title XIX of the Food, Agriculture, Conservation and Trade Act of 1990, Pub. L. 101–624, November 28, 1990) which amended the Cotton Research and Promotion Act (7 U.S.C. 2101 *et. seq.*) The amendments of 1990 require the Secretary to conduct a referendum among persons who have been cotton producers during a representative period, and persons who are importers of cotton and who, during a 12 month period ending not later than 90 days prior to the conduct of the referendum under this section, imported a quantity of cotton with a value or weight in excess of the de minimis quantity, if any, established by the Secretary. The referendum is for the purpose of determining if a majority of those voting approve the proposed amendment to the Order. Such a referendum will be conducted on a date to be announced by the Secretary in accordance with the Cotton Research and Promotion Act Amendments of 1990. The amendment to the Order shall not become effective if disapproved by a majority of cotton producers and importers voting in the referendum. In addition a review will be conducted once every five years in accordance with the requirements of the Cotton Research and Promotion Act Amendments of 1990 by the Secretary to ascertain whether a referendum is needed to determine whether producers and importers favor or disfavor these amendments to the Order. Also, in accordance with the 1990 amendments, if the Secretary does not provide for a referendum, one may be conducted upon the request of a requisite number of producers and importers.

The Agricultural Marketing Service issued an invitation to submit comments on the proposed amendments to the Cotton Research and Promotion Order in the April 10, 1991, **Federal Register**. Fifteen respondents, including members of Congress, national and state farm organizations, individual producers, associations representing importers, and legal counsel representing importers, submitted comments. Seven of the respondents, representing members of Congress, national and state farm organizations, and individual producers, expressed support for the amendments. Five respondents representing importer associations and importers expressed opposition to the amendments. Two producer respondents expressed both support and concern over specific amendments. One respondent representing import brokers and freight forwarders expressed concern over one specific provision.

The substantive comments are discussed in the following paragraphs together with changes made upon review of the comments and the proposed Order by the agency. For the reader's convenience, the discussion is organized by the topic of the headings in this proposal. Also, other minor non-substantive changes have been made for purposes of clarity and accuracy.

Definitions

An incorrect citation was corrected in the newly added definition for "Cotton-Importer Organization". The corrected definition would read as follows: "Cotton-Importer Organization" means any organization which has been certified by the Secretary pursuant to § 1205.342.

As proposed, § 1205.309 defines the term importer as "any person who enters or withdraws from warehouse,

cotton for consumption in the customs territory of the United States, and the term import means any such entry. One respondent expressed concern that under this definition a broker acting on behalf of the ultimate consignee may be liable for the assessment. It was the intention of the agency that the proposed definition of importer have the same meaning as that appearing in the 1990 amendments to the Act. Upon review of the proposed definition, we discovered that a comma was omitted which could lead to misinterpretation. The agency has changed the proposed definition to include the omitted coma. The definition of importer would now read as follows: *Importer* means any person who enters, or withdraws from warehouse, cotton for consumption in the Customs territory of the United States and the term *import* means any such entry. We interpret this definition to mean that the importer would be any person who enters cotton for consumption, or any person who withdraws from warehouse cotton for consumption, in the United States. The person liable for the assessment would be any person who meets the requirements of this definition. This view is not inconsistent with regulations of the U.S. Customs Service, the agency which would collect the assessments on imports of cotton. Under that agency's regulations, an importer is the person primarily liable for the payment of any duties, and may be the importer of record or the consignee.

Cotton Board, Establishment and Membership

Five of the written comments received on behalf of importers concerning the proposed provisions for establishment and membership of the Cotton Board in § 1205.322 objected to the 20 percent cap on importer representation on the Cotton Board, stating that importers would not receive equitable representation under the proposal. It was argued that such inequitable representation would violate our international obligations under GATT. Conversely, one comment suggested that importers should be limited to two Board memberships initially.

The 1990 amendment to the Act provides for "——— an appropriate number of importer representatives on the Cotton Board, as determined by the Secretary, of importers of cotton on which assessments are paid ———". This is not the same criteria the Act provides for establishing domestic cotton producer representation on the Board. The Act specifically requires that cotton producers have representation on the Board for each cotton-producing state proportionate to that state's share of total U.S. marketings of cotton. Each cotton-producing state is entitled to at least one representative. The Order provides that producers are entitled to one representative for each one million bales (or major fraction thereof) of cotton produced.

Upon consideration of the concern raised by importers, the agency has decided to remove the 20 percent cap, and to establish importer representation on the Board in a manner that would more closely reflect the amount of cotton being imported and assessed.

For the purpose of the initial implementation of the proposed Order, the agency has determined that importer representation would be established at four members on the Cotton Board. Upon consideration of the estimated volume of imported cotton that would be subject to assessment, the agency has determined this number to be appropriate. In no case would importer representation consist of less than two members.

According to our information, the total quantity of imported cotton during 1990 was approximately 4.9 million bale equivalents. At this time, our figures indicate that the volume of imported cotton in bale equivalents would be less in 1991. Total bale equivalents of imported cotton do not accurately reflect the amount of imported cotton on which assessments would be paid because a substantial amount of imported cotton would not be subject to assessment. Imported cotton not subject to assessment would include de minimis amounts of cotton as defined in the rules and regulations implementing the Order, U.S.-produced cotton reentering the U.S., cotton contained in industrial products, and other product categories which would not be included in the Harmonized Tariff Schedule numbers in rules and regulations that would implement the Order. It is the agency's view that the volume of cotton not subject to assessment could be 1 million bale equivalents or more. Therefore, four importer representatives on the Board would result in approximately one representative for each one million bales or bale equivalents of cotton imported and assessed. This would closely parallel the formula used for producer representation.

An accurate estimate of the volume of imported cotton subject to assessment is not known. The agency would have better information as to the volume of imported cotton assessed after assessments have been collected for at least one year. To make allowance for fluctuations in the volume of imported cotton subject to assessment, the proposed Order provision would enable the Secretary to reduce or expand importer representation on the Board after consultation with organizations representing importers and producers, and the Cotton Board, in a manner provided by the rules and regulations implementing the Order.

Two additional comments also expressed concerns over the proposed formula for establishing importer representation. One of the two comments suggested that importer representation be based upon the volume of imported products containing cotton as opposed to the cotton content of imported products. The other comment suggested that allowing domestic producers at least 80 percent of Board composition when imports represent approximately 40 percent of consumption does not constitute appropriate representation. Representation based on consumption of imported products would not be consistent with the intent of the Act, and the importer representation established in this amendment is deemed appropriate in light of the volume of cotton which, according to our information, is being imported.

Assessments

Eleven respondents commented on various aspects of the proposed assessment on imported cotton and cotton-containing products as proposed in § 1205.335 "Assessments". Six respondents representing producers expressed general support for the provision to assess imported cotton and the cotton content of imported products. The remaining five representing importers expressed concerns, both general and specific regarding assessments on imported cotton products. The concerns of these five respondents are discussed below.

One concern regarding the assessment was that importers would not receive benefits resulting from the Research and Promotion program to the same extent that domestic producers do. Three respondents shared this concern and agreed that such assessment on cotton imports would violate our international obligations under GATT.

Cotton's share of the U.S. fiber market has increased substantially over the past fifteen years from approximately 34 percent to 53 percent. The Cotton Research and Promotion program under the Act have no doubt contributed substantially to this growth in the use of cotton and cotton products.

The importation of cotton products into the U.S. market is substantial and

increasing. Over the past fifteen years there has been a sharp increase in imports of cotton compared to domestic mill use. In fact, the rate of growth of imported cotton products has substantially exceeded that of domestically produced cotton products. Thus importers have benefitted from the expansion of markets for cotton products, and have done so to an even greater extent than domestic producers.

Further, the respondents argued that the benefits to importers as a result of expanding markets for cotton are limited to the extent that quota levels permit entry of imported cotton products. Import quotas for textile products are negotiated on a country and product specific basis. While it is common for a specific product of a specific country to fill its quota and then be restricted from further entry, the product could resume entry at the next negotiated opportunity and it is our understanding that it is not uncommon for the quotas to be renegotiated at higher limits. The dramatic increase in entries of imported cotton products since the mid 1970's strongly suggests that quotas have not restricted market growth for these products. For these reasons the agency believes that importers have had and will continue to have the opportunity equal to domestic producers to benefit as a result of this program.

The next general concern, expressed by two respondents, was that the assessment would be applied to unlike products and could therefore represent an inconsistency with U.S. international obligations under the provisions of GATT. The respondents were concerned that while the assessment would be applied to raw cotton produced domestically it would be applied to imported products containing cotton.

The proposed assessment would not apply to the value of the imported product as a whole. Only the cotton content of the product would be subject to assessment, and the assessment would be based on a bale equivalent value. In this regard the proposed assessment is specific to cotton, whether in raw form or in products.

The value of the imported cotton, for the purpose of the supplemental assessments, would be established through notice and comment rulemaking with the intent to approximate as nearly as practicable, the value of domestically produced cotton. To accomplish this, the Secretary would determine the average price received by U.S. producers during a 12 month period and use this average as the value of imported cotton for the following 12 month period.

Accordingly, the agency has determined that since the assessment for domestically produced cotton is levied on cotton fiber and the assessment for imported cotton would be levied on cotton fiber or the cotton of imported products in the same manner, no disparity exists between the domestic assessments and the imported assessments.

The next general concern regarding assessments, expressed by two respondents, was that the assessment calculation for imports would be too burdensome. Respondents expressed concern that complex calculations of cotton content would be required for each entry. Further it was stated that even within a single Harmonized Tariff Schedule (HTS) category an infinite variety of product variations could exist. Concerns were also expressed that critical information has not been released, specifically that the public has not had opportunity to comment on how the cotton content of products, the assessment, and value of cotton would be calculated for cotton imports.

Detailed explanations of the assessment calculation, the list of HTS categories subject to assessment, the cotton content determinations, and the value of imported cotton for supplemental assessments will be published in the rules and regulations that implement the proposed Order provisions. The agency is now in the process of preparing such rules and regulations for publication in the **Federal Register.** Proposed rules will be published and will afford all interested persons the opportunity to participate in the rulemaking through notice and comment. The agency intends that the cotton content determinations and the assessment calculation be as practical and simple as is possible.

Another concern, expressed by three respondents, was that the assessment would represent a significant cost to importers. To minimize this cost the respondents suggested four methods of reducing the cost of the assessment.

The first two suggestions were that the assessment on imported products should be eliminated and that only imported raw cotton should be assessed. However, this would be inconsistent with the 1990 Act Amendments. Congress expressly stated in the amendments that the assessment would be made on both imported cotton and the cotton content of imported products.

Another suggestion related to reducing the cost to importers was that the assessment on imported cotton should be less than the assessment on U.S. produced cotton because the Act does not specifically state that the assessment on imported cotton should be established at the same rate, but states that it would be established in the same manner as the assessment on U.S. cotton. The agency views the term "same manner" to mean that there be an equivalent assessment rate levied on imported cotton and on domestically produced cotton.

A commenter also suggested that products entering the U.S. under special access programs of the Customs Service that can be identified as having U.S. origin should be exempt from assessment. This comment has merit. Textile articles assembled abroad from U.S. cut and formed fabrics represent a significant number of entries. Since U.S. produced cotton contained in these articles is assessed at the raw cotton stage, no further assessment is warranted. These articles are entered under specific Customs Service statistical notations and can be readily identified. The specific rules for dealing with this class of products will be incorporated into rules and regulations implementing the Order. A new paragraph is added to § 1205.335 providing that entries of cotton and cotton products which can be determined to contain U.S. produced cotton or cotton which is other than Upland cotton would not be assessed.

The final concern regarding the assessment was expressed by one respondent. The respondent was concerned that the assessment should not go to fund the projects and programs of a private organization such as the Cotton Board.

The authority for the establishment of the Cotton Board is provided by law in the Cotton Research and Promotion Act. By statute, Congress has determined the need for an instrumentality of the Secretary of Agriculture, established to effectuate the policies and aims of the Cotton Research and Promotion Act. The Cotton Board is not, as the respondent suggested, a private organization. Cotton Board members are appointed by the Secretary to carry out the functions specified in the Cotton Research and Promotion Order. The activities of the Cotton Board are carried out under the oversight and with the approval of USDA.

Reports, and Books and Records

Two respondents commented on the reporting and recordkeeping requirements of the proposed Order. The comments expressed concerns that the proposed requirements may be overly burdensome, overly broad and violative of the Paperwork Reduction Act.

The U.S. Customs Service will serve as the collecting agent for import assessments. Almost all information

required under this proposal would be available from records already maintained by importers under the Customs Service requirements. The Department intends to rely greatly on records maintained by the Customs Service and records maintained by importers under Customs Service requirements for its administration and enforcement of the provisions of the proposed Order. We anticipate that importers would be required to provide additional reports and records only on occasions when additional information is needed as evidence of compliance. In light of the responsibility of U.S.D.A. to ensure the effective administration of the Research and Promotion program and the periodic nature of the request for records, the agency views the recordkeeping requirements for importers as limited in burden, practical in application, and not duplicitous. Thus it is not in violation of the Paperwork Reduction Act. The rules and regulations will specify in greater detail what type of books and records importers would need to maintain.

Importer Reimbursements

Six comments on proposed § 1205.336, Importer Reimbursements, were received, objecting to the importer's perceived burdens in the reimbursement process because of the difficulty of determining the origin of raw cotton fiber in manufactured products, and because of the uncertainty as to what type of information would need to be submitted to the Cotton Board. One respondent commented favorably on the reimbursement process. Clearly defined procedures for importer exemption from assessment and reimbursements of assessments will be established in rules and regulations that supplement the Order. The agency is currently developing these procedures which will be published in the **Federal Register** with a request for written comments. The agency realizes the difficulty in determining the origin of raw cotton fiber in manufactured products. Any single manufactured product may contain fibers from several origins and any two identical products produced by a single manufacturer may contain fibers of different origins. With this in mind the agency intends to establish the reimbursement procedure so that it is as practical and as uncomplicated as administrative needs will permit. However, importers wishing to receive reimbursements would be required to provide proof satisfactory to the Cotton Board that the imported cotton was U.S. produced cotton or cotton other than Upland cotton. The agency envisions that satisfactory proof would vary case by case and be influenced greatly by the product on which the reimbursement of assessment in sought.

Commenters were also concerned that the proposed reimbursement procedure would have the effect of treating imported products differently from domestic products, and that it could result in detrimental cash flow effects. In response to these concerns, the agency is adding a method of exemption from assessment for cotton that is U.S. produced cotton or is other than Upland cotton in proposed § 1205.335 of the Order. Importers would be required to submit proof satisfactory to the Cotton Board that the cotton is U.S. produced cotton or is other than Upland cotton. The rules and regulations would specify in greater detail the procedures for obtaining exemption from assessment. Under the revised proposal importers would have the option of seeking exemption or seeking reimbursement. Failing to obtain exemption would not prevent the importer from seeking reimbursement.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1205 is proposed to be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. Section 1205.302 is revised to read as follows:

§ 1205.302 Act

Act means the Cotton Research and Promotion Act, as amended (7 U.S.C. 2101–2118; 89–502, 80 Stat 279, as amended).

3. Section 1205.304 is revised to read as follows:

§ 1205.304 Cotton.

Cotton means:

(1) All Upland cotton harvested in the United States, and, except as used in §§ 1205.311, and 1205.335, includes cottonseed of such cotton and the products derived from such cotton and its seed, and (2) imports of Upland cotton, including the Upland cotton content of the products derived thereof. The term "cotton" shall not, however, include any entry of imported cotton by an importer which has a value or weight less than a de minimis amount established in regulations issued by the Secretary and industrial products as that term is defined by regulation.

4. The sections listed in the first column are redesignated as shown in the second column.

Old Section	*New Section*
1205.305	1205.307
1205.306	1205.308
1205.307	1205.309
1205.308	1205.311
1205.309	1205.312
1205.310	1205.313
1205.311	1205.314
1205.312	1205.315
1205.313	1205.316
1205.314	1205.318
1205.315	1205.319
1205.316	1205.320
1205.317	1205.321
1205.318	1205.322
1205.319	1205.323
1205.320	1205.324
1205.321	1205.325
1205.322	1205.326
1205.323	1205.327
1205.324	1205.328
1205.325	1205.329
1205.326	1205.330
1205.327	1205.331
1205.328	1205.332
1205.329	1205.333
1205.330	1205.334
1205.331	1205.335
1205.332	1205.336
1205.333	1205.337
1205.334	1205.338
1205.335	1205.339
1205.336	1205.340
1205.337	1205.341
1205.338	1205.343
1205.339	1205.345
1205.340	1205.346
1205.341	1205.347
1205.342	1205.348

5. Section 1205.305 "Upland Cotton" is added to read as follows:

§ 1205.305 Upland Cotton.

Upland Cotton means all cultivated varieties of the species Gossypium hirsutum L.

6. Section 1205.306 "Bale" is added to read as follows:

§ 1205.306 Bale.

Except as used in § 1205.322, *Bale* means the package of lint cotton produced at a cotton gin or the amount of processed cotton in a manufactured product that is equivalent to a 500 pound bale of lint cotton.

7. Section 1205.310 "Importer" is added to read as follows:

§ 1205.310 Importer.

Importer means any person enters, or withdraws from warehouse, cotton for consumption in the customs

territory of the United States, and the term "import" means any such entry.

8. Redesignated § 1205.316 is revised to read as follows:

§ 1205.316 Cotton-Producer Organization.

Cotton-Producer Organization means any organization which has been certified by the Secretary pursuant to § 1205.341.

9. Section 1205.317 is added to read as follows:

§ 1205.317 Cotton-Importer Organization.

Cotton-importer organization means any organization which has been certified by the Secretary pursuant to § 1205.342.

10. Redesignated § 1205.322 is revised to read as follows:

§ 1205.322 Establishment and Membership.

(a) There is hereby established a Cotton Board composed of: (1) Representatives of cotton producers, each of whom shall have an alternate, selected by the Secretary from nominations submitted by eligible producer organizations within a cotton producing state, as certified pursuant to § 1205.341, or, if the Secretary determines that a substantial number of producers are not members of or their interests are not represented by any such eligible organizations, from nominations made by producers in a manner authorized by the Secretary, and (2) Representatives of cotton importers, each of whom shall have an alternate, selected by the Secretary from nominations submitted by eligible importer organizations, as certified pursuant to § 1205.342, or, if the Secretary determines that a substantial number of importers are not members of or their interests are not represented by any such eligible organization, from nominations made by importers in a manner authorized by the Secretary.

(b) Representation on the Cotton Board shall be as follows: (1) Each cotton-producing state shall have at least one member and an additional member for each 1 million bales or major fraction (more than half) thereof of cotton produced in the state and marketed above 1 million bales during the period specified in the regulations for determining Board membership, and (2) Cotton importers shall be represented by an appropriate number of representatives, as determined by the Secretary, of importers of cotton subject to assessment during the period specified in the regulations for determining Board membership. That number shall not be less than two members. The initial importer representation on the Board shall consist of four representatives. The Secretary may, after consultation with organizations representing importers, reduce or increase the number of importer representatives, in the manner prescribed by the Secretary.

11. Redesignated § 1205.323 is revised to read as follows:

§ 1205.323 Term of Office.

All members of the Board and their alternates shall serve for terms of three years. Each member and alternate shall continue to serve until a successor is selected and has qualified.

12. Redesignated § 1205.324 is revised to read as follows:

§ 1205.324 Nominations.

All nominations authorized under § 1205.322 shall be made within such a period of time and in such a manner as the Secretary shall prescribe. The eligible producer organizations within each cotton-producing state, as certified pursuant to § 1205.341, shall caucus for the purpose of jointly nominating two qualified persons for each member and each alternate member to be selected to represent the cotton producers of such cotton-producing state. The eligible importer organizations, as certified pursuant to § 1205.342, shall caucus for the purpose of jointly nominating two qualified persons for each member and alternate member to be selected to represent cotton importers. If joint agreement is not reached with respect to the nominees for any such position, each such organization may nominate two qualified persons for any position on which there is no agreement.

13. Redesignated § 1205.325 is revised to read as follows:

§ 1205.325 Selection.

From the nominations made pursuant to §§ 1205.322 and 1205.324, the Secretary shall select the members of the Board and an alternate for each member on the basis of representation provided for in §§ 1205.322 and 1205.323.

14. Redesignated § 1205.327 is revised to read as follows:

§ 1205.327 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the Board to qualify, or in the event of death, removal, resignation or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and selected in the manner specified in §§ 1205.322, 1205.324 and 1205.325.

15. Redesignated § 1205.328 is revised to read as follows:

§ 1205.328 Alternate Members.

An alternate member of the Board, during the absence of the member for whom the person is the alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of death, removal, resignation or disqualification of a member, the alternate for the member shall act for the member until a successor for such member is selected and qualified. In the event that both a producer member of the Board and the member's alternate are unable to attend a meeting, the Board may designate any other alternate member from the same cotton-producing state or region to serve in such member's place and stead at such meeting. In the event that both an importer member and the member's alternate are unable to attend a meeting, the Board may designate any other importer alternate member to serve in such member's place and stead at such meeting.

16. In redesignated § 1205.331, paragraph (b) is revised to read as follows:

§ 1205.331 Powers.

* * * * *

(b) Subject to the approval of the Secretary, to make rules and regulations to effectuate the terms and provisions of this subpart including the designation of the handler, importer, or other person responsible for collecting the assessments authorized by § 1205.335, which designation may be of different handlers, importers, or other persons, or classes of handlers, importers, or other persons, to recognize differences in marketing practices or procedures in any state or area;

* * * * *

17. In redesignated § 1205.332, paragraphs (c) and (i) are revised to read as follows:

§ 1205.332 Duties.

(c) With the approval of the Secretary, to enter into contracts or agreements for the development and submission to it of Research and Promotion plans or projects authorized by § 1205.333, and for the carrying out of such plans or projects when approved by the Secretary, and for the payment of costs thereof with funds collected pursuant to § 1205.335, with an organization or association whose governing body consists of cotton producers selected by the cotton-producer organizations certified by the Secretary under § 1205.341, in such manner that the

producers of each cotton-producing state will, to the extent practicable, have representation on the governing body of such organization in the proportion that the cotton marketed by the producers of such state bears to the total marketed by the producers of all cotton-producing states. Any such contract or agreement shall provide that such contracting organization or association shall develop and submit annually to the Cotton Board, for the purpose of review and making recommendations to the Secretary, a program of research, advertising, and sales promotion projects, together with a budget, or budgets, which shall show the estimated cost to be incurred for such projects, and that any such projects shall become effective upon approval by the Secretary. Any such contract or agreement shall also provide that the contracting organization shall keep accurate records of all its transactions, which shall be available to the Secretary and Board on demand, and make an annual report to the Cotton Board of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require;

* * * * *

(i) To act as intermediary between the Secretary and any producer, importer, or handler.

* * * * *

18. In redesignated § 1205.333, the introductory text is revised to read as follows:

§ 1205.333 Research and Promotion.

The Cotton Board shall in the manner prescribed in § 1205.332(c) establish or provide for:

* * * * *

19. In redesignated § 1205.334, paragraphs (b) and (c) are revised and new paragraph (d) is added to read as follows:

§ 1205.334 Expenses.

* * * * *

(b) The Board shall reimburse the Secretary for:

(1) Expenses up to $300,000 incurred by the Secretary in connection with any referendum conducted under the Act and

(2) Expenses incurred by the Department of Agriculture for administrative and supervisory costs up to five employee years annually.

(c) The Board shall reimburse any agency of the United States Government that assists in administering the import provisions of the Order for a reasonable amount of the expenses incurred by that agency in connection therewith.

(d) The funds to cover such expenses incurred under paragraphs (a), (b) and (c) of this section shall be paid from assessments received pursuant to § 1205.335.

20. Redesignated § 1205.335 is revised to read as follows:

§ 1205.335 Assessments.

(a) Each cotton producer or other person for whom cotton is being handled shall pay to the handler thereof designated by the Cotton Board pursuant to regulations issued by the Secretary and such handler shall collect from the producer or other person for whom the cotton, including cotton owned by the handler, is being handled, and shall pay to the Cotton Board, at such times and in such manner as prescribed by regulations issued by the Secretary, assessments as prescribed in paragraphs (a)(1) and (2) of this section:

(1) An assessment at the rate of $1 per bale of cotton handled.

(2) A supplemental assessment on cotton handled which shall not exceed one percent of the value of such cotton as determined by the Cotton Board and approved by the Secretary and published in the Cotton Board rules and regulations. The rate of the supplemental assessment may be increased or decreased by the Cotton Board with the approval of the Secretary. The Secretary shall prescribe by regulation whether the assessment rate shall be levied on:

(i) The current value of the cotton, or

(ii) An average value determined from current and/or historical cotton prices and converted to a fixed amount for each bale.

(b) Each importer of cotton shall pay to the Cotton Board through the U.S. Customs Service, or in such other manner and at such times as prescribed by regulations issued by the Secretary, assessments as prescribed in paragraphs (b)(1) and (2) of this section:

(1) An assessment of $1 per bale of cotton imported or the bale equivalent thereof for cotton products.

(2) A supplemental assessment on each bale of cotton imported, or the bale equivalent thereof for cotton products, which shall not exceed one percent of the value of such cotton as determined by the Cotton Board and approved by the Secretary and published in the Cotton Board rules and regulations. The rate of the supplemental assessment on imported cotton shall be the same as that paid on cotton produced in the United States. The rate of the supplemental assessment may be increased or decreased by the Cotton Board with the approval of the Secretary. The Secretary shall prescribe by regulation the value of imported cotton based on an average of current and/or historical cotton prices.

(c) The Secretary may designate by regulation exemptions to assessments provided for in this section for the following:

(1) Entries of products designated by specific Harmonized Tariff Schedule numbers which the Secretary determines are composed of U.S. Cotton or other than Upland cotton, and for:

(2) Cotton contained in entries of imported cotton and cotton products that is U.S. produced cotton or is other than Upland cotton.

(d) Assessments collected under this section are to be used for such expenses and expenditures, including provision for a reasonable reserve, as the Secretary finds reasonable and likely to be incurred by the Cotton Board and the Secretary under this subpart.

21. Redesignated § 1205.336 is revised to read as follows:

§ 1205.336 Importer Reimbursements.

Any cotton importer against whose imports any assessment is made and collected under the authority of the Act who has reason to believe that such assessment or any portion of such assessment was made on U.S. produced cotton or cotton other than Upland cotton shall have the right to demand and receive from the Cotton Board a reimbursement of the assessment or portion of the assessment upon submission of proof satisfactory to the Board that the importer paid the assessment and that the cotton was produced in the U.S. or is other than Upland cotton. Any such demand shall be made by the importer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary. Such time period shall provide the importer at least 90 days from the date of collection to submit the reimbursement form to the Board. Any such reimbursement shall be made within 60 days after demand therefor.

22. Redesignated § 1205.338 is revised to read as follows:

§ 1205.338 Reports.

Each handler and importer subject to this subpart and importers of de minimis amounts of cotton may be required to report to the Cotton Board periodically such information as is required by regulations, which may include but not be limited to the following:

(a) Number of bales handled or imported;

(b) Number of bales on which an assessment was collected;

(c) Name and address of person from whom the handler has collected the assessments on each bale handled or imported;

(d) Date collection was made on each bale handled or imported.

23. Redesignated § 1205.339 is revised to read as follows:

§ 1205.339 Books and Records.

Each handler and importer subject to this subpart and importers of de minimis amounts of cotton shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the marketing year of their applicability.

24. Redesignated § 1205.340 is revised to read as follows:

§ 1205.340 Confidential Treatment.

All information obtained from such books, records or reports shall be kept confidential by all officers and employees of the Department of Agriculture and of the Cotton Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this § 1205.340 shall be deemed to prohibit—

(a) the issuance of general statements based upon the reports of a number of handlers or importers subject to this subpart or importers of de minimis amounts of cotton, which statements do not identify the information furnished by any person, or

(b) the publication by the direction of the Secretary, of the name of any person violating this subpart, together with a statement of the particular provisions of this subpart violated by such person.

25. In redesignated § 1205.341, the concluding text of the section is revised to read as follows:

§ 1205.341 Certification of Cotton Producer Organizations.

* * * * *

The primary consideration in determining the eligibility of an organization shall be whether its cotton producer membership consists of a sufficiently large number of cotton producers who produce a relatively significant volume of cotton to reasonably warrant its participation in the nomination of members for the Cotton Board. Any cotton producer organization found eligible by the Secretary under this § 1205.341 will be certified by the Secretary, and the Secretary's determination as to eligibility is final.

26. Redesignated § 1205.343 is revised to read as follows:

§ 1205.343 Suspension and Termination.

(a) The Secretary will, whenever the Secretary finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this subpart or such provision.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of cotton producers and importers (if subject to the Order) voting in the most recent referendum, to determine whether cotton producers and importers subject to the Order favor the suspension or termination of this subpart, except that in counting such request for a referendum, not more than 20 percent of such request may be from producers from any one state or importers of cotton (if subject to the Order). The Secretary shall suspend or terminate such subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of producers and importers subject to the Order voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of cotton, and who produced and imported more than 50 percent of the volume of cotton produced and imported by those voting in the referendum.

27. In redesignated § 1205.345 paragraphs (b) and (c) are revised to read as follows:

§ 1205.345 Proceedings after Termination.

* * * * *

(b) The said trustees shall—

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Cotton Board under any contracts or agreements entered into by it pursuant to § 1205.332(c);

(3) From time-to-time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all funds, property and claims vested in the Board or the trustees pursuant to this § 1205.345.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to this § 1205.345 shall be subject to the same obligation imposed upon the Cotton Board and upon the trustees.

* * * * *

28. A new § 1205.342 "Certification of cotton importer organizations" is added to read as follows:

§ 1205.342 Certification of Cotton Importer Organizations.

Any importer organization may request the Secretary for certification of eligibility to participate in nominating members and alternate members to represent cotton importers on the Cotton Board. Such eligibility shall be based, in addition to other available information, upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

(a) Nature and size of organization's active membership, proportion of total active membership accounted for by cotton importers and the total amount of cotton imported by the organization's cotton importer members;

(b) The extent to which the cotton importer membership of such organization is represented in setting the organization's policies;

(c) Evidence of stability and permanency of the organization;

(d) Sources from which the organization's operating funds are derived;

(e) Functions of the organization; and

(f) The organization's ability and willingness to further the aims and objectives of the Act.

The primary consideration in determining the eligibility of an organization shall be whether its membership consists of a sufficiently large number of cotton importers who import a relatively significant volume of cotton to reasonably warrant its participation in the nomination of members for the Cotton Board. Any importer organization found eligible by the Secretary under this § 1205.342 will be certified by the Secretary, and the Secretary's determination as to eligibility is final.

Dated: July 3, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 91–16273 Filed 7–5–91; 2:36 pm]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[CN-91-004]

Cotton Research and Promotion Order Amendments; Order Directing That a Referendum Be Conducted; Determination of Representative Period and Voter Eligibility

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: The Cotton Research and Promotion Act Amendments of 1990 provide that after notice and opportunity for public comment, the Secretary shall issue a proposed amendment to the Cotton Research and Promotion Order implementing the provisions of the 1990 Amendments to the Act. The amendments to the Act further provide that the Secretary shall conduct a referendum among eligible cotton producers and importers to ascertain whether the proposed Order amendment is approved by a majority of those voting in the referendum. The proposed amendment to the Order provides for: (1) Importer representation on the Cotton Board; (2) the assessment of imported cotton and cotton products; (3) increasing the amount the Secretary of Agriculture can be reimbursed for conduct of a referendum from $200,000 to $300,000; (4) reimbursing government agencies who assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of producers to demand a refund of assessments.

DATES: For the purpose of determining producer voter eligibility, the representative production period is the period January 1, 1990 through December 31, 1990. Producers engaged in the production of the 1990 cotton crop during that period are eligible to vote in the referendum. For the purpose of determining importer voter eligibility, the 12-month period during which qualifying imports of cotton must have been made is January 1, 1990 to December 31, 1990.

The referendum will be held during the period July 17, 1991 through July 26, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald H. Read, Cotton Division, Agricultural Marketing Service, 202-447-2145.

SUPPLEMENTARY INFORMATION: The proposed amendment to the Cotton Research and Promotion Order, published on July 9, 1991, in the **Federal Register** has been issued pursuant to the Cotton Research and Promotion Act Amendments of 1990 (subtitle G of title XIX of the Food, Agriculture, Conservation and Trade Act of 1990, Pub. L. 101-624, November 28, 1990) which amended the Cotton Research and Promotion Act (7 U.S.C. 2101 *et seq.*). The 1990 Amendments to the Act require the Secretary to conduct a referendum among persons who have been cotton producers during a representative period, as determined by the Secretary, and persons who are importers of cotton and who, during a 12-month period ending not later than 90 days prior to the referendum imported a quantity of cotton in excess of the de minimis quantity (by weight or value) established by the Secretary. The purpose of the referendum is to determine if a majority of those voting approve the proposed amendment to the Order.

Cotton producers eligible to vote in the referendum are those producers who were engaged in Upland cotton production of the 1990 crop during the period January 1, 1990 through December 31, 1990, which is determined to be the representative period for the purpose of this referendum. Importers eligible to vote are persons who entered, or withdrew from warehouse, cotton for consumption in the customs territory of the United States during the 12-month period January 1, 1990, to December 31, 1990, having an Upland cotton content value in excess of the de minimis value of $220.99 per line item entry. January 1, 1990, to December 31, 1990, is established as the 12-month importation period for the purpose of importer eligibility because records on imports during this period were readily available from the U.S. Customs Service. The availability of records on imports covering a time period closer to the actual dates of the referendum could not be assured. In selecting the 12-month representative period, it was the intent of the agency to identify importers who are eligible to vote in the referendum in a fair and reasonable manner while, at the same time, minimizing administrative burdens.

A review of the U.S. Customs Service records of imports of cotton-containing products during the 12-month period January 1, 1990, to December 31, 1990, revealed that there were approximately 10,000 importers who imported products which are identified by approximately 700 Harmonized Tariff Schedules (HTS) numbers and which contain cotton having a value in excess of the de minimis figure of $220.99 per line item entry. Our information indicates that the assessments that would be generated by the products classified under these 700 numbers would account for about 97 percent of the total possible assessments if all cotton-containing HTS categories were assessed. It is anticipated that the remaining cotton-containing products classified by the Harmonized Tariff Schedule would be exempted from assessment by the rules and regulations implementing the Order. However, importers of these products who, during the 12-month period January 1, 1990, to December 31, 1990, imported such products having a value of cotton in excess of the de minimis value per line item entry would also be eligible to vote.

In general, a person may qualify as an eligible voter by meeting the above requirements, but no voter shall be entitled to more than one vote regardless of the number of importing entities or Upland cotton farms in which the person is interested, or the number of communities, counties, or states in which are located such operations in which the person holds an interest. However, the individual partners of a qualified partnership shall each have one vote, but the partnership itself will not have a vote, and an individual who qualifies as an eligible voter by reason of ownership of a separate farming or importing operation shall have only one vote whether or not that individual has additional ownership in an organization such as a corporation which is also eligible as a voter and entitled to one vote. Persons who engage in cotton production or importing as guardians, administrators, executors or trustees are eligible to vote in that fiduciary capacity if, in fact, in such capacity, that person qualifies as an eligible voter. Each producing or importing entity shall have one vote, no matter how large the volume of cotton produced or imported.

The approximately 10,000 importers of the specified products who have already been identified from U.S. Customs Service records as being eligible to vote will be mailed ballots by ASCS. Other importers who determine they are eligible to vote and who do not receive a ballot by July 12, 1991, should request a ballot from the U.S. Department of Agriculture. Such request should include the weight and HTS number of cotton-containing products imported during the period January 1, 1990, to December 31, 1990, having an estimated cotton content value in excess of the de minimis value of $220.99 per line item entry. A copy of Customs Form 7501—"Entry Summary" would serve the purpose of identifying the weight and HTS number of the product and should be included with the request for a ballot.

The value of the cotton content of products by line item entry can be approximated by applying the following formula to determine eligibility for voting in the referendum: an estimate of the percentage of cotton in the product × net weight in kilograms of the imported product × $1.446 = total cotton value. The value of imported cotton for the purpose of the referendum was calculated to be $1.446 per kilogram. This is the value of cotton that USDA anticipates would be used for calculating assessments. The importer is eligible to vote only if the total cotton value for a line item entry is in excess of $220.99.

Referendum ballots will be mailed to all known eligible voters by the Agricultural Stabilization and Conservation Service (ASCS) of USDA by July 10, 1991. The U.S. Customs Service will provide a list of eligible importers, who we anticipate would be subject to assessments under the Order, from its 1990 import records to the ASCS Kansas City Management Office, where a register of known eligible importer voters will be established prior to the referendum. The ASCS county committees shall establish a register of known eligible producer voters in each county prior to the referendum.

Any eligible voter who does not receive a ballot by July 12, 1991, should request a ballot. Producers should contact their county ASCS office, and importers should write the U.S. Department of Agriculture, ASCS, Attn. CGRD, P.O. Box 2415, Washington, DC 20013, with the information which supports eligibility discussed above.

Voters must complete the ballots with all requested information, including signature, and return the ballots to the designated polling place before the period of the referendum ends. Importers must enter their U.S. Customs Service importer number on the ballot if it does not already appear there.

Ballots will be considered to have been received during the referendum period if they are received in the polling place prior to the close of business on the final day of the referendum period, or if ballots are postmarked not later than midnight of the final day of the referendum period and are received prior to the start of the canvassing of the votes.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) and section 3504(h) of that Act, the ballot materials that will be used in this referendum have been submitted to, and approved by, the Office of Management and Budget (OMB) and have been assigned OMB number 0581–0093. It is estimated that approximately 210,000 producers and 10,000 to 15,000 importers will be eligible to vote in a referendum. It is estimated that an average of .10 hours will be required to complete each ballot.

The Secretary will announce the results of the referendum within 30 days of the close of the referendum period.

Dated: July 3, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–16274 Filed 7–5–91; 2:36 pm]

BILLING CODE 3410-02-M

federal register

Tuesday
July 9, 1991

Part VII

The President

Presidential Determination No. 91-41—Certification on Progress Toward National Reconciliation in Angola

Presidential Documents

Federal Register
Vol. 56, No. 131
Tuesday, July 9, 1991

Presidential Documents

Title 3—

The President

Presidential Determination No. 91–41 of June 19, 1991

Certification on Progress Toward National Reconciliation in Angola

Memorandum for the Secretary of State

Pursuant to Section 5 of Title II of the Dire Emergency Supplemental Appropriations and Transfers, Urgent Supplementals, and Correcting Enrollment Errors Act of 1989 (Public Law 101–45; 103 Stat. 120), I hereby determine that progress is being made toward national reconciliation in Angola and so certify to the Congress.

You are directed to inform the appropriate committees of the Congress of this determination and to provide them with copies of the justification explaining the basis for this determination. You are further directed to publish this determination in the **Federal Register**.

THE WHITE HOUSE,
Washington, June 19, 1991.

[FR Doc. 91–16447
Filed 7–5–91; 3:51 pm]
Billing code 3195–01–M

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