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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours; to present:

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3. The important elements of typical Federal Register documents.

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

ALBUQUERQUE, NM

WHEN: December 8, at 9:00 am
WHERE: University of New Mexico Continuing Education Bldg., Room 1
       1634 University Blvd., NE
       Albuquerque, NM
RESERVATIONS: Julie Stone
               505-768-3532

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FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R-0723]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; Correction.

SUMMARY: This document contains corrections to the final regulation which was published Wednesday, October 14, 1992, (57 FR 46956). The regulation relates to the elimination of presentment fees on checks presented by 8 a.m. local time at specified locations.


FOR FURTHER INFORMATION CONTACT: Stephanie Martin, Senior Attorney (202/452-2198), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3198), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: As published, the final regulation contains errors that are misleading and need to be clarified.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

Accordingly, 12 CFR part 229 is corrected by making the following correcting amendments:

PART 229—AMENDED

1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 et seq.

2. Amendatory instructions 13 and 14, in the middle column on page 46975 of the issue for Wednesday, October 14, 1992, are revised to read as follows:

13. In Appendix E to part 229 the commentary to § 229.36 is amended by revising the last sentence of the first paragraph of paragraph (a) as follows:

14. In Appendix E to part 229 the commentary to § 229.39 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) as follows:


William W. Wiles, Secretary of the Board.

[FR Doc. 92-20828 Filed 11-4-92; 8:45 am]

BILLING CODE 8010-01-F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 206, 210, and 218

RIN 1010-AB72

Elimination of Form MMS-4014

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Royalty Management Program of the Minerals Management Service (MMS) is amending its regulations to remove references to Form MMS-4014 (Report of Sales and Royalty Remittance—Solid Minerals). The MMS has revised its Form MMS-2014 to provide for the reporting of sales and royalty information from any type of Federal or Indian mineral leases include oil and gas leases, geothermal resources leases, and solid mineral leases.

The MMS is continually reviewing its operations relative to the collection and disbursement of royalties and other revenues from Federal and Indian mineral leases for improvements that can be made. As a result of this ongoing process, MMS has revised its Form MMS-2014 to provide for the reporting of sales and royalty information from any type of Federal or Indian mineral leases. Federal and Indian mineral leases include oil and gas leases, geothermal resources leases, and solid mineral leases.

The MMS is amending its regulations to remove all references to Form MMS-4014 because that form will no longer be used after the effective date of this final rule. The consolidation of all payor reporting requirements on the revised Form MMS-2014 will simplify reporting requirements on the part of the payor and will also improve the efficiency of MMS’ collection process. As of the effective date of this rule, all lessees and other royalty payors on any Federal or Indian mineral lease must begin reporting sales and royalty information relative to its lease(s) on the revised Form MMS-2014, which has been retitled “Report of Sales and Royalty Remittance.”

EFFECTIVE DATE: December 1, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3610, Denver, CO 80225-0165, telephone (303) 231-3432.

SUPPLEMENTARY INFORMATION: The principle author of this final rule is Marvin D. Shaver of the Rules and Procedures Branch, Royalty Management Program, MMS.
Form MMS–4014, or for errors in completing the Form MMS–2014 for products previously reported on the Form MMS–4014. A letter advising royalty payors of the change, explaining the difference between the two forms, and advising them of the grace period will be mailed to payors prior to implementation of the regulatory change.

In accordance with established reporting requirements, information on Federal and Indian leases may not be reported on the same Form MMS–2014. Separate Forms MMS–2014 and payment documents must be submitted for Federal and Indian leases. The reporting of Federal and Indian lease information on the same Form MMS–2014 will be subject the payor to an assessment in accordance with 30 CFR 218.41(b)(4).

For purposes of this rule only, Indian leases include leases located in the State of Alaska in which any Alaska Native corporation owns an interest. In accordance with established reporting requirements, information on oil and gas leases and solid minerals leases should not be reported on the same Form MMS–2014. Separate Forms MMS–2014 and payment documents must be submitted for each lease type. Because separate payor codes have been assigned based on the type of lease, the combined reporting of information for different lease types on the same Form MMS–2014 will subject the payor to an assessment in accordance with 30 CFR 218.41(b)(5).

Procedural Matters

Administrative Procedure Act

The changes included in this rulemaking are administrative only and are not representative changes. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is unnecessary to issue proposed regulations before the issuance of this final rule amendment.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This final rule amendment consolidates all payor royalty reporting requirements on one form. This change will simplify payor reporting requirements and will also improve the efficiency of MMS’ collection process with no additional requirements or burden placed upon small business entities as a result of implementation of this rule.

Executive Order 12830

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12830, “Government Action and Interference With Constitutionally Protected Property Rights.”

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Paperwork Reduction Act of 1980

The information collection requirements contained in this rule for the reporting of sales and royalty information on Form MMS–2014 have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned OMB Clearance Number 1010–0022.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to paragraph 2(C) of Section 102 of the National Environmental Policy Act of 1969 (43 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Parts 206 and 210

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Minerals royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 218

Coal, Continental shelf, Electronic funds transfer, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.


Daniel Talbot,
Deputy Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR parts 206, 210, and 218 are amended as follows:

PART 206—PRODUCT VALUATION

1. The authority citation for part 206 continues to read as follows:


2. In part 206, remove the number “4014” and add in its place, the number “2014” in the following places:

(a) Section 206.254(b);
(b) Section 206.257(d)(3);
(c) Sections 206.259(c)(1)(i) [2 places], (c)(2)(i) [2 places], (c)(4), (d)(1), (e)(1), and (e)(2);
(d) Sections 206.262(c)(1), (c)(2)(i), (c)(4), (d)(1), (e)(1), and (e)(2).

PART 210—FORMS AND REPORTS

1. The authority citation for part 210 continues to read as follows:


§ 210.202 [Amended]

2. In § 210.202, remove the number “4014” in four places and add in each place the number “2014”, and remove the words “Remittance—Solid Minerals” in the first sentence and add in their place the word “Remittance”.

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 continues to read as follows:


§ 218.40 [Amended]

2. Remove the phrase “or Form MMS–4014” in § 218.40(c).
ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52
[PA-3-1-5444; FRL-4531-4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania: Revised Definition of Volatile Organic Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision amends the SIP's definition of volatile organic compound (VOC), which is set out in Title 25 Pa. Code, Chapter 121, Section 121.1. The intended effect of this action is to approve Pennsylvania's revised definition of VOC. This action is being taken in accordance with Section 110 and part D of the Clean Air Act (CAA).

EFFECTIVE DATE: This rule will become effective on December 7, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; Commonwealth of Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 2357, Executive House—2nd & Chestnut Streets, Harrisburg, PA 17105.

FOR FURTHER INFORMATION CONTACT: Mrs. Aquanetta Dickens, (215) 597-4554.

SUPPLEMENTARY INFORMATION: On October 17, 1991 (56 FR 52010—52011), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval to amend the SIP's definition of VOC which is set out in Title 25 Pa. Code, Chapter 121, Section 121.1. The formal SIP revision was submitted by the Commonwealth of Pennsylvania on January 11, 1991.

Background.

In a Federal Register Notice on November 24, 1987, EPA stated in its Proposed Post-1987 Policy for Ozone and Carbon Monoxide that air quality monitors revealed continued exceedances of the ozone standard in Pennsylvania and that a SIP call would be issued, (see 52 FR 45094). A SIP call is a finding by EPA that the SIP does not provide for attainment by the required date, (section 110[a][2][H], 42 U.S.C. 7410[k][5] of the CAA, as amended, Public Law 101-549). On May 20, 1988 and November 8, 1989, EPA sent a letter to Robert P. Casey, Governor of Pennsylvania, pursuant to section 110[a][2][H] of the pre-amended Clean Air Act, notifying him that the Pennsylvania SIP was substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. The appropriate response to the SIP call would include: (1) Correcting identified deficiencies in the existing SIP's VOC regulations, (2) adopting VOC regulations previously required or committed to but never adopted, and (3) updating the areas' base year emissions inventories.

In 1988 and 1989, EPA sent letters to the Director, Pennsylvania Department of Environmental Resources (PADER), Bureau of Air Quality Control outlining the corrections that needed to be made to Pennsylvania's existing VOC regulations to eliminate the identified deficiencies and inconsistencies in the regulations pursuant to EPA's national guidance. The revised definition of VOC submitted by Pennsylvania on January 11, 1991, is in response to EPA's 1988 and 1989 letters.

Content of Revised Regulation

In 1988 and 1989, EPA sent letters to the Director of PADER's Bureau of Air Quality Control outlining the corrections that needed to be made to Pennsylvania's existing VOC regulations to eliminate the identified deficiencies and inconsistencies in the regulations as pursuant to EPA's national guidance. The revised definition of VOC submitted by Pennsylvania on January 11, 1991, is in response to EPA's 1988 and 1989 letters. Other specific requirements of the revised definition of VOC and the rationale for EPA's proposed action were explained in the NPR and will not be restated here. Public comments were received on the NPR.

Response to Public Comments

On November 18, 1991, the National Oil Seed Processors Association (NOPA) submitted comments on this action on behalf of itself and the Corn Refiners Association, Institute of Shortening and Edible Oils, Inc., and the National Cotton Council. NOPA commented on the proposed amendments to the Pennsylvania definition of VOC.

NOPA did not oppose EPA approval of the new definition, but urges EPA to make clear at the time of approval that the definition of VOC does not include vegetable oils, and to include a statement to this effect in its Federal Register Notice.

NOPA provided various materials in support of its assertion that vegetable oils are not contributors to the ozone problem. As an alternative, NOPA stated that if EPA concludes that vegetable oils contribute to ozone formation, EPA should issue control guidance that would recognize the very small contribution of such sources to the ozone problem, and would advise states to exempt vegetable oils from control for that reason.

Response

Pennsylvania revised its definition of VOC to reflect current EPA guidance. The new definition deletes vapor pressure as a criterion for determining whether or not an organic compound is a VOC, and adds the requirement that any organic compound which is involved in atmospheric photochemical reactions is a VOC.

PADER's revised definition was not intended to regulate vegetable oils, but simply to identify all potential compounds which participate in atmospheric photochemical reactions. Currently, the Commonwealth of Pennsylvania does not have any plans to regulate vegetable oil manufacturing or processing.

In 1990, EPA determined that vegetable oils will tend to remain primarily in the condensed phase in the atmosphere, and generally will not be available to participate in the formation of photochemically-produced ozone. Under section 116 of the CAA, states may adopt requirements beyond minimum requirements; therefore, the extent that a state's definition includes vegetable oils, EPA cannot disapprove it.

Final Action

EPA is approving the Pennsylvania SIP revision to amend the SIP's definition of VOC, as a revision to the Commonwealth of Pennsylvania SIP which is set out in Title 25 Pa. Code, Chapter 121, Section 121.1. The intended effect of this action is to approve of Pennsylvania's revised definition of VOC. The Agency has reviewed this request for revision of the Federally-approved State Implementation Plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990.

The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.
Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements. SIp approvals under Section 110 and subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co. v. U.S. EPA. 427 U.S. 245, 255-66 (1976); 42 U.S.C. 7410(a)(2).

This action to approve Pennsylvania's revised definition of VOC has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 [54 FR 2214-2225]. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Tables 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 4, 1993. Filing a petition for reconsideration by the Administrator of this final rule approving Pennsylvania's revised definition of VOC does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations. Ozone, Reporting and recordkeeping requirements.


Thomas Vogttagg.

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

Acting Regional Administrator, Region VII.

PART 52—AMENDED

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

Authority: 42 U.S.C. 7401-7871q

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(76) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(76) Revisions to the State Implementation Plan (SIP) submitted by the Pennsylvania Department of Environmental Resources (PADER) on January 11, 1991.

(i) Incorporation by reference.

(A) A letter from PADER dated January 11, 1991 submitting a revision to the Pennsylvania SIP.

(B) Title 25 PA. Code, Chapter 121, Section 121.1—Definition of VOC.

[FR Doc. 92-26896 Filed 11-4-92; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[MO12-1-5609; FRL-4529-11]

Approval and Promulgation of Air Quality Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking rescinds Missouri rules 10 CSR 10-2.120, 10 CSR 10-4.110, and 10 CSR 10-5.200. These rules were replaced by a new rule (10 CSR 10-6.180) entitled "Measurement of Emissions of Air Contaminants" in an earlier rulemaking. The old rules are being rescinded and replaced by 10 CSR 10-6.180 because the new rule gives the director statewide authority to require emission testing as opposed to only area specific authority. 10 CSR 10-6.180 became federally enforceable on September 23, 1991. The newly promulgated rule broadens the authority of the director in matters of air pollution control strategies, allowing the director to maintain a statewide emission inventory.

DATES: This action will be effective January 4, 1993 unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the state submittal for this action are available for public inspection during normal business hours at: The Environmental Protection Agency, Region VII, Air Branch, 720 Minnesota Avenue, Kansas City, Kansas 66101; Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101; and Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Lambrecht at (913) 551-7846.

SUPPLEMENTARY INFORMATION:

Background

With the adoption of statewide rule 10 CSR 10-6.180, Measurement of Emissions of Air Contaminants, rules 10 CSR 10-2.120, 10 CSR 10-4.110, and 10 CSR 10-5.200 which covered the Kansas City Metropolitan Area, Springfield-Greene County Area, and the St. Louis Metropolitan Area, respectively, were rendered redundant. The new rule provides that the director may, statewide, require any person responsible for the source of emission of air contaminants to make or have made tests to determine the quantity and/or nature of emission of air contaminants from the source. The director may further specify testing methods to be used in accordance with good professional practice.

The state of Missouri published the proposal for rescission in the November 1, 1991, Missouri Register. Proper notice was published and a hearing was held on December 5, 1991, at a Missouri Air Conservation Commission (MACC) meeting. The MACC formally adopted this rule on January 30, 1992. The final rulemaking was submitted to EPA on July 20, 1992.

EPA Action

EPA approves Missouri's rescission of the three emission measurement rules due to the adoption of a statewide rule, which provides that upon request any source shall complete or have completed test of emissions or, at the option of the agency, make the source available for tests of emissions.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial rescission and anticipates no adverse
List of Subjects in 40 CFR Part 52

Air pollution control. Incorporation by reference, and Reporting and recordkeeping requirements.


William Rice,
Acting Regional Administrator.

40 CFR Part 52, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(81) to read as follows:

§ 52.1320 Identification of plan.

••••

(c) * * *

(81) The Missouri Department of Natural Resources submitted a rule action rescinding rules 10 CSR 10-2.120, 10 CSR 10-4.110, and 10-5.200, Measurement of Emissions of Air Contaminants for the Kansas City Metropolitan Area, Springfield-Greene County Area, and the St Louis Metropolitan Area, respectively, on July 9, 1992.

(i) Incorporation by reference.

(A) Rescission of rules 10 CSR 10-2.120, 10 CSR 10-4.110, and 10 CSR 10-5.200 entitled "Measurement of Emissions of Air Contaminants" rescinded April 9, 1992.

2. Section 52.1320 is amended by adding paragraph (c)(81) to read as follows:

§ 52.1320 Identification of plan.

••••

(c) * * *

(81) The Missouri Department of Natural Resources submitted a rule action rescinding rules 10 CSR 10-2.120, 10 CSR 10-4.110, and 10-5.200, Measurement of Emissions of Air Contaminants for the Kansas City Metropolitan Area, Springfield-Greene County Area, and the St Louis Metropolitan Area, respectively, on July 9, 1992.

(i) Incorporation by reference.

(A) Rescission of rules 10 CSR 10-2.120, 10 CSR 10-4.110, and 10 CSR 10-5.200 entitled "Measurement of Emissions of Air Contaminants" rescinded April 9, 1992.

[FR Doc. 92-26900 Filed 11-4-92; 8:45 am]

BILING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of Inspector General
42 CFR Part 1001

RIN 0991-AA69

Medicare and State Health Care Programs: Fraud and Abuse; Safe Harbors for Protecting Health Plans

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Interim final rule with request for comment.

SUMMARY: In accordance with section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987, this interim final rule establishes two new safe harbors and amends one existing safe harbor to provide protection for certain health care plans, such as health maintenance organizations and preferred provider organizations. The first new provision protects certain new incentives to enrollees (including waiver of coinsurance and deductible amounts) paid by health care plans. The second new provision protects certain negotiated price reduction agreements between health care plans and contract health care providers. Finally, an existing safe harbor has been amended to protect certain agreements entered into between hospitals and Medicare SELECT insurers. These safe harbors specifically set forth various standards and guidelines that, if met, will result in the particular arrangement being protected from criminal prosecution or civil sanctions under the anti-kickback provisions of the statute.

DATES: Effective date: This rule is effective on November 5, 1992. Comment period: Although this rule is final, we will consider comments on this regulatory revision delivered to the address provided below by 5 p.m., January 4, 1993. Comments are available for public inspection on November 19, 1992.

ADDRESSES: Address comments to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–23–FC, room 5249, 330 Independence Avenue, SW., Washington, DC 20201. If you prefer, you may deliver your comments to Room 5551, 330 Independence Avenue, SW., Washington, DC. In commenting, please refer to file code LRR–23–FC. Comments are available for public inspection in room 5551, 330 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 9 a.m. to 5 p.m., (202) 619–3270.


For paperwork reduction and information collection requirements write to: Allison Eydt, Office of Management and Budget, New Executive Office Building, room 3001, 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

1. Background

Section 14 of Public Law 100–93 requires the promulgation of regulations specifying those payment practices that will not be subject to criminal prosecution under section 1128B(b) of the Social Security Act (the Act), 42 U.S.C. 1320a–7b(b), and that will not provide a basis for exclusion from...
Proposed regulations designed to implement section 14 of Public Law 100-93 were developed by the Office of Inspector General (OIG) and published in the Federal Register on January 23, 1989 (54 FR 3088). The regulations set forth various proposed business and payment practices, or “safe harbors,” that would not be treated as criminal offenses under section 1128(b)(7) of the Act and would not serve as a basis for a program exclusion under section 1128(b)(7) of the Act.

In that proposed rulemaking, we did not specifically delineate a safe harbor provision for a variety of arrangements grouped under the generic headings of “managed care” plans for “preferred provider organizations” (PPOs) because we believed that one or more of the other proposed safe harbors would protect relationships in managed care and PPO networks. However, we did invite public comments on the question of adding additional safe harbors that would provide further protections to health maintenance organizations (HMOs), PPOs and other managed care plans. Although we received a number of responsive comments, we did not publish a specific safe harbor in this area in the final rule published on July 29, 1991 (56 FR 35952). As was true then, we could publish the two new safe harbor provisions in this final rule without an opportunity for further public comment. In addition, as discussed in section III.C. of this preamble, we find that good cause exists to publish the amendment regarding Medicare SELECT without a prior comment period. Therefore, further public comment is not required before publication of this rule. However, we will accept public comments submitted within 45 days of the publication of this interim final rule.

These interim final regulations will be effective upon publication. We find that good cause exists for an immediate effective date due to the nature of these safe harbor regulations. This rule places no affirmative obligation on any individual or entity. Indeed, by expanding safe harbor protection, this rule exempts certain conduct from potential criminal and administrative sanctions. We find that the benefits conferred on the public by this rule’s publication provides good cause for it to be effective upon publication.

We wish to emphasize that nothing in this final regulation changes reimbursement rules promulgated by the Health Care Financing Administration (HCFA) or a State health care program. If a provider chooses to engage in one course of conduct in order to comply with these safe harbor provisions, such action may very well have reimbursement implications. However, such reimbursement is governed exclusively by HCFA or State regulations, and not by this rulemaking.

II. Summary of Comments Received

As a result of our request for comments in the proposed rulemaking published on January 23, 1989, we received numerous responses on how best to protect HMOs, PPOs and other managed care plans. The following is a summary of the various issues raised through that public comment process. In the following section, we will discuss our responses to the comments we received.

Two commenters requested safe harbor protection for HMOs that waive the beneficiary’s obligation to pay coinsurance and deductibles. They believed that this was a common practice among HMOs. In addition, a few commenters pointed out that some PPOs negotiate agreements with contract health care providers for those providers not to change the health plan or enrollee for some or all of the coinsurance and deductible amounts they are owed for furnishing services to enrollees. Under such an agreement, when the contract provider bills the Medicare program directly (and not the health plan) and agrees to waive all coinsurance and deductibles, the beneficiaries typically phrased the agreement as one “to accept Medicare payment as payment in full.”

Several commenters requested the OIG to protect a variety of arrangements between HMOs, PPOs, competitive medical plans (CMPs) as defined in 42 CFR part 417, managed care plans, and other health plans on the one hand, and medical groups and other health care providers who furnish items and services to the health plans at a reduced price on the other hand. A few of these commenters indicated that benefits can be achieved when a health care provider offers discounts to these organizations.

III. Provisions of the Interim Final Rule

In this section, we discuss our responses to the comments indicated above, and set forth the provisions of this interim final rule.

Many program beneficiaries are now served by a wide variety of managed care plans, such as various models of HMOs, CMPs, and PPOs. The proposed plan (HCPs) as defined in 42 CFR part 417, and prepaid health plans (PHPs) as defined in 42 CFR part 434, as well as PPOs, and we agree that additional safe harbor protection is warranted. We are promulgating these two safe harbor provisions to protect the essential activities of prepaid health plans (“health plans”). The first provision protects the various marketing incentives that health plans offer to attract “enrollees” through increased benefits coverage, reduced cost-sharing amounts (coinsurance, deductibles, or copayments), or reduced premiums. The second provision protects the contractual relationships between health plans and “contract health care providers” for the furnishing of covered items and services at reduced prices. Before discussing the specific features of these two safe harbor provisions, we will discuss our specific use of the terms “health plan,” “contract health care provider,” and “enrollee,” all of which are defined in § 1001.952(1)(b).

Definition of Terms

Health Plan

For an entity to be classified as a “health plan,” it must either (1) furnish, or arrange under agreement with contract health care providers for the furnishing of, items or services to enrollees or, (2) as with some PPOs, furnish health insurance coverage for the provision of such items or services. In either case, it must charge a premium (with exceptions noted below) for these covered benefits. Such premiums may be paid by a variety of sources, including HCFA, a State agency, an employer, or the enrollee. In addition, the health plan must either be operating under a contract or agreement with HCFA or a State health care program, or be subject to State regulation of its premium structure.

Where the health plans do not operate in accordance with a contract or agreement with HCFA or State health care program, we require the regulation of the premium structures because of our experience with phony insurance plans created by providers where for a $1 “premium” all Medicare coinsurance and deductibles are covered. The premium structure of these “insurance plans” is not based on a bona fide assessment of the liability risk of providing health benefits to enrollees. Therefore, such health plans are not legitimate forms of health insurance or...
prepaid health care, and we consider them to be unlawful routine copayment waiver programs.

Such health plans with regulated premium structures must operate under the oversight to State insurance laws or a State enabling statute governing HMOs or PPOs. Many such health plans may be federally qualified HMOs under 42 U.S.C. 300e or may operate under the Employee Retirement Income Security Act of 1974. Such health plans also may exist in a variety of other forms. They may be established as provider-based plans, or be independent of providers (such as union-sponsored plans or company plans). In addition, they may be Medicare supplemental (Medigap) policies, such as a Medicare SELECT plan issued under the terms of section 1881(i)(1) of the Act.

Contract Health Care Provider

Under these safe harbor provisions, the term “contract health care provider” means an individual or entity under contract with a health plan to furnish to the health plan’s enrollees items or services that are covered by the health plan, Medicare, or a State health care program. Although such health care providers may have contractual relationships with health plans to perform a variety of other functions, such as marketing or peer review, the term “contract health care provider” under these two safe harbor provisions is limited to contractual relations for the furnishing of covered items and services.

Enrollee

The third term for these two safe harbor provisions is “enrollee,” meaning an individual who has entered into a contractual relationship with a health plan, such as union- or employer- or other private or governmental entity has entered into such a relationship under which the individual is entitled to receive specified health care items and services, or insurance coverage for such items and services, in return for payment of a premium.

Set forth below is a discussion of the specific features of these two safe harbor provisions, and the amendments to existing § 1001.952(k) involving the protection of certain waivers of Medicare copayments for inpatient hospital services under Medicare SELECT.

A. Increased Coverage, Reduced Cost-sharing Amounts, or Reduced Premium Amounts Offered by Health Plans

The first of these safe harbor provisions protecting health plans deals with the relationship of health plans to enrollees. Although the anti-kickback statute is generally not implicated when a health plan offers a premium to a Medicare or State health care program beneficiary to provide an insurance package, the statute is implicated when discounts on premiums or other incentives are offered.

Health plans offer a variety of incentives to attract beneficiaries to enroll. Under these incentives a health plan may increase covered benefits, reduce or eliminate the beneficiary’s obligation to pay cost-sharing amounts (such as coinsurance, deductibles, and copayments), or reduce or eliminate the beneficiary’s obligation to pay the premium amounts attributable to the costs of furnishing the covered benefits. The first new safer harbor covers health plans operating pursuant to a contract or agreement with HCFA or a State health care program and is divided into two parts. The first part of the safe harbor (§ 1001.952(1)(1)) protects HMOs, PHPs, CMPs and other health plan risk contract, and the second part of the safe harbor (§ 1001.952(1)(2)) protects HMOs, CMPs, PHPs, HCPPs and other health plans paid on a reasonable cost or similar basis. Before discussing the standards contained in these two parts of the safe harbor, we will briefly discuss the types of incentives these health plans offer enrollees and why we believe safe harbor protection is appropriate.

In some cases, incentives to enrollees are either mandated under the Social Security Act or are provided with the approval of HCFA. For example, under section 1876 of the Act and implementing regulations, beneficiaries who enroll in HMOs and CMPs are financially responsible for paying the Medicare coinsurance and deductible amounts. Further, section 1876 permits HMOs and CMPs to charge beneficiaries monthly premiums to cover such coinsurance and deductible amounts. HCFA must approve the premiums that are charged, and it regularly permits health plans to waive these premiums. Further, under certain conditions, section 1876 mandates HMOs and CMPs to offer additional benefits or reduce beneficiary cost-sharing amounts. The decision regarding the mix between additional benefits and reduced cost-sharing amounts, however, is left up to the discretion of the health plan.

The routine waiver of a beneficiary’s obligation to pay coinsurance and deductible amounts by a prepaid health plan is clearly distinguishable from such routine waiver by other health care providers, such as hospital outpatient departments, physicians, or durable medical equipment suppliers. Two principal characteristics distinguish a health plan’s routine waiver of cost-sharing amounts from that of other health care providers. First, a health plan’s routine waiver program is inextricably intertwined with the offering of a comprehensive package of covered benefits, and is not offered for the purchase of an individual item or service. Quite often, in the case of prepaid plans, the routine waiver of cost-sharing amounts is made in the form of a waiver of the beneficiary’s premium and may also be combined with the offering of increased covered benefits. Thus, the routine waiver of cost-sharing amounts is generally not an incentive to use a particular item or service at the time it is furnished.

Second, although cost-sharing requirements can serve to control utilization, HMOs and other health plans under contract with HCFA or a State health care program have built-in incentives to control unnecessary utilization, or have their utilization and costs monitored by HCFA or the State health care program. Thus, the issue of potential overutilization (with increased costs to the Medicare and Medicaid programs) is adequately dealt with without report to imposing the obligation on beneficiaries to pay coinsurance and deductible amounts.

As discussed above, both parts of this safe harbor protect health plans that are acting in accordance with a contract or agreement with HCFA or a State health care program. As stated above, the first part of this safe harbor protects incentives offered by risk-based contract health plans, such as HMOs, CMPs and PHPs, operating in accordance with section 1876(g) or 1903(m) of the Act, under a Federal statutory demonstration authority, or under other Federal statutory or regulatory authority. The only standard for such health plans is that the health plan may not discriminate in the offering of these incentives, but must offer the same incentives to all enrollees unless otherwise specifically approved by HCFA or a State health care program. This standard will minimize the possibility for the health plan to improperly favor certain healthy beneficiaries or to use incentives to improperly encourage utilization at the time the item or service is furnished.

The second part of the safe harbor protects incentives offered to enrollees by HMOs, CMPs, PHPs and HCPPs that are under contract with HCFA or a State health care program, and that are paid on a reasonable cost or similar basis. For these plans, two standards must be
met. One, the same incentives must be offered to all enrollees for all covered services. And two, the health plan may not claim the cost of these incentives as bad debts or otherwise shift the burden of these incentives onto Medicare, Medicaid, other payors, or individuals. We impose this second standard because the incentives a health plan offers to its enrollees should make economic sense for the health plan, and should not be motivated by a desire to shift costs. In addition, it is noted that claiming such costs as Medicare bad debts is not authorized under 42 CFR 413.80 and 417.536 of the Medicare regulations. And where such a claim is presented unlawfully, an entity may be subject to civil or criminal prosecution.

This new safe harbor does not protect incentives to enrollees offered by health plans that do not have contractual relationship with HCFA or a State health care program. [Note: As indicated above, we are amending existing § 1001.952(k) to protect certain waivers of Medicare copayments for inpatient hospital services under Medicare SELECT. See section III.C. of this preamble below.] An example of some of the incentives we are not protecting is an agreement between a PPO and a contract health care provider whereby the provider agrees not to charge the health plan or enrollee all or part of the coinsurance and deductible amounts. When the contract provider bills the program directly (and not the health plan) and agrees to waive all coinsurance and deductibles, the agreement typically is characterized as an agreement to "accept Medicare payment as payment in full." Although such waiver programs may be offered in contract health care programs, the contract typically is characterized as a package of health care benefits and thus have some features similar to the other waiver programs we are protecting in this safe harbor provision, we are not convinced that the Medicare and Medicaid programs are properly protected against overutilization. As discussed above, when a health plan under contract with HCFA or a State health care program waives cost-sharing amounts, utilization and costs are controlled or monitored. This is not necessarily the case with HMOs and PPOs or their providers that bill the Medicare and Medicaid programs on a fee-for-service basis.

For this reason, we are soliciting comments on whether safe harbor protection should be afforded health plans, which do not have a contract or agreement with HCFA or a State health care program, to waive cost-sharing amounts as part of their agreements with contract providers.

### B. Price Reductions Offered to Health Plans

This second safe harbor provision for health plans protects the price reductions offered to them by contract health care providers pursuant to an agreement to furnish or arrange for the furnishing of covered items and services. Typically, health care providers will contract with health plans and agree to furnish items and services to enrollees of the health plan at a discount from the provider’s usual fee in return for obtaining a large volume of patients.

As with the safe harbor provision discussed above protecting incentives to enrollees, this safe harbor provision is divided into two separate parts for risk-based and cost-reimbursed health plans that operate in accordance with a contract or agreement with HCFA or a State health care program. In addition, this price reduction safe harbor provision contains a third part protecting other health plans that do not have contracts or agreements with HCFA or State health care programs where additional standards are met.

Before discussing the standards to be met in each of these three price reduction safe harbors, we will discuss three definitional prerequisites in § 1001.952(m)(1). The first prerequisite is that the protected remuneration is the contract health care provider’s reduction of its usual charges for the services. This safe harbor does not cover reductions which are applicable only to a specific part or portion of the health care provider’s charge, such as coinsurance and deductibles, but only applies to reductions in the total amount charged by the health care provider as its usual fee. Furthermore, we are only protecting the remuneration which represents the price reduction offered by the contract health care provider to make clear that any other forms of remuneration offered or paid by a contract health care provider to a health plan are not protected under this safe harbor provision. Indeed, we will closely review any forms of other such remuneration to ensure that improper payments are not employed to induce the health plan to issue a contract or otherwise steer patients to the person paying the remuneration.

The second prerequisite is that the terms of the agreement between the parties must be in writing. This prerequisite is intended to assist the Department in understanding the intent of the parties. Additionally, if need be, we will look behind the contract to determine if the real intent of the parties is not fully disclosed in the written agreement.

The third prerequisite is that the agreement must be for the sole purpose of having the contract health care provider furnish to enrollees items or services that are covered by the health plan, Medicare, or Medicaid. In other words, this provision does not protect contracts between health plans and contract health care providers for these providers to furnish services other than covered benefits. For example, many contract health care providers furnish peer review, marketing services, or pre-enrollment screening. We note that health plans with HCFA contracts under section 1876 of the Act are not permitted to engage in such pre-enrollment screening as a means of denying or discouraging relatively sick beneficiaries from enrolling (sections 1876(c)(3) and (i)(6) of the Act). For the remuneration attributable to the furnishing of other than covered services to be protected, it must comply with the personal service/management contracts safe harbor (§ 1001.952(d)) as set forth in the safe harbor regulations published in the Federal Register on July 29, 1991 (56 FR 35952). And as with all safe harbor provisions, where two parties engage in a multi-faceted payment arrangement where protection is sought from more than one safe harbor, separate justifications must be clearly set forth for each provision for which protection is sought.

We are imposing this third prerequisite because of our experience with some HMOs that have abused their contractual relationships with medical groups where individuals in the groups have engaged in abusive or illegal activities on behalf of the HMO, for example, by conducting pre-enrollment screening. In at least one case such activities have resulted in a criminal conviction. We intend to use our authorities aggressively to monitor closely and penalize where appropriate any abusive relationships between health plans and contract health care providers to assure the medically necessary services of a high quality are available and accessible to all enrollees.

We now discuss the standards in each of the three parts of the price reduction safe harbor. The first part of this safe harbor (§ 1001.952(m)(1)(i)) protects risk-based HMOs, PPHs and CMPs under contract with HCFA or a State health care program, and operating in accordance with section 1876(g) or 1876(f) of the Act, under a Federal statutory demonstration authority, or under other Federal statutory or regulatory authority. Risk-based
contract health plans must meet the three fundamental prerequisites discussed above. Additionally, except as specifically authorized by HCFA or the State health care program, contract health care providers may not separately bill Medicare, Medicaid or another State health care program for items or services furnished under the agreement with the health plan. Nor may the contract health care provider otherwise shift the burden of the agreement onto Medicare, Medicaid, other payors, or individuals.

The second part of the price reduction safe harbor (§ 1001.952(m)(1)(iii)) protects health plans that have executed a contract or agreement with HCFA or a State health care program to have payment made on a reasonable cost or similar basis. Price reduction agreements with contract health care providers will be protected as long as four standards are met. One, the term of the agreement may not be for less than one year. Two, the agreement must specify in advance the covered items or services furnished under the agreement with the health plan. Three, the health plan must fully and accurately report to HCFA or the State health care program the amount it has paid the contract health care provider pursuant to the agreement. And four, the contract health care provider may not claim payment in any form less specifically authorized by HCFA or the State health care program, or otherwise shift the burden of such an agreement onto Medicare, Medicaid, other payors, or individuals for the costs of furnishing the items and services. Any claim for reimbursement made directly to Medicare, Medicaid or other State health care program for items or services for which payment was made by the health plan would constitute an unlawful false claim.

The third part of the price reduction safe harbor (§ 1001.952(m)(1)(iii)) protects price reductions offered by contract health care providers to all other health plans where six standards are met. One, the term of the price reduction agreement may not be for less than one year. Two, the agreement must specify in advance the covered items and services, which party is to file claims or requests for payment with Medicare, Medicaid and the other State health care programs, and the schedule of fees that contract health care providers will be paid. In other words, to meet this second standard, although it does not matter whether the health plan or the contract health care provider bills Medicare, Medicaid or another State health care program, the parties must agree to a set fee schedule. Three, unless a fee update is specifically authorized by Medicare or a State health care program, the fee schedule must remain in effect throughout the term of the agreement. Four, the party submitting claims for items or services furnished under the agreement may not claim or request payment for amounts in excess of the fee schedule. This fourth standard should not be misconstrued as a "lowest charge" provision in that it does not restrict the contract provider from claiming or requesting payment in amounts in excess of this fee schedule when it negotiates a different fee schedule with another health plan or when it is furnishing items or services directly to enrollees on a fee-for-service basis. Five, full and accurate reporting of costs must be made by the health plan or the contract health care provider. And six, to help assure that false claims are not filed, we prohibit the party which is not responsible under the agreement for seeking reimbursement from Medicare, Medicaid or any other State health care program from claiming payment or otherwise shifting the burden of the price reduction onto Medicare, Medicaid, other payors, or individuals.

G. Waiver of Part A Deductible and Coinsurance Amounts Pursuant to an Agreement Between a Hospital and a Medicare SELECT Insurer

The Department has designated 15 States in which State insurance regulators may approve the issuance of Medicare supplemental (Medigap) insurance policies that restrict Medigap coinsurance or deductible amounts for inpatient hospital services. The Medicare SELECT, approved insurers and providers that are protected under the amendment to the safe harbor set forth below.

We have identified two types of arrangements between Medicare SELECT insurers and providers that may implicate the anti-kickback statute. The provider may offer or pay remuneration (in the form of reducing its charges) to induce the referral of Medicare patients by the insurer to the provider. Likewise, the insurer may solicit or receive remuneration from the provider in return for the insurer's referral of Medicare beneficiaries. We believe that some potential arrangements between Medicare SELECT insurers and providers should be granted safe harbor protection while other potential arrangements could be abusive and do not deserve protection.

On July 29, 1991, the Department published final regulations which, among other provisions, included a safe harbor for the reduction or waiver of coinsurance or deductible amounts for inpatient hospital services paid for under the prospective payment system (§ 1001.952(m)). Second, waivers or reduction of inpatient hospital coinsurance and deductible by a hospital pursuant to an agreement with a Medicare SELECT insurer will be protected under the amendment to the safe harbor set forth below.

The arrangements between Medicare SELECT insurers and providers should be granted safe harbor protection while other potential arrangements could be abusive and do not deserve protection.
agreements that are part of a contract between a hospital and a Medicare SELECT insurer for the furnishing of items or services to Medicare SELECT beneficiaries. To qualify for protection under this safe harbor, the insurer must have issued a Medicare SELECT insurance policy under the terms of section 1882(t)(1) of the Act. In other words, the Medicare SELECT policy must meet all of the requirements of section 1882(t)(1), and must be approved by a State insurance commissioner for use in one of the 15 States designated by the Secretary. Furthermore, to be protected by this safe harbor, the waiver of coinsurance or deductible amounts provided for under the agreement must be limited to beneficiaries covered by the insurer’s Medicare SELECT policy. Finally, provisions of the safe harbor still apply to such waivers or reductions. We believe that this amendment will allow Medicare SELECT insurers to enter into advantageous contracts with hospitals, while continuing to ensure that hospital waivers do not increase costs to Medicare or other payors, or promote over utilization. The evaluation of Medicare SELECT to be completed in 1994 (see Pub. L. 101-508, section 4530(d)) will enable us to determine whether this amendment has had any of these undesirable effects.

In contrast, we will provide safe harbor protection for other types of arrangements between Medicare SELECT insurers and providers that may implicate the anti-kickback statute. For example, we continue to consider routine waivers of coinsurance and deductibles under Part B of Medicare to be an area of potential abuse. Any provider that routinely waives coinsurance and deductible under Part B is subject to criminal liability and civil and administrative sanctions under Federal false claims and false statements statutes as well as the anti-kickback statute. (See OIG’s Special Fraud Alert on Routine Waiver of Copayments or Deductibles Under Medicare Part B.) Section 1882(t) of the Act does not provide any safeguards against the abuse of Part B waivers. Therefore, we will not grant any safe harbor protection for the waiver or reduction of Part B coinsurance or deductibles by Medicare SELECT providers.

We find good cause to publish this amendment in interim final form with a comment period rather than as a proposed rule. We find that the delay that would result from soliciting public comment prior to publications would be impracticable, unnecessary and contrary to the public interest. Medicare SELECT only applies to Medicare supplemental (Medigap) insurers who meet specific statutory criteria in one of 15 States designated by the Secretary during the three year period commencing on January 1, 1992. Because the Medicare SELECT program has already started and is only authorized to continue to the end of 1994, the amendment must be published promptly in final form in order to have its intended effect, that is, to protect certain transactions involving Medicare SELECT providers. Furthermore, the amendment is quite limited in scope since it merely broadens one standard in an existing safe harbor to accommodate certain actions taken in accordance with agreements between hospitals and Medicare SELECT insurers. Finally, the amendment by expanding a safe harbor, places no affirmative obligations on any individuals or entities. Rather, the amendment expands a safe harbor to enable some entities to more easily immunize themselves from potential criminal and administrative sanctions.

IV. Additional Information

A. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a final regulatory impact analysis for any regulation that meets one of the Executive Order criteria for a “major rule,” that is, that which would be likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies or geographic regions; or, (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601-612), unless the Secretary certifies that a final regulation would not have a significant economic impact on a substantial number of small entities. In the proposed rule published on January 23, 1989, we indicated that this provision was designed to specify business and payment practices that would not be considered a kickback for purposes of criminal or civil remedies, and served to clarify departmental policy as to the legality of various commercial arrangements. We stated that the great majority of health care providers and practitioners do not engage in illegal remuneration schemes, and that the aggregate economic impact of this provision should, in effect, be minimal, affecting only those who have chosen to engage in prohibited payment schemes in violation of the statutory intent. As indicated above, this interim final rulemaking serves to further expand the safe harbor provisions to enable entities to more easily immunize themselves from potential criminal and administrative sanctions, and to eliminate potential barriers to the provision of coordinated health care under the Medicare and State health care programs.

Consistent with the intent of the statute, this regulation has been designed to permit individuals and entities to freely engage in business practices and arrangements that encourage competition, innovation and economy. Compliance with these provisions may require that certain individuals and entities change their business practices or arrangements. It is impossible to predict how many individuals and entities will be affected by this regulation. We believe, however, that the number will be insignificant.

For this reason, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a number of small business entities, and we have, therefore, not prepared a regulatory flexibility analysis.

B. Information Collection Requirements

Sections 1001.952(m)(1)(ii) and 1001.952(m)(1)(iii) of this rule contain information collection requirements which are subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980. These sections are currently approved under OMB control number 0938-0165 (HCFA-276). Comments on these requirements may be forwarded to the individual whose name appears in the address section of this preamble.

C. Department of Justice Review

In accordance with the provisions of Public Law 100-63, these regulations have been developed in consultation with the Department of Justice.

D. Response to Comments

Because of the large number of comments we normally receive on regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments received timely and the appropriateness of revising this interim final rule.
List of Subjects in 42 CFR Part 1001
Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicare.

TITLE 42—PUBLIC HEALTH
CHAPTER V—OFFICE OF INSPECTOR GENERAL—HEALTH CARE, DEPARTMENT OF HEALTH AND HUMAN SERVICES
42 CFR Part 1001 is amended as set forth below:

PART 1001—PROGRAM INTEGRITY—MEDICARE AND STATE HEALTH CARE PROGRAMS

1. The authority citation for part 1001 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(j), 1395u(k), 1395y(e), and 1395hh.

2. Section 1001.952 is amended by revising paragraph (k)(1) and (m) and adding new paragraphs (l) and (n) to read as follows:

§1001.952 Exceptions.

The following payment practices shall not be treated as a criminal offense under section 1128B of the Act and shall not serve as the basis for an exclusion:

(k) Waiver of beneficiary coinsurance and deductible amounts. As used in section 1128B of the Act, "remuneration" does not include any reduction or waiver of a Medicare or a State health care program beneficiary's obligation to pay coinsurance or deductible amounts as long as all of the standards are met within either of the following two categories of health care providers:

(1) If the coinsurance or deductible amounts are owed to a hospital for inpatient hospital services for which Medicare pays under the prospective payment system, the hospital must comply with all of the following three standards:

(i) This hospital's offer to reduce or waive the coinsurance or deductible amounts must not be made as part of a price reduction agreement between a hospital and a third-party payor, unless the agreement is part of a contract for the furnishing of items or services to a beneficiary of a Medicare supplemental policy issued under the terms of section 1832(t) of the Act.

(ii) Increased coverage, reduced cost-sharing amounts, or reduced premium amounts offered by health plans. (1) As used in section 1128B of the Act, "remuneration" does not include the additional coverage of the any item or service offered by a health plan to an enrollee or the reduction of some or all of the enrollee's obligation to pay the health plan or a contract health care provider for cost-sharing amounts (such as coinsurance, deductible, or copayment amounts) or for premium amounts attributable to items or services covered by the health plan, the Medicare program, or a State health care program, as long as the health plan complies with all of the standards within one of the following two categories of health plans:

(ii) If the health plan is a risk-based health maintenance organization, competitive medical plan, prepaid health plan, or other health plan under contract with HCFA or a State health care program and operating in accordance with section 1128B of the Act, under a Federal statutory demonstration authority, or under other Federal statutory or regulatory authority, it must offer the same increased coverage or reduced cost-sharing or premium amounts to all enrollees unless otherwise approved by HCFA or by a State health care program.

(j) Remuneration for furnishing of items or services to enrollees, or furnishes insurance coverage for the provision of such items and services, in return for payment of a premium.

(i) Health plan means an entity that furnishes or arranges under agreement with contract health care providers for the furnishing of items or services to enrollees, or furnishes insurance coverage for the provision of such items and services, in return for payment of a premium, where such entity either operates in accordance with a contract, agreement or statutory demonstration authority approved by HCFA or a State health care program, or has its premium structure regulated by a State insurance statute or a State enabling statute governing health maintenance organizations or preferred provider organizations.

(m) Price reductions offered to health plans. (1) As used in section 1128B of the Act, "remuneration" does not include a reduction in price a contract health care provider offers to a health plan in accordance with the terms of a written agreement between the contract health care provider and the health plan for the sole purpose of furnishing to enrollees items or services that are covered by the health plan, Medicare, or a State health care program, as long as both the health plan and contract health care provider comply with all of the applicable standards within one of the following three categories of health plans:

(i) If the health plan is a health maintenance organization, competitive medical plan, health care prepayment plan, prepaid health plan or other health plan that has executed a contract or agreement with HCFA or with a State health care program, as long as the health plan complies with all of the standards within one of the following two categories of health care providers:

(ii) If the health plan is a health maintenance organization, competitive medical plan, health care prepayment plan, prepaid health plan or other health plan that has executed a contract or agreement with HCFA or with a State health care program, as long as the health plan complies with all of the standards within one of the following two categories of health care providers:

(2) For purposes of paragraph (1) of this section, the terms—

Contract health care provider means an individual or entity under contract with a health plan to furnish items or services to enrollees who are covered by the health plan, Medicare, or a State health care program.

Enrollee means an individual who has entered into a contractual relationship with a health plan or on whose behalf an employer, or other private or governmental entity has entered into such a relationship under which the individual is entitled to receive specified health care items and services, or insurance coverage for such items and services, in return for payment of a premium.
similar basis, the health plan and contract health care provider must comply with all of the following four standards—

(A) The term of the agreement between the health plan and the contract health care provider must be for not less than one year;

(B) The agreement between the health plan and the contract health care provider must specify in advance the covered items and services to be furnished to enrollees, and the methodology for computing the payment to the contract health care provider;

(C) The health plan must fully and accurately report, on the applicable cost report or other claim form filed with the Department or the State health care program, the amount it has paid the contract health care provider under the agreement for the covered items and services furnished to enrollees; and

(D) The contract health care provider must not claim payment in any form from the Department or the State health care program, other payors, or individuals.

(iii) If the health plan is not described in paragraphs (m)(1)(C) or (m)(1)(ii) of this section, both the health plan and contract health care provider must comply with all of the following six standards—

(A) The term of the agreement between the health plan and the contract health care provider must be for not less than one year;

(B) The agreement between the health plan and the contract health care provider must specify in advance the covered items and services to be furnished to enrollees, which party is to file claims or requests for payment with Medicare or the State health care program for such items and services furnished to enrollees;

(C) The fee schedule contained in the agreement between the health plan and the contract health care provider must remain in effect throughout the term of the agreement, unless a fee increase results directly from a payment update authorized by Medicare or the State health care program;

(D) The party submitting claims or requests for payment from Medicare or the State health care program for items and services furnished in accordance with the agreement must not claim or request payment for amounts in excess of the fee schedule;

(E) The contract health care provider and the health plan must fully and accurately report on any cost report filed with Medicare or a State health care program the fee schedule amounts charged in accordance with the agreement; and

(F) The party to the agreement, which does not have the responsibility under the agreement for filing claims or requests for payment, must not claim or request payment in any form from the Department of the State health care program for items or services furnished in accordance with the agreement, or otherwise shift the burden of such an agreement onto Medicare, a State health care program, other payors, or individuals.

(2) For purposes of this paragraph, the terms contract health care provider, enrollee, and health plan have the same meaning as in paragraph (l)(2) of this section.


Bryan B. Mitchell,
Principal Deputy Inspector General.

Approved: October 6, 1992.

Louis W. Sullivan,
Secretary.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

43 CFR Subtitle A

Coastal Barrier Improvement Act: Advisory Guidelines

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Rule-related notice and request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is revising its rule-related document of October 6, 1983 to reflect changes in the Coastal Barrier Resources Act (CBRA), as amended by the Coastal Barrier Improvement Act of 1990 (CBIA). This document sets forth the Service’s general statement of policy and advisory guidelines regarding the provisions of the CBIA that address limitations on Federal expenditures and financial assistance, and exceptions to the limitations.

DATES: Comments on this document will be accepted through January 4, 1993. The prohibitions on new Federal financial expenditures and assistance, including Federal flood insurance, were effective within new and expanded units of the Coastal Barrier Resources System upon enactment of CBIA on November 16, 1990. The ban on Federal flood insurance on "otherwise protected areas", as defined in the CBIA, went into effect on November 16, 1991.

ADDRESSES: Comments should be directed to U.S. Fish and Wildlife Service, Division of Habitat Conservation, 400 Arlington Square, Washington, DC 20240 (703-358-2201).

FOR FURTHER INFORMATION CONTACT: Linda Kelsey (703-358-2201).

SUPPLEMENTARY INFORMATION: On November 16, 1990, President Bush signed the Coastal Barrier Improvement Act (CBIA) into law (Pub. L. 101-591). The CBIA amends the Coastal Barrier Resources Act (CBRA) in several significant ways. It expanded the Coastal Barrier Resources System (System) from 183 to 560 units and from 143,000 acres to 1.25 million acres. The System now includes units in Puerto Rico, the U.S. Virgin Islands, Great Lakes States, New Jersey, Maryland, and the Florida Keys, as well as many new areas in States that already contained units within the System. The CBIA also established a new category identified as "otherwise protected areas" where Federal flood insurance for new construction not in conformance with the purposes of the area is banned. The Federal Emergency Management Agency is issuing revised Flood Insurance Rate Maps that reflect the changes. Separate codes are used on the maps depicting areas where the ban went into effect on October 16, 1983, November 16, 1990, and November 16, 1991.

These guidelines reiterate the guidance provided in 1983 on the definition of expenditures and financial assistance. Unless specified that the guidance has been modified by the CBIA, the requirements of CBRA remain unchanged since passage of the Act in 1982. The guidelines for consultation with the Fish and Wildlife Service (Service) are also outlined.

1. Environmental Effects

These guidelines describe the procedures Federal agencies should follow in consulting with the Service prior to making an expenditure on or providing assistance to activities excepted under section 6 of CBRA, as amended by CBIA. Such activities generally continue the status quo, provide localized environmental benefits or localized emergency disaster assistance. Therefore, the Department of the Interior (Department) has
determined that these guidelines will have no significant impact on the environment.

2. Statement of Effects

The Department has determined that these interpretive guidelines are not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. These guidelines will result in minimal cost to Federal agencies and some economic effects on local firms and businesses to the extent that they are engaged in activities covered by the expansion of the System and paid for or assisted by Federal funds. The guidelines do not require preparation of a federalism assessment under Executive Order 12866. Further, these guidelines do not have any taking implications that would require preparation of an assessment under Executive Order 13045.

3. Paperwork Reduction Act

These interpretive guidelines do not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

4. Authorship Statement

This document has been prepared by Frank McGilvery of the U.S. Fish and Wildlife Service.

5. Public Participation

Interested persons, organizations, Federal agencies, and other entities are encouraged to submit comments on these guidelines. Comments will be accepted until January 4, 1993.

Coastal Barrier Resources System—Prohibitions on New Federal Expenditures and Procedures for Consultation

I. Financial Assistance

CBRA, as amended by CBIA, with certain exceptions, prohibits Federal expenditures and financial assistance for development within the System. Section 3(3) of CBRA defines “financial assistance” as any form of loan, grant, guaranty, insurance payment, rebate, subsidy, or any other form of direct or indirect Federal assistance. Section 5(a) provides the general prohibition on new Federal expenditures and financial assistance in System units. Section 5(a) states that except as provided in Section 6, no new expenditures or new financial assistance may be made available under authority of any Federal law for any purpose within the Coastal Barrier Resources System. CBRA, as amended by CBIA, excepted certain specific activities from this prohibition. They will be discussed under the Exceptions section. Otherwise protected areas identified on maps of the System, dated October 24, 1990, are not affected by these prohibitions. They are only affected by the Federal flood insurance program.

The Service has identified additional specific examples of Federal program expenditures and financial assistance prohibited within the System. These activities include, but may not be limited to, the following programs:

Department of Agriculture

Farms Home Administration
—Loans for rural disaster relief, water systems, wastewater systems, commercial development, community services, and subdivision development.

Rural Electrification Administration
—Loans for new or expanded electrical systems that would encourage development.

Department of Commerce

Economic Development Administration
—Grants for planning and administering local economic development programs.

National Oceanic and Atmospheric Administration
—CEIP grants (Coastal Energy Improvement Program).

Department of Defense

U.S. Army Corps of Engineers
—Construction and financial assistance involving beach erosion control, hurricane protection, and flood control works. Under CBRA, new or expanded navigation projects were prohibited. However, section 6(b) of CBIA allows expansion if the project was authorized before the date on which the relevant System unit or portion of the System unit was included within the System.

Department of Energy

—Energy development programs.

Department of Housing and Urban Development

—Block grants for community development.

—Mortgage insurance, housing assistance or rehabilitation subsidy programs.

—Urban Development Action Grants.

Department of Transportation

Federal Aviation Administration
—Grants for airport planning and development.

Federal Highway Administration
—Federal assistance to States for highway construction. CBIA specified two exceptions; U.S. route 1 in the Florida Keys and highways in a System unit in Michigan in existence on the date of the enactment of the CBIA.

Urban Mass Transportation Administration
—Capital improvement and operating grants.

Environmental Protection Agency
—Grants for wastewater treatment construction (Sec. 203 grants), water quality management planning (Sec. 208 grants).

Federal Emergency Management Agency
—Federal National Insurance Program.
—Disaster assistance program.

Federal Home Loan Administration
—Guaranteed housing loans.

General Services Administration
—Construction or reconstruction of Federal property.
—Exchange or sale of Federal property for development purposes.

Small Business Administration
—Loans to small businesses for disaster relief, upgrading of water treatment systems, and other purposes.
—Disaster assistance to homeowners.

Veterans Administration
—Guaranteed housing loans.

This list may not be all inclusive. Each Federal agency is responsible for review of its programs to assure compliance.

II. Exceptions

Section 6 of CBRA, as amended by CBIA, outlines the specific exceptions to the general prohibition on new Federal expenditures or financial assistance. There are two categories of exceptions: expenditures allowed if they meet the requirements of the specific exception, and expenditures allowed if they meet the requirements of the specific exception and also meet the purposes of CBRA. Most of the exceptions remain the same as under CBRA as originally enacted. The few changes are noted in the detailed discussion.

Section 6(a) requires the appropriate Federal official to consult with the
Secretary of the Interior before making any Federal expenditures or financial assistance available under the provisions of Section 6. The Secretary's consultation responsibilities have been delegated to the Service. Procedures for consultation follow the discussion of exceptions.

Expenditures Allowed for Specific Activities

(1) Energy projects (Section 6(a)(1)). Federal assistance may be made available for energy projects in or adjacent to coastal areas for any use or facility necessary for the exploration, extraction, or transportation of energy resources (such as can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body. The legislative history (House Report 97–841) states that "this provision is intended to be read broadly in terms of energy projects. However, the provision should not be interpreted to allow assistance for projects primarily designed to encourage development which might be carried out in the guise of energy development."

(2) Navigation channel improvements (Section 6(a)(2)), as amended by CBIA section 6(b)). The CBRA exception that allowed only maintenance of existing navigation channels was amended to allow maintenance or construction of improvements of existing Federal navigation channels and related structures (such as jetties). CBRA section 6(b) provides that for purposes of subsection (a)(2), a Federal navigation channel or a related structure is an existing channel or structure, respectively, if it was authorized before the date on which the relevant System unit or part of the System unit was included within the System. The use of disposal sites for dredge materials is included under this exception, so long as the sites are related to, and necessary for, the maintenance or construction of an existing project. House Report 97–841 also stated "that because of the unstable nature of barrier islands, existing channels can be relocated periodically."

(3) Roads, Structures or Facilities (Section 6(a)(3)) as amended by the CBIA in this subsection and section 6(c). Maintenance, replacement, reconstruction, or repair, but not expansion (except for U.S. Highway 1 in the Florida Keys and highways in Michigan that run through System units), of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system can continue. The legislative history indicates the Congressional intent to include drains, gutters, curbs and other related roadworks under this exception. The Service interprets "structures or facilities" to include public utilities. Section 6(a)(6)(F) is also applicable to public utilities that are not essential links in a larger system.

(4) Military activities (Section 6(a)(4)). Military activities essential to national security are excepted from the ban on Federal expenditures, but not from the requirement to consult. The Defense Department will be the judge of what is essential to national security, but, as stated in Conference Report 97–928, its "determination as to whether military activities are essential to national security must be made in accordance with existing law and procedures." The Defense Department still has the responsibility to consult with the Service with respect to any expenditures or financial assistance within the System.

(5) Coast Guard (Section 6(a)(5)). Expenditure of funds or provision of financial assistance for the construction, maintenance, operation and rehabilitation of Coast Guard facilities can continue.

Expenditures Allowed for Specific Activities if They Meet the Purposes of CBRA

(6) Conservation, navigation aids, recreation, scientific research, disaster relief, roads, shoreline stabilization (Section 6(a)(6)). The following actions or projects are excepted, providing the expenditure is consistent with the purposes of CBRA, which are detailed in Section 2(b) (i.e., to minimize loss of human life, wasteful Federal expenditures and damage to fish, wildlife, and other natural resources):

(A) Projects for the study, management, protection and enhancement of fish and wildlife resources and habitats, including, but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects. The legislative history states: "This exception recognizes the value of System units as fish and wildlife habitats and is in complete conformity with the purposes of the legislation. It is intended that the full range of Federal financial assistance authorized for protecting and managing fish and wildlife habitats will continue to be available. This includes, where necessary, assistance for stabilization projects to protect valuable habitats. Federal funds for projects involving facilities for fish and wildlife-related recreation would also be allowed. It is intended by the Committee that any development of recreational facilities be consistent with the purposes of the legislation." (House Report 97–841)

(B) The establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto. The legislative history indicates that, in almost every instance, placement and use of such aids and devices on undeveloped coastal barriers would be appropriate. (House Report 97–841)

(C) Projects under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–4 through 11) and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.). The legislative history applied to Section 6(a)(6)(A) would be generally applicable to this provision as well. Recreational use of System units should be encouraged so long as it is accomplished consistent with the purposes of CBRA.

(D) Scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development and applications.

(E) Assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, and 502 of the Disaster Relief and Emergency Assistance Act and section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4106) and are limited to actions that are necessary to alleviate the emergency.

(F) The maintenance, replacement, reconstruction, or repair, but not the expansion of publicly owned or publicly operated roads, structures, or facilities. This exception is essentially moot since the Federal Highway Administration has determined that all highways on the Federal network are essential links in a larger network or system.

(G) Nonstructural projects for shoreline stabilization that are designed to mimic, enhance or restore natural stabilization systems. The legislative
history cites the planting of dune grass or other beach nourishment activities as examples of these projects.

III. Consultation

Federal agencies must consult with the Service and allow the Service opportunity to provide written comment prior to making Federal expenditures or financial assistance available for an action excepted under Section 6 of CBRA, as amended by CBIA, within a System unit. Compliance with Section 6 rests initially on the Federal officer responsible for making the funds or financial assistance available for a permitted action. The Service's responsibility is to respond to a consultation request by providing technical information and comments on the question of consistency with CBRA, as amended by CBIA. The final determination whether action permitted under this section is consistent with the purposes of the CBRA rests with the consulting agency.

Consultation Process

Consultation requests should be made through the appropriate Regional Director of the Fish and Wildlife Service (Regional Office addresses are appended).

CBRA, as amended by CBIA, provides for two levels of exception. Section 6(a)(1–5) clearly allows certain designated Federal activities. When consulting on these activities, the Service will provide technical information and register an opinion as to whether the activity is one which the clause allows. Section 6(a)(6) provides an additional caveat for the included list of exceptions that require that the action is consistent with the purposes of the Act. For activities falling under this subsection, the Service will also comment on the consistency of the proposed action with the purposes of CBRA as stated in section 2(b) to minimize the loss of human life, wasteful expenditure of Federal revenues, and damage to fish, wildlife and other natural resources associated with coastal barriers.

The requirements of sections 402, 403, and 502 of the Disaster Relief Act make prior consultation impractical in responding to a national disaster. However, the Service will participate in Regional Task Forces for disasters and emergencies. Permanent replacement activities related to section 6(a)(1–5) will require consultation prior to commitment of funds. Section 4(d) of the CBIA requires the Administrator of General Services to consult with the Service and obtain a determination as to whether a property proposed for disposal under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) constitutes an undeveloped coastal barrier. The Service will make a determination within 180 days. If it concludes that the property meets the definition of an undeveloped coastal barrier, the property will be added to the System subsequent to notification in the Federal Register.

Section 10 of the CBIA allows the Resolution Trust Corporation (RTC) and the Federal Deposit Insurance Corporation (FDIC) to consult with the Service to determine if property under their control is within the System or is undeveloped, greater than 50 acres in size, and adjacent to or contiguous with any lands managed by a governmental agency primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes. RTC and FDIC must allow 90 days for any governmental agency or qualified conservation organization to submit written notice of interest in acquiring such property before placing the property on the open market.

The Service's Washington and Regional Offices will assist RTC and FDIC to the maximum extent possible in identification of such properties, particularly those in the System.

Appendix 1—Pertinent Regional Offices

U.S. Fish and Wildlife Service, P.O. Box 1300, Albuquerque, New Mexico 87102: Assistant Regional Director—Fish and Wildlife Enhancement: Telephone 505–766–2324, CBRA Jurisdiction—Texas.


Richard N. Smith,
Deputy Director.

[FR Doc. 92–25870 Filed 11–4–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 255

[FRA Economic Docket No. 3, Notice No. 4] RIN 2130–AA79

Assistance to States and Persons in the Northeast and Midwest Region for Local Rail Services Under Section 402 of the Regional Rail Reorganization Act of 1973

AGENCY: Federal Railroad Administration; Department of Transportation.

ACTION: Final rule.

SUMMARY: The Federal Railroad Administration ("FRA") is amending its regulations to delete certain provisions that apply to financial assistance for continuing local rail freight services and acquisition or modernization of facilities. These regulations are superfluous to FRA's present statutory responsibilities. Elimination of these regulations will not have an effect on any present program or statutory obligation of FRA or the Department of Transportation ("DOT").

DATES: The final rule will become effective on December 7, 1992.


SUPPLEMENTARY INFORMATION: The regulations contained in part 255 established procedures for implementing the authority conferred by, and for processing applications made pursuant to, section 402 of the Regional Rail Reorganization Act of 1973 (the "3-R Act"). 45 U.S.C. 701 et seq., Public Law 93–236. Section 402 has authorized the Secretary to provide certain "Rail Service Continuation Subsidies." The regulations set forth in part 255 established a process by which a State or a person (including a local or regional transportation authority) in the northeast or midwest region could apply for the financial assistance authorized by section 402. However, section 403(a)(1) or the Omnibus Budget Reconciliation Act of 1986, Public Law 99–509, repealed title IV of the 3-R Act, including section 402. Since the statutory authority conferred by section 402, which part 255 was promulgated to implement, has been repealed, the regulations contained in part 255 are no longer necessary.

Public Participation

In taking this action, FRA is not exercising its regulatory authority in a manner that could be informed by public comment. There are no substantive
choices to be made in the deliberations as to whether to promulgate this rule. Instead, this is merely a technical amendment that is being made to delete obsolete regulations that were designed to implement statutory authority that has been repealed.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. It is considered to be non-major under Executive Order 12291 and non-significant under DOT policies and procedures. (44 FR 11034; February 26, 1979.)

This rule will not have any direct or indirect economic impact because it does not alter any existing substantive regulation in such a way as to impose additional burdens. The cost of complying with existing substantive regulations is not being increased. The rule merely deletes a set of regulations that became obsolete with the repeal of statutory authority.

Regulatory Flexibility Act

FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts that could affect small units of government.

Executive Order 12612—Federalism

The deletion of the regulations that will be accomplished by the effectiveness of this final rule will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Paperwork Reduction Act

There are no information collection requirements contained in this rule.

Environmental Impact

FRA has evaluated this final rule in accordance with its procedures for ensuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act, 42 U.S.C. 4321 et seq., other environmental statutes, executive orders, and DOT Order 5610.1c. This final rule meets the criteria that establish this as a non-major action for environmental purposes.

List of Subjects in 49 CFR Part 255

Grant programs—transportation, Railroads, Reporting and recordkeeping requirements.

In consideration of the foregoing, part 255 of title 49, Code of Federal Regulations, is removed.

Issued in Washington, DC, on October 30, 1992.

Gilbert E. Carmichael, Federal Railroad Administrator.

[FR Doc. 92-26845 Filed 11-4-92; 8:45 am]

BILLING CODE 4910-06-M

49 CFR Part 268

[FRA Economics Docket No. 5, Notice No. 9]

RIN 2130-AA78

Merger and Consolidation Procedures

AGENCY: Federal Railroad Administration; Department of Transportation.

ACTION: Final rule.

SUMMARY: The Federal Railroad Administration ("FRA") is amending its regulations to delete certain provisions on merger and consolidation procedures because these regulations are superfluous to its present statutory responsibilities. Elimination of these regulations will not have an effect on any present program or statutory obligation of FRA or the Department of Transportation ("DOT").

DATES: The final rule will become effective on December 7, 1992.

FOR FURTHER INFORMATION CONTACT: C. Joseph King, Legal Services Branch, Office of the Chief Counsel, FRA, Washington, DC 20590 (Telephone: 202 386-0616).

SUPPLEMENTARY INFORMATION: The regulations contained in part 268 established procedures for implementing the authority conferred by, and for processing applications made pursuant to, section 11346 of title 49, U.S.C. Section 11346 provided a mechanism whereby a carrier, or the Secretary with the carrier's consent, could propose joint use of tracks or other rail facilities, or a merger or consolidation of rail carriers subject to the jurisdiction of the Interstate Commerce Commission, under a special procedure which was provided for on an interim basis (as an alternative to the process now set forth in sections 11344 and 11345 of title 49, U.S.C.). This procedure, by statute, was authorized only for applications proposing such proposals which were filed prior to January 1, 1982. 49 U.S.C. 11346(a).

Hence, the statutory authority conferred by section 11346, which part 268 was promulgated to implement, has lapsed by operation of law. Accordingly, the regulations contained in part 268 are unnecessary.

Public Participation

In taking this action, FRA is not exercising its regulatory authority in a manner that could be informed by public comment. There are no substantive choices to be made in the deliberations as to whether to promulgate this rule. Instead, this is merely a technical amendment that is being made to delete obsolete regulations that were designed to implement statutory authority that has lapsed and has been supplanted by the procedures provided for by the Congress in sections 11344 and 11345 of title 49, U.S.C.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. It is considered to be non-major under Executive Order 12291 and non-significant under DOT policies and procedures. (44 FR 11034; February 26, 1979.)

This rule will not have any direct or indirect economic impact because it does not alter any existing substantive regulation in such a way as to impose additional burdens. The cost of complying with existing substantive regulations is not being increased. The rule merely deletes a set of regulations that became obsolete with the lapse of statutory authority.

Regulatory Flexibility Act

FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts that could affect small units of government.

Executive Order 12612—Federalism

The deletion of the regulations that will be accomplished by the effectiveness of this final rule will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Paperwork Reduction Act

There are no information collection requirements contained in this rule.
Environmental Impact

FRA has evaluated this final rule in accordance with its procedures for ensuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act, 42 U.S.C. 4321 et seq., other environmental statutes, executive orders, and DOT Order 5010.1c. This final rule meets the criteria that establish this as a non-major action for environmental purposes.

List of Subjects in 49 CFR Part 268
Administrative practice and procedure, Merger and consolidation procedures, Railroads.

In consideration of the foregoing, part 268 of title 49, Code of Federal Regulations, is removed.

Issued in Washington, DC, on October 30, 1992.

Gilbert E. Carmichael
Federal Railroad Administrator.

[FR Doc. 92-38946 Filed 11-4-92; 8:45 am]
BILLING CODE 4101-06-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227
[Docket No. 920780-2180]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Turtle excluder device exemption in North Carolina restricted area and request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) will continue to allow limitations on tow times as an alternative to the requirement to use turtle excluder devices (TEDs) by shrimp trawlers in a small area off the coast of North Carolina through December 2, 1992. This area exhibits intermittently high concentrations of a brown alga, Dictyopteris sp., that makes trawling with TEDs impracticable. Shrimp inhibit the alga, and fisherman wish to harvest the alga to catch the shrimp. When algal concentrations are high, TEDs may reduce the shrimp retention by excluding a large portion of the algae and the shrimp within. The tow time alternative allows fisherman to harvest shrimp more productively. NMFS will monitor the situation to ensure there is adequate protection for sea turtles in this area when tow times are allowed in lieu of TEDs, and to determine whether algal concentrations continue to make TED use impracticable.

DATES: This rule is effective from November 1, 1992, through December 2, 1992. Comments on this action must be received by December 2, 1992.

ADDRESSES: Comments on this action should be sent to Dr. Michael Tillman, Acting Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910. Comments on the collection-of-information requirement subject to the Paperwork Reduction Act should be directed to the Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, Attention: Phil Williams, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator (301/713-2322) or Charles A. Oravetz, Chief, Protected Species Program, Southeast Region, NMFS, (813/323-3360).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, U.S.C. 1531 et seq. (ESA). Incidental capture by shrimp trawlers has been documented for five species of sea turtle that occur in waters off of North Carolina. Interim final regulations at 50 CFR parts 217 and 227 require shrimp trawlers 25 feet (7.6 m) long or longer in offshore waters of the Atlantic Area, which includes waters off North Carolina, to use approved TEDs in trawls year round. Effective November 1, 1992, pursuant to the interim final regulations, shrimp trawlers less than 25 feet long in offshore waters of the Atlantic area are required to limit tow times to 75 minutes or less, or use TEDs. Tow time is defined as the interval from trawl doors entering the water to trawl doors being removed from the water.

Special Environmental Conditions

Interim final rules published on July 29, 1992, (57 FR 35452), and September 8, 1992, (57 FR 40859), allowed shrimpers to limit tow times rather than use TEDs through September 30, 1992, in a restricted area off the coast of North Carolina. A Notice issued under an Interim final rule published September 8, 1992 (57 FR 40861) allowed the use of limited tow times through October 31, 1992 (57 FR 45986, October 6, 1992). The background and need for these exemptions was thoroughly discussed in the July 29, 1992, interim final rule, and will not be repeated here. NMFS' continuing review of the TED exemption program in the North Carolina restricted area indicates there are no sea turtle mortalities associated with this program. Incomplete reports of sea turtles strandings on beaches adjacent to the restricted area show that one loggerhead turtle stranded during the period of September 1-25, 1992. No strandings have been reported from the area during the month of October. The historical average for the month of October is three turtles. NMFS and the State of North Carolina, have conducted cooperative enforcement activities and report that shrimpers have complied with the tow-time restrictions. The North Carolina Division of Marine Fisheries (NCDMF) has conducted approximately 200 hours of enforcement effort, and only one written warning has been issued by their enforcement officers since July 29, 1992.

Fishing activity in the restricted area has been limited. Fewer-three vessels have registered for the TED exemption program, but daily fishing activity has been limited to a maximum of 15 vessels, with about 3-4 vessels being the daily average. NMFS placed an observer on vessels on September 10, and 28, 1992. No turtles were taken during ten observed tows that ranged between 16 and 47 minutes. Shrimping was poor and bycatch of algae predominated the hauls, followed by finfish and other crustaceans. The NCDMF also observed tows on September 29 and July 28 (before the exemption began) and verified the presence of large amounts of algae. NCDMF enforcement reports continue to document the presence of large amounts of algae.

NMFS has determined that there is nothing to indicate that the environmental conditions in the restricted area that were initially determined to make TED use impracticable have changed. Therefore, the Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) extends the authorization to use restricted tow times, as an alternative to the requirement to use TEDs, in the North Carolina restricted area, acting pursuant to the interim final regulations codified at 50 CFR 227.72(e)(3)(iii), (57 FR 40861, September 8, 1992).
Comments on the Interim Rule and Notice

Only one comment has been received to date on the North Carolina Algae interim rules or the notice action. The Center for Marine Conservation (CMC) raised four primary concerns: (1) Compliance with tow times would be difficult to monitor, (2) the exemption establishes a bad precedent, (3) 20–30 minutes of forced submergence may cause significant stress to sea turtles and, (4) the proximity of the exemption area to turtle nesting beaches could impact nesting and hatching sea turtles.

NMFS Response

Compliance with tow time restrictions has not proven difficult to monitor. NMFS and the Coast Guard did encounter some initial difficulty with vessel enforcement because Coast Guard cutters are highly visible, however, both NMFS and NCDMF enforcement have been able to effectively monitor the area from adjacent beaches. An October 20, 1992, report from NCDMF stated that beach observation proved to be most effective because it enabled the enforcement officers to time the vessels without the vessel operators’ knowledge. To date, NCDMF has conducted approximately 200 hours of observed activity in this area and has written only one warning and no citations.

NMFS does not believe that this exemption has established a bad precedent for future notices with regard to inadvertent exemption issuances and extensions. NMFS received similar requests for TED exemptions in the Gulf of Mexico after Hurricane Andrew. NMFS allowed a TED exemption in a specific area off the coast of Louisiana where an accumulation of debris resulting from the hurricane made fishing with TEDs temporarily impracticable. A 30-day notice allowing the use of limited tow times in lieu of TEDs in a limited area of Louisiana was issued on September 4, 1992 (57 FR 41703). NMFS monitored the area for the presence of debris during the 30-day period and when the debris problem abated, the notice expired.

CMC’s concern for potential increased stresses (resulting in death) to sea turtles because of 20–30 minutes of forced submergence appears to be unfounded with respect to this exemption. No turtles have been reported captured and only three have stranded within range of the restricted area in the three month period that this tow time exemption has been in place. Likewise, CMC’s concern for increased adverse impacts to nesting and hatching sea turtles is not supported based on catch and stranding information. However, NMFS will take into consideration the potential impacts of such an exemption, should future requests be made during summer nesting activities in and adjacent to the North Carolina restricted area.

Sea Turtle Conservation Measures

This action applies to shrimp trawlers 25 feet (7.6 m) in length or longer in a restricted area off the coast of North Carolina. The “North Carolina restricted area” is that portion of the offshore waters between Rich Inlet, North Carolina, (34° 17.6' N. latitude) and Brown’s Inlet, North Carolina, (34° 35.7' N. latitude), the inner boundary of which is the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972) and the seaward boundary of which is 1 nautical mile (1.8 km) east of that line. A shrimp trawler utilizing this authorization must limit tow times to no more than 55 minutes (measured from the time trawl doors enter the water, until they are retrieved from the water). NMFS does not anticipate that there will be adverse effects to sea turtles by substituting tow times for TEDs if shrimpers comply with the tow time requirements. The 55-minute tow time limitation allows at least 40 minutes bottom-time for trawling. The 55-minute tow time has also been determined to constitute an acceptable limit for forced submergence of sea turtles in shrimp trawls, and the more restricted tow time facilitates enforcement. The National Academy of Sciences report, “Decline of the Sea Turtles: Causes and Prevention,” provided guidance on effects of tow times on sea turtles. The report concluded that tow times of 40 minutes in summer months and 60 minutes during winter months would provide protection comparable to that afforded by TEDs. Thus, a tow-time limitation appears to be an effective alternative to mandatory TED use and should provide comparable protection for sea turtles.

The owner or operator of a shrimp trawler 25 feet (7.6 m) in length or longer trawling in the North Carolina restricted area must register with the Southeast Regional Director, NMFS, by telephoning at 813/893-3103. The following information is requested: (1) The name and official number of the vessel; (2) the time and date of the telephone registration; the number of the state permit authorizing fishing in the restricted area; (3) a statement that the owner or operator intends to trawl in the North Carolina restricted area using the limited tow times option; (4) and the dates towing operations in the North Carolina restricted area are expected to be conducted.

If required by the Assistant Administrator, the owner and operator of a shrimp trawler 25 feet (7.6 m) in length or longer trawling in the North Carolina restricted area must carry a NMFS-approved observer. The observer will monitor compliance with required conservation measures, including restricted tow times, and resuscitation of captured turtles in accordance with 50 CFR 227.72(e)(1)(i).

Any person who does not comply with any requirement in this action is in violation of the interim final regulations (57 FR 40861), codified at 50 CFR 227.71(b)(3).

Additional Sea Turtle Conservation Measures: Termination

The Assistant Administrator, at any time, may modify the required conservation measures through notice in the Federal Register, if necessary, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the Assistant Administrator will impose any necessary additional or more stringent measures, including requiring more restrictive tow times or synchronized tow times, if the Assistant Administrator determines that conditions do not make trawling with TEDs impracticable, that there is insufficient compliance with the required conservation measures, or, that compliance cannot be monitored effectively. Likewise, conservation measures may be modified if monitoring to assess turtle mortality indicates that the incident take level for the program is approaching the incidental take level established by the biological opinion for this action issued as a result of consultation under section 7 of the ESA. That level is one lethal take of a Kemp’s ridley, green, hawksbill, or leatherback turtle or two lethal takes of loggerhead turtles.

The Assistant Administrator will terminate this exemption for the North Carolina restricted area, if the incidental take level is exceeded, if significant or unanticipated levels of lethal or non-lethal takings or strandings of sea turtles associated with fishing activities in the North Carolina restricted area occur, or if conditions do not make trawling with TEDs impracticable. NMFS will monitor algal concentrations regularly in the restricted area through limited observer coverage and the testing of TEDs to evaluate the need for continued TED exemption for this local fishery. Finally, the Assistant Administrator may...
terminate this exemption for the North Carolina restricted area, if shrimpers refuse to accept observers when requested to do so and the level of observer coverage is insufficient to adequately monitor incidental take. The Assistant Administrator may take such action, for these or other reasons, as appropriate, at any time. A notice will be published in the Federal Register announcing any additional sea turtle conservation measures or the termination of the tow time option in the North Carolina restricted area.

Classification

The Assistant Administrator has determined that this action is necessary to respond to an emergency situation to allow more efficient fishing for shrimp, while providing adequate protection for listed sea turtles, and is consistent with the ESA and other applicable law. This action does not require a regulatory impact analysis under Executive Order 12291, because it is not a major rule.

Because neither section 553 of the Administrative Procedure Act (APA) nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The Assistant Administrator prepared an environmental assessment (EA) for the interim final rule published on September 8, 1992, (57 FR 40861), and the two previous interim final rules (57 FR 33452, July 29, 1992; and 57 FR 40559, September 8, 1992) implementing this TED exemption program. A notice action continued the exemption (57 FR 45968, October 6, 1992). A supplemental EA prepared for this action and the Notice issued on September 30, 1992, conclude, that with specified mitigation measures, this action would have no significant impact on the human environment.

This action continues a registration program that contains a collection-of-information requirement subject to the Paperwork Reduction Act, namely, requests for registration to trawl using restricted tow times in lieu of TEDs in the North Carolina restricted area. This collection has been approved by the Office of Management and Budget (OMB) under OMB control number 0648-0287.

The public reporting burden for this collection-of-information is estimated to average 7 minutes per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Comments regarding this burden estimate or any other aspect of this collection-of-information, including suggestions for reducing this burden, may be sent to NMFS and OMB (see ADDRESSES). See OMB control number 0643-0287 and related analysis.

The Assistant Administrator, pursuant to section 553(b)(B) of the APA, finds there is good cause to take this action on an emergency basis and that it is impracticable and contrary to the public interest to provide notice and opportunity for comment. Failure to implement temporary measures immediately would result in fishermen not being able to catch shrimp as efficiently as possible in the North Carolina restricted area, while still protecting endangered and threatened sea turtles. Because this action relieves a restriction (the requirement to use TEDs), under section 553(d)(1) of the APA, this rule is being made immediately effective.

Date: October 30, 1992.

Nancy Foster,
Acting Deputy, Assistant Administrator for Fisheries.
[FR Doc. 92-26808 Filed 11-2-92; 4:08 am]
BILLING CODE 3610-22-M

50 CFR Part 672
[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA) except for pollock by vessels using pelagic trawl gear. This action is necessary because the annual limit of Pacific halibut prohibited species catch (PSC) specified for trawl fisheries in the GOA has been caught.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), October 30, 1992 through 12 midnight, A.l.t., December 31, 1992.


SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The final notice of 1992 initial specifications for the GOA (57 FR 2844, January 24, 1992) established the 1992 Pacific halibut PSC limit for trawl gear at 2,000 metric tons (mt).

The Regional Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(1)(i) that the Pacific halibut PSC limit for vessels using trawl gear in the GOA has been reached. Therefore, NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear, except for pollock by vessels using pelagic trawl gear, in the GOA from 12 noon, A.l.t., October 30, 1992, through 12 noon, A.l.t., December 31, 1992.

Classification

This action is taken under 50 CFR 672.20, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 18 U.S.C. 1801 et seq.


David S. Crestin,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-26791 Filed 10-30-92; 4:08 pm]
BILLING CODE 3610-22-M
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 THE TREASURY

Internal Revenue Service
26 CFR Part 1
[CO-18-90; CO-99-91]

RIN 1545-AOS4; 1545-AO59

Notice of Proposed Rulemaking Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards; Limitations on Corporate Net Operating Loss; Hearing

AGENCY: Internal Revenue Service. Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on two separately-issued sets of proposed regulations. First, the hearing will cover proposed regulations on treating options as exercised in certain circumstances, for the purpose of determining whether a loss corporation has an ownership change, within the meaning of section 382 of the Internal Revenue Code. Second, the hearing will cover proposed regulations which modify existing rules that require segregation of public groups following stock issuances for purposes of determining whether an ownership change has occurred.

DATES: The public hearing will be held on Tuesday, February 2, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Tuesday, January 12, 1993.

ADDRESSES: The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to:

Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:TR, (CO-18-90; and/or CO-99-91), room 5228, Washington, DC, 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-8452 or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is two separately-issued sets of proposed regulations under section 382 of the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the Federal Register.

The rules of §601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, January 12, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,
Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-26158 Filed 11-4-92; 8:45 am]

BILLING CODE 4830-01-M

Federal Register
Vol. 57, No. 215
Thursday, November 5, 1992

26 CFR Part 1
[CO-99-91]

RIN 1545-AQ59

Proposed Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 382 of the Internal Revenue Code of 1986. The proposed regulations modify existing rules that require segregation of public groups following stock issuances for purposes of determining whether an ownership change has occurred.

DATES: Written comments must be received by January 12, 1993. Requests to appear and outlines or oral comments to be presented at the hearing scheduled for February 2, 1993, must be received by January 12, 1993. See notice of hearing published elsewhere in this issue of the Federal Register.

ADDRESSES: The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Send requests to speak, outlines of oral comments and written comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:TR [CO-99-91], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Roberta F. Mann of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:5) or telephone 202-622-7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Paperwork Reduction Act

The collection of information requirement contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information and suggestions for reducing the burden
should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer TFP, Washington, DC 20224.

The collection of information requirement in this regulation is at proposed §1.382-3(j)(13)(ii), which permits an election to apply the rules of §1.382-3(j) retroactively. The respondents will be loss corporations making such election. These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 500 hours. Estimated annual burden per respondent varies from 0.05 to 0.2 hours depending on individual circumstances, with an estimated average of 0.1 hours. Estimated number of respondents: 5,000. Estimated annual frequency of response: once.

Background

This document proposes regulations to be added to the Income Tax Regulations [26 CFR part 1] under section 382 of the Internal Revenue Code (Code). Section 382 was amended by the Tax Reform Act of 1986, the Revenue Act of 1987, the Technical and Miscellaneous Revenue Act of 1988, and the Revenue Reconciliation Act of 1989. The proposed regulations relate to the application of rules requiring segregation of stock ownership after certain events. These segregation rules are contained in temporary regulations under section 382 that were issued by the Service on August 5, 1987 (the "temporary regulations").

Explanation of Provisions

Overview of Relevant Provisions of the Code and Regulations

Section 382 of the Code limits the use of a loss corporation’s pre-change loss following an ownership change. An ownership change generally is a more than 50 percentage point increase in stock ownership by 5-percent shareholders over a three-year period. A 5-percent shareholder generally is an individual who owns a 5 percent or more of the loss corporation’s stock or individuals and entities separately owning less than 5 percent of its stock ("less-than-5-percent shareholder") that are aggregated into a public group. Transfers of stock among less-than-5-percent shareholders are generally not taken into account in determining whether an ownership change has occurred.

Sections 382(g)(3)(A) and (1)(B) of the Code require that, following an equity structure shift to which the loss corporation is a party, the loss corporation segregate and treat as separate public groups the less-than-5-percent shareholders who owned stock prior to the transaction and the less-than-5-percent shareholders who acquired stock in the transaction. With certain exceptions, any tax-free reorganization under section 382 is an equity structure shift. Section 382(g)(3)(B) provides that, to the extent provided in regulations, taxable reorganization-type transactions, public offerings, and similar transactions are to be treated as equity structure shifts.

Congress recognized that there are certain transfers of stock involving less-than-5-percent shareholders where it is feasible to identify changes in ownership by these shareholders. These situations are those in which, unlike with public trading, the changes occur as part of a single, integrated transaction. With respect to these transactions, Congress intended that, where identification of changes in ownership is reasonably feasible or a reasonable presumption regarding changes in ownership can be applied, regulations should provide that the changes are taken into account in determining whether an ownership change has occurred. Conf. Rep. No. 841, 99th Cong., 2d Sess. Part II at 176.

The temporary regulations provide rules for segregating public groups following equity structure shifts and certain other transactions, including any issuance of stock to which section 1032 applies. Under the temporary regulations, a loss corporation issuing stock generally must treat less-than-5-percent shareholders acquiring stock in the issuance as a separate public group from any public groups existing before the issuance. The less-than-5 percent shareholders who are part of this new public group are presumed not to be members of any existing public groups ("presumption of no cross-ownership"). A loss corporation must have actual knowledge of an overlap in ownership between public groups to rebut the presumption of no cross-ownership. Similar rules apply to issuances of ownership interests by first tier and higher tier entities.

The Proposed Regulations

A. Overview

The Service and the Treasury believe that it is appropriate to modify the segregation rules as applied to stock issuances that are not made in an equity structure shift.

The segregation rules impose significant administrative burdens on loss corporations. For example, corporations frequently issue small amounts of stock as incentive compensation or otherwise. Under the segregation rules, these issuances create new public groups, which must be separately tracked (although they may be combined with other de minimis public groups first identified during the same taxable year).

In the case of new offerings of stock to the public, the presumption of no cross-ownership appears to be unrealistic. The Service and the Treasury believe that, on average, there is considerable overlapping ownership between existing less-than-5-percent shareholders and less-than-5-percent shareholders purchasing stock in a stock offering. However, as a practical matter, it is often difficult for loss corporations to rebut the presumption of no cross-ownership because information about the identity of existing less-than-5-percent shareholders immediately before the offering and less-than-5-percent shareholders that purchase stock in the offering generally is not readily available. As a result, the Service and the Treasury believe that a rule presuming considerable overlapping ownership is more reasonable than the presumption of no cross-ownership.

In addition, issuances of stock to less-than-5-percent shareholders result in a shift of ownership to persons who, because of the relative size of their ownership interest, generally have little incentive to undertake transactions to enhance the use of the loss corporation’s losses. In this regard, these issuances are similar in effect to secondary trading among such shareholders. However, under the temporary regulations, secondary trading is ignored for purposes of determining whether the loss corporation has an ownership change, while stock issuances are treated as owner shifts.

Accordingly, the proposed regulations provide a small issuance exception to the segregation rules. In addition, the proposed regulations partially exempt other issuances of stock for cash from these rules. These exceptions are described below.
B. Small Issuance Exception

Subject to certain limitations, the proposed regulations provide an exception from the segregation rules for small issuances of stock. A small issuance generally is any issuance of an amount of stock less than the small issuance limitation. If an issuance exceeds the small issuance limitation, none of the issuance qualifies for the small issuance exception.

Under the small issuance exception (subject to the limitations discussed in part D. and G. below), the segregation rules do not apply to any small issuance, except to the extent that the value of the stock issued in that issuance and all other small issuances previously made during the taxable year (determined in each case on issuance) exceeds the small issuance limitation. For each taxable year, the loss corporation generally may, at its option, apply the small issuance exception (1) on a corporation-wide basis, in which case the small issuance limitation is 10 percent of the total value of the loss corporation’s stock outstanding at the beginning of the taxable year (excluding the value in section 1371(a)(4) stock), or (2) on a class-by-class basis, in which case the small issuance limitation is 10 percent of the number of shares of the class outstanding at the beginning of the taxable year. Allowing a loss corporation to determine its small issuance limitation based on the number of shares avoids the need to value stock at the beginning of the taxable year and on dates of issuance. However, if more than one class of stock is issued in a single issuance (or in certain related issuances described in part H. below), the small issuance limitation must be determined by value.

C. Cash Issuance Exemption

If the loss corporation issues stock for cash, the proposed regulations provide that (subject to the limitations discussed in part D. and G. below) the segregation rules do not apply to a percentage of stock issued equal to one-half of the percentage of stock owned by less-than-5-percent shareholders immediately before the issuance. For example, if 80 percent of the loss corporation stock was held by a direct public group immediately before an issuance of stock for cash, 40 percent of the stock issued generally would be treated as acquired by that public group. The cash issuance exception does not apply to small issuances that are fully exempt under the small issuance exception. For small issuances for cash that are partially exempt under the small issuance exception, the cash issuance exception applies to the non-exempt portion.

D. Stock Acquired by 5-Percent Shareholders not Affected

The amount of stock exempted under the small issuance and cash issuance exceptions is limited to the amount of stock issued less than the amount of stock acquired by 5-percent shareholders (other than direct public groups). This rule prevents the same stock from being taken into account more than once in determining the amount of owner shift.

E. Proportionate Acquisition of Exempted Stock

Stock exempted from the segregation rules under the small issuance or cash issuance exceptions is treated as acquiring by existing direct public groups in proportion to their pre-issuance ownership interests.

F. Actual Knowledge of Stock Ownership

1. In General. The loss corporation may treat existing direct public groups as acquiring in the aggregate more stock than the amount they are treated as acquiring under the small issuance and cash issuance exemptions, but only if it knows that the aggregate amount actually acquired is greater. For example, if existing direct public groups are treated under the exceptions as acquiring 100 shares of stock in the issuance, and the loss corporation knows that the groups actually acquired 200 shares, the groups are treated as acquiring 120 shares in the issuance, the loss corporation may treat the groups as acquiring 120 shares.

2. Treatment of Pro Rata Rights Offerings. The proposed regulations provide that (subject to the limitations discussed in part D. and G. below) the segregation rules do not apply to a percentage of stock issued equal to one-half of the percentage of stock owned by less-than-5-percent shareholders immediately before the issuance. For example, if 80 percent of the loss corporation stock was held by a direct public group immediately before an issuance of stock for cash, 40 percent of the stock issued generally would be treated as acquired by that public group. The cash issuance exception does not apply to small issuances that are fully exempt under the small issuance exception. For small issuances for cash that are partially exempt under the small issuance exception, the cash issuance exception applies to the non-exempt portion.

G. Exception for Equity Structure Shifts

Pursuant to sections 382(g)(3)(A) and (4)(B), the cash issuance exception does not apply to issuances of stock in an equity structure shift. The small issuance exception does not apply to an issuance of stock in an equity structure shift except for stock issued in a recapitalization under section 380(a)(1)(F).

H. Aggregation of Related Issuances

Two or more issuances are treated as a single issuance if the issuances occur at approximately the same time and pursuant to the same plan or arrangement or if a principal purpose of issuing the stock in separate issuances is to minimize or avoid an owner shift under the rules of the proposed regulation.

I. Application to First Tier and Higher Tier Entities

The proposed regulations provide that rules similar to the above rules apply to issuances of ownership interests by a first tier or higher tier entity.

J. Proposed Effective Date

The proposed regulations would apply to issuances of stock in taxable years ending on or after November 4, 1992. Taxpayers may, however, elect to have the proposed regulations apply retroactively to issuances of stock in taxable years ending prior to November 4, 1992.

Special Analyses

It has been determined that these proposed regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an
initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests To Appear at the Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held at 10 a.m., February 2, 1993. See notice of hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of these regulations is Roberta F. Mann, Office of the Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.381(a)-1

Through 1.383-3

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953.

Paragraph 1. The authority citation for part 1 is amended by adding the following citation to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.382-3(f) also issued under 26 U.S.C. 382(8)(3)(B) and 26 U.S.C. 382(m).

Par. 2. In section 1.382-1, the entry for § 1.382-3 (b) through (i) is removed and the following entries are added in its place to read as follows:

§ 1.382-1 Table of contents.

§ 1.382-3 Definitions and rules relating to a 5-percent shareholder.

(b) through (l) [Reserved].

(i) Modification of the segregation rules of § 1.382-2T(j)(2)(iii) in the case of certain issuances of stock.—(1) Introduction. This section exempts, in whole or in part, certain issuances of stock by a loss corporation from the segregation rules of § 1.382-2T(j)(2)(iii)(B). Terms and nomenclature used in this section, and not otherwise defined herein, have the same meanings as in section 382 and the regulations thereunder.

(2) Small issuance exception.—(i) In general. Section 1.382-2T(j)(2)(iii[B] does not apply to a small issuance (as defined in paragraph (j)(2)(iii) of this section), except to the extent that the total amount of stock issued in that issuance and all other small issuances previously made in the same taxable year (determined in each case on issuance) exceeds the small issuance limitation. This paragraph (j)(2) does not apply to an issuance of stock that, by itself, exceeds the small issuance limitation.

(ii) Small issuance defined. “Small issuance” means an issuance (other than an issuance described in paragraph (j)(6) of this section) by the loss corporation of an amount of stock not exceeding the small issuance limitation. For purposes of this paragraph (j)(2)(ii), all stock issued in the issuance is taken into account, including stock owned immediately after the issuance by a 5-percent shareholder that is not a direct public group.

(iii) Small issuance limitation.—(A) In general. For each taxable year, the loss corporation may, at its option, apply this paragraph (j)(2)—

(1) On a corporation-wide basis, in which case the small issuance limitation is 10 percent of the total value of the loss corporation’s stock outstanding at the beginning of the taxable year (including the value of stock described in section 1504(a)(4)); or

(2) On a class-by-class basis, in which case the small issuance limitation is 10 percent of the number of shares of the class outstanding at the beginning of the taxable year.

(B) Class of stock defined. For purposes of this paragraph (j)(2)(ii), a class of stock includes all stock with the same material terms.

(C) Adjustments for stock splits and similar transactions. Appropriate adjustments to the number of shares of a class outstanding at the beginning of a taxable year must be made to take into account any stock split, reverse stock split, stock dividend to which section 305(a) applies, recapitalization, or similar transaction occurring during that taxable year.

(D) Exception. The loss corporation may not apply this paragraph (j)(2)(ii) on a per share basis if, during the taxable year, more than one class of stock is issued in a single issuance (or in two or more issuances treated as a single issuance under paragraph (j)(6) of this section).

(iv) Short taxable years. In the case of a taxable year that is less than 365 days, the small issuance limitation is reduced by multiplying it by a fraction, the numerator of which is the number of days in the taxable year, and the denominator of which is 365.

(3) Other issuances of stock for cash.—(i) In general. If the loss corporation issues stock for cash, § 1.382-2T(j)(2)(iii[B] does not apply to stock issued in an amount equal (as a percentage of the total stock issued) to one-half of the aggregate percentage ownership interest of direct public groups immediately before the issuance.

(ii) Coordination with paragraph (j)(2) of this section. This paragraph (j)(2) does not apply to a small issuance exempted in whole from "1.382-
Section 1.382-2T(j)(2)(iii)(B) under paragraph (j)(2) of this section, in the case of a small issuance of stock in an equity structure shift, except that paragraph (j)(2) of this section applies (if its requirements are met) to the issuance of stock in a recapitalization under section 368(a)(1)(E).

- **Transitory ownership by underwriter disregarded.** For purposes of sections 1.382-2T(g)(1), 1.382-2T(h), and this section, the transitory ownership of stock by an underwriter of the issuance is disregarded.

**(8) Certain related issuances.** For purposes of this section, two or more issuances (including issuances of stock by first tier or higher tier entities) are treated as a single issuance if—

(i) Issuances occur at approximately the same time pursuant to the same plan or arrangement; or

(ii) A principal purpose of issuing the stock in separate issuances rather than in a single issuance is to minimize or avoid an owner shift under the rules of this section.

**Application to options.** The principles of this section apply for purposes of applying section 1.382-2T(j)(2)(iii)(B) (relating to the deemed acquisition of stock as the result of the ownership of an option).

**Application to first tier and higher tier entities.** The principles of this section apply to issuances of stock by a first tier entity or a higher tier entity that owns 5 percent or more of the loss corporation’s stock (determined without regard to the application of section 1.382-2T(h)(2)(i)(A)).

**Non-stock ownership interests.** As the context may require, a non-stock ownership interest in an entity other than a corporation is treated as a stock ownership interest for purposes of this section.

**Examples.** The provisions of this section are illustrated by the following examples:

**Example 1.** (i) L corporation is a calendar year taxpayer. On January 1, 1994, L has 1,000 shares of Class A common stock standing, the aggregate value of which is $1,000. Five hundred shares are owned by another public group ("Public 1") and 500 shares are owned by another public group ("Public 2").

On August 1, 1995, L issues 200 shares of Class B common stock for $200 cash. A, an individual, acquires 120 Class B shares in the transaction. The remaining 80 Class B shares are acquired by public shareholders. No other changes in the ownership of L’s stock occur prior to August 1, 1995.

(ii) The August issuance is not a small issuance. The total value of the Class B stock issued ($200) exceeds $100, the small issuance limitation as calculated under paragraph (j)(2)(iii)(A) of this section (10 percent of the value of L’s stock on January 1, 1995). The total number of Class B shares issued (200) exceeds 10 percent of the number of Class B shares outstanding on January 1, 1995. Accordingly, paragraph (j)(2) of this section does not apply to the August issuance.

(iii) Paragraph (j)(3) of this section, as limited by paragraph (j)(4) of this section, exempts 60 shares from the segregation rules of section 1.382-2T(j)(2)(iii)(B). This is the amount of Class B stock of a value to the

**Example 2.** (i) L corporation is a calendar year taxpayer. On January 1, 1995, L has 1,000 shares of Class A common stock outstanding, the aggregate value of which is $1,000. Five hundred shares are owned by Public L and 500 shares are owned by another public group ("Public 1").

On August 1, 1995, L issues 200 shares of Class B common stock for $200 cash. A, an individual, acquires 120 Class B shares in the transaction. The remaining 80 Class B shares are acquired by public shareholders. No other changes in the ownership of L’s stock occur prior to August 1, 1995.

(ii) The August issuance is not a small issuance. The total value of the Class B stock issued ($200) exceeds $100, the small issuance limitation as calculated under paragraph (j)(2)(iii)(A) of this section (10 percent of the value of L’s stock on January 1, 1995). The total number of Class B shares issued (200) exceeds 10 percent of the number of Class B shares outstanding on January 1, 1995. Accordingly, paragraph (j)(2) of this section does not apply to the August issuance.

(iii) Paragraph (j)(3) of this section, as limited by paragraph (j)(4) of this section, exempts 60 shares from the segregation rules of section 1.382-2T(j)(2)(iii)(B). This is the amount of Class B stock of a value of the

**Exception for equity structure shifts.** This section does not apply to
FOR FURTHER INFORMATION CONTACT:

Annette M. Ahlers of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 [Attention: CC:CORP:1], or telephone (202) 622-7750 (not a toll-free number).

SUPPLEMENTAL INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(b)). Comments on the collection of information and suggestions for reducing the burden should be sent to the Office of Management and Budget, Attention: Paperwork Reduction Project, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies of the Internal Revenue Service, Attention: IRS Reports Clearance Officer, TF:FP, Washington, DC 20224.

The collection of information in these regulations is at § 1.382-4(d)(6). The information is required by the Internal Revenue Service to determine whether an option meets the principal purpose test of § 1.382-4(d)(2) of the proposed regulations. The likely respondents are business or other for profit institutions.

The estimates below are approximations of the average time needed to collect required information. The estimates are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances. Estimated total annual reporting burden: 5000 hours.

The estimated annual burden per respondent varies from .5 hours to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour. Estimated number of respondents: 5000.

Estimated annual frequency of responses: 1.

Background


§ 1.382-2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).

(a) ... (j)...

(B) ***(!)**

(2) * * *

(f) ***

(ii)...

See § 1.382-3(j) for exceptions to the segregation rules of this paragraph.

(i)...

George O’Hanlon,

Acting Commissioner of Internal Revenue.

[FR Doc. 92-26159 Filed 11-4-92; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[CO-18-90]

RIN 1545-AOS4

Notice of Proposed Rulemaking Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes rules treating options as exercised in certain circumstances, for the purpose of determining whether a loss corporation has an ownership change, within the meaning of section 382 of the Internal Revenue Code. The rules generally treat an option as exercised only if it was issued or transferred for a principal purpose of manipulating the timing of an owner shift to avoid or ameliorate the impact of an ownership change. These rules would replace those of the existing temporary regulations, which generally provide that an option is treated as exercised if the deemed exercise results in an ownership change.

DATES: Written comments must be received by January 12, 1993. Requests to speak (with outlines of oral comments to be presented) at the public hearing scheduled for 10 a.m., February 2, 1993, must be received by January 12, 1993. See the notice of hearing published elsewhere in this issue of the Federal Register.

ADRESSES: All submissions are to be sent to: Internal Revenue Service, Attention: CC: CORP:TR [CO-18-90], P.O. Box 7004, Ben Franklin Station, Washington, DC 20044. The hearing will be held in the Commissioner’s Conference Room 3313, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

Explanation of Provisions

A. Introduction

Section 382 of the Code limits the amount of income earned by a corporation after an “ownership change” that can be offset by losses incurred prior to the ownership change. In general, an ownership change is an increase of more than 50 percentage points in stock ownership by 5-percent shareholders over a three-year period. Under section 383, the amount of the loss corporation’s tax liability that can be offset by certain pre-change credits is also limited based on the section 382 limitation.

Pursuant to section 382(l)(3)(A), § 1.382-27(h)(4) of the temporary regulations requires that an option or similar interest be treated as exercised if its deemed exercise would result in an ownership change (the “deemed exercise rule”). The deemed exercise rule must be applied separately with respect to each class of options, each option holder, and each combination of holders (the “selective exercise rule”). Thus, the deemed exercise rule can cause an ownership change if the exercise of some, but not all, options would result in an ownership change. The deemed exercise rule generally applies to an option regardless of any contingency or limitation on its exercise. The temporary regulations provide only narrow exceptions to the deemed exercise rule.

The Service and the Treasury have received numerous comments regarding the practical difficulties of applying the option rules provided in the temporary regulations. These difficulties arise principally from the selective exercise rule and the broad scope of the deemed exercise rule. These rules require a loss corporation to consider different combinations in which various outstanding options might be exercised. In certain circumstances, extensive calculations are required to apply the option rules, making it extremely difficult to determine whether options have caused an ownership change. These proposed regulations revise the section 382 option rules to narrow their scope and simplify their application.

The proposed regulations treat an option as exercised only in abuse situations. The Service and the Treasury believe that rules treating options as exercised are necessary under section 382 to prevent the use of options to manipulate the timing of an owner shift and thereby avoid or ameliorate the impact of an ownership change. The principal means by which options could be used to avoid or ameliorate the impact of an ownership change would be to create income to absorb the corporation’s losses prior to the exercise of the option. Pre-change income could be created, for example, by contributing new capital to the loss corporation to increase its earning power, or by causing the loss corporation to enter into one or more transactions to accelerate income to the pre-change period, or defer deductions, losses, or credits to the post-change period. An option could also be used to transfer a substantial portion of the attributes of stock ownership, but defer a formal sale of stock until more than three years after earlier transactions that, in conjunction with the sale, would have caused an ownership change.

b. Treatment of Options as Exercised

The proposed regulations provide that options are generally not treated as exercised. An option that is issued or transferred for an abusive principal purpose, however, is treated as exercised for purposes of determining whether an ownership change occurs on the date of issuance or transfer or, subject to the rules described in part (E) below, on any subsequent testing date.

C. Abusive Principal Purpose

An abusive principal purpose is a principal purpose of manipulating the timing of an owner shift to avoid, or ameliorate the impact of, an ownership change either by (1) providing the holder of the option, prior to its exercise, with a substantial portion of the attributes of ownership of the amount of stock covered by the option, or (2) facilitating the creation of income to absorb the loss corporation’s losses prior to the exercise of the option. Therefore, an option does not meet the principal purpose test if it is issued with the intent that it be treated as exercised to prevent an ownership change. The determination of whether an option is issued or transferred for an abusive principal purpose is based on all relevant factors and circumstances. The proposed rules include a nonexclusive list of factors that evidence an abusive principal purpose. These factors are (1) an exercise price that is substantially less than the value of the underlying stock at the time the option is issued or transferred, (2) participation by the option holder in the management of the loss corporation, (3) the provision to the option holder of fights ordinarily afforded to shareholders, (4) matching call and put options, (5) contributions to the capital of the loss corporation, and (6) transactions entered into by the loss corporation with a view to accelerate income or defer deductions, losses, or credits.

D. Definition of Option

The option rules provided in the proposed regulations apply to options and to interests similar to options, such as contingent purchases, warrants, convertible debt, puts, stock subject to a risk of forfeiture, and contracts to acquire stock.

The proposed regulations provide that convertible stock is generally treated as stock and not as an option. If, however, the terms of the conversion feature require the tender of consideration other than the stock being converted, the convertible stock is treated as both stock and an option.

The rules described above differ from those provided in Notice 88-67, 1988-1 C.B. 555 (See § 601.601(d)(2)(iii)(B) of the Statement of Procedural Rules), in their treatment of nonvoting convertible preferred stock. Notice 88-67 treats such stock as an option and not as stock. This treatment of nonvoting convertible preferred stock is appropriate under the option rules provided in the temporary regulations, which generally treat options as exercised. These proposed regulations, however, generally will not treat options as exercised. Therefore, because nonvoting convertible preferred stock may provide its holder with a significant equity interest in the issuing corporation, the Service and the Treasury believe that it is more appropriate to treat the stock as stock rather than as an option.

The proposed regulations apply the rules of Notice 88-67 to testing dates and stock issued prior to November 5, 1992.

E. Subsequent Treatment of Options Treated as Exercised on a Change Date

If an option is treated as exercised on a date on which an ownership change occurs, the option is not treated as exercised on any subsequent testing date unless the option is later transferred for an abusive principal purpose. Further, the exercise of such an option, if by the person who owned the option immediately after the ownership change, does not cause another ownership change on or after the date of exercise. This special rule also applies to the exercise of the option by a transferee of the option who acquired it, directly or indirectly, in one or more transfers described in part (F) below, from the person who held the option immediately after the ownership change.

Based on a comment on the temporary regulations, the proposed regulations
provide that, it an option is exercised within three years after the ownership change, a loss corporation may apply a look-back rule as an alternative to the rules described in the preceding paragraph. Under this alternative look-back rule, the option is treated as having been exercised on the change date, for the purpose of determining whether an ownership change occurs on any and all testing dates after the change date. Consistent with this treatment, any transfer of the option after the change date is treated as a transfer of the stock subject to the option, and the exercise of the option is not taken into account. A loss corporation that applies the look-back rule to an option must file such amend returns as may be necessary to apply the rule to taxable years prior to the year in which the option is exercised.

The Service and the Treasury request comments on whether other rules regarding the treatment on subsequent testing dates of options treated as exercised on issuance or transfer may be appropriate. In particular, the Service and the Treasury request comments on whether an option issued or transferred for an abusive principal purpose should be treated as having been exercised on issuance or transfer for the purposes of determining whether an ownership change occurs on any subsequent testing date (with corresponding rules treating the transfer, lapse, or forfeiture of the option as a transfer of the underlying stock).

F. Transfers not Subject to Principal Purpose Test

The proposed regulations, following §1.382-2T(h)(4)(iv)(A) of the temporary regulations, provide that the rule treating an option as exercised if it is transferred for an abusive principal purpose does not apply to a transfer of an option between members of one or more public groups or a transfer by reason of death, gift, divorce, or separation.

G. Disclosure Requirement

If a loss corporation does not treat as exercised an option to which one of the specific abuse factors applies, the corporation must disclose to the Service the terms of the option and all relevant facts and circumstances that affect the treatment of the option under these rules.

H. Effective Date

The option rules provided in the proposed regulations generally would apply to testing dates on or after November 5, 1992. Under a special transition rule analogous to the rules of §1.382-2T(h)(4)(iv)(A) and (x)(F), options in existence immediately before and after an ownership change occurring before publication of this notice of proposed rulemaking would not be treated as exercised unless they are transferred for an abusive principal purpose. Further, the actual exercise of such an option, if by the person who owned the option immediately after the ownership change (or by a transferee of the option who acquired the option, directly or indirectly, from that person in one or more transfers described in Part (F) above), will not cause an ownership change. The Service requests comments regarding the need for additional transition rules.

I. Alternative Approaches

In drafting the proposed regulations, the Service and the Treasury considered and rejected narrowing the scope of the option rules provided in the temporary regulations by retaining those rules and expanding the exceptions to those rules. Three principal reasons support this decision. First, the list of exceptions would have been lengthy, if it were to include all types of options that may be regarded as generally having little or no abuse potential. Second, many of the exceptions would have been subject to various conditions to prevent their application in particular cases with undue abuse potential. Third, expanding the exceptions would have reduced, but not eliminated, the practical difficulties caused by the selective exercise rule. The first two reasons also support the decision not to provide safe harbors in the proposed regulations.

J. Applicability of Substance-Over-Form Principles

In proposing rules that treat options as exercised if issued or transferred for an abusive principal purpose, the Service and the Treasury intend no inference regarding the treatment of options under substance-over-form principles. Therefore, an option may be treated as stock under those principles without regard to whether it is issued or transferred for an abusive principal purpose.

K. Public Comments Requested

The Service and the Treasury request comments on whether, in light of the option rules in the proposed regulations, changes should also be made in the treatment of options in determining whether the stock ownership requirements of section 382 are satisfied. See §1.382-5(e).

Special Analyses

It has been determined that these rules are not major regulations as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to this notice of proposed rulemaking. Therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this notice of proposed rulemaking is Annette M. Ahlers, Office of the Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Service and the Treasury Department participated in developing the regulations, in matters of both substance and style.

List of Subjects in 26 CFR 1.382(a)–1 through 1.383–3

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by removing the current citations for §§1.382–2 and 1.382–4 and by adding the following citations to read as follows:

Authority: 26 U.S.C. 7605 * * * Section 1.382–2 also issued under 26 U.S.C. 382(b)(1), 26 U.S.C. 382(k)(3) and 382(m), and 26 U.S.C. 382(l). * * * Section 1.382–4 also issued under 26 U.S.C. 382(l)(3) and 26 U.S.C. 382(a). * * *

Par. 2. Section 1.382–1 is amended as follows:

1. Entries for §1.382–2, paragraphs (a)(3) through (b)(3) are added.
2. Entries for §1.382–2T are amended by:
   a. Revising the entry for paragraph (a)(2)(i).
   b. Adding an entry for paragraph (b)(4)(xii).
§ 1.382-2T Definition of ownership change

(a) In general. [Reserved]

(b) Exceptions. [Reserved]

(c) Nonvoting convertible preferred stock. [Reserved]

(d) Other convertible stock. [Reserved]


(iii) Convertible stock issued on or after July 20, 1986 and before ownership change occurring before November 5, 1992.

Par. 3. Section 1.382-2 is amended by adding paragraphs (a)(3), (a)(4), and (b) to read as follows:

§ 1.382-2 General rules for ownership change.

(a) * * *

(3) Stock. [Reserved]

(i) Testing dates prior to November 5, 1992.

(ii) Abusive principal purpose defined.

(iii) Convertible stock issued on or after July 20, 1986.

(iv) Options in existence immediately before and after an ownership change occurring before November 5, 1992.

Par. 4. Section 1.382-2 is amended as follows:

1. Paragraph (a)(2) is amended by revising the heading for paragraph (a)(2)(i) and adding a sentence at the end of paragraph (a)(2)(i)(B).

2. Paragraph (b)(4)(i) is removed.

3. Paragraph (b)(4)(vi) is added.

4. Paragraphs (m)(4)(vi) and (m)(4)(vii) are added.

5. The revisions and additions read as follows:

§ 1.382-2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary)

(a) * * *

(2) Rules provided in paragraph (a)(5)(ii) of this section—(i) In general. Except as provided in paragraph (b)(2)(ii) of this section, the rules provided in paragraph (a)(3)(ii) of this section apply with respect to any convertible stock.

(ii) Certain convertible preferred stock. Convertible stock that, when issued, would be described in section 1504(a)(4) by disregarding subparagraph (D) thereof and by ignoring the potential participation in corporate growth that the conversion feature may offer is treated as stock described in that section (and thus is not treated as stock for the purpose of determining whether an ownership change occurs, but is taken into account for the purpose of determining the value of the loss corporation immediately before an ownership change; see sections 382(e)(1) and 382(k)(6)(A)) if—

(A) The stock was issued on or after July 20, 1986 and prior to November 5, 1992; or

(B) The stock was issued prior to July 20, 1986 and the loss corporation makes the election described in Notice 88-67, 1988-1 C.B. 555 (see § 601.601(d)(2)(ii)(b) of this chapter for availability of Cumulative Bulletins (C.B.) on or before the earlier of the date prescribed in the Notice or December 7, 1992.

(3) Rules provided in paragraph (a)(4) of this section. The rules provided in paragraph (a)(4) of this section apply to determine whether dates on or after November 5, 1992 are testing dates.

Par. 4. Section 1.382-2T is amended as follows:

1. Paragraph (a)(2) is amended by revising the heading for paragraph (a)(2)(i) and adding a sentence at the end of paragraph (a)(2)(i)(B).

2. Paragraph (b)(4)(i) is removed.

3. Paragraph (b)(4)(vi) is added.

4. Paragraphs (m)(4)(vi) and (m)(4)(vii) are added.

5. The revisions and additions read as follows:

§ 1.382-2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary)

(a) * * *

(2) * * *

(i) Testing dates prior to November 5, 1992.

(B) * * *

See paragraphs (m)(4)(vi) of this section for special rules regarding
the effective date of the provisions of this paragraph (a)(2)(i).

(h) * * *

(iv) Rules provided in paragraph (h)(4) of this section. The rules provided in paragraph (h)(4) of this section do not apply on any testing date on or after November 5, 1992. The rule provided in paragraph (h)(4)(viii) of this section applies to the lapse or forfeiture of any option treated as exercised under paragraph (a)(4)(i) of this section.

(vi) Rules provided in paragraph (a)(2)(ii) of this section. The rules provided in paragraph (a)(2)(ii) of this section apply to determine whether dates prior to November 5, 1992 are testing dates. For rules regarding the determination of whether dates on or after November 5, 1992 are testing dates, see § 1.382-2(a)(4).

* * * * *

Par. 5. Section 1.382-4 is revised to read as follows:

§ 1.382-4 Constructive ownership of stock.

(a) In general. [Reserved]

(b) Attribution from corporations, partnerships, estates and trusts. [Reserved]

(c) Attribution to corporations, partnerships, estates and trusts. [Reserved]

(i) Treatment of options as exercised.—(1) General rule. Except as provided in paragraph (d)(2) of this section, an option is not treated as exercised under section 382(b)(3)(A).

(2) Options treated as exercised.—(i) Principal purpose test. An option that is issued or transferred for an abusive principal purpose is treated as exercised for purposes of determining whether an ownership change occurs on the date of its issuance or transfer, respectively, and, except as provided in paragraph (d)(4) of this section, on any subsequent testing date as defined in § 1.382–2(a)(4).

(ii) Abusive principal purpose defined. An abusive principal purpose is a principal purpose of manipulating the timing of an owner's shift to avoid, or ameliorate the impact of, an ownership change of the loss corporation by—

(A) Providing the holder of the option, prior to its exercise, with a substantial portion of the attributes of ownership of all or part of the amount of stock covered by the option (through the option alone or in combination with one or more related arrangements); or

(B) Facilitating the creation of income to absorb the loss corporation's losses prior to the exercise of the option.

(iii) Determination of principal purpose.—(A) In general. The determination of whether an option is issued or transferred for an abusive principal purpose is based on all relevant facts and circumstances, including (but not limited to) related transactions and the application of the factors set forth in paragraph (d)(2)(iii)(B) of this section.

(B) Specific factors evidencing abusive principal purpose. The following factors are evidence of an abusive principal purpose:

(1) The option entitles its holder to acquire stock at a fixed or determinable exercise price that is substantially below the fair market value of the stock on the date the option is issued or transferred.

(2) The option or an agreement entered into in connection with its issuance or transfer entitles the holder to participate in the management of the loss corporation (other than through a bona fide employment arrangement).

(3) The option or an agreement entered into in connection with its issuance or transfer entitles the holder to rights that ordinarily would be afforded to owners of the underlying stock (e.g., dividend or voting rights or rights to proceeds on liquidation).

(4) In connection with acquiring a call option with respect to stock of the loss corporation, the acquiror (or a person related to the acquiror) purchases stock subject to a put provides its holder with a right to transfer, instead of acquire, stock.

(4) Subsequent treatment of options treated as exercised on a change date—(i) In general. In the case of an option that is treated as exercised under paragraph (d)(2) of this section on a change date—

(A) Paragraph (d)(2) of this section does not apply to the option for any testing date after the change date and prior to a transfer of the option for an abusive principal purpose; and

(B) The exercise of the option, if by the person who owned the option immediately after the ownership change (or by a transferee of the option who acquired the option, directly or indirectly, from that person in one or more transfers described in paragraph (d)(5) of this section), does not cause another ownership change on any testing date on or after the date of exercise.

(ii) Alternative look-back rule for options exercised within 3 years after change date. If a loss corporation, on its return, as originally filed, for a taxable year that includes a change date, properly treats an option as exercised under paragraph (d)(2) of this section on the change date, and the option is actually exercised within three years after the change date, the loss corporation may treat the rules of paragraph (d)(4)(i) of this section as inapplicable to the option and instead treat the option as having been exercised on the change date for the purpose of determining whether an ownership change occurs on any and all testing dates after the change date (filing such amended returns as may be necessary for taxable years ending after the change date and before the date of exercise of the option). A transfer after the change date of an option to which this paragraph (d)(4)(ii) applies is treated as a transfer
of the stock subject to the option. The exercise of an option to which this paragraph (d)(4)(iii) applies is not taken into account for the purpose of determining whether an ownership change occurs on or after the date of exercise.

[5] Transfers not subject to principal purpose test. Paragraph (d)(2) of this section does not apply to the transfer of an option—

(i) Between persons who are not 5-percent shareholders;

(ii) Between members of separate public groups resulting from the application of the segregation rules of §§1.382-2T (j)(2) and (3)(iii); or

(iii) In any of the circumstances described in section 382(1)(3)(B) (relating to stock acquired by reason of death, gift, divorce, separation, etc.).

(6) Disclosure requirement—(i) In general. If any of the factors set forth in paragraph (d)(2)(iii)(B) of this section apply to an option, and the corporation does not treat the option as exercised, pursuant to paragraph (d)(2) of this section, on the date the option is issued or transferred, the loss corporation must disclose to the Internal Revenue Service its treatment of the option. This disclosure must be made by attaching to the loss corporation's return for the taxable year that includes the date the option is issued or transferred (or, if later, the taxable year in which the activity described in paragraph (d)(2)(iii)(B) of this section occurs) a completed Form 8275 or a statement that—

(A) Includes a caption identifying the statement as disclosure under §1.382-4(d);

(B) Identifies the option with respect to which disclosure is made, and describes the terms of the option; and

(C) Describes all relevant facts relating to the issuance or transfer of the option that affect the treatment of the option under this paragraph (d).

(ii) Application of deep-in-the-money factor. Solely for purposes of this paragraph (d)(6), an exercise price is not substantially below the value of stock, within the meaning of paragraph (d)(2)(iii)(B)(1) of this section, if the price is at least 90 percent of that value.

(e) Stock transferred under certain agreements. [Reserved]

(f) Family attribution. [Reserved]

(g) Definitions. The terms and nomenclature used in this section, and not otherwise defined herein, have the same meaning as in section 362 and the regulations thereunder.

(h) Effective date—(1) In general. [Reserved]

(2) Option attribution rules—(i) General rule. The rules of paragraph (d) of this section apply on any testing date after November 5, 1992.

(ii) Convertible stock issued prior to July 20, 1988—(A) In general. Except as provided in paragraph (h)(2)(ii)(B) of this section, convertible stock issued prior to July 20, 1988, is not treated as an option subject to the rules of §1.382-2T(h)(4) or paragraph (d)(2) of this section.

(B) Exceptions—(1) Nonvoting convertible preferred stock. Convertible stock issued prior to July 20, 1988, is treated as an option subject to the rules of §1.382-2T(h)(4) or paragraph (d)(2) of this section if—

(i) The stock, when issued, would be described in section 1504(a)(4) by disregarding subparagraph (D) thereof and by ignoring the potential participation in corporate growth that the conversion feature may offer; and

(ii) The loss corporation makes the election described in Notice 86-57, 1986-3 C.B. 555 (see §1.601-1A(d)(2)(ii)(B) of this chapter for availability of Cumulative Bulletins (C.B.) on or before the earlier of the date prescribed in Notice 86-67 or December 7, 1992.

(2) Other convertible stock. Convertible stock issued prior to July 20, 1988, is treated as an option subject to the rules of §1.382-2T(h)(4) or paragraph (d)(2) of this section if—

(i) The terms of the conversion feature permit or require the tender of consideration other than the stock being converted; and

(ii) The loss corporation makes the election described in Notice 86-67 on or before the date prescribed in the Notice.

(iii) Convertible stock issued on or after July 20, 1988, and before November 5, 1992. Convertible stock issued on or after July 20, 1988, and before November 5, 1992, is treated as an option subject to the rules of §1.382-2T(h)(4) and paragraph (d) of this section only if—

(A) The stock, when issued, would be described in section 1504(a)(4) by disregarding subparagraph (D) thereof and by ignoring the potential participation in corporate growth that the conversion feature may offer; or

(B) The terms of the conversion feature permit or require the tender of consideration other than the stock being converted.

(iv) Options in existence immediately before and after an ownership change occurring before November 5, 1992. If an option existed immediately before and after an ownership change occurring before November 5, 1992—

(A) The rules of paragraph (d)(2) of this section do not apply to the option for any testing date after November 5, 1992 and prior to any transfer of the option for an abusive principal purpose; and

(B) The actual exercise of the option, if by the person who owned the option immediately after the ownership change (or by a transferee of the option who acquired the option, directly or indirectly, from that person in one or more transfers described in paragraph (d)(5) of this section), will not cause an ownership change on any testing date on or after the date of exercise.
presentations will aid this rulemaking, determines that the opportunity for oral address under "ADDRESSES." If it plans no public hearing. Persons may view of the comments. The Coast Guard by a later notice in the Federal Register.

amounts is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting the document are Mrs. Justine Bunnell, U.S. Coast Guard, Project Manager, Office of Marine Safety, Security and Environmental Protection and Ms. Helen Boutrous, Project Counsel, Office of Chief Counsel.

Background and Purpose

Currently, 46 CFR 78.10-1 and 46 CFR 97.10-5 require masters and pilots to exclude all persons not connected with the navigation of a vessel from the pilothouse and navigation bridge while underway. However, inspectors of the Coast Guard, U.S. Navy, U.S. Coast and Geodetic Survey, U.S. Army Corps of Engineers, or Maritime Administration personnel, may be allowed in the pilothouse or upon the navigation bridge upon appropriate authorization. NTSB personnel are not among the officials that may be allowed in the pilothouse or upon the navigation bridge while underway. The NTSB has requested that the regulations be amended to allow NTSB access to the pilothouse and navigation bridge of a vessel while underway, to allow NTSB officials to more effectively perform their duties. The Coast Guard expects that the amendments would have no economic impact on the maritime industry.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

This proposal, if adopted, would allow NTSB officials to have access to the pilothouse and navigation bridge of vessels while underway and, is expected to result in no economic impact on the maritime industry. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12866 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The authority to regulate the operations of vessels subject to these regulations is committed to the Coast Guard by Federal statutes. The purpose of these regulations is to set forth uniform minimum requirements for covered vessels operating on the navigable waters of the United States. Therefore, the Coast Guard intends that this proposal, if adopted, would preempt State action that would conflict with the regulations proposed in this NPRM.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This proposal involves only operational procedures regarding officials that may be allowed in the pilothouse or upon the navigation bridge while underway and clearly would have no environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects

46 CFR Part 78

Marine safety, Navigation (water), Cargo vessels, Marine safety, Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR parts 78 and 97 as follows:

PART 78—OPERATIONS

1. The authority citation for part 78 is revised to read as follows:

2. Section 78.10-1 is revised to read as follows:

§ 78.10-1 Persons excluded.
Masters and pilots shall exclude from the pilothouse and navigation bridge while underway, all persons not connected with the navigation of the vessel. However, licensed officers of vessels, persons regularly engaged in learning the profession of pilot, officials of the United States Coast Guard, United States Navy, United States Coast and Geodetic Survey, U.S. Army Corps of Engineers, Maritime Administration, and National Transportation Safety Board may be allowed in the pilothouse or upon the navigation bridge upon the responsibility of the master or pilot.

A.E. Heim, Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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


4. Section 97.10-5 is revised to read as follows:

§ 97.10-5 Persons excluded.
Masters and pilots shall exclude from the pilothouse and navigation bridge while underway, all persons not connected with the navigation of the vessel. However, licensed officers of vessels, persons regularly engaged in learning the profession of pilot, officials of the United States Coast Guard, United States Navy, United States Coast and Geodetic Survey, U.S. Army Corps of Engineers, Maritime Administration, and National Transportation Safety Board may be allowed in the pilothouse or upon the navigation bridge upon the responsibility of the master or pilot.

A.E. Heim, Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

Designated Critical Habitat; Sacramento River Winter Run Chinook Salmon

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
50 CFR Part 226
[Docket No. 920773-2173]

AGENCY: National Marine Fisheries Service [NMFS], NOAA, Commerce.

SUMMARY: On August 14, 1992, NMFS announced proposed regulations (57 FR 36628) that would designate critical habitat for the Sacramento River winter-run chinook salmon (Oncorhynchus tshawytscha) pursuant to the Endangered Species Act (ESA). The habitat proposed for designation includes (1) the Sacramento River from Keswick Dam, Shasta County (River Mile 0) at the westward margin of the Sacramento-San Joaquin Delta; (2) all waters from Chippewa Island westward to Carquinez Bridge; (3) all waters of San Pablo Bay westward of the Carquinez Bridge; and (4) all waters of San Francisco Bay from San Pablo Bay to the Golden Gate Bridge. NMFS has scheduled public hearings on the proposed rule and guidelines, and has extended the comment period.

DATES: Comments on the proposed rule and guidelines will be accepted until December 15, 1992. Public hearings are scheduled as follows:
1. November 16, 1992, at 6–10 p.m., Fresno, CA;
2. November 17, 1992, at 6–10 p.m., Sacramento, CA;
3. November 18, 1992, at 6–10 p.m., Willows, CA;

ADDRESSES: Send written comments to Dr. Michael Tillman, Acting Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Hearings will be held at the following locations:
1. Fresno, CA, Raisin-Almond Room, Holiday Inn Fresno Airport 5090 East Clinton;
2. Sacramento, CA, Auditorium, Department of Water and Natural Resources Bldg., 1416 9th St;
3. Willows, CA, Willows Veterans Memorial Hall, 525 W. Sycamore St

FOR FURTHER INFORMATION CONTACT: Margaret Lorenz (301) 713–2322, or Craig Wingert (310) 980–4010.

Nancy Foster, Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92–28893 Filed 11–4–92; 8:45 am] BILLING CODE 4910–14–M

[FR Doc. 92–28854 Filed 11–4–92; 8:45 am] BILLING CODE 4910–22–M
This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 30, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

1. Agency proposing the information collection;
2. Title of the information collection;
3. Form number(s), if applicable;
4. How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry.

Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690-2118.

Revision

* Forest Service

National Survey of Forest-Land Ownership

On occasion

<table>
<thead>
<tr>
<th>Application No.</th>
<th>Applicant</th>
<th>Date received</th>
<th>Organisms</th>
<th>Field test location</th>
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<tr>
<td>92-259-01 renewal of permit 92-015-02 issued on 04-30-92</td>
<td>Northrup King Company</td>
<td>09-15-92</td>
<td>Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.</td>
<td>Hawaii</td>
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Federal Register / Vol. 57, No. 215 / Thursday, November 5, 1992 / Notices

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<td>Rogers NK Seed Company</td>
<td>09-16-92</td>
<td>Petunia plants genetically engineered to express the dihydrofolate reductase gene to modify flower color.</td>
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<td>92-260-02</td>
<td>Monsanto Agricultural Company</td>
<td>09-16-92</td>
<td>Soybean plants genetically engineered to express the enzyme 5-enolpyruvy 3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.</td>
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<td>Monsanto Agricultural Company</td>
<td>09-18-92</td>
<td>Corn plants genetically engineered to express a gene from Bacillus thuringiensis subsp. kurstaki (Btk) for resistance to lepidopteran insects.</td>
</tr>
<tr>
<td>92-262-02</td>
<td>Monsanto Agricultural Company</td>
<td>09-18-92</td>
<td>Potato plants genetically engineered to express a gene from Bacillus thuringiensis subsp. tenebrionis (Btt) for resistance to Colorado potato beetle, and the coat protein gene of potato virus Y (PVY) for resistance to PVY.</td>
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<td>92-265-01</td>
<td>Monsanto Agricultural Company</td>
<td>09-21-92</td>
<td>Corn plants genetically engineered to express a gene from Bacillus thuringiensis subsp. kurstaki (Btk) for resistance to lepidopteran insects.</td>
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<td>Monsanto Agricultural Company</td>
<td>09-21-92</td>
<td>Corn plants genetically engineered to express a gene from Bacillus thuringiensis subsp. kurstaki (Btk) for resistance to lepidopteran insects, and/or genes for tolerance to the herbicide glyphosate, and/or a beta-glucuronidase (GUS) gene as a marker.</td>
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<td>92-267-01</td>
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<td>09-23-92</td>
<td>Tomato plants genetically engineered to express a coat protein of tomato yellow leaf curl virus (TYLCV) for resistance to TYLCV.</td>
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Done in Washington, DC with 30th day of October 1992.
Lonnlie J. King,
Acting Administrator, Animal and Plant Health Inspection Service.
[FR Doc. 92-26666 Filed 11-4-92; 8:45 am]
BILLING CODE 3410-34-M

Forest Service
Tenderfoot Horse Resource Area; Idaho Panhandle National Forests, Kootenai and Shoshone Counties, Idaho

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The notice is hereby given that the Forest Service is gathering information in order to prepare an EIS (Environmental Impact Statement) for a proposal to harvest timber and build roads in the Tenderfoot Horse Resource Area. The area is located approximately 4 air miles northeast of Coeur d'Alene, Idaho, from approximately the Canfield Butte area to the Bernard Peak area. Management activities would be administered by the Fernan Ranger District of the Idaho Panhandle National Forests in Kootenai and Shoshone Counties, Idaho. This EIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area. The purpose and need for the proposed action are to (1) Treat areas infected by root disease and insect infestation; (2) Improve age-class distribution in the area; and (3) Contribute to the District's share of the Forests' Allowable Sale Quantity.

The Forest Service also serves notice that the agency is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparing the Draft EIS. This process will include:
1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. For most effective use, comments should be sent to the agency within 45 days from the date of publication in the Federal Register. Written comments concerning the scope of the analysis must be received within 45 days from the date of publication in the Federal Register.

ADDRESSES: Send written comments to District Ranger, Fernan Ranger District, 2502 E. Sherman Avenue, Coeur d'Alene, ID 83814.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Patrick Sheridan, Planning Staff Officer, Fernan Ranger District, Idaho Panhandle National Forests, 2502 East Sherman Avenue, Coeur d'Alene, ID 83814. Phone: (208) 765-7381.

SUPPLEMENTARY INFORMATION: The Forest Plan provides the overall guidance for management activities in the potentially affected area through its Goals, Objectives, Standards and Guidelines, and Management Area direction. The potentially affected area is within the following Management Areas:
Management Area 1: Consists of lands designated for timber production. The goals are to manage those lands suitable for timber production for the long-term growth and production of commercially valuable wood products as well as to provide for soil and water protection, wildlife habitat, dispersed recreation opportunities and visual quality.
Management Area 4: Consists of lands designated for timber production within big-game winter range. The goal is to
manage big-game winter range to provide forage to support projected big-game habitat needs, through scheduled timber harvest and permanent forage areas. Management Area 6: Consists of lands designated for management of big-game summer range, to provide sufficient habitat to support projected elk populations, and to provide for the long-term growth and production of wood products.

Management Area 8: Consists of non-forest lands or lands not capable of timber production. Management goals are to maintain and protect existing improvements and resource productive potentials.

Management Area 16: Consists of primary riparian areas. The goal is to manage riparian areas to feature riparian dependent resources (fish, water quality, maintenance of natural channels, and certain vegetation and wildlife communities) while producing other resource outputs.

Management Area 19: Consists of lands to be managed for semi-primitive recreation and timber production. Management goals are to manage the semi-primitive recreation setting in a near-natural appearing condition while managing wildlife habitat and the timber resource through scheduled low levels of timber harvest within minimum standard interior roads. A range of alternatives will be considered. One of these will be the "no-action" alternative, in which current management of the area would continue, and timber harvest and associated road building would be deferred. Other alternatives will examine the effects of timber harvest, varying in the volume harvested, silvicultural systems, and miles of road construction.

The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives.

Public participation will be important during the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision, however, two periods of time are specifically identified for the receipt of comments: During the scoping process, and in the review of the Draft EIS (February, 1994).

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. Meetings with area residents, organizations, and other agencies will be scheduled as needed.

The draft environmental impact statement (DEIS) is expected to be available for public review in February, 1994. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by June, 1994. The Forest Service will respond to the comments received in the FEIS. The District Ranger is the responsible official for this EIS, and will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.


Donald J. Bright,
District Ranger, Ferron Ranger District, Idaho Panhandle National Forests.

[FR Doc. 92-26867 Filed 11-4-92; 8:45 am]

BILLING CODE 3410-11-M

Timber Bridge Research Joint Venture Agreements; Solicitation of Applications and Application Guidelines

Program Description

Purpose

The Federal Highway Administration and the USDA, Forest Service, Forest Products Laboratory (FPL), are working cooperatively under Public Law 102-240, The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, on Research for the development of wood in transportation structures. The FPL is now inviting proposals for specific areas of the research under the authority of the Food Security Act of 1985 (7 U.S.C. 3318(b) and will award competitive Research Joint Venture Agreements for cooperative research related to wood in transportation structures. The specific research areas are stated within this announcement.

Eligibility

Proposals may be submitted by any Federal Agency, university, private business, nonprofit organization, or any research or engineering entity. An applicant must qualify as a responsible applicant in order to be eligible for an award. To qualify as responsible, an applicant must meet the following standards:

(a) Adequate financial resources, including terms, arrangement, or ability to obtain same (including any to be obtained through subcontract[s]);
(b) Ability to comply with the proposed or required completion schedule for the project;
(c) Adequate financial management system and audit procedures that provide efficient and effective accountability and control of all funds, property, and other assets;
(d) Satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants, agreements, and contracts from the Federal government; and
(e) Otherwise be qualified and eligible to receive an award under the applicable laws and regulations.

Available Funding

Available funding is shown under the specific research areas, below. The FPL will reimburse the cooperator not-to-exceed eighty percent (80%) of the total cost of the research. Indirect costs will not be reimbursed to State Cooperative Institutions. State Cooperative Institutions are designated by the following:

(a) The Act of July 2, 1862 (7 U.S.C. 301 and the following), commonly known as the First Morrill Act;
(b) The Act of August 30, 1890 (7 U.S.C. 323 and the following), commonly known as the Second Morrill Act, including the Tuskegee Institute;
(c) The Act of March 2, 1887 (7 U.S.C. 361a and the following), commonly known as the Hatch Act of 1887;
(d) The Act of May 8, 1914 (7 U.S.C. 341 and the following), commonly known as the Smith-Lever Act;
(f) Sections 1423 through 1439 (Animal Health and Disease Research), sections 1474 through 1483 (Rangeland Research) of Public Law 95-113, as amended by Public Law 97-98. The institution may contribute the indirect costs as its portion of the total cost of the research.

Definitions

(a) Grants and Agreements Officer means the Grants and Agreements Officer of the FPL and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.
(b) Awarding Official means the Grants and Agreements Officer and any other officer or employee of the Department of Agriculture to whom the authority to issue or modify awards has been delegated.
(c) Budget Period means the interval of time (usually twelve months) into which the project period is divided for budgetary and reporting purposes.

(d) Department or USDA means the U.S. Department of Agriculture.

(e) Research Joint Venture Agreement means the award by the Grants and Agreements Officer or his/her designee to a cooperator to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research problem area identified herein.

(f) Cooperative means the entity designated in the Research Joint Venture Agreement award document as the responsible legal entity to whom a Research Joint Venture Agreement is awarded.

(g) Methodology means the project approach to be followed to carry out the project.

(h) Peer review group means an assembled group of experts or consultants qualified by training and/or experience in particular scientific or technical field to give expert advice on the technical merit of grant applications in those fields.

(i) Principal Investigator means an individual who is responsible for the scientific and technical direction of the project, as designated by the cooperating in the application and approved by the Grants and Agreements Officer.

(j) Project means the particular project as outlined in the approved application or the approved portions thereof.

(k) Project Period means the total time approved by the Grants and Agreements Officer for conducting the proposed project as outlined in an approved application or the approved portions thereof.

(l) Research means any systematic study directed toward new or fuller knowledge of the subject field.

Areas

Proposals are currently being solicited in the following areas:

(a) Evaluate the economics of timber bridges: This project will develop initial cost, life cycle cost, and design life comparisons of timber bridge superstructures compared to steel and concrete superstructures. It will present comparisons on a regional basis, be national in scope, and will be exclusive of timber bridges constructed through demonstration programs of the USDA or the Federal Highway Administration. Total estimated cost: $79,750; 80% of total cost allowed: $63,000.

(b) Accelerated laboratory testing of new wood preservatives: This project will involve testing of 4-5 new wood preservatives that currently show promise for bridge applications but have not been fully evaluated for all wood species that could be used in bridges. Accelerated laboratory testing will be conducted to determine efficacy and suitability for several softwood and hardwood species that are being considered for use in timber bridges. Two agreements will be awarded: One agreement will be for accelerated testing of preservative specimens in soil contact. Total estimated cost: $56,750; 80% of total cost allowed: $45,000.

(c) Development of treatments and methods for field treating bridge members: This project will develop and present guidelines for the design and application of waterproof asphalt wearing surfaces for timber decks. This project will examine the behavioral characteristics of various types of timber deck systems and develop recommendations for the design and application of waterproof asphalt wearing surfaces using membranes and/or geotextile fabrics. Total estimated cost: $56,000; 80% of total cost allowed: $45,000.

(d) Develop methods for the in-place evaluation of timber bridges using stress wave technology: This project will develop guidelines for applying existing stress wave technology to the in-place evaluation of timber bridges. It will develop and present guidelines for design values to in-place wood members, and assessing the in-place capacity. One agreement, to be conducted in two phases, will be awarded. The first phase will focus on development and evaluation of methods for in-place bridge inspection. Phase two efforts will be aimed at field evaluation and application of non-destructive testing methods. Total estimated cost: $131,250; 60% of total cost allowed: $78,750.

(e) Develop standard plans and specifications for timber bridge superstructures: This project will develop standard design plans and construction specifications for several or all of the following timber bridge superstructures: glulam beams with transverse glulam deck, longitudinal glulam deck, longitudinal stress-laminated deck, longitudinal spike-laminated deck, and timber decks on steel beams. Total estimated cost: $113,750; 60% of total cost allowed: $68,250.

Programmatic Contact

For additional information, contact John G. Bachhuber, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, WI 53705-2398.

Proposal Preparation

Application Materials

An Application Kit and a copy of this solicitation will be made available upon request. The kit contains required forms; certifications, and instructions for preparing and submitting agreement applications. Copies of the Application Kit and this solicitation may be requested from: Grants and Agreements, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, WI 53705-2398, Telephone Number (608) 231-9282.

Proposal Format

(a) Proposal Cover Page

(1) Form CSRS-661, Application for Funding, must be completed in its entirety. The program to which you are applying is "Wood in Transportation Structures." The Program Numbers and Areas are as follows:

(2) Develop Guidelines for the Design and Application of Waterproof Asphalt Wearing Surfaces for Timber Decks;

(e) Develop Methods for the In-Place Evaluation of Timber Bridges Using Stress Wave Technology; and

(f) Develop Standard Plans and Specifications for Timber Bridge Superstructures.

(2) One copy of Form CSRS-661 must contain the pen-and-ink signatures of the proposing Principal Investigator(s) and the Authorized Organizational Representative who possesses the necessary authority of commit the applicant entity's time and other relevant resources. Investigators who do not sign the cover sheet will not be
listed on the awards documents in the event an award is made.

(b) Project Summary

Each proposal must contain a project summary which may not exceed 2 single- or double-spaced pages in length. This summary is not intended for the general reader; consequently, it may contain technical language. The project summary should be a self-contained, specific description of the activity to be undertaken and should focus on:

(1) Overall project goal(s) and supporting objectives; and
(2) Plans to accomplish project goal(s).

(c) Project Description

The specific aims of the project description may not exceed 15 single- or double-spaced pages and must contain the following components:

(1) Introduction: A clear statement of the long-term goal(s) and supporting objectives of the proposed project should preface the project description. The most significant published works in the field under consideration, including work of key project personnel on the current proposal, should be reviewed. All work cited, including that of key personnel, should be cited.

(2) Experimental plan: The hypotheses or questions being asked and the methodology to be applied to the proposed project should be stated explicitly and must include:

(i) A description of the investigations and/or experiments proposed and the sequence in which the investigations and/or experiments are to be performed;
(ii) Techniques to be used in carrying out the proposed project, including the feasibility of the techniques;
(iii) Results expected;
(iv) Means by which experimental data will be interpreted or analyzed;
(v) Pitfalls that may be encountered;
(vi) Limitations to proposed procedures; and
(vii) Tentative schedule for conducting major steps involved in these investigation/experiments.

In describing the experimental plan, the applicant must explain fully any materials, procedures, situations, or activities that may be hazardous to personal (whether or not they are directly related to a particular phase of the proposed project), along with an outline of precautions to be exercised to avoid or mitigate the effects of such hazards.

(d) Facilities and Equipment

All facilities and major items of equipment that are available for use or assignment to the proposed research project during the requested period of support should be described. In addition, items of nonexpendable equipment necessary to conduct and successfully conclude the proposed project should be listed.

(e) Collaborative Arrangements.

If the nature of the proposed project requires collaboration or subcontracoral arrangements with other scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator/subcontractor and provide a full explanation of the nature of the relationship. Evidence (i.e., letters of intent) should be provided to assure peer reviewers that the collaborator have agreed to render this service.

(f) Vitae. Publications and Conflicts of Interest Lists

Curriculum vitae: A curriculum vitae should be included for each key person associated with the project. The vitae must be limited to a presentation of credentials related to the study, and must be no more than two pages each in length, excluding the publications lists.

Publications lists. A chronological list of all publications in refereed journals during the past five years, including those in press, must be provided for each key project person from whom a curriculum vitae is provided. The list should follow a format used in journals. In cases where key individuals do not publish in journals, a chronological list of work for the past five years may be provided in lieu of the list of publications.

Conflicts of interest list. To assist program staff in excluding from proposal review individuals who have conflicts of interest with project personnel, a list of the following individuals should be appended for each project person:

(1) Collaborators on research projects within the past five years;
(2) Co-authors on publications issued within the past five years;
(3) Thesis or postdoctoral advisory within the past five years; and
(4) Graduate students or postdoctoral associates within the past five years.

(g) Budget

A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. Form CSRS-55. Budget, must be used for this purpose. A copy of Form CSRS-55, along with instructions for its completion, is contained in the Application Kit and may be reproduced as needed.

Funds may be requested under any of the categories listed on Form CSRS-55, provided that the item or service for which support is requested is identified as necessary for successful conduct of the proposed project. Is allowable under the authorizing legislation, the applicable Federal cost principles, and these guidelines, and is not prohibited under any applicable Federal statute.

Salaries of project personnel who will be working on the project may be requested in proportion to the effort they will devote to the project.

All salaries and wages, nonexpendable equipment, foreign travel, and “All Other Direct Costs” for which support is requested must be itemized and justified on separate sheet of paper placed immediately behind the Form CSRS-55.

(h) Current and Pending Support

Each applicant must complete Form CSRS-663, Current and Pending Support, a copy of which is contained in the Application Kit. The purpose of this form is to identify any other current public or private research support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for personnel involved is included in the proposed budget. Analogous information must be provided for any pending proposals that are being considered by, or which will be submitted in the near future to, other possible sponsors.

Concurrent submission of identical or similar project to other possible sponsors will not prejudice the review or evaluation of a project. However, a proposal that duplicates or overlaps substantially with a proposal funded or that will be funded by another sponsor will not be funded.

(i) Appendices

Each project description is expected to be complete. However, if the inclusion of additional information is necessary to ensure the equitable evaluation of the proposal (e.g., photographs that will not reproduce well, reprints, or other pertinent materials that are unsuitable for inclusion in the text of the proposal), the number of copies of additional information should match the number of copies of the application submitted. Excessive materials will not be used in the evaluation process.

(j) Organizational Management Information

Specific management information relating to an applicant entity must be submitted on a one-time basis prior to the award if the proposed cooperator
has not received other awards from FPL and such information was not previously submitted. FPL will request management information (e.g., bank references, financial statements, statements of purpose, etc.) from "new" cooperators once a proposal has been recommended for funding.

Proposal Submission

What to Submit

An original and five copies of a proposal must be submitted. Each copy of each proposal must be stapled securely in the upper left-hand corner (Do not bind). All copies of the proposal must be submitted in one package.

Where and When to Submit

Proposals submitted through the regular mail must be postmarked by December 31, 1983, and should be sent to the following address: Grants and Agreements Officer, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, WI 53705-2396, Telephone (608) 231-9282. Proposals not sent through the regular mail must be brought to the above address by December 31, 1982.

Proposal Review, Evaluation, and Disposition

Proposal Review

All proposals received will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to this solicitation. Proposals that do not fall within solicitation guidelines will be eliminated from competition and will be returned to the applicant. All accepted proposals will be reviewed by the Grants and Agreements Officer, qualified officers or employees of the Department, and by peer panel(s) of scientists or others who are recognized specialists in the areas covered by the proposals. Peer panels will be selected and organized to provide maximum expertise and objective judgment in the evaluation of proposals.

Evaluation Criteria

The peer review panel(s) will take into account the following criteria in carrying out its review of responsive proposals submitted:

(a) Scientific merit of proposal;
(b) Conceptual adequacy of hypothesis;
(c) Clarity and delineation of objectives;
(d) Adequacy of the description of the undertaking and suitability and feasibility of methodology;
(e) Demonstration of feasibility through preliminary data;
(f) Probability of success of project;
(g) Novelty, uniqueness, and originality;
(h) Qualifications of proposed project personnel and adequacy of facilities.

(1) Training and demonstrated awareness of previous and alternative approaches to the problem identified in the proposal and performance record and/or potential for future accomplishments;
(2) Time allocated for specific attainment of objectives;
(3) Institutional experience and competence in subject area; and
(4) Adequacy of available or obtainable support personnel, facilities, and instrumentation.

Proposal Disposition

When the peer review panel(s) has completed its deliberations, the USDA program staff, based on the recommendations of the peer review panel(s), will recommend to the Awarding Official that the project be approved for support from currently available funds or declined due to insufficient funds or unfavorable review.

USDA reserves the right to negotiate with the Principal Investigator and/or the submitting entity regarding project revisions (e.g., reduction in scope of work), funding level, or period of support prior to recommending any project for funding.

A proposal may be withdrawn at any time before a final funding decision is made. One copy of each proposal that is not selected for funding (including those that are withdrawn) will be retained by USDA for one year, and remaining copies will be destroyed.

Supplementary Information

Grant Awards

Within the limit of funds available for such purpose, the awarding official shall make awards to those responsible eligible applicants whose proposals are judged most meritorious under the evaluation criteria and procedures set forth in this solicitation and application guidelines.

The date specified by the awarding official as the beginning of the project period shall not be later than March 15, 1993.

All funds awarded shall be expended only for the purpose for which the funds are awarded in accordance with the approved application and budget, the terms and conditions of any resulting award, and the applicable Federal cost principles.

Obligation of the Federal Government

Neither the approval of any application nor the award of any Research Joint Venture Agreement commits or obligates the United States in any way to provide further support of a project or any portion thereof.

Other Conditions

The FPL may, with respect to any class of awards, impose additional conditions prior to or at the time of any award, when in the FPL's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of Research Joint Venture Agreement funds.

Done at Madison, WI, on October 21, 1992.

John G. Babcox, Grants and Agreements Officer.

Delegation of Authority to Forest Supervisors, Southwestern Region

AGENCY: Forest Service, USDA.

ACTION: Notice; delegation of authority.

SUMMARY: The Southwestern Region of the Forest Service hereby gives notice of the delegation of authority by the Deputy Regional Forest to all Forest Supervisors to perform certain transactions related to the granting and terminating of easements on National Forest System lands.

EFFECTIVE DATE: This policy was effective October 5, 1982.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Doug Salyer, Lands and Minerals, Forest Service, USDA, 517 Gold Avenue SW, room 5315, Albuquerque, New Mexico 87102 (505) 842-3445.

SUPPLEMENTAL INFORMATION: Pursuant to 36 CFR 252.52 and the delegation of authority from the Chief of the Forest Service set forth in Forest Service Manual §§ 2731.04b, 2732.04, and 2733.04b, the Deputy Regional Forest for the Southwestern Region has determined that all National Forests in the Southwestern Region have sufficient lands staff expertise to permit the delegation of authority to Forest Supervisors of those forests to:

1. Prepare and approve environmental assessment documents and decision documents, excluding Federal Lands Highway Projects, issue letters of consent authorizing entry, approve plans and specifications, and approve stipulations for applications for...
Department of Transportation

2. Approve environmental assessment and decision documents; grant easements to public road agencies under the authority of the National Forest Road and Trails Act of October 13, 1984 (78 Stat. 1088; 16 U.S.C. 533); and terminate such easements with the consent of the grantee.

3. Issue easements and reservations for construction and use of roads; execute stipulations; and terminate such easements on the occurrence of a fixed or agreed upon condition, event, or time when the easement, by its terms, provides for such termination, pursuant to the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1715).

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Donald Lynn Shetterly; Order Denying Permission To Apply for or Use Export Licenses

In the matter of: Donald Lynn Shetterly, with addresses at 1419 Winding Way, Anderson, Indiana 46011 and United States Federal Prison Camp P.O. Box 33 Terre Haute, Indiana 47808.

On June 6, 1991, Donald Lynn Shetterly was convicted in the United States District Court for the Southern District of Indiana of violating section 2410(a) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2420 (1991)) (EAA). * Section 11(h) of the EAA provides that, at the discretion of the Secretary of Commerce, no person convicted of a violation of the EAA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the EAA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Shetterly's conviction for violating the EAA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Shetterly permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on June 6, 2001. I have also decided to revoke all export licenses issued pursuant to the EAA in which Shetterly had an interest at the time of his conviction.

Accordingly, it is hereby Ordered:

1. All outstanding individual validated licenses in which Shetterly appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

Further, all of Shetterly's privileges of participating, directly or indirectly, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

2. Until June 6, 2001, Donald Lynn Shetterly, 1419 Winding Way, Anderson, Indiana 46011, and currently incarcerated at United States Federal Prison Camp, P.O. Box 33, Terre Haute, Indiana 47808, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the regulations, any person, firm, corporation, or business organization related to Shetterly by affiliation, ownership, control, or position of

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the North Dakota Advisory Committee to the Commission will be held from 10 a.m. until 1 p.m. on Tuesday, November 24, 1992, at the Radisson Inn, 800 So. 3d Street, in Bismarck. The purpose of this meeting is to discuss current civil rights issues and plans for future activities.

Persons desiring additional information should contact Acting Committee Chairperson, Betty L. Mills, or William F. Muldrow, Director of the Rocky Mountain Regional Division, (303) 866-1040 (TDD 303-866-1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

DATED at Washington, DC, October 27, 1992.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.

BILLING CODE 3410-11-M
responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license; (ii) Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (iii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until June 6, 2001.

VI. A copy of this Order shall be delivered to Shetterly. This Order shall be published in the Federal Register.


Iain S. Baird,
Director, Office of Export Licensing.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 355.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than November 30, 1992, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

<table>
<thead>
<tr>
<th>Antidumping Duty Proceedings</th>
<th>Period</th>
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<tbody>
<tr>
<td>Argentina: Barbed Wire and Barbless Fencing Wire (A-357-405)</td>
<td>11/01/91-10/31/92</td>
</tr>
<tr>
<td>Argentina: Steel Wire Rod (A-357-007)</td>
<td>11/01/91-10/31/92</td>
</tr>
<tr>
<td>Japan: Bicycle Speedometers (A-568-032)</td>
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<tr>
<td>Japan: Light Scattering Instruments (A-568-813)</td>
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<td>Japan: Titanium Sponge (A-686-039)</td>
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<tr>
<td>Germany: Drying Machinery (A-442-037)</td>
<td>11/01/91-10/31/92</td>
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<tr>
<td>The Republic of Singapore: Rectangular Pipes and Tubes (A-559-507)</td>
<td>11/01/91-10/31/92</td>
</tr>
<tr>
<td>The People's Republic of China: Tungsten Ore Concentrates (A-570-811)</td>
<td>11/01/91-10/31/92</td>
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</table>

Suspension Agreements

| Argentina: Certain Small Motors (A-588-030) | 11/01/91-10/31/92 |

<table>
<thead>
<tr>
<th>Countervailing Duty Proceedings</th>
<th>Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina: Certain Textiles and Textile Products (Men's and Boy's Woolen Apparel) (C-357-048)</td>
<td>01/01/91-12/31/91</td>
</tr>
<tr>
<td>Argentina: Oil Country Tubular (C-357-403)</td>
<td>01/01/91-12/31/91</td>
</tr>
<tr>
<td>Peru: Deformed Steel Concrete Reinforcing Bar (C-333-502)</td>
<td>01/01/91-12/31/91</td>
</tr>
</tbody>
</table>

In accordance with §§ 355.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review of specified individual producers or resellers covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with §§ 355.31 or § 355.22 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by November 30, 1992.
If the Department does not receive, by November 30, 1992, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered. This notice is not required by statute, but is published as a service to the international trading community.

**Dated:** October 30, 1992.

Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.

**BILLING CODE 3510-05-M**

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**[A-357-405]**

Barbed Wire and Barbless Fencing Wire From Argentina; Intent To Revoke Antidumping Duty Order

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of Intent to revoke antidumping duty order.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on barbed wire and barbless fencing wire from Argentina. Interested parties who object to this revocation must submit their comments in writing no later than November 30, 1992.

**EFFECTIVE DATE:** November 5, 1992.

**FOR FURTHER INFORMATION CONTACT:** Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-5253.

**SUPPLEMENTARY INFORMATION:**

- On November 13, 1983, the Department of Commerce ("the Department") published an antidumping duty order on barbed wire and barbless fencing wire from Argentina (58 FR 40120). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.
- The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by §353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

**Opportunity to Object**

No later than November 30, 1992, interested parties, as defined in §353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room 5-B099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by November 30, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke this antidumping duty order, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

**Dated:** October 30, 1992.

Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.

**BILLING CODE 3510-05-M**

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**[A-570-819]**

Preliminary Determination of Sales of Less Than Fair Value Ferrosilicon from the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** November 5, 1992.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Hardin, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0771.

**PRELIMINARY DETERMINATION:** We primarily determine that ferrosilicon from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act).

**Case History**

Since the notice of initiation on June 11, 1992 (57 FR 27021, June 17, 1992), the following events have occurred.

On July 8, 1992, the International Trade Commission (ITC) issued an affirmative preliminary determination.

On June 15, 1992, we sent a cable to the American Embassy in Beijing requesting the identity of any PRC companies that produce and/or export the subject merchandise to the United States. On June 23, 1992, we sent an antidumping survey to the Ministry of Foreign Economic Relations & Trade (MOFERT), China Chamber of Commerce of Exporters & Importers of Metals and Minerals (the Chamber), and to the Embassy of the PRC in Washington, DC.

On July 14, 1992, we sent a follow-up cable to the American Embassy in Beijing inquiring whether it would be able to provide the information requested in the June 15, 1992 cable.

On July 21, 1992, the Department presented its questionnaire to MOFERT, the Chamber, and to the Embassy of the PRC in Washington, DC in accordance with 19 CFR 353.31(b). We received no response to the questionnaire.

We received no response to our cables or our questionnaire from any party.

**Scope of Investigation**

The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of these investigations. Calcium silicon is an alloy containing, by weight, not more...
than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0500. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

Period of Investigation
The period of investigation (POI) is December 1, 1991, through May 31, 1992.

Best Information Available
We have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate for sales of the subject merchandise in this investigation. In deciding to use best information available, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. In this case, exporters of ferrosilicon from the PRC did not respond to any request for information.

As outlined in the "Case History" section of this notice, the Department made several attempts to obtain information from the American Embassy of the PRC, from MOFERT, and from the Chamber. However, the Department received no information from any of these sources. Consequently, we based our preliminary determination in this investigation on best information available. As best information available, we used the highest margin listed in the notice of initiation for this investigation, which was based on the petition.

Fair Value Comparisons
To determine whether sales of ferrosilicon from the PRC made a 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.

United States Price
We based USP on BIA, which was information supplied by petitioners. Petitioners based their estimate of USP on the average U.S. f.o.b. import value of ferrosilicon for the period September 1991 to February 1992. Petitioners made no adjustments to the estimated USP because they stated that they were unable to obtain information regarding foreign transportation costs.

Foreign Market Value
We based FMV on BIA, which was information supplied by the petitioner. Petitioners calculated FMV on the basis of the valuation of the factors of production for AIMCOR, a U.S. producer of ferrosilicon. In valuing the factors of production, petitioners used India as a surrogate country. For purposes of the initiation, we accepted India as having a comparable economy and being a significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Act.

Petitioners used AIMCOR's factors for raw material and processing material inputs, electricity, and labor. The raw material, energy and labor factors for producing ferrosilicon are based on AIMCOR's actual experience from October 1990 through September 1991. However, petitioners made an adjustment to the labor factor to account for the smaller scale of more labor-intensive ferrosilicon operations existing in the PRC. Overhead expenses are expressed as a percentage of the cost of manufacture as experienced by AIMCOR.

Petitioners based labor and electricity values on 1991 wage rates and energy rates in India. Petitioners based the value of raw material costs for steel scrap, quartzite, coke, bituminous coal, diesel fuel, and water on Indian values. Petitioners based the value of raw material costs for electrode paste on a delivered import price from Italy to India. Petitioners based raw material costs for charcoal and woodchips, and other processing materials on AIMCOR's average costs from October 1990 through September 1991.

Pursuant to section 773(c) of the Act, petitioners added the statutory minima of 10 percent for general expenses and eight percent for profit, and an amount for shipment preparation.

Suspension of Liquidation
In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry, before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment
In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than November 23, 1992, and rebuttal briefs no later than November 30, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on December 3, 1992, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-499, within ten days of the publication of this notice in the Federal Register. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(a)(4).

<table>
<thead>
<tr>
<th>Manufacturer/producer/exporter</th>
<th>Margin percent</th>
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<tbody>
<tr>
<td>All manufacturers/producers/exporters</td>
<td>137.73</td>
</tr>
</tbody>
</table>

ITC Notification
In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry, before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.
Small Diameter Standard and Rectangular Pipe and Tube From Singapore; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on small diameter standard and rectangular pipe and tube from Singapore. Interested parties who object to this revocation must submit their comments in writing no later than November 30, 1992.

EFFECTIVE DATE: November 5, 1992.


SUPPLEMENTARY INFORMATION:

Background

On November 13, 1986, the Department of Commerce ("the Department") published an antidumping duty order on small diameter standard and rectangular pipe and tube from Singapore (51 FR 41442). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months. The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.20(c) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than November 30, 1992, interested parties, as defined in § 353.22(c) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230. If interested parties do not request an administrative review by November 30, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by November 30, 1992, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

Amended Antidumping Duty Order; Stainless Steel Hollow Products from Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 5, 1992.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Antidumping Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at (202) 482-0161.

AMENDED ANTIDUMPING ORDER:

Scope of Order

The products covered by this order are certain stainless steel hollow products including pipes, tubes, hollow bars and blanks thereof, of circular cross-section, containing over 11.5 percent chromium by weight. Prior to January 1, 1988, these products were classified under Tariff Schedules of the United States Annotated (TSUSA) item numbers 610.3701, 610.3727, 610.3741, 610.3742, 610.5130, 610.5202, 610.5229, 610.5230, and 610.5231. These products are now classified under Harmonized Tariff Schedule of the United States (HTS) subheadings 7304.41.00, 7304.49.00, 7306.40.10, and 7306.40.50. Although the TSUSA item numbers and HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Antidumping Duty Order

On October 9, 1987, the Department published its Final Determination of

Sales at Less Than Fair Value; Stainless Steel Hollow Products from Sweden (52 FR 37810). The scope of that determination included both seamless and welded stainless steel hollow products (SSHP). On November 18, 1987, the International Trade Commission (ITC) notified the Department that imports of seamless SSHP were materially injuring a U.S. industry. The ITC also found that imports of welded SSHP were neither materially injuring, nor threatening material injury to, a U.S. industry. As a result, on December 3, 1987, we published an antidumping duty order and amended final determination (corrected for clerical errors) on seamless SSHP. We also terminated the suspension of liquidation on welded SSHP. (52 FR 45985)

On November 27, 1990, the United States Court of International Trade (CIT) affirmed the ITC's amended determination upon remand that an industry in the United States is materially injured by reason of imports of welded SSHP from Sweden. (55 FR 51745, December 17, 1990.) On December 7, 1990, in accordance with the decision of the Court of Appeals for the Federal Circuit (CAFC) in Timken Co. v. United States, 805 F.2d 357 (Fed. Cir. 1990), the Department ordered the suspension of liquidation of welded SSHP. (55 FR 51745, December 17, 1990.) At that time, we stated that we would issue an antidumping duty order on that product if the CIT's decision was affirmed, or not appealed.

The CIT's decision having been affirmed by the CAFC, on September 8, 1992, the ITC issued a notice of its final affirmative determination of injury, made pursuant to court remand, in the antidumping duty investigation of welded SSHP from Sweden. (57 FR 42761, September 16, 1992) ([Trent Tube Div., Crucible Materials Corp. v. United States, No. 87-12-01189, Slip Op. 90-124 (CIT November 27, 1990.) On December 7, 1990, in accordance with the decision of the Court of Appeals for the Federal Circuit (CAFC) in Timken Co. v. United States, 805 F.2d 357 (Fed. Cir. 1990), the Department ordered the suspension of liquidation of welded SSHP. (55 FR 51745, December 17, 1990.) At that time, we stated that we would issue an antidumping duty order on that product if the CIT's decision was affirmed, or not appealed. Given the class or kind of merchandise investigated by the Department included both seamless and welded SSHP, we are amending the original order (which covered only seamless SSHP) to now include welded SSHP as well. Therefore, in accordance with section 736 of the Act, the Department will direct the Customs Service to continue to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of SSHP from Sweden. These antidumping
The weighted-average margins for Sandvik, AB an “All Others” are those established in the final results of the third administrative review for SSHP from Sweden (57 FR 21389, May 20, 1992). Given that exports of Avesta Sandvik Tube AB have not been examined in any administrative review, its weighted-average margin is the one established in the original final determination of SSHP from Sweden.

This notice constitutes the amended antidumping duty order with respect to SSHP from Sweden, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-089 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This amended order is published in accordance with the provisions of the Paperwork Reduction Act and 19 CFR 353.21.

The VTS Committee will hear reports on the current National Marine Fisheries Service (NMFS)/U.S. Coast Guard test of a VTS in Honolulu, and on a VTS Consultation held recently in Auckland. The VTS Committee will also begin its critique of the NMFS draft national VTS policy, and start to develop a Council (regional) policy statement.

For more information contact Kitty M. Simonds, Executive Director, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 523-1308.


David S. Crestin,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-26801 Filed 11-4-92; 8:45 am]
collection requirements in the safety regulations for non-full-size cribs codified at 16 CFR 1500.18(a)(14) and part 1509. These regulations were issued to reduce hazards of strangulation, suffocation, pinching, bruising, laceration, and other injuries associated with non-full-size cribs. (A non-full-size crib is a crib having an interior length dimension either greater than 55 inches or smaller than 48 1/2 inches; or an interior width either greater than 30 1/2 inches or smaller than 25 1/2 inches; or both.) The regulations prescribe performance, design, and labeling requirements for non-full-size cribs. They also require manufacturers and importers of those products to maintain records for a period of three years after the manufacture or sale of non-full-size cribs. If any non-full-size cribs subject to the provisions of 16 CFR 1500.18(a)(14) and part 1509 fail to comply in a manner severe enough to warrant a recall, the required records can be used by the manufacturer or importer and by the Commission to identify those persons and firms who can be used by the manufacturer or importer and by the Commission to identify those persons and firms who should be notified of the recall.

Additional Details About the Request for Extension of Approval of Information Collection Requirements
Title of information collection: Recordkeeping Requirements for Non-Full-Size Baby Cribs - 16 CFR 1509.12
Type of request: Extension of approval.
Frequency of collection: Varies depending upon volume of products manufactured, imported, or sold.
General description of respondents: Manufacturers and importers of non-full-size cribs.
Estimated number of respondents: 40
Estimated average number of hours per respondent: 4 per year.
Estimated number of hours for all respondents: 160 per year.
Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Donald Arbuckle, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395-7740.
Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504-0416.
This is not a proposal to which 44 U.S.C. 3504(b) is applicable.

Sadie E. Dunn,
Secretary, Consumer Product Safety Commission.
[FR Doc. 92-26682 Filed 11-4-92; 8:45 am]
BILLING CODE 6355-01-F

DEPARTMENT OF DEFENSE
Office of the Secretary
Defense Science Board Task Force on Submarine Service Life; Meeting

ACTION: Cancellation of meeting.


Dated: November 2, 1992.
Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 92-26850 Filed 11-4-92; 8:45 am]
BILLING CODE 3810-01-M

Special Operations Policy Advisory Group; Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on Thursday, November 19, 1992 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The purpose of the meeting will be to finalize and present the study final briefing. The meeting will be closed to the public in accordance with section 552(b)(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697-8404.
Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 92-26840 Filed 11-4-92; 8:45 am]
BILLING CODE 3810-01-M

USAF Scientific Advisory Board; Meeting


The USAF Scientific Advisory Board Test Center (TCAG) will meet on 15 December 1992 from 8 a.m. to 4 p.m. Eastern Time at Eglin Air Force Base Florida and on 17 December 1992 from 8 a.m. to 4 p.m. Pacific Time at Edwards Air Force Base, California.

The purpose of the meeting will be to acquaint TCAG members with the mission and test facilities of the AFDTF and AFFTC. The briefings and the tours will contain classified information and will be closed to the public in accordance with sections 552(b)(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-8404.
Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 92-26840 Filed 11-4-92; 8:45 am]
BILLING CODE 3810-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on GPS Integrity and Denial will meet from 8 a.m. to 5 p.m. on 10-11 December 1992 at the ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA.

The purpose of this meeting is to finalize and present the study final briefing. The meeting will be closed to the public in accordance with section 552(b)(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697-8404.
Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 92-26840 Filed 11-4-92; 8:45 am]
BILLING CODE 3810-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on Science and Technology will meet from 8 a.m. to 5 p.m. on 10-11 December 1992 at the ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA.

The purpose of this meeting is to finalize and present the study final briefing. The meeting will be closed to the public in accordance with section 552(b)(c) of title 5, United States Code, specifically subparagraphs (1) and (4).
DEPARTMENT OF ENERGY

Oak Ridge Field Office; Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2), it intends to issue on a noncompetitive basis a renewal to Dawnbreaker, Rochester, New York, to continue providing training, through individual instruction, to recipients of Small Business Innovation Research (SBIR) Program Phase II awards. The period of performance for the renewal will be one year. The estimated cost is $198,998.

PROCUREMENT REQUEST NO.: 05-93ER00688-007.

PROJECT SCOPE: This grant was awarded September 15, 1989, in response to DOE Program Solicitation No. DE-FS05-88ER00688, and was renewed on March 15, 1991 for a second year. The grantee will continue to provide training to recipients of SBIR Phase II awards and will again select a larger number of SBIR companies for training than was used in the initial grant. Assistance will be provided in preparing business plans. Additional emphasis will be given this year to preparing business opportunity presentations, and in presenting these materials to potential sponsors in a Commercialization Opportunity Forum. The objective is to have companies trained and to provide each of them with contacts of prospective value. A secondary objective is to have these same companies well enough prepared so they can pursue cooperative and other financial agreements with parties outside of the Forum. Dawnbreaker has developed an exclusive capability to perform the requisite training, both through its prior experience and through the training methods and tools developed under the initial grant. Also, the rights to intellectual property developed under this project pass to Dawnbreaker under the regulations which apply to small businesses. Eligibility for renewal of this award is, therefore, restricted to Dawnbreaker.


Issued on Oak Ridge, Tennessee, on October 23, 1992.

Peter D. Dayton, Director, Procurement and Contracts Division Oak Ridge Field Office.

[FEDERAL REGISTER NO. 92-26841 Filed 11-4-92; 8:45 am]

OAK RIDGE FIELD OFFICE.

For further information, contact the SAB Secretariat at (703) 697-8404.

Pat S. Connors.

Air Force Federal Register Liaison Officer.

[FR Doc. 92-26841 Filed 11-4-92; 8:45 am]

AIR FORCE FEDERAL REGISTER LIAISON OFFICER.

[FR Doc. 92-26841 Filed 11-4-92; 8:45 am]

BILLING CODE 3510-11-M

OAK RIDGE FIELD OFFICE.

For further information, contact the SAB Secretariat at (703) 697-8404.

Pat S. Connors.

Air Force Federal Register Liaison Officer.

[FR Doc. 92-26841 Filed 11-4-92; 8:45 am]

AIR FORCE FEDERAL REGISTER LIAISON OFFICER.

[FR Doc. 92-26841 Filed 11-4-92; 8:45 am]

BILLING CODE 3510-11-M

OAK RIDGE FIELD OFFICE.

For further information, contact the SAB Secretariat at (703) 697-8404.

Pat S. Connors.

Air Force Federal Register Liaison Officer.

[FR Doc. 92-26841 Filed 11-4-92; 8:45 am]

AIR FORCE FEDERAL REGISTER LIAISON OFFICER.

[FR Doc. 92-26841 Filed 11-4-92; 8:45 am]

BILLING CODE 3510-11-M

OAK RIDGE FIELD OFFICE.

For further information, contact the SAB Secretariat at (703) 697-8404.

Pat S. Connors.

Air Force Federal Register Liaison Officer.

[FR Doc. 92-26841 Filed 11-4-92; 8:45 am]

AIR FORCE FEDERAL REGISTER LIAISON OFFICER.

[FR Doc. 92-26841 Filed 11-4-92; 8:45 am]

BILLING CODE 3510-11-M

OAK RIDGE FIELD OFFICE.

For further information, contact the SAB Secretariat at (703) 697-8404.

Pat S. Connors.

Air Force Federal Register Liaison Officer.

[FR Doc. 92-26841 Filed 11-4-92; 8:45 am]

AIR FORCE FEDERAL REGISTER LIAISON OFFICER.

[FR Doc. 92-26841 Filed 11-4-92; 8:45 am]

BILLING CODE 3510-11-M

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For further information, contact the SAB Secretariat at (703) 697-8404.

Pat S. Connors.

Air Force Federal Register Liaison Officer.

[FR Doc. 92-26841 Filed 11-4-92; 8:45 am]

AIR FORCE FEDERAL REGISTER LIAISON OFFICER.

[FR Doc. 92-26841 Filed 11-4-92; 8:45 am]

BILLING CODE 3510-11-M

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For further information, contact the SAB Secretariat at (703) 697-8404.

Pat S. Connors.

Air Force Federal Register Liaison Officer.

[FR Doc. 92-26841 Filed 11-4-92; 8:45 am]

AIR FORCE FEDERAL REGISTER LIAISON OFFICER.

[FR Doc. 92-26841 Filed 11-4-92; 8:45 am]

BILLING CODE 3510-11-M

OAK RIDGE FIELD OFFICE.

For further information, contact the SAB Secretariat at (703) 697-8404.

Pat S. Connors.

Air Force Federal Register Liaison Officer.

[FR Doc. 92-26841 Filed 11-4-92; 8:45 am]

AIR FORCE FEDERAL REGISTER LIAISON OFFICER.

[FR Doc. 92-26841 Filed 11-4-92; 8:45 am]

BILLING CODE 3510-11-M

OAK RIDGE FIELD OFFICE.

For further information, contact the SAB Secretariat at (703) 697-8404.

Pat S. Connors.

Air Force Federal Register Liaison Officer.

[FR Doc. 92-26841 Filed 11-4-92; 8:45 am]

AIR FORCE FEDERAL REGISTER LIAISON OFFICER.

[FR Doc. 92-26841 Filed 11-4-92; 8:45 am]

BILLING CODE 3510-11-M

OAK RIDGE FIELD OFFICE.
6. Pacific Gas and Electric Company
[Docket No. ER93-31-000]
October 27, 1992.
Take notice that on October 21, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing a revised Appendix A (Contract Capacity) to the Power Sale Agreement (PSA) between PG&E and the Sacramento Municipal Utility District (SMUD). This appendix has been revised to reflect the reduction in capacity purchased by SMUD under the PSA from 550 MW to zero MW as of February 11, 1997, pursuant to SMUD's written notice to PG&E.
Copies of the filing have been served upon SMUD and the California Public Utilities Commission.
Comment date: November 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. PSI Energy, Inc.
[Docket No. ER92-803-000]
October 27, 1992.
Take notice that on October 22, 1992, PSI Energy, Inc. (PSI) tendered for filing an amended Service Schedule to the FERC Filing in Docket No. ER92-863-000 per a FERC Staff request.
Service Schedule I—Emergency Service, has been revised.
PSI has requested that the original effective date of December 1, 1992 remain unchanged.
Copies of the filing were served on Wabash Valley Power Association, Inc. and the Indiana Utility Regulatory Commission.
Comment date: November 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Otter Tail Power Company
[Docket No. ER93-34-000]
October 27, 1992.
Take notice that on October 19, 1992, Otter Tail Power Company (OTP) tendered for filing an Electric Service Agreement with the City of Newfolden, MN. The Agreement allows for a Partial Requirements Controlled Load Electric Service, which was approved in Docket No. ER86-618-000, Tariff No. 005, Rev. 000. The Agreement should have been filed prior to the initiation of service. OTP requests a waiver of the Commission Notice Requirements to allow this schedule to become effective October 20, 1992.
Comment date: November 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Edison Company
[Docket No. ER93-35-000]
October 27, 1992.
Take notice that on October 22, 1992, Commonwealth Edison Company (Edison) tendered for filing proposed changes in its FERC Electric Tariff Service Agreement No. 27. The proposed changes revise the Electric Service Contract between Edison and the City of Naperville, Illinois (Naperville).
A copy of the filing has been served upon Naperville and the Illinois Commerce Commission.
Comment date: November 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Service Corporation
[Docket No. ER92-801-000]
October 27, 1992.
Take notice that on October 22, 1992, West Penn Power Company (West Penn), Monongahela Power Company (Monongahela), and Duquesne Light Company (Duquesne), filed a revised Proposed Schedule as part of a Rate Schedule Supplement to the Transmission Agreement dated March 15, 1987 in response to the request of the Commission Staff to make minor adjustments to ensure consistency in the precision of all calculated results within the Rate Schedule.
Copies of the filing were served upon the public utility’s relevant state public regulatory commissions.
Comment date: November 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. LG&E—Westmoreland Altavista
[Docket No. QP88-94-005]
October 27, 1992.
On October 13, 1992, LG&E—Westmoreland Altavista of 2030 Main Street, Irvine, California 92714, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission’s Regulations. The instant request for recertification is due to the change in ownership. Request is also made for waiver of the Commission’s operating standard pursuant to § 292.205(c) of the Commission’s Regulations. No determination has been made that the submittal constitutes a complete filing. The topping-cycle cogeneration facility is located in Altavista, Virginia. The Commission previously certified the facility as a qualifying cogeneration facility, Ultra Cogen Systems, Inc., 43 FERC 62,205 (1988), and recertified the facility as a qualifying cogeneration facility, Hudson Power 12—Altavista, 59 FERC 62,167 (1992).
Comment date: November 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Inter-Power/AhCon
[Docket No. QP92-597-002]
October 27, 1992.
On October 22, 1992, Inter-Power/ AhCon Partners, L.P., tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.
The amendment provides information pertaining to additional sources of bituminous waste coal for use as waste fuel in the facility, and other supplemental information regarding the ownership structure of the facility.
Comment date: November 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. The Cincinnati Gas & Electric Company
[Docket No. ER92-804-000]
Take notice that on October 22, 1992, The Cincinnati Gas & Electric Company (CG&E), in response to a request by the Commission Staff, filed supplemental cost information to support the monthly payments CG&E is to pay to the Ohio Valley Electric Company (OVEC) under the Facility Agreement, dated as of May 1, 1992, between CG&E and OVEC. The Facility Agreement was filed with the Commission on August 28, 1992. CG&E and OVEC request that the Facility Agreement be made effective on October 27, 1992, sixty days following the submission of the filing of the Facility Agreement.
Copies of the filing of supplemental information were served on the Public Service Commission of Kentucky, the Ohio Public Utilities Commission and the Utility Regulatory Commission of Indiana.
Comment date: November 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Union Electric Company
[Docket No. ER92-842-000]
Take notice that on October 28, 1992, Union Electric Company (UE) tendered for filing a First Amendment to the Wholesale Power Service Agreement between UE and the Central Illinois Public Service Company (CIPS).
UE states that the purpose of the First Amendment to the Wholesale Power Agreement is to specify a cap and floor in the rates based on the maximum demand and energy charges for UE's Callaway Plant.

Comment date: November 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Central Illinois Public Service Company
[Docket No. ER93-37-000]

Take notice that on October 23, 1992, Central Illinois Public Service Company (CIPS) tendered for filing a service agreement, Appendix A, to the Interconnection Agreement between CIPS, Illinois Power Company (IP) and Union Electric Company (UE). The Appendix provides for an additional point of interconnection between CIPS and IP. CIPS proposes an effective date of June 10, 1991, and, therefore, request waiver of the Commission's notice requirements.

Copies of the filing have been served on IP, UE, the Illinois Commerce Commission and the Missouri Public Service Commission.

Comment date: November 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Fitchburg Gas and Electric Light Company
[Docket No. ER93-38-000]

Take notice that on October 22, 1992, Fitchburg Gas and Electric Light Company (Fitchburg) filed with the Commission a service agreement between Fitchburg and Central Vermont Public Service Corporation (Central Vermont) for the sale of 10 MW of capacity and associated energy from Fitchburg #7. This is a service agreement under Fitchburg's FERC Electric Tariff, Original Volume No. 2, which was accepted for filing by the Commission in Docket No. ER92-88-000 on September 30, 1992. The capacity rate to be charged Central Vermont is below the maximum capacity charges set forth in the Tariff, and the energy rate is that established in the Tariff. Fitchburg requests that service commence as of November 1, 1992 and accordingly, seeks waiver of the Commission's notice requirements for good cause shown. A notice of cancellation was also filed.

Fitchburg states that copies of the filing were served on Central Vermont and the Massachusetts Department of Public Utilities.

Comment date: November 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power Corporation

Take notice that on October 23, 1992, Florida Power Corporation tendered for filing a supplement in the above-referenced docket stating that Items Nos. 1 through 7 of its filing in this docket are tariff Service Agreements covered by the amnesty established by the Commission's order in New England Power Company, Docket No. ER92-236-001, October 5, 1992.

Comment date: November 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. Pacific Gas and Electric Company
[Docket No. ER93-38-000]

Take notice that on October 28, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing an agreement entitled "Special Facilities Agreement For The Atlantic Substation Upgrade" between Sierra Pacific Power Company (Sierra) and PG&E. The Special Facilities Agreement pertains to the rate, terms, and conditions under which PG&E will own, operate, and maintain the facilities specially installed in order to maintain firm transfer capability from PG&E to Sierra. Under the Special Facilities Agreement, PG&E charges Sierra a customer advance and monthly Cost of Ownership Rate, equal to the Cost of Ownership Rate for Transmission-level, Customer-financed facilities filed with the California Public Utilities Commission (CPUC) pursuant to Electric Rule 2. The Cost of Ownership Rate is expressed as a monthly percentage of the installed cost of the facilities. PG&E has also requested to be allowed automatic rate adjustments whenever the CPUC authorizes a new Electric Rule 2 Cost of Ownership Rate and shall be limited to a cap of 0.5% monthly, or 6.2% annually.

Copies of this filing have been served upon Sierra and the CPUC.

Comment date: November 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Pacific Gas and Electric Company

Take notice that on October 23, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing an Addendum No. 3 dated October 20, 1992 to the Rate Settlement Agreement between PG&E and the Department of Water Resources of the State of California (DWR) dated March 23, 1992, previously filed with the Commission on March 27, 1992. Due to further negotiations between PG&E and DWR, the Parties have mutually agreed to (1) change the effective date of the Rate Settlement Agreement and the four amendments to Rate Schedule FERC Nos. 92, 93, 94 and 100 for special facilities, (2) revise the transmission rates in the Rate Settlement Agreement and (3) change the dates of the first annual adjustments to the transmission rates and the special facilities charges under the Rate Settlement Agreement and the four amendments to Rate Schedule FERC Nos. 92, 93, 94 and 100. Addendum No. 3 to the Rate Settlement Agreement reflects these changes.

Copies of this filing were served upon DWR and the California Public Utilities Commission.

Comment date: November 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell, Secretary.

[FR Doc. 92-28885 Filed 11-4-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. JD92-00348T Colorado-49]
State of Colorado: NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation


Take notice that on October 21, 1992, the Oil and Gas Conservation Commission of the State of Colorado (Colorado), submitted the above-referenced Notice of Determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the
Niobrara Formation underlying certain lands in Weld County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described on the attached appendix.

The notice of determination also contains Colorado’s findings that the referenced portion of the Niobrara Formation meets the requirements of the Commission’s regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,
Acting Secretary.

Appendix

The recommended area is the Niobrara Formation underlying certain lands in Weld County, Colorado more fully described as:

**Township 5 North, Range 61 West**
Sections 4-9: All
Sections 16-18: All

**Township 5 North, Range 62 West**
Sections 1-36: All

**Township 5 North, Range 63 West**
Sections 19: All
Sections 21-36: All

**Township 6 North, Range 61 West**
Sections 19-21: All
Sections 23-33: All

**Township 6 North, Range 62 West**
Sections 1-36: All

**Township 6 North, Range 63 West**
Sections 1-18: All

**Township 7 North, Range 63 West**
Sections 1-36: All

[FR Doc. 92-26813 Filed 11-4-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. JD93-00350T Colorado-51]
State of Colorado; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation


Take notice that on October 28, 1992, the Oil and Gas Conservation Commission (the State of Colorado) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission’s regulations, that the Niobrara Formation underlying certain lands in Weld County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area includes all or portions of the Oneida, Barcreek, Ogle, Mistletoe, Big Creek, Creekville, Hyden West and Hoskinton Quadrangles.

The notice of determination also contains Texas’ findings that the referenced portion of the Cretaceous Formation meets the requirements of the Commission’s regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-26819 Filed 11-4-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. JD93-00530T Texas-85]
State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation


Take notice that on October 26, 1992, the Railroad Commission of Texas submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission’s regulations, that the Wilcox (9,300) Sand Formation underlying the East 76 field in a portion of Duval County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area includes all or portions of the following surveys:

<table>
<thead>
<tr>
<th>Survey</th>
<th>Abstract</th>
</tr>
</thead>
<tbody>
<tr>
<td>J. Poitevent</td>
<td>A-432</td>
</tr>
<tr>
<td>V.R. Guffy</td>
<td>A-2039</td>
</tr>
<tr>
<td>J. Poitevent</td>
<td>A-431</td>
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<tr>
<td>J. Poitevent</td>
<td>A-430</td>
</tr>
<tr>
<td>E. Rodriguez</td>
<td>A-1981</td>
</tr>
</tbody>
</table>

[FR Doc. 92-26818 Filed 11-4-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. JD93-00529T Kentucky-6]
State of Kentucky; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation


Take notice that on October 26, 1992, the Kentucky Public Service Commission submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission’s regulations, that the Cretaceous Formation underlying portions of Clay, Leslie, Perry, Owseley and Breathitt Counties qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The state land and is described on the attached appendix.

The notice of determination also contains Kentucky’s findings that the referenced portion of the Cretaceous Formation meets the requirements of the Commission’s regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-26819 Filed 11-4-92; 8:45 am]
Capitol Street, NE., Washington, DC 20428. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-29620 Filed 11-4-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. JD93-00531T Texas-83]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation


Take notice that on October 26, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission’s regulations, that the Travis Peak Formation underlying a portion of the Bear Grass (Travis Peak) Field in portions of Leon and Freestone Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is described in the attached appendix.

The notice of determination also contains Texas’ findings that the referenced portion of the Travis Peak Formation meets the requirements of the Commission’s regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,
Acting Secretary.

Appendix

The recommended Travis Peak Formation is located in Leon and Freestone Counties, Texas, within Railroad Commission District 5.

<table>
<thead>
<tr>
<th>Survey</th>
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<tr>
<td>Leon County:</td>
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<tr>
<td>Daniel M. Fishman</td>
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<tr>
<td>John Byrrn</td>
<td>A-71</td>
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<td>M.J. McMillan</td>
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<td>W. Mays</td>
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<td>Luliana Yarbrough</td>
<td>A-989</td>
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<tr>
<td>M. Johnson</td>
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</tbody>
</table>

Substitute Thirty-First Revised Sheet No. 8
Substitute Thirty-Second Revised Sheet No. 8
Substitute Tenth Revised Sheet No. 8
Substitute Eighth Revised Sheet No. 8
The following tariff sheet to be effective November 1, 1992:

[F] [Docket No. JD93-00531T Texas-83]

[Docket No. EG93-2-000]

Doswell Limited Partnership; Application for Commission Determination of Exempt Wholesale Generator Status


On October 28, 1992, Doswell Limited Partnership (Doswell) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status. Doswell is a Virginia limited partnership that owns and operates an approximately 663 MW gas-fired combined-cycle generating plant located in Hanover County, Virginia.

Any person desiring to be heard or objecting to the application for exempt wholesale generator status 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 §§ 385.211 and 385.214 of this chapter. All such petitions or protests must be filed on or before November 17, 1992, and must be served on the applicant. 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.

Substitute Thirty-Third Revised Sheet No. 8 and Substitute Thirty-Third Revised Sheet No. 8 in Docket Nos. TQ93-1-34 and TQ93-2-34 respectively, were filed subsequent to Docket No. TM93-1-34. Therefore, they are also submitted to reflect the corrected ACA charge.

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 rule 211 of the Commission’s Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 6, 1992. 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.

Appendix

The recommended Travis Peak Formation is located in Leon and Freestone Counties, Texas, within Railroad Commission District 5.

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</tr>
</tbody>
</table>

Substitute Thirty-First Revised Sheet No. 8
Substitute Thirty-Second Revised Sheet No. 8
Substitute Tenth Revised Sheet No. 8
Substitute Eighth Revised Sheet No. 8
The following tariff sheet to be effective November 1, 1992:

Substitute Thirty-Third Revised Sheet No. 8

[Docket No. CP85-221-007]

Frontier Gas Storage Co., Notice of Sale Pursuant to Settlement Agreement

October 26, 1992.

Take notice that on October 22, 1992, Frontier Gas Storage Company (Frontier), % Reid & Priest, Market Square, 701 Pennsylvania Ave., NW., Washington, DC 20004, in compliance with the provisions of the Commission’s February 13, 1985 Order in Docket No. CP82-487-000 et, al., submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to 1 Bcf of Frontier’s gas storage inventory on an “as metered” basis to Rainbow Gas Company (Rainbow). The Service Agreement is lifted.

Substitute Thirty-First Revised Sheet No. 8
Substitute Thirty-Second Revised Sheet No. 8
Substitute Tenth Revised Sheet No. 8
Substitute Eighth Revised Sheet No. 8
The following tariff sheet to be effective November 1, 1992:

Substitute Thirty-Third Revised Sheet No. 8

[Docket No. TM93-1-34-001]

Florida Gas Transmission Co.; Compliance Filing

October 30, 1992.

Take notice that on October 27, 1992, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective October 1, 1992:

Substitute Thirty-First Revised Sheet No. 8
Substitute Thirty-Second Revised Sheet No. 8
Substitute Tenth Revised Sheet No. 8
Substitute Eighth Revised Sheet No. 8
The following tariff sheet to be effective November 1, 1992:

Substitute Thirty-Third Revised Sheet No. 8

[Docket No. CP85-221-007]

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October 26, 1992.

Take notice that on October 22, 1992, Frontier Gas Storage Company (Frontier), % Reid & Priest, Market Square, 701 Pennsylvania Ave., NW., Washington, DC 20004, in compliance with the provisions of the Commission’s February 13, 1985 Order in Docket No. CP82-487-000 et, al., submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to 1 Bcf of Frontier’s gas storage inventory on an “as metered” basis to Rainbow Gas Company (Rainbow). The Service Agreement is lifted.

[Docket No. TM93-1-34-001]

Florida Gas Transmission Co.; Compliance Filing

October 30, 1992.

Take notice that on October 27, 1992, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective October 1, 1992:

Under subpart (b) of Ordering Paragraph (P) of the Commission's Order of February 13, 1985, Frontier is authorized to commence this sale of its inventory under such an executed service agreement fourteen days after the filing of the agreement with the Commission and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter.

Any person desiring to be heard or to make a protest with reference to said tariff sheet filing should, on or before November 18, 1992, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington, DC 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell, Secretary.

[FR Doc. 92-28812 Filed 11-4-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GF88-203-005]

GEO East Mesa Limited Partnership—
GEM 2; Amendment to Filing


On October 22, 1992, GEO East Mesa Limited Partnership (Applicant) tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain technical information. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status 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 Procedure. All such motions or protests should be filed by November 10, 1992, and must be served on the Applicant. 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.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-28817 Filed 11-4-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GF88-202-005]

GEO East Mesa Limited Partnership—
GEM 1; Amendment to filing


On October 22, 1992, GEO East Mesa Limited Partnership (Applicant) tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain technical information. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status 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 Procedure. All such motions or protests must be filed by November 10, 1992, and must be served on the Applicant. 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.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-26816 Filed 11-4-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP93-26-000, et al.]

K N Energy, Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

[Subpart (b) of Ordering Paragraph (P) of the Commission's Order of February 13, 1985.]


Take notice that on October 22, 1992, K N Energy, Inc. (K N) P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP93-26-000 a prior notice request with the Commission pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate 23 sales taps in order to deliver natural gas to various end-users under the blanket certificate issued in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

K N proposes to construct and operate 23 sales taps to various end-users along its jurisdictional pipelines in Colorado, Kansas, and Nebraska. K N states that its sales tap customers would use the gas for commercial, domestic, grain-drying, and irrigation purposes.

K N states that its existing tariff does not prohibit these additional sales taps and that the 23 additional sales taps would have no significant impact on K N's peak day and annual deliveries.

Comment date: December 10, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Co.
[Subpart (b) of Ordering Paragraph (P) of the Commission's Order of February 13, 1985.]


Take notice that on October 7, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP93-30-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.208) for authorization to reassign volumes of gas to be delivered to United's firm sales customer South Coast Gas Company (South Coast) among three existing delivery points, under the authorization issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that it currently makes sales of natural gas to South Coast under a service agreement dated October 1, 1991. For the purpose of more efficiently serving its customer load, United States that South Coast requested that United increase the maximum daily quantity (MDQ) at its Ashland city gas station from 95 to 345 MMMBtu/d. It is stated that this increase of 250 MMMBtu/d will be offset by reductions at South Coast's Golden Meadow (150 MMMBtu) and Raceland (100 MMMBtu) delivery points. United States that the total volumes to be delivered to South Coast after reassignment will not exceed the total volumes authorized prior to this reassignment.
United advises that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers; and that its tariff does not prohibit the proposed reassignment.

Comment date: December 14, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Southern Natural Gas Co.
[Docket No. CP93–29–000]
Take notice that on October 26, 1992, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP93–29–000 a request pursuant to §157.205 of the Regulations under the Natural Gas Act for authorization to replace certain measurement facilities and change the operation of an existing delivery point by altering the contract delivery pressure under the certificate issued in Docket No. CP92–400–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it currently delivers gas supplies to Atlanta Gas Light Company (Atlanta) at the Dallas No. 2 point of delivery (Dallas No. 2) at a contract delivery pressure of 150 psig. Southern indicates that Atlanta has requested and Southern has agreed to deliver gas to Atlanta at Dallas No. 2 at a contract delivery pressure of 300 psig. Southern states that because of the proposed increased delivery pressure, it also proposes to abandon one 4-inch diameter rotary meter run and replace it with one 3-inch rotary meter run in order to operate Dallas No. 2 at the increased pressure in conformance with Atlanta’s contract demand at that station.

Southern states that the abandonment and increase in delivery pressure proposed in the instant application will not result in any termination of service, and that said changes will not result in a change to the contract demand of Atlanta at Dallas No. 2. Further, Southern states that (1) it has sufficient capacity to accomplish deliveries at the revised delivery pressure without detriment or disadvantage to its other customers; (2) deliveries at the increased delivery pressure will have no significant impact on Southern’s peak day and annual deliveries; and (3) the abandonment and change in contract delivery pressure are not prohibited by an existing tariff of Southern.

Comment date: December 14, 1992, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission’s staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission’s Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to §157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.
Lois D. Cashell, Secretary.
[FR Doc. 92–26909 Filed 11–4–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP91–229–013]
Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff
October 30, 1992.
Take notice that on October 23, 1992, tendered for filing revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1.
First Revised Sheet No. 3–C.18
First Revised Sheet No. 43–16

Panhandle proposes that these revised tariff sheets become effective November 1, 1992.

Panhandle states that these revised tariff sheets are being filed in compliance with the Commission’s Order Accepting Settlement and Authorizing Abandonment dated August 28, 1992 in Docket No. RP91–229–009, et al.
Specifically, Ordering Paragraph (C) of that order required Panhandle to advise the Commission which tariff sheets relating to the proceedings included in the Settlement should be withdrawn or superseded by the tariff sheets included in the Settlement.
Appendix A includes the tariff sheets that should be superseded as a result of the Commission’s approval of the Settlement. Appendix B hereto identifies the tariff sheets which should be withdrawn upon the effectiveness of the Settlement.
Panhandle states that a copy of this filing is being served on all jurisdictional customers, applicable state regulatory agencies and parties to the above-referenced proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission’s Rules of Practice and Procedure. All such protests should be filed on or before November 6, 1992. Protests shall be considered by the Commission in determining the action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.
Lois D. Cashell, Secretary.
[FR Doc. 92–26909 Filed 11–4–92; 8:45 am]
BILLING CODE 6717–01–M
Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell, Secretary.

[FR Doc. 92-26915 Filed 11-4-92; 8:45 am] BILING CODE 6717-01-M

[Docket No. TM92-3-8-000]

South Georgia Natural Gas Company; Proposed Changes in FERC Gas Tariff

October 30, 1992.

Take notice that South Georgia natural Gas Company (South Georgia) on October 23, 1992, tendered for filing Seventeenth Revised Sheet Nos. 76 and 106 of the First Revised Volume No. 2 of its FERC Gas Tariff. The proposed revised tariff sheets would flow through to South Georgia's two gas storage customers reduced storage transportation charges billed to South Georgia by Southern Natural Gas Company (Southern).

South Georgia states that the Commission's August 22, 1980 order in the captioned proceeding permits South Georgia to flow through to its two storage customers any changes in the amounts which the Commission authorizes Southern to charge South Georgia for storage transportation services. South Georgia further states that the Commission recently accepted for filing to be effective September 1, 1992, subject to refund, revised tariff sheets which set forth the Settlement regarding rate recovery of costs associated with environmental assessment and remediation costs related to polychlorinated biphenyl ("PCB") contamination of its system and sites adjacent to its system. The Commission approved the Settlement, and it became final and non-appealable on April 17, 1992. Pursuant to the terms of the Settlement in section 35 "Article VI Adjustment" of Texas Eastern's FERC Gas Tariff, Texas Eastern is required to submit on or before October 31, 1992, tariff sheets that set forth the settlement rates for Year 3. Texas Eastern states that the proposed tariff sheets have been filed to comply with this requirement of the Settlement.

South Georgia requests waivers of § 154.51 of the Commission's Regulations and any other waivers necessary to make the revised tariff sheets effective as of September 1, 1992, the date of the decrease in Southern's charges to South Georgia.

South Georgia states that copies of the filing were served on the two jurisdictional customers affected by the filing, interested state commissions and all parties in the captioned proceeding.

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 the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before November 6, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protesters 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. 92-26911 Filed 11-4-92; 8:45 am] BILING CODE 6717-01-M

[Docket No. RP93-13-000]

Texas Eastern Transmission Corp.; Petition for Declaratory Order

October 30, 1992.

Take notice that on October 26, 1992, Texas Eastern Transmission Corporation (Texas Eastern) filed a petition for declaratory order, pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 CFR 385.212. Texas Eastern requests that the Commission declare that—(1) a September 18, 1992 request by Elizabethtown Gas Company (Elizabethtown) to convert 75 percent of the level of its firm sales entitlement to firm transportation service effective December 1, 1992, and (2) a September 30, 1992 notice by Elizabethtown of its withdrawal from and termination of a May 27, 1988 settlement—are prohibited by the express language of the 1988 settlement, the Commission's Rules and Regulations, and Texas Eastern's FERC Gas Tariff.

Texas Eastern states that Elizabethtown made its conversion request in response to the Commission's August 31, 1992 order terminating Texas Eastern's gas inventory charge. Texas Eastern argues that Elizabethtown could only have withdrawn from the settlement prior to its effective date, and at this stage neither it nor Texas Eastern has that right. Texas Eastern also argues that under the 1988 settlement and Texas Eastern's FERC Gas Tariff, any request by Elizabethtown to convert to Order No. 436/500 firm transportation will be effective November 1, 1993, pursuant to Rate Schedule FT-1 section 2.5(a), and not December 1, 1992, as requested by Elizabethtown. Texas Eastern states that it has served its petition for declaratory order upon all the parties on the official restricted service list compiled by the Secretary in the proceedings in Docket No. RP92-117, et al.

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 the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 6, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protesters parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell, Secretary.

[FR Doc. 92-26915 Filed 11-4-92; 8:45 am] BILING CODE 6717-01-M
November 13, 1992. 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.

[F.R. Doc. 92-26814 Filed 11-4-92; 8:45 am]
BILLING CODE 6717-01-M


The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a motion to intervene.

Under the procedure provided for here, unless otherwise advised, WEM will not have to appear or be represented at any hearing.

Linwood A. Watson, Jr.,
Acting Secretary.

[F.R. Doc. 92-26814 Filed 11-4-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RS92-86-000, et al.]

October 30, 1992.

Take notice that on Tuesday, November 10, 1992, an informal technical conference will be convened in the above-captioned dockets. Discussion at the conference will be limited to matters regarding the operation of Transcontinental Gas Pipe Line Corporation’s system.

The technical conference will be held in room 2042A at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The conference will begin at 10 a.m. Attendance at the conference will not confer party status on non-parties.

For additional information, call Ralph Leslie at (202) 208-0238.

Lois D. Cashell,
Secretary.

[F.R. Doc. 92-26812 Filed 11-4-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI93-3-000]

Washington Energy Marketing, Inc.; Application for Blanket Certificate With Pregranted Abandonment


Take notice that on October 23, 1992, Washington Energy Marketing, Inc. (WEM) filed an application under Sections 4 and 7 of the Natural Gas Act (NGA) for a blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all categories of natural gas subject to the Commission’s NGA jurisdiction. The application is on file with the Commission and open to public inspection.

To be heard or to protest the application a person must file a motion to intervene or a protest on or before November 16, 1992. A person filing a protest or motion to intervene must follow the Commission’s Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests or motions to intervene must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a motion to intervene.

Under the procedure provided for here, unless otherwise advised, WEM will not have to appear or be represented at any hearing.

Linwood A. Watson, Jr.,
Acting Secretary.

[F.R. Doc. 92-26814 Filed 11-4-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RS92-89-000]

WestGas Interstate, Inc.; Conference

October 30, 1992.

Take notice that on Tuesday, November 10, 1992, at 1:30 p.m., a conference will be convened in the captioned restructuring docket to discuss the summary of the proposed plan by WestGas Interstate, Inc. to implement Order No. 636.

The conference will be held in room 2042B at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons may call Michael Goldenberg at (202) 208-2294.

Lois D. Cashell,
Secretary.

[F.R. Doc. 92-26814 Filed 11-4-92; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[F.RL-4530-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.
SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before December 7, 1992.
FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA (202) 208-2740.
SUPPLEMENTARY INFORMATION:
Office of Prevention, Pesticides and Toxic Substances

Title: Polychlorinated Biphenyls (PCBs)—Notification and Manifesting of PCB Waste Activities (EPA ICR No. 0583; OMB No. 2210-0061), and Records of PCB Storage and Disposal (EPA ICR No. 1446.03; OMB No. 2070-0112). The two collections are now consolidated under ICR No. 1446.03; OMB No. 2070-0112, and this notice requests an extension of the expiration date for the ICR.

Abstract: Under section 6(e) of the Toxic Substances Control Act (TSCA), generators of PCB waste must prepare manifests when they ship the waste for storage and disposal. The manifests enable EPA to track the chain of custody for a particular PCB waste shipment. Generators must also submit to EPA an Exception Report if, within 45 days, they do not receive a copy of the PCB waste manifest signed by the owner or operator of the PCB commercial storage and disposal facility to which the waste was shipped. They are also required to submit an annual report of unmanifested PCB waste.

All commercial storers, transporters and disposers of PCB waste must notify the EPA of their PCB waste handling activities, and they must obtain an ID number to be used on the required PCB waste manifests. Owners and operators of commercial storage and disposal facilities must submit to the Agency an annual report of discrepancies between the quantity and type of PCB waste designated on the manifest or shipping papers, and the quantity or type of PCB waste actually delivered to, and received by, their designated facilities. Commercial storers of PCB waste must submit financial assurance and closure plans for EPA approval of their facilities. In addition, users, storers, and disposers of PCB waste must keep records of all their PCB activities, including copies of manifests and all annual records of the disposition of PCBs. The Agency uses the information to monitor the movement of PCBs and their ultimate disposal, and to ensure compliance with the regulations that govern them.

Burden Statement: The estimated average public reporting burden for this collection of information is .35 hour per respondent for reporting, and 3.3 hours per recordkeeper annually. This...

SUPPLEMENTARY INFORMATION: Three petitions were filed with the Environmental Appeals Board seeking review of a Prevention of Significant Deterioration (PSD) permit issued to Hadson Power 14—Buena Vista for construction of a 66.5 megawatt coal-fired electric generating power plant in Buena Vista, Virginia. Pursuant to a delegation of authority from the U.S. EPA, Region III, the Virginia Department of Air Pollution Control (VDAPC) issued the final permit on April 18, 1992. Because of the delegation, the Virginia permit was considered an EPA-issued permit for purposes of federal law (40 CFR 124.41 (1991); 45 FR 33413 (May 19, 1980)), and is subject to review by the Agency under 40 CFR 124.19 (1991).

PSD Appeal No. 92-3 was filed by the Southern Environmental Law Center on behalf of itself and other various groups. One of these groups, Clean Air for Rockbridge (CLEAR), and CLEAR's president (Michael Lonergan) and treasurer (Saundra Martis), also filed a separate petition raising additional reasons to review the permit (PSD Appeal No. 92-5). The third petition for review, PSD Appeal No. 92-6, was filed by the County of Rockbridge.

The Board issued a Remand Order in the above case on October 5, 1992. In remanding this permit to the VDAPC the Board held that: (1) VDAPC erred in rejecting the Federal Land Managers' adverse impact determinations regarding the Class I area—James River Face Wilderness and Shenandoah National Park—In Virginia; and (2) VDAPC also erred in categorically excluding construction emissions from the air quality analyses; in failing to give public notice of its intention to use an air quality model not previously subject to public scrutiny; and in providing an incomplete description of the proposed increment consumption in its public notice of the draft permit.

The permit is remanded to VDAPC to perform a substantive review of the adverse impact determinations, to reopen the public comment process, and to address the other deficiencies in accordance with the remand order. The VDAPC is hereby directed to reopen the permit proceedings for the limited purpose of reconsidering these issues in a manner consistent with the opinion of the Board. After reconsidering these issues, VDAPC shall reissue a draft permit and reopen the public comment period to allow comments on its reconsideration. The notice of the public comment period shall be in accordance with all applicable federal and State regulations, and shall provide for public comment on all increments to be consumed by the proposed source (including any increment at the Shenandoah National Park), and Hadson Power's use of a non-Guideline model in its air quality analyses. The State's final permit decision is subject to review under 40 CFR 124.10.

Anyone wishing to review the permit, petition, remand order, or related materials should contact the following offices:


Virginia Department of Air Pollution Control, Room 301, Ninth Street Office Building, Richmond, Virginia 23219.

Pursuant to 40 CFR 124.19(f)(1)(iii) and the Remand Order, in order to exhaust available administrative remedies, these remand proceedings must be appealed to the U.S. EPA Environmental Appeals Board.

Edwin B. Erickson, Regional Administrator.

BILLING CODE 6560-50-M

Handbook of RYRA Ground-Water Monitoring Constituents, Chemical & Physical Properties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of handbook.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of a reference handbook entitled "Handbook of Ground-Water Monitoring Constituents: Chemical & Physical Properties." This document provides specific chemical and physical properties and SW-846 analytical methods for the constituents listed in 40 CFR part 264, appendix IX. Appendix IX is the list of ground-water monitoring constituents for permitted hazardous waste treatment, storage, and disposal facilities that are subject to the ground-
water monitoring requirements of 40 CFR part 264, subpart F. The constituents contained in the Handbook are those currently listed in appendix IX, however, the Handbook also contains data on 19 constituents that are being considered for addition to appendix IX. The Handbook also denotes those constituents being considered for deletion from appendix IX. Any additions or deletions to appendix IX will first be proposed and appear in the proposed rule section of the Federal Register.

DATES: Comments on this handbook must be submitted on or before February 3, 1993.

ADDRESSES: Commenters must send an original and two copies of their comments to: Docket Clerk, Office of Solid Waste (OS-305), Docket No. F-92-HGCA-FFFFF, U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460. Comments should include the docket number [F-92-HGCA-FFFFF]. The RCRA docket is located in room M2427 at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 285-3327. Charges under $25.00 are waived. In addition, this document is available for purchase through the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, telephone (703) 487-4600; Handbook of RCRA Ground-Water Monitoring Constituents: Chemical & Physical Properties. (NTIS #PB92-235-206).

FOR FURTHER INFORMATION CONTACT: General information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (800) 424-9346, TDD (800) 553-7672 (hearing impaired); in the Washington, DC metropolitan area the number is (703) 920-9610, TDD (703) 486-3323. For technical information contact Jim Brown, Office of Solid Waste (OS-341), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (202) 285-3320.

SUPPLEMENTARY INFORMATION: This document provides specific chemical and physical properties and SW-846 analytical methods for each of the 222 constituents listed in appendix IX, and 19 constituents that are being considered for addition to appendix IX. For each constituent listed in the appendix IX Handbook, the following information is provided if available:

1. Appendix IX Name: The name of the constituent as it appears on the list of ground-water monitoring constituents listed in 40 CFR part 264 appendix IX. The Handbook is organized alphabetically by appendix IX name.

2. CAS Name: The name of the constituent as it appears in the Chemical Abstracts Service (CAS) Registry.

3. CAS Number: The CAS registry number.

4. Empirical Formula: The chemical formula that provides the number of each type of atom in the molecule. For metals, the Handbook provides the chemical symbol.

5. Maximum Contaminant Level: The maximum permissible level of the constituent in water which is delivered to the free flowing outlet of the ultimate user of a public water system. If there does not exist a maximum contaminant level for the constituent, the notation "NA" is presented.

6. Molecular Weight: The molecular or formula weight of the constituent in grams/mole.

7. Boiling Point: The temperature in degrees celsius at which the vapor pressure of the constituent in aqueous form is equal to atmospheric pressure.

8. Melting Point: The temperature in degrees celsius at which the constituent in solid phase is in equilibrium, with the liquid phase at atmospheric pressure.

9. Specific Gravity: The ratio of the density of the constituent at a specified temperature relative to the density of water at a specified temperature.

10. Solubility: The concentration of the constituent (in milligrams per liter) that is required to form a saturated solution in water at a given reference temperature.

11. Vapor Pressure: The pressure (in millimeters of mercury) of the vapor phase of the constituent that is in equilibrium with its liquid or solid phase.

12. Henry's Law Constant: The ratio of the equilibrium concentration (in atmospheres) of the constituent in air relative to its concentration (in moles/cubic meter) in water.

13. Log Kow: The log of the ratio of the equilibrium concentration of the constituent in octanol relative to its concentration in water.

14. Possible SW-846 Methods: The analytical methods presented in the USEPA publication "Test Methods for Evaluating Solid Waste" (SW-846), Third Edition (as amended by Updates I and II), that may be used to determine the concentration of the constituent in ground water. For each method, an Estimated Quantitation Limit (EQL) is given if an EQL is available.

15. Chemical Structure: The chemical formula written to show the relative arrangements of the atoms. For metals, the Handbook provides the chemical symbol.

Finally, the Handbook provides a table of abbreviations, an index by CAS registry number, an index by CAS name, and a listing of references.

The appendix IX Handbook is designed to be a concise and readily accessible resource for ground-water professionals who are designing and evaluating ground-water monitoring programs, hydrogeologic characterizations, and corrective measures, including: Determining the fate and transport of contaminants in ground water; choosing an analytical methods for ground-water analysis; evaluating corrective actions; selecting treatment methods; reviewing RCRA Corrective Measures Studies; evaluating the potential for LNAPLs or DNAPLs in ground water; and contaminant transport modeling.


Don Clay, Assistant Administrator, Office of Solid Waste.

[FR Doc. 92-26960 Filed 11-4-92; 8:45 am]

BILLING CODE 6560-50-M

Gulf of Mexico Program Technical Steering Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting of the Technical Steering Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Technical Steering Committee will hold a meeting on November 5-6, 1992, at the Airport Holiday Inn in New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Deputy Director, Gulf of Mexico Program, Building 1103, room 202, John C. Stennis Space Center, Stennis Space Center, MS 38668-3726.

SUPPLEMENTARY INFORMATION: A meeting of the Technical Steering Committee of the Gulf of Mexico Program will be held on November 5-6, 1992, at the Airport Holiday Inn in New Orleans, LA. Agenda items will include status reports and discussion of (1) fiscal year 1993 work plan, (2) the technical subcommittee, (3) five-year strategy (1993-1997), (4) priority setting and comparative risk. (5) the 1992 Gulf
of Mexico Symposium, and [6] Year-of-the-Gulf Activities. The meeting is open to the public.

Alan Fox,
Deputy Assistant Administrator, Office of Water.

[FR Doc. 92-26994 Filed 11-4-92; 8:45 am]
BILLING CODE 6560-55-M

[OPPTS-140196; FRL-4172-9]
Access to Confidential Business Information by the U.S. General Accounting Office

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the U.S. General Accounting Office (GAO) access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than November 19, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In accordance with 40 CFR 2.306(h), EPA has determined that GAO will require access to CBI submitted to EPA under all sections of TSCA to successfully perform their duties. GAO personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the Federal Register of July 18, 1988 (53 FR 27078), GAO was authorized for access to CBI submitted to EPA under all sections of TSCA. EPA is issuing this notice to allow GAO to conduct its present review of EPA programs and information management systems.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide GAO access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this agreement will take place at EPA Headquarters.

GAO will be authorized access to TSCA CBI under the TSCA Confidential Business Information Security Manual. Upon completing review of the CBI materials, GAO will return all materials to EPA.

Clearance for access to TSCA CBI for GAO may continue until September 30, 1994.

GAO personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.


George A. Bonina,
Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-26997 Filed 11-4-92; 8:45 am]
BILLING CODE 6560-50-F

[OPPTS-140197; FRL-4173-1]
Access to Confidential Business Information by the U.S. Consumer Product Safety Commission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the U.S. Consumer Product Safety Commission (CPSC) for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than November 19, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under a Memorandum of Understanding (MOU), dated September 23, 1988, CPSC agreed to EPA procedures governing access to CBI submitted to EPA under TSCA. In accordance with 40 CFR 2.306(h), EPA has determined that CPSC will require access to CBI submitted to EPA under all sections of TSCA to perform successfully their responsibilities under the Consumer Product Safety Act and TSCA. CPSC personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the Federal Register of November 8, 1989 (54 FR 46981), CPSC was authorized for access to CBI submitted to EPA under all sections of TSCA. EPA is issuing this notice to grant CPSC a 5-year extension to its TSCA CBI access under the existing MOU.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide CPSC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this MOU will take place at EPA Headquarters and CPSC’s 5401 West Bard Ave., Bethesda, MD site.

CPSC will be authorized access to TSCA CBI at its facility under the TSCA Confidential Business Information Security Manual. Before access to TSCA CBI is authorized at CPSC’s site, EPA will approve CPSC’s security certification statement, perform the required inspection of its facility, and ensure that the facility is in compliance with the manual. Upon completing review of the CBI materials, CPSC will return all transferred materials to EPA.

Clearance for access to TSCA CBI for CPSC may continue until September 30, 1997.

CPSC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.


George A. Bonina,
Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-26998 Filed 11-4-92; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Request for Additional Information

Agreement No.: 207-011386.
Title: NGPL-Joint Service Agreement.

Parties:
The China Navigation Co., Ltd.
Mitsui O.S.K. Lines, Ltd.

Synopsis: Notice is hereby given that the Federal Maritime Commission, pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1705), has
requested additional information from the parties to the Agreement in order to complete the statutory review of Agreement No. 207-011386 required by the Act. This action extends the review period as provided in section 6(c) of the Act.


By Order of the Federal Maritime Commission.

Joseph C. Polking, Associate Secretary.

Title: Port of New Orleans/Transocean Terminal Operators Lease Agreement.

Parties:
The Port of New Orleans Transocean Terminal Operators ("TTO").

Synopsis: The Agreement reduces the initial term of the lease; eliminates the second five-year option period; adds an additional tract to the leased premises; raises the rent for the office, gear storage and parking areas; and lowers the rent for the marshaling area.


By Order of the Federal Maritime Commission.

Joseph C. Polking, Associate Secretary.

FEDERAL RESERVE SYSTEM

First Community Financial Group, Inc.; Formulation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board’s approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1943(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, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Comments regarding the application must be received not later than November 30, 1992.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

Governors not later than November 30, 1992.

A. Federal Reserve Bank of Richmond
[Lloyd W. Bostian, Jr., Senior Vice President] 701 East Byrd Street, Richmond, Virginia 23261:

1. First Union Corporation, Charlotte, North Carolina; to acquire 100 percent of the voting shares of Dominion Banksshares Corporation, Roanoke, Virginia, and thereby indirectly acquire Dominion Bank of Washington, National Association, Washington, D.C.; Dominion Bank of Maryland, National Association, Rockville, Maryland; Dominion Bank, National Association, Roanoke, Virginia; Dominion Bank of Middle Tennessee, Nashville, Tennessee; Merchants & Planters Bank, Newport, Tennessee; and Citizens Union Bank, Rogersville, Tennessee.

In connection with this application, Applicant also proposes to acquire Dominion Banksshares CDC, Inc., Roanoke, Virginia, and thereby engage in making equity and debt investments in corporations or projects designated to promote community welfare, such as economic development and development of low-income areas by providing housing, services or jobs for residents pursuant to § 225.25(b)(6); Dominion Trust Company, Roanoke, Virginia, and thereby engage in performing functions and activities of trust companies including activities of a fiduciary, agency and custodial nature within the State of Virginia pursuant to § 225.25(b)(3); Dominion Trust Company of Tennessee, Nashville, Tennessee; and thereby engage in 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 interest, 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 hearing will be conducted.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 30, 1992.

A. Federal Reserve Bank of Cleveland
[John J. Wixted, Jr., Vice President] 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Integra Financial Corporation, Pittsburgh, Pennsylvania; to acquire Equibank (Delaware), N.A., Wilmington, Delaware, and thereby engage in making, acquiring, and servicing retail installment and revolving credit loans pursuant to § 225.25(b)(1); to acquire First Associates Financial, Inc., Tampa, Florida, and thereby engage in collecting its remaining mobile home financing loans pursuant to § 225.25(b)(1); and to acquire American Financial Corporation of Tampa, Inc., Tampa, Florida, and American Financial Corporation of Georgia, Inc., Tampa, Florida, and thereby engage in originating and servicing consumer home equity loans through a network of correspondents and brokers pursuant to § 225.25(b)(1) of the Board’s Regulation Y.


Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92-26831 Filed 11-4-92; 8:45 am]

BILLING CODE 6210-01-F

Integra Financial Corporation;
Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have 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)(6) 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.

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 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 interest, 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.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 30, 1992.

A. Federal Reserve Bank of Cleveland
[John J. Wixted, Jr., Vice President] 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Integra Financial Corporation, Pittsburgh, Pennsylvania; to acquire Equibank (Delaware), N.A., Wilmington, Delaware, and thereby engage in making, acquiring, and servicing retail installment and revolving credit loans pursuant to § 225.25(b)(1); to acquire First Associates Financial, Inc., Tampa, Florida, and thereby engage in collecting its remaining mobile home financing loans pursuant to § 225.25(b)(1); and to acquire American Financial Corporation of Tampa, Inc., Tampa, Florida, and American Financial Corporation of Georgia, Inc., Tampa, Florida, and thereby engage in originating and servicing consumer home equity loans through a network of correspondents and brokers pursuant to § 225.25(b)(1) of the Board’s Regulation Y.


Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92-26831 Filed 11-4-92; 8:45 am]

BILLING CODE 6210-01-F

Westdeutsche Landesbank
Girozentrale; Application to Acquire Voting Shares of Company Engaged In Nonbanking Activities

Westdeutsche Landesbank
Girozentrale, Dusseldorf, Germany

([ Applicant]), has applied pursuant to section 4(c)(6) of the Bank Holding Company Act (12 U.S.C. 1843(c)(6)) (BHC Act) to retain direct and indirect control of 100 percent of the voting shares of Thomas Cook Inc., New York, New York (Company), and thereby engage indirectly in the nonbanking activities described below. Pursuant to Applicant’s proposal, Applicant would acquire directly 10 percent of the voting shares of Company and the remaining 90 percent would be acquired by Applicant’s subsidiary TBG Touristik Beteiligungs GmbH & Co. KG (Subsidiary).

Proposed Activities

Applicant proposes to engage through Company in the following nonbanking activities:

1. Consumer Instruments Activities. Issuing, selling, redeeming and refunding U.S. dollar- and foreign currency-denominated travelers cheques, money orders, and similar consumer instruments with a face value of $1,000 or less (Consumer Instruments) issued by Company and by affiliated and unaffiliated institutions, directly and through affiliated and unaffiliated entities. Applicant also proposes to engage through Company in certain activities it maintains are incidental to, or an integral part of, the foregoing Consumer Instruments Activities, including (i) providing marketing, operations, sales, and training materials to unaffiliated third parties selling such Consumer Instruments for the Company’s account, and (ii) sponsoring training seminars for sales agents, and promotions for sales agents and customers, of Company’s Consumer Instruments.

2. Payment Instruments and Wires Activities. Issuing and selling U.S. dollar- and foreign currency-
denominated drafts and payment instruments (Payment Instruments) and payment orders and wire transfers (Wires), with no limitation as to face value, directly and through affiliated and unaffiliated institutions. Applicant also proposes to engage through Company in certain activities it maintains are incidental to the foregoing Payment Instruments and Wires Activities, including (i) purchasing Payment Instruments and Wires, and (ii) sending for collection and cashing Payment Instruments.

3. Foreign Exchange Activities. The following Foreign Exchange Activities: (i) marketing, purchasing, and selling foreign currency directly and through affiliated and unaffiliated institutions at wholesale and retail for its own account and for the account of others; (ii) engaging in foreign exchange forward transactions for the account of customers; and (iv) as an activity incidental to the foregoing activities, providing foreign exchange-related information services. Company will not provide investment advice for compensation regarding foreign currency.

4. Precious Metals Activities. Marketing, purchasing and selling precious metals (gold and silver bullion, bars, rounds, and coins) for its own account and for the account of others at wholesale and retail directly and through third parties. Applicant also proposes to engage through Company in certain activities it maintains are incidental to the foregoing Precious Metals Activities.

5. Data Processing. Data processing and related bookkeeping (including accounts payable processing) and record retention activities in connection with the foregoing activities, including (i) payment and refund processing for Consumer Instruments and Payment Instruments, (ii) accounting for instruments sold (including travelers cheque inventory fulfillment), and (iii) preparing profitability statements, product inventory reports, and market data.

6. Certain Incidental Activities. Certain activities Applicant maintains are incidental to one or more of the foregoing activities, including (1) providing investment management services for cash proceeds received from sales of Consumer Instruments and Payment Instruments, (ii) providing incidental legal, accounting, and support services in connection with the provision of the Company’s services described in items 1 through 5 above, and (iii) cashing U.S. dollar-denominated payroll checks and small-denomination personal checks for the convenience of airport and airline workers and certain credit card holders. Applicant also proposes through Company to provide a variety of emergency services to certain credit card holders, including facilitating credit card replacements, making cash advances, and providing communications assistance and lost or stolen credit card reporting services. In addition, Applicant proposes to engage through Company in providing services to travel business affiliates operating outside of the United States.

Permissibility of Proposed Activities
Applicant states that the Board has previously approved, by regulation or order, certain of Applicant’s proposed Consumer Instruments Activities, Payment Instruments and Wires Activities, Foreign Exchange Activities, Precious Metals Activities, and Data Processing Activities (together, Core Activities). See, e.g., 12 CFR 225.25(b)(7) and (12); Midland Bank, PLC, 76 Federal Reserve Bulletin 860 (1990)(Midland IV). With respect to proposed Foreign Exchange Activities and Precious Metals Activities, Applicant has stated that it will comply with the prudential limitations and other conditions established by the Board in its previous Orders. See Midland IV, supra. See also 12 CFR 225.142. With respect to proposed Payment Instruments and Wires Activities, Applicant has proposed certain modifications from conditions imposed in previous Orders regarding the treatment of proceeds of Payment Instruments and Wires, including (a) eliminating the $10,000 face value limitation on U.S. dollar-denominated Payment Instruments and Wires, (b) increasing to $50,000 the minimum face value on foreign-currency denominated Payment Instruments which must be made subject to reserve requirements, and (c) eliminating conditions imposed by the Board in prior cases which mandate that the proceeds from sales of Wires must be deposited over night in demand deposit accounts and thereby made subject to reserve requirements. See Midland IV, supra. Applicant maintains that these modifications do not materially alter the nature of the activity and are necessary to allow it to reduce transaction costs, increase operating efficiency, and remain competitive. Applicant also maintains that these modifications will have no more than a marginal impact on the reserve base, a concern noted by the Board in its previous Orders with respect to similar applications.

Applicant states that the Board has also approved by order certain of the activities which Applicant maintains are incidental to one or more of its proposed Core Activities. See, e.g., Midland IV, supra.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity “which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto”. In determining whether a proposed activity is closely related to banking for purposes of the BHC Act, the Board considers, inter alia, the matters set forth in National Courier Association v. Board of Governors of the Federal Reserve System, 516 F.2d 1229 (D.C. Cir. 1975), including (1) whether banks generally have in fact provided the proposed services, (2) whether banks generally provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed services, and (3) whether banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. See id. at 1237.

Certain of the proposed activities maintained by Applicant to be incidental to its proposed Core Activities or otherwise permissible under the BHC Act have not previously been determined by the Board to be permissible under section 4 of the BHC Act, including: (1) the proposed incidental activities specifically enumerated in paragraphs 1 and 2 above; (2) the use of foreign currency hedging vehicles not specifically addressed by the Board in its previous Orders; and (3) with the exception of cashing payroll checks drawn on unaffiliated banks, the activities listed in paragraph 6 above. Applicant maintains that all of the proposed activities that the Board has not previously determined to be permissible for bank holding companies are either activities closely related and properly incident to banking, activities incidental to a proposed activity which are themselves so closely related and properly incident, or activities permissible under section 4(c)(1)(C) of the BHC Act.

Proper Incidence to Banking Standard
In order to approve the proposal, the Board must determine that the proposed
activities to be conducted by Company “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.” 12 U.S.C. 1843(c)(8).

Applicant maintains that its proposed activities to be engaged in through Company will benefit the public by promoting competition. Applicant states that Company’s affiliation with Applicant will allow Company to improve its services and products and thereby to increase market efficiencies and to lower overall costs to customers. Applicant also maintains that its acquisition of Company would not result in undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Miles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than November 20, 1992. Any request for a hearing on this application must, as required by § 262.3(e) of the Board’s Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why 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. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

The notice is hereby given that the Steering Committee for the African Burial Ground Meeting will hold a special meeting on Monday, November 9, 1992 at 2 p.m. in the third floor floor Board Room (Metropolitan Washington Council of Governments), 777 North Capitol St., NE., Washington, DC.

The agenda for the meeting will consist of a review of the minutes of the October 26 meeting, final approval of the Statement of Recommended Accounting Standards No. 1, Accounting for Selected Assets and Liabilities, final approval of the Exposure Draft User Needs and Objectives, a discussion of the Exposure Draft on Accounting for Liabilities and Future Claims on Budgetary Resources, and a discussion of agenda items for future meetings of the Board. We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT:
Ronald S. Young, Staff Director, 401 F Street NW., room 302, Washington, DC 20001, or call (202) 504-3336.


Dated: November 2, 1992.
Jimmie D. Brown,
Deputy Director.
[FR Doc. 92-26917 Filed 11-4-92; 8:45 am]
BILLING CODE 6320-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Agency for Health Care Policy and Research

National Institute of Mental Health;
Development of Clinical Guidelines for Diagnosis and Treatment of Anxiety and Panic Disorders in the Primary Care Setting

The Agency for Health Care Policy and Research (AHCPR), with collaborative support from the National...
Institute of Mental Health (NIMH), announces that it is establishing a panel of health care experts and consumers to develop a clinical practice guideline for diagnosis and treatment of anxiety and panic disorders in the primary care setting and invites nominations of qualified individuals to serve as the chairperson(s) and as panel members.

**Background**

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) added a new title IX to the Public Health Service Act (the PHS Act), which established the Agency for Health Care Policy and Research to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services (See 42 U.S.C. 299–299c-6 and 1320b–12).

As part of its legislative mandate, AHCPR is authorized for the development, periodic review, and updating of clinically relevant guidelines that may be used by physicians, other health care practitioners, educators, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed.

Section 912 of the PHS Act (42 U.S.C. 299b–4(b)) requires that the guidelines be:

1. Based on the best available research and professional judgment;
2. Presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers; and
3. Presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care.

Section 913 of the PHS Act (42 U.S.C. 299b–2) describes two mechanisms through which AHCPR may arrange for development of guidelines: 1. Panels of qualified health care experts and consumers may be convened; and 2. contracts may be awarded to public and private non-profit organizations. The AHCPR has elected to use the panel process for development of clinical practice guidelines for diagnosis and treatment of anxiety and panic disorders in the primary care setting.

Section 914 of the PHS Act (42 U.S.C. 299b–3(a)) identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods of prevention, diagnosis, treatment, and clinical management, and thereby benefit a significant number of individuals; 2. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and 3. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with title IX, of the PHS Act and section 1142 of the Social Security Act, the Administrator, AHCPR, is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines.

The National Institute of Mental Health has as its mission under Section 944 of the PHS Act "to promote the health of each individual as to improve, through research, mental health services, in all health care settings, for people with these disorders. The NIMH also is mandated to carry out related information dissemination and has been actively engaged in patient and professional education. Neither the NIMH nor the AHCPR has previously developed clinical guidelines on the diagnosis and treatment of anxiety and panic disorders. Therefore, both organizations are collaborating in this effort, pursuant to Section 944A of the PHS Act, as a result of mutual commitment to the need for developing guidelines for the diagnosis and treatment of anxiety and panic disorders. Therefore, both organizations are collaborating in this effort, pursuant to Section 944A of the PHS Act, as a result of mutual commitment to the need for developing guidelines for the diagnosis and treatment of anxiety and panic disorders. Therefore, both organizations are collaborating in this effort, pursuant to Section 944A of the PHS Act, as a result of mutual commitment to the need for developing guidelines for the diagnosis and treatment of anxiety and panic disorders. Therefore, both organizations are collaborating in this effort, pursuant to Section 944A of the PHS Act, as a result of mutual commitment to the need for developing guidelines for the diagnosis and treatment of anxiety and panic disorders. Therefore, both organizations are collaborating in this effort, pursuant to Section 944A of the PHS Act, as a result of mutual commitment to the need for developing guidelines for the diagnosis and treatment of anxiety and panic disorders. Therefore, both organizations are collaborating in this effort, pursuant to Section 944A of the PHS Act, as a result of mutual commitment to the need for developing guidelines for the diagnosis and treatment of anxiety and panic disorders. Therefore, both organizations are collaborating in this effort, pursuant to Section 944A of the PHS Act, as a result of mutual commitment to the need for developing guidelines for the diagnosis and treatment of anxiety and panic disorders. Therefore, both organizations are collaborating in this effort, pursuant to Section 944A of the PHS Act, as a result of mutual commitment to the need for developing guidelines for the diagnosis and treatment of anxiety and panic disorders.
plus a statement of the rationale for the specific nomination. To be considered, nominations must be received by December 14, 1992 at the following address: Office of the Forum for Quality and Effectiveness in Health Care Attn: Kay Pearson, Forum staff contact. Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 401, Rockville, MD 21012. (Phone: 301-227-6671) [Fax: 301-227-8332].

For Additional Information

Additional information on the guideline development process is contained in the AHCPR Fact Sheet, "AHCPR-Commissioned Clinical Practice Guidelines," dated January 1992 and the Program Note, "Clinical Guideline Development," dated August 1990. These documents can be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8457, Silver Spring, MD 20907; or call Toll-Free: 1-800-358-9285.

Also, information can be obtained by contacting Kathleen A. McCormick, Ph.D., R.N., Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, at the Rockville address above.


J. Jarrett Clinton, Administrator.
[FR Doc. 92-26857 Filed 11-4-92; 8:45 am]
BILLING CODE 4160-90-M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA’s advisory committee.

MEETING: The following advisory committee meeting is announced:

Subcommittee Meeting of the Food Advisory Committee

Date, time, and place. November 23 and 24, 1992, 8 a.m., Doubletree Hotel, Federal Hall, 300 Army-Navy Dr., Arlington, VA.

Type of meeting and contact person. The subcommittee will meet on November 23 and 24, 1992, to provide advice to FDA on regulation of folic acid, consistent with the Public Health Service policy on folic acid and neural tube defects. Open committee discussion, November 23, 1992, 8 a.m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 6 p.m.; open committee discussion, November 24, 1992, 8 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12.m., unless public participation does not last that long; open committee discussion, 12 m. to 3 p.m.; Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFF-6), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5140 or Patricia Thompson, Advisory Committee/Communications Group, 202-205-4564.

General function of the committee. The committee provides advice on emerging food safety, food science, and nutrition issues that FDA considers of primary importance in the next decade.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Those desiring to make formal presentations should notify the contact person before November 13, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, and the names and addresses of proposed participants. Comments will be limited to five minutes.

Open committee discussion. On November 23 and 24, 1992, the subcommittee will discuss with expert witnesses: (1) Target populations, (2) how the information available on the effective level of intake affects options, (3) specific safety concerns, and (4) strategies for FDA implementation. On November 24, 1992, the subcommittee will develop its recommendations.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee’s work.

Public hearings are subject to FDA’s guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA’s public administrative proceedings, including hearings before public advisory committees under 21 CFR part
Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be answered, and any other materials relevant to a meeting will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.


Jane E. Henney
Deputy Commissioner for Operations.

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**NDA No.** | **Drug Name** | **Applicant name and address**
---|---|---
3-240 | Metamidren Tablets | Ciba Pharmaceutical Co., Division of Ciba-Geigy ---
5-270 | Neoloid Emulsion | ---
5-691 | Vertavis Tablets | ---
6-924 | Pamisyi Tablets and Pamisyi Sodium Power and Tablets | ---
7-865 | Potassium Chloride Injection | ---
7-964 | Ambodryl Capsules | ---
8-322 | Gomoni Tablets | ---
8-391 | Cotinazin Tablets | ---
8-478 | Ambodryl Elixir | ---
8-486 | Niconyl Tablets | ---
8-745 | Ambodryl Syrup | ---
8-765 | Cortisone Acetate Ophthalmic Ointment | ---
8-767 | Hedulin Tablets | ---
8-967 | Caldesone Powder & Ointment | ---
9-164 | Cortril (hydrocortisone) Aqueous Suspension | ---
9-202 | Cetobid-D Injection | ---
9-372 | Andolsyn Injection | ---
9-796 | Cortril (hydrocortisone) Vaginal Tablets | ---
10-697 | Therusin Tablets | ---
11-156 | Delta-Cortril (prednisolone acetate) Injection | ---
11-302 | Dulcolax Tablets | ---
11-384 | Dulcoflex Suppositories | ---

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Ciba Pharmaceutical Co., et al.; Withdrawal of Approval of 61 New Drug Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of 61 new drug applications (NDA's). The holders of the NDA's notified the agency in writing that the drug products were no longer being marketed under the NDA and requested that the approval of the applications be withdrawn.

**EFFECTIVE DATE:** December 7, 1992.

**FOR FURTHER INFORMATION CONTACT:** Nancy Maizel, Center for Drug Evaluation and Research (HFD-53), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4320.

**SUPPLEMENTARY INFORMATION:** The holders of the NDA's listed below have informed FDA that these drug products are no longer being marketed under the NDA and requested that FDA withdraw approval of the applications. The applicants have also, by request, waived their opportunity for a hearing.
 Withdrawal of Approval of Nine Abbreviated New Drug Applications

To: The Director of the Center for Drug Evaluation and Research (HFD-360),
Lola E. Batson, Center for Drug Evaluation and Research.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-258-0389.

SUPPLEMENTARY INFORMATION: Eon has informed FDA that the drug products listed in the following table are no longer marketed and has requested that FDA withdrawal approval of the applications. Eon has also, by its request, waived its opportunity for a hearing.

<table>
<thead>
<tr>
<th>NDA No.</th>
<th>Drug name</th>
<th>Applicant name and address</th>
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</thead>
<tbody>
<tr>
<td>11-705</td>
<td>Betadine Shampoo</td>
<td>Purdue Frederick Co., 100 Connecticut Ave., Norwalk, CT 06850-1380.</td>
</tr>
<tr>
<td>11-964</td>
<td>Povam Suspension</td>
<td>Parke-Davis.</td>
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<tr>
<td>12-485</td>
<td>Povam Tablets</td>
<td>Parke-Davis.</td>
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<tr>
<td>12-542</td>
<td>Prokazol Tablets</td>
<td>Wyeth-Ayerst Laboratories.</td>
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<tr>
<td>13-448</td>
<td>Euthonyl Flimtab Tablets</td>
<td>Abbott Laboratories.</td>
</tr>
<tr>
<td>14-696</td>
<td>Preslate Tablets</td>
<td>Parke-Davis.</td>
</tr>
<tr>
<td>16-021</td>
<td>Meprobamate Tablets</td>
<td>Pennex Products Co., Inc., Eastern Ave. at Penex Dr., Verona, PA 15147-9961.</td>
</tr>
<tr>
<td>16-047</td>
<td>Eutrol Flinhtab Tablets</td>
<td>Abbott Laboratories.</td>
</tr>
<tr>
<td>16-128</td>
<td>Conceptrol Cream</td>
<td>Advanced Care Products, Division of Ortho Pharmaceutical Corp., Raritan, NJ 08869.</td>
</tr>
<tr>
<td>16-509</td>
<td>Tricyclic (tricyclic sodium) Tablets</td>
<td>Merrell Dow Pharmaceuticals Inc.</td>
</tr>
<tr>
<td>16-924</td>
<td>Ipranol Solution</td>
<td>Lyphomed, Division of Fujisawa USA, Inc., 2045 North Cornell Ave., Morton Grove, IL 60053-1002.</td>
</tr>
<tr>
<td>16-574</td>
<td>Tricyclic (tricyclic sodium) Solution</td>
<td>Merrell Dow Pharmaceuticals Inc.</td>
</tr>
<tr>
<td>16-578</td>
<td>Tegner One Lotion Shampoo</td>
<td>Do.</td>
</tr>
<tr>
<td>16-692</td>
<td>Tegner One Shampoo with Protein</td>
<td>Do.</td>
</tr>
<tr>
<td>16-693</td>
<td>Ulbid Tablets</td>
<td>Parke-Davis.</td>
</tr>
<tr>
<td>16-828</td>
<td>Meprobamate Tablets</td>
<td>Parke-Davis.</td>
</tr>
<tr>
<td>16-409</td>
<td>Tynflex Extra-Strength Capsules</td>
<td>The Boots Co., Inc., No. 1 Fellowship Rd., Cherry Hill, NJ 08034.</td>
</tr>
<tr>
<td>17-593</td>
<td>Break One Shampoo with Protein</td>
<td>G.D. Searle &amp; Co., 4901 Searle Pkwy., Skokie, IL 60077.</td>
</tr>
<tr>
<td>18-059</td>
<td>Binions Viscous Solution</td>
<td>The Dial Corp.</td>
</tr>
<tr>
<td>18-740</td>
<td>Uterot Ointment</td>
<td>Parke-Davis.</td>
</tr>
<tr>
<td>18-205</td>
<td>Tatum-T Intrauterine Device</td>
<td>Do.</td>
</tr>
<tr>
<td>18-925</td>
<td>Discise for Injection</td>
<td>G. D. Searle &amp; Co.</td>
</tr>
<tr>
<td>19-440</td>
<td>Unicam Capsules</td>
<td>The Boots Co. (USA), Inc., 300 Tri-State International Center, Suite 200, Lincolnshire, IL 60069.</td>
</tr>
<tr>
<td>19-080</td>
<td>Versapen O.S./Pediatric Drops</td>
<td>Pfizer Inc.</td>
</tr>
<tr>
<td>19-093</td>
<td>Polycillin Tablets</td>
<td>Bristol-Myers U. S. Pharmaceutical Group, Bristol-Myers Squibb Co., Evansville, IN 47721-0001.</td>
</tr>
<tr>
<td>19-093</td>
<td>Resistopen Capsules</td>
<td>Do.</td>
</tr>
<tr>
<td>20-389</td>
<td>Polybllin Tablets</td>
<td>Bristol-Myers Squibb Co., U. S. Managed Health Care Group, P.O. Box 4000, Princeton, NJ 08543-4000.</td>
</tr>
<tr>
<td>20-196</td>
<td>Dimoxinol R. T.</td>
<td>Do.</td>
</tr>
<tr>
<td>20-323</td>
<td>Candiex lotion</td>
<td>Miles Inc., Pharmaceutical Division, 400 Morgan Lane, West Haven, CT 06516.</td>
</tr>
<tr>
<td>50-241</td>
<td>Neo-Dila-Mantle Creme</td>
<td>Do.</td>
</tr>
<tr>
<td>50-201</td>
<td>TAO Pediatric Drops</td>
<td>Pfizer Inc.</td>
</tr>
<tr>
<td>50-332</td>
<td>TAO Oral Suspension</td>
<td>Do.</td>
</tr>
<tr>
<td>50-500</td>
<td>Velasef Tablets</td>
<td>Apothecion, Bristol-Myers Squibb Co., U. S. Managed Health Care Group, P. O. Box 4000, Princeton, NJ 08543-4000.</td>
</tr>
<tr>
<td>50-599</td>
<td>Ilosone Sulfate Liquid, Oral Suspension</td>
<td>Lilly Research Laboratories.</td>
</tr>
</tbody>
</table>

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the NDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective December 7, 1992.

Gerald F. Meyer,
Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 92-26856 Filed 11-4-92; 8:45 a.m.]
Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Louisiana SPA 91–18 proposes to remove the cost limits for inpatient hospital services for infants under the age of 1 in all hospitals as required by section 4604(a) of the Omnibus Budget Reconciliation Act of 1990, as codified by section 1902(e) of the Act, effective July 1, 1992.

The issue is whether Louisiana SPA 91–18 complies with Federal regulations at 42 CFR 447.253(f), and thus also satisfies the public notice requirements described in 42 CFR 447.205.

Federal regulations at 42 CFR 430.12(c) require a SPA to reflect new or revised Federal statutes or regulations or material change in any phase of State law, organization or operation of a Medicaid program. In accordance with Federal regulations at 42 CFR 447.253(f), the Medicaid Agency must also comply with the public notice requirements in section 447.205 when it is proposing significant changes to its methods and standards for setting payment rates for inpatient and long-term care facility services. Section 447.205(c) and (d) set forth additional requirements regarding the content and publication of the notice. Section 447.205(d)(1) requires that the notice be published before the proposed effective date.

Specifically 447.205(c)(1) provides that the notice describe the methods and standards of the proposed change. Louisiana indicated in its June 20, 1991, public notice that, "Mandatory title XIX provisions of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) are hereby adopted and implemented as required by provisions of said Act, utilizing the interpretations set forth by the Health Care Financing Administration (HCFA) in its State Medicaid Manual publication and in conformity with HCFA’s formal assistance rendered until final regulations are adopted by HCFA, as appropriate." HCFA believes the June 20, 1991, notice failed to describe the change in the methods and standards specific to Louisiana SPA 91–18. The State’s notice did not specifically reference that its proposal would remove cost limits for infants under the age of 1. Moreover, section 42 CFR 447.205(c)(2) specifies that notice must, "Give an estimate of the expenditures of any increase or decrease in annual aggregate State expenditures." HCFA believes Louisiana’s submittal remained silent on the estimated annual State expenditures. Therefore, even though the State of Louisiana published notice on June 20, 1991, in the Louisiana Register, HCFA has determined that this notice does not satisfy the requirements described in 42 CFR 447.205(c)(1) and (2).

While the regulations at 42 CFR 447.205 provide for some exceptions to the requirement of providing public notice of significant changes in methods and standards for setting payment rates (e.g., the change is required by a court order), HCFA believes there is no exception applicable to this situation that would permit the State of Louisiana to be exempt from any of the public notice requirements described in 42 CFR 447.205.

Louisiana indicated that section 1902(s) of the Act requires it to implement this provision, for calendar quarters beginning on or after July 1, 1991, and that HCFA is preventing the State from complying with the requirements of section 1902(e), by making it conform with the public notice requirements.

However, it is HCFA’s position that the implementation of new legislation does not relieve the State from its obligation to comply with existing Federal rules and regulations. Therefore, Louisiana must comply with all Federal requirements pertaining to SPAs. While the State submitted the assurance and related information required for the approval of SPAs, HCFA believes it did not comply with the public notice requirements. Regardless of the effective date permitted by legislation, with respect to individual statutory provisions, the effective date of SPAs is governed by the date the plan was submitted to HCFA and the publication of public notice.

<table>
<thead>
<tr>
<th>ANDA no.</th>
<th>Drug</th>
</tr>
</thead>
<tbody>
<tr>
<td>83-899</td>
<td>Hydrochlorothiazide Tablets, 25 mg</td>
</tr>
<tr>
<td>64-829</td>
<td>Chlordiazepoxide Hydrochloride Tablets, 25 mg</td>
</tr>
<tr>
<td>84-919</td>
<td>Chlordiazepoxide Hydrochloride Tablets, 10 mg</td>
</tr>
<tr>
<td>84-920</td>
<td>Chlordiazepoxide Hydrochloride Tablets, 5 mg</td>
</tr>
<tr>
<td>85-247</td>
<td>Hydroxyzine Hydrochloride Tablets, 25 mg</td>
</tr>
<tr>
<td>86-130</td>
<td>Probenecid 500 mg and Cobicholine 0.5 mg</td>
</tr>
<tr>
<td>87-245</td>
<td>Hydroxyzine Hydrochloride Tablets, 50 mg</td>
</tr>
<tr>
<td>87-246</td>
<td>Hydroxyzine Hydrochloride Tablets, 10 mg</td>
</tr>
<tr>
<td>89-566</td>
<td>Carisoprodol Tablets, 350 mg</td>
</tr>
</tbody>
</table>
The notice to Louisiana announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. John Futrell, Director, Bureau of Health Services Financing, P.O. Box 81030, Baton Rouge, Louisiana 70821-9030

Dear Mr. Futrell: I am responding to your request for reconsideration of the decision to disapprove Louisiana State Plan Amendment (SPA) 91-18. This amendment proposes to remove the cost limits for inpatient hospital services for infants under the age of 1 in all hospitals as required by 4604(a) of the Omnibus Budget Reconciliation Act of 1990, as codified by section 1902(a) of the Social Security Act, effective July 1, 1991.

Federal regulations at 42 CFR 430.12(c) require a SPA to reflect new or revised Federal statutes or regulations or material change in any phase of the State law, organization policy, or State agency operation. In accordance with Federal regulations at 42 CFR 447.205(f), the Medicaid Agency must also comply with the public notice requirements in section 447.205 when it is proposing significant changes to its operations. Section 447.205 requires that the notice be published before the proposed effective date.

The issue is whether Louisiana SPA 91-18 complies with Federal regulations at 42 CFR 447.205(f), and thus also satisfies the public notice requirements described in 42 CFR 447.205.

I am scheduling a hearing on your request for reconsideration to be held on December 9, 1992, in room 1010, 1200 Main Tower Building, Dallas, Texas. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

The hearing will be governed by the procedures prescribed at 42 CFR part 430. I am designating Dr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597-3013.

Sincerely,

William Toby, Jr., Acting Deputy Administrator.

Authority: Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18.

Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program.


William Toby, Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 92-28732 Filed 11-4-92; 8:45 am]
BILLING CODE 4120-03-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92-463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

Maternal and Child Health Research Grants Review Committee Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1029, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC. Copies may be obtained from: Conran Lamberly, Dr. P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, room 18-A, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 433-2190.


Jackie E. Baum, Advisory Committee Management Officer, HRSA.

[FR Doc. 92-29578 Filed 11-4-92; 8:45 am]
BILLING CODE 4120-15-M

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92-463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

HRSA AIDS Advisory Committee

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC. Copies may be obtained from: G. Stephen Bowen, M.D., Acting Associate Administrator for AIDS, room 14A-21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 433-4508.


Jackie E. Baum, Advisory Committee Management Officer, HRSA.

[FR Doc. 92-28738 Filed 11-4-92; 8:45 am]
BILLING CODE 4105-15-M

National Institutes of Health

Meeting of the Program Advisory Committee on the Human Genome

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Program Advisory Committee on the Human Genome, National Center for Human Genome Research, December 7 and 8, 1992, at the National Institutes of Health, Building 31, Conference Room 6. The meeting will take place from 8:30 to 5 p.m. on December 7 and from 8:30 to adjournment on December 8. The meeting will be open to the public.

This will be the eighth meeting of the Program Advisory Committee on the Human Genome. The purpose of the meeting is to discuss the planning, organization, and progress of the human genome project at the National Institutes of Health.

Dr. Elke Jordan, Deputy Director, National Center for Human Genome Research, National Institutes of Health, Building 38A, room 605, Bethesda, Maryland 20892, (301) 496-0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Catalogue of Federal Domestic Assistance Program No. 92.172, Human Genome Research.

Date: October 26, 1992.

Susan K. Feldman, Committee Management Officer, NIH.

[FR Doc. 92-26680 Filed 11-4-92; 8:45 am]
BILLING CODE 4140-01-M

Public Health Service

National Vaccine Advisory Committee; Public Meeting

AGENCY: Office of the Assistant Secretary for Health

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing the forthcoming meeting of the National Vaccine Advisory Committee.

DATES: Date, Time and Place: November 12, at 9 a.m.; and November 13, at 8:30 a.m.; Hubert Humphrey Building, room 703A, 200 Independence Avenue SW., Washington, DC 20201. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Kenneth J. Bart, M.D. M.P.H., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program, 5600 Fishers Lane, Parklawn

[FR Doc. 92-26680 Filed 11-4-92; 8:45 am]
Discussion:
There will be updates on the National Vaccine Compensation Program. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 15 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson’s discretion.

Open Advisory Committee Discussion: There will be updates on the National Vaccine Program, and the National Vaccine Compensation Program. There will be reports and discussions on the four working subcommittees: Adult Immunization; National Vaccine Plan; State and Local Impediments to Immunization Services; and Vaccine Licensure and Regulation. Presentations on various immunization policy studies will also be on the agenda. Meetings of the Advisory Committee shall be conducted, insofar as is practical, in accordance with the agenda published in the Federal Register notices. Changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion. A list of Advisory Committee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person. Summary minutes of the meeting will be made available upon request from the contact person.


Kenneth J. Bart,
Executive Secretary, NVAC.

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories that Have Withdrew from the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS. (Formerly: National Institute on Drug Abuse, ADAMHA, HHS)

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11988). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory’s certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT:
Denise L. Goss, Program Assistant, Division of Workplace Programs, room 9-A-54, 5000 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443-6014.

SUPPLEMENTARY INFORMATION:
Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12504 and section 503 of Public Law 100-71, Subpart C of the Guidelines, “Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,” sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections. Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

AccuTox Analytical Laboratories, 427 Fifth Avenue, N.W., P.O. Box 770, Attalla, AL 35954-0770, 205-538-0012/800-247-3063.

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, suite 21, Nashville, TN 37221, 615-331-5300.

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800-541-4931/205-263-5745.

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817-202-2257.

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703-802-6900.


Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787.

Baptist Medical Center—Toxicology Laboratory, 9601 I-630, Exit 7, Little Rock, AR 72205-7299, 501-227-2783, (formerly: Forensic Toxicology Laboratory Baptist Medical Center), 215 N. Webster Ave., Green Bay, WI 54301, 414-433-7455.

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617-547-8960.

California Toxicology Services, 1925 East Dakota Avenue, suite 206, Fresno, CA 93726, 209-221-5655/800-448-7600.

Cedars Medical Center, Department of Pathology, 1400 Northwest 15th Avenue, Miami, FL 33136, 305-355-5810.

Centinela Hospital Airport Toxicology Laboratory, 6901 S. Sepulveda Blvd., Los Angeles, CA 90405, 310-215-6020.

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412-488-7500.

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800-445-0917.

ComputChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3306 Chapel Hill/Nelson.
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<tr>
<td>Nichols Institute Substance Abuse Testing (NISAT), 8965 Balboa Avenue, San Diego, CA 92123, 600-446-4728/619-694-5050.</td>
<td>Nichols Institute Substance Abuse Testing (NISAT), 8965 Balboa Avenue, San Diego, CA 92123, 600-446-4728/619-694-5050.</td>
<td>Nichols Institute Substance Abuse Testing (NISAT), 8965 Balboa Avenue, San Diego, CA 92123, 600-446-4728/619-694-5050.</td>
</tr>
<tr>
<td>Pharmacel Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 617-595-0294, (Formerly: Harris Medical Laboratory).</td>
<td>Physicians Reference Laboratory Toxicology Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913-336-4070.</td>
<td>Physicians Reference Laboratory Toxicology Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913-336-4070.</td>
</tr>
<tr>
<td>Precision Analytical Laboratories, Inc., 13300 Blanco Road, suite #150, San Antonio, TX 78216, 512-493-3211.</td>
<td>Puckett Laboratory, 4200 Mamie Street, Hattiesburg, MS 39402, 601-264-3556/600-844-0379.</td>
<td>Puckett Laboratory, 4200 Mamie Street, Hattiesburg, MS 39402, 601-264-3556/600-844-0379.</td>
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</table>
Regional Toxicology Services, 15305 NE, 40th Street, Redmond, WA 98052, 206-882-3400.


Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205-581-4170.

Roche Biomedical Laboratories, 1957 Lakeside Parkway, suite 542, Tucker, GA 30084, 404-939-4811.

Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601-342-1286.

Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800-437-4986.

Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800-749-3788.

S.E.D. Medical Laboratories, 500 Walter NE, suite 500, Albuquerque, NM 87102, 505-849-8800.

Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800-648-5472.

SmithKline Beecham Clinical Laboratories, 7600 Tytore Avenue, Van Nuys, CA 91405, 818-376-2520.

SmithKline Beecham Clinical Laboratories, 5175 Presidential Drive, Atlanta, GA 30340, 404-634-0205. (name changed: formerly SmithKline Bio-Science Laboratories).

SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 706-2010.

SmithKline Beecham Clinical Laboratories, 11638 Administration Drive, St. Louis, MO 63146, 314-567-3900.

SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800-523-5447. (name changed: formerly SmithKline Bio-Science Laboratories).

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214-639-1301. (name changed: formerly SmithKline Bio-Science Laboratories).

South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219-234-4179.

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405-272-7052.

St. Louis University Forensic Toxicology Laboratory, 1208 Farr Lane, St. Louis, MO 63104, 314-877-8428.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, suite 208, Columbia, MO 65203, 314-882-1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305-593-2260.

The following laboratories voluntarily withdrew from the National Laboratory Certification Program:

None.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 92-36941 Filed 11-4-92; 8:45 am]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Preliminary Certification of No Adverse Impact on Theodore Roosevelt National Park and Lostwood Wilderness Area Under Section 165(d)(2)(C)(iii) of the Clean Air Act

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of preliminary determination under section 165(d)(2)(C)(iii) of the Clean Air Act.

SUMMARY: This notice announces the preliminary determination by the Federal Land Manager (FLM) of Theodore Roosevelt National Park and Lostwood Wilderness Area in North Dakota subject to Prevention of Significant Deterioration (PSD) of air quality requirements will not adversely affect the resources of the park or wilderness area. The Department of the Interior has decided, as a matter of policy, to invite full public review of the issues involved and thereafter to make a final decision on the basis of the best available information. The intent of this notice is to alert interested parties to the availability of supporting documentation and to solicit comments on the preliminary determination.

DATES: Comments must be received on or before December 7, 1992.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Chief, Policy, Planning, and Permit Review Branch, National Park Service-AIR, P.O. Box 25287, Denver, CO 80225.

Supporting Documentation

Copies of the supporting documentation are available for public inspection and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, at the following locations: National Park Service, Main Interior Building, room 3223, 18th and C Streets NW., Washington, DC; National Park Service, Air Quality Division, 12795 W. Alameda Parkway, room 215, Lakewood, CO; Theodore Roosevelt National Park Headquarters, Medora, ND; and Lostwood National Wildlife Refuge, Kenmare, ND. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: John Bunyak, Air Quality Division, National Park Service-AIR, P.O. Box 25287, Denver, CO 80225, telephone number 303) 969-2071.

SUPPLEMENTARY INFORMATION: The PSD provisions of the Clean Air Act (the Act) deal with major new or modified facilities wishing to locate in relatively unpolluted areas of the country ("clean air regions"). In certain instances, the new pollution might affect federal conservation areas ("Clean I areas"). which were set aside for their pristine air quality or other natural, scenic, recreational, or historic values vulnerable to air pollution. In this situation, the Act imposes special requirements on the proposed new or modified facilities to insure that the pollution from them will be minimized. In addition, the Act imposes special responsibilities on the managers of the federal Class I areas to insure that no major new or modified facility will have an unacceptable adverse impact on the areas' protected resources.

The Act establishes several "standards" or "tests" for judging a proposed facility's impact on the clean air regions in general, and on the Class I areas in particular. These standards or tests include, among others, National Ambient Air Quality Standards (NAAQS); PSD Classes I, II, and III air pollution increments; and the adverse impact determination for Class I areas. In brief, NAAQS are standards applicable to the entire country and must not be violated under any circumstances. These standards represent those pollution levels acceptable for protecting the public health and national welfare. Attainment and maintenance of these NAAQS constitute one of the fundamental purposes of the Clean Air Act: All areas presently not in compliance with the standards must improve their air quality to meet them, and all areas cleaner than the standards must not deteriorate so as to violate them.

The PSD increments and the adverse impact determination are the primary tools of the PSD provisions which govern the permitting of proposed major new sources of pollution in clean air.
regions. The Class I increments apply to the 158 natural, scenic, or historic areas of special national significance (national parks and wilderness areas) which Congress designated as Class I in the Act. The Class I increments represent the small amount of additional pollution that Congress thought, as a general rule, should be allowed in Class I areas. These increments define the restriction on additional pollution which Congress thought necessary in most cases for protection of the resources in federal Class I areas. Currently, Class I increments have been established for particulate matter, sulfur dioxide (SO\textsubscript{2}), and nitrogen dioxide (NO\textsubscript{2}). Typically, a proposed facility must not cause or contribute to exceedances of the Class I increments.

The "adverse impact" determination, however, provides the possible exception to the general rule described above. The adverse impact determination is a site-specific test which examines whether or not a proposed project will, in fact, unacceptably affect the resources of a Class I area. If the manager of the federal Class I area determines, and convinces the permitting authority, that a proposed facility will adversely affect the Class I area even though it will not cause an exceedance of the Class I increment, then the permitting authority may not authorize the facility. Conversely, if the FLM determines that a proposed facility will not adversely affect the area, then the permitting authority (the state or the Environmental Protection Agency) may authorize the facility even though the facility's emissions may cause or contribute to an exceedance of the Class I increment. In this situation, the facility must, nevertheless, not exceed an alternate set of Class I increments established by the Act. Thus, the adverse impact test is critical for a proposed facility with the potential to affect a Class I national park or wilderness area.

The action which is the subject of today's notice concerns Theodore Roosevelt NP and the Lostwood WA, both mandatory Class I areas located in North Dakota. Dakota Gasification Company (DGC) is proposing to increase the allowable (i.e., permitted) emissions from their facility located in the vicinity of the Class I areas. Results of the dispersion modeling analyses performed by the State of North Dakota indicate that the modified facility would meet the NAAQS and Class I increments, but would significantly contribute to exceedances of the SQ\textsubscript{2} Class I increment at both Theodore Roosevelt NP and Lostwood WA (see detailed discussion in following sections). Given the modeled Class I increment exceedances, DGC has several options available for obtaining a modified permit. One option is to request certification from the FLM under section 165(d)2(C)(iii) of the Clean Air Act that the project will have no adverse impact on the resources of Theodore Roosevelt NP or Lostwood WA even though the Class ISQ\textsubscript{2} increment would be exceeded. Another option would be to reduce emissions further so that the source would not significantly contribute to increment exceedances. Dakota Gasification Company has chosen to request FLM certification of no adverse impact. Therefore, the adverse impact determination may be the determining factor in the State of North Dakota's pending permit decision for the DGC project.

Prevention of Significant Determination New Source Applicant

Dakota Gasification Company has submitted an application to the North Dakota State Department of Health and Consolidated Laboratories (the State) to amend the PSD permit for the Great Plains Synfuels Plant (GPSP). The GPSP is located near Beulah, North Dakota, approximately 120 kilometers east of Theodore Roosevelt NP and 150 kilometers southeast of the Lostwood WA. The facility was originally permitted in 1977 and began operation in 1984. The air pollution control equipment initially installed as best available control technology (BACT) failed to comply with the permitted SO\textsubscript{2} limit, and the current SO\textsubscript{2} emissions continue to exceed the permitted limit.

In their application, DGC proposes to (1) redefine BACT for SO\textsubscript{2} from the main stack, (2) increase the maximum sulfur content of the coal utilized, and (3) increase main stack nitrogen oxide (NO\textsubscript{x}) emissions as a result of the higher nitrogen levels in the fuel and increased firing of liquid fuels in the boiler. The net changes in actual and permitted emissions at the GPSP (in tons per year) as a result of the proposed modification are summarized in the following table.

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Permitted emissions</th>
<th>Actual emissions</th>
<th>Proposed emissions</th>
<th>Net change in permitted emissions</th>
<th>Net change in actual emissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sulfur dioxide</td>
<td>8,988</td>
<td>33,459</td>
<td>15,409</td>
<td>+6,421</td>
<td>+18,050</td>
</tr>
<tr>
<td>Nitrogen oxides</td>
<td>3,451</td>
<td>4,012</td>
<td>3,795</td>
<td>+344</td>
<td>+217</td>
</tr>
<tr>
<td>Particulate matter</td>
<td>891</td>
<td>2,141</td>
<td>874</td>
<td>-17</td>
<td>-1,542</td>
</tr>
<tr>
<td>Carbon monoxide</td>
<td>2,110</td>
<td>2,240</td>
<td>-279</td>
<td></td>
<td>+130</td>
</tr>
</tbody>
</table>

*Carbon monoxide emissions were not listed in the permit, but were included in the original analysis for the facility.

As the above table shows, although the proposed modification would result in significant net increases in permitted SO\textsubscript{2} and NO\textsubscript{x} emissions from the GPSP, the modification would also result in substantial reductions in current actual SO\textsubscript{2}, NO\textsubscript{x}, particulate matter, and carbon monoxide emissions. The substantial reduction in actual SO\textsubscript{2} emissions would result from the installation of a wet limestone flue gas desulfurization system which will control SO\textsubscript{2} emissions from the main boiler stack by at least 93 percent.

Summary of Modeled Class I Area Impacts

Class I Increments

The State, which has been delegated complete PSD authority by the Environmental Protection agency, used dispersion modeling techniques to determine the cumulative impacts at Theodore Roosevelt NP and Lostwood WA from the proposed GPSP emission increases and other PSD increment-consuming sources in the area. Given the distances involved (120 km from GPSP to the closest Class I area), the State used the long-range transport MSPPU model for this analysis.

Modeling results for the GPSP Class I increment analysis were characterized by relatively high predicted SO\textsubscript{2} concentrations, but very low NO\textsubscript{x} concentrations. Exceedances of the allowable 3-hr and 24-hr increments for SO\textsubscript{2} were predicted at Theodore Roosevelt NP, while the 24-hr SO\textsubscript{2} increment was exceeded at the Lostwood WA. No exceedances of the annual average SO\textsubscript{2} or NO\textsubscript{x} Class I increments were modeled at either area. The cumulative modeling results show
Theodore Roosevelt NP. The highest micrograms per cubic meter (μg/m$^3$) predicted concentration was 46.1 that the highest overall 3-hr SO$\text{2}$ concentration, when the State) was 27.2 μg/m$^3$, while the highest 24-hr prediction with a significant GPSP contribution remained at 27.2 μg/m$^3$. The maximum 24-hr concentration at the Lostwood WA when the GPSP contributed significantly was 5.4 μg/m$^3$. Overall, at Theodore Roosevelt NP there were eight 24-hr exceedances when the GPSP contributed significantly, and one 3-hr exceedance with significant GPSP contribution. At the Lostwood WA, GPSP contributed significantly to one 24-hr Class I increment exceedance. The State of North Dakota has established the following SO$\text{2}$ Class I significant impact levels: 1.0 μg/m$^3$, 3-hr, 0.2 μg/ m$^3$, 24-hr, and 0.1 μg/m$^3$, annual average.

As mentioned previously, in the case of a permit issued under a FLM certification of no adverse impact, the source must still comply with an alternative set of PSD increments. Because only 3-hr and 24-hr SO$\text{2}$, 24-hr Class I increment exceedances were modeled, it is only necessary to compare the maximum modeled concentrations to the alternate SO$\text{2}$ increments for these averaging times. The alternate 3-hr and 24-hr SO$\text{2}$ increments are 325 and 91 μg/ m$^3$, respectively. The results of the State’s modeling analysis reported above show that the maximum predicted concentrations at Theodore Roosevelt NP and Lostwood WA are well below the alternative Class I increments.

**Visibility**

Dakota Gasification Company performed a visibility analysis using the Environmental Protection Agency’s VISIBLE computer model. The results of this analysis indicate that there would be a decrease in visual plume impacts with the proposed permitted emissions, compared to the originally permitted emissions or the existing actual emission rates. This is due to the fact that the effects of the proposed increase in NO$\text{2}$ emissions are more than offset by the decrease in allowable particulate matter emissions. The potential for regional haze impacts was addressed by analyzing the one year of on-site meteorological data and five years of representative Federal Aviation Administration hourly meteorological data for the existence of stagnation atmospheric conditions necessary for regional haze formation. The analysis indicates that the frequency and duration of stagnant atmospheric conditions are not sufficient to allow significant or long-term regional haze events attributable to local sources. Therefore, it is unlikely that emissions from the GPSP would contribute significantly to regional haze impacts at Theodore Roosevelt NP or the Lostwood WA.

**Adverse Impact Decision**

The FLM has stated that air pollution effects on resources in Class I areas constitute an unacceptable adverse impact if such effects:
1. Diminish the national significance of the area;
2. Impair the structure and functioning of ecosystems; and/or
3. Impair the quality of the visitor experience.

Factors that are considered in determining whether an effect is unacceptable, and therefore adverse, include the projected frequency, magnitude, duration, location, and reversibility of the impact. The FLM will consider the following in this analysis:
1. Will the effects last long enough, occur frequently enough, and/or occur on a scale large enough to impair the structure and functioning of ecosystems in the park or wilderness area, impair visitor experience or diminish the national significant of the area?
2. Are the effects reversible if the stress causing them is removed from the area?

**Findings and Determination**

The FLM certified no adverse impacts for Class I areas in North Dakota twice before, once in 1982 for both Theodore Roosevelt NP and Lostwood WA, and then again in 1984 for Theodore Roosevelt NP only. In the 1982 certification, the FLM determined that increased SO$\text{2}$ emissions would not adversely affect plants, including lichens, in the park and wilderness area. In the 1984 certification the FLM concluded the following:
1. Plant and animal species known to be sensitive to low levels of SO$\text{2}$, ozone, and particulate matter are present in Theodore Roosevelt NP. Pollutant levels predicted to occur from all increment-consumers sources appear to be below the threshold values for adverse effects.
2. Soils in the park are buffered and are therefore unlikely to be affected by acidic rainfall events. Similarly, the streams, ponds, and rivers are also unlikely to be affected.
3. A field evaluation of sensitive species in the park found no symptoms of visible injury due to ambient air pollution.
4. The review indicated that predicted SO$\text{2}$ concentrations are not of sufficient magnitude to diminish the role of lichens in the park. Thus, it does not appear that the structure and functioning of ecosystems would be impaired, nor would there be any impairment to the visitor experience, or diminution of the national significance of the park.

To help assess the impacts of the Dakota Gasification Company’s permit modification request on Theodore Roosevelt NP and the Lostwood WA, it is useful to compare the current air quality situation in North Dakota to that of 1984, and to consider the new air quality effects information that has become available since that time. Several PSD facilities which had quality permits in 1984 have been shut down, and several proposed PSD facilities which had obtained permits to construct chose to let those permits expire for economic reasons. Consequently, the total number of PSD facilities in or near North Dakota (and associated emissions) has been reduced from 17 in 1984 to 11 currently (including GPSP). In addition, oil and gas activity in the State has decreased since 1984, and many previously flared gas wells are now tied to gas processing plants. As a result, even with the proposed GPSP allowable emissions increase, the potential SO$\text{2}$ Class I impacts would be lower now than when the last certification was granted in 1984. To demonstrate this, the State remodeled the 1984 scenario using the same procedure that was applied for the current GPSP Class I analysis. The results of this analysis do indeed show that the increase in Class I area impacts due to the proposed allowable GPSP emissions increase is more than offset by the reduction in impacts due to the attrition of permitted major PSD sources and the reduction in oil and gas activity since 1984. As an example, the total number of 24-hr SO$\text{2}$ exceedances at Theodore Roosevelt NP fell from more than 135 in 1984 to 23 currently.

Over the last several years, the National Park Service Air Quality Division and the State have jointly monitored ambient SO$\text{2}$ levels at both Theodore Roosevelt NP and the Lostwood WA. The historical data collected at these monitoring sites show that the ambient SO$\text{2}$ levels are well below both the federal and State ambient air quality standards. In fact, 80-95 percent of the time, the SO$\text{2}$ levels
were below the minimum detectable limit of the analyzer. In other words, the concentration was so low that it was undetectable. Figures showing the 1-hr, 3-hr, 24-hr, and annual mean SO₂ concentrations are provided in the State’s “Technical Support Document for PSD Class I Variance Request” (Figures 3-6 through 3-9), which is part of the supporting documentation available for public review.

Since 1984, there has been a limited amount of new information available regarding the status of resources in Theodore Roosevelt NP and the Lostwood WA. First, a 1986 study showed that mosses at Theodore Roosevelt NP were not being adversely affected by air pollutants. Second, surface water chemistry data collected at the Lostwood WA in 1987 indicated that temporary wetlands in the vicinity of the park or wilderness area are probably well-buffered and not highly susceptible to acidification. Finally, a cursory review of the National Atmospheric Deposition Program data from North Dakota showed that the amount of sulfate in wet deposition did not change appreciably between 1981 and 1990. Given the increment situations at both Theodore Roosevelt NP and the Lostwood WA, it is likely that future industrial activities proposed in the vicinity of these areas would also significantly contribute to Class I increment exceedances. Requesting applicants to again ask the FLM to certify no adverse impacts. In order to provide adequate information for future adverse impact determinations, follow-up studies to better document current conditions and identify trends with respect to air pollution impacts to sensitive resources at these Class I areas are warranted. Therefore, the FLM recommends that the State consider asking sources, like Dakota Gasification Company—i.e., sources that contribute to the pollution affecting these areas—to support post-construction monitoring activities to gather this necessary information. The FLM would be happy to supply the State with specific data needs and to discuss the appropriate monitoring requirements to obtain this information.

In conclusion, the findings of the FLM's review of Dakota Gasification Company's proposed modification of the Great Plains Synfuels Plant PSD permit are as follows:

1. The proposed increase in allowable emissions should not increase perceptible plume impacts or contribute to regional haze impacts in either Theodore Roosevelt NP or Lostwood WA.

2. The substantial reductions in actual emissions from the GPSP (over 16,000 tons per year of SO₂) would result in an overall environmental improvement compared to existing conditions at the plant.

3. There is no evidence of existing adverse impacts on biological resources due to air pollution at either Theodore Roosevelt NP or the Lostwood WA.

4. In general, the air quality in North Dakota appears to have improved, for various reasons, since the FLM's last certification of no adverse impacts in 1984.

5. The maximum predicted pollutant concentrations at Theodore Roosevelt NP and the Lostwood WA are well below the alternate Class I increments.

6. There is no reason to believe that the proposed new allowable emissions from the GPSP would cause or contribute to impairment of the structure and functioning of ecosystems at Theodore Roosevelt NP or the Lostwood WA. Likewise, there should be no impairment to the visitor experience, or diminution of the national significance of the park or wilderness area.

Based on the above findings, and the overall analysis, the FLM preliminarily concludes that the proposed Dakota Gasification Company permit modification would not cause an unacceptable, adverse impact on the natural resources of Theodore Roosevelt NP or the Lostwood WA.

These findings and review are based on emissions as proposed by the Dakota Gasification Company and the analysis presented by the State of North Dakota. The conclusion reached in this review should not be extrapolated to any future permit applications in the vicinity of Theodore Roosevelt NP or the Lostwood WA. Each future application must be reviewed on a case-by-case basis, because a source's emission parameters, such as stack height, gas temperature, and geographic location, determine its interaction with other sources and hence, the potential for effects. New applicants that contribute to Class I increment exceedances must demonstrate to the FLM's satisfaction that the proposed source will not cause or contribute to an adverse impact on the resources of Theodore Roosevelt NP or the Lostwood WA.

Interested parties are invited to comment on this preliminary determination. Comments should be confined to the issue of whether the air quality related values (visibility or biological resources) of Theodore Roosevelt NP or the Lostwood WA would be adversely affected by the proposed permit modification. Comments on other aspects of the project should be directed to the State when the State announces a public comment period on the permit modification approval.


Michael Hayden, Assistant Secretary for Fish and Wildlife and Parks, Federal Land Manager of Theodore Roosevelt National Park and Lostwood Wilderness Area.

Bureau of Land Management

| U.T.-080-03-4210-02 |

Vernal District Advisory Council; Meeting

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of advisory council meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and CFR part 1780, that a meeting of the Vernal District Advisory Council will be held on Thursday, December 17, 1992. The meeting will begin at 7 p.m. in the District Conference Room at 170 South 500 East, Vernal, Utah.

The purpose of the meeting is to provide an opportunity for the Advisory Council, as a group or as individuals, to discuss and make recommendations to the Vernal District Manager concerning (1) The Draft Environmental Impact Statement/Oorary to Interstate 70 Highway and (2) a proposal to reintroduce Black Footed Ferrets to the District. The Draft EIS and the proposed Ferret reintroduction are the only two agenda items.

The public is invited to the meeting and may, if they choose, orally address the Advisory Council concerning these two matters. Persons desiring to address the Council must make prior arrangements by contacting the District Manager, David E. Little, phone number (801) 789-1362, prior to close of business on Wednesday, December 16. If several persons wish to speak, a speaking time limit may be imposed.

FOR FURTHER INFORMATION CONTACT: The District Manager, Vernal District Office, 170 South 500 East, Vernal, Utah, 84078 or call (801) 789-1362.


Gary R. Hunter, Acting District Manager.
Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 184(d) and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW104902 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16% percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW104902 effective July 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Florence R. Speltz,
Supervisory Land Law Examiner.

[FR Doc. 92-26873 Filed 11-4-92; 8:45 am]
BILLING CODE 4310-22-M

Conveyance of Public Lands; Order Providing for Opening of Lands; Oregon; Correction

The citation stated in paragraph 4 in FR Doc. 92-24478, published on page 46403, in the issue of Thursday, October 8, 1992, is hereby corrected as follows:

On page 46403, column 2, in paragraph 4, line 10, reads "30 U.S.C. 1716, Sec. 38," and is corrected to read "30 U.S.C. Sec. 38".


Robert E. Mollohan,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-26874 Filed 11-4-92; 8:45 am]
BILLING CODE 4310-33-M

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management is proposing to sell, under section 203 of the Federal Land Policy and Management Act of 1976, public land described as Salt Lake Meridian, T. 26 S., R. 6 W., sec. 29, tract 37, containing 1.38 acres located in Beaver County, Utah. Because of the location in relation to other private land and the past history of use, the land will be sold by direct sale to Lenzy and Mongli Puffer at the appraised fair market value of $500. The purpose of the sale is to provide the Puffers the land they need to access, secure, and preserve their home, family heritage and other investments located on public land.

DATES: Comments must be submitted on or before December 21, 1992. The sale will be conducted no sooner than January 4, 1993.

ADDRESSES: All comments concerning this proposed sale should be addressed to Gordon Staker, District Manager, Cedar City District, 176 East D.L. Sargent Drive, Cedar City, Utah 84720.

FOR FURTHER INFORMATION CONTACT: Arthur L. Tait, Area Manager, at 365 South Main, Cedar City, Utah 84720 (801) 586-2458.

SUPPLEMENTARY INFORMATION: The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action or on August 2, 1993, whichever occurs first. Only the surface estate will be sold. The patent, when issued, will contain a reservation for all minerals to the United States, together with the right to prospect for, mine and remove the minerals. There will also be reserved to the United States, a right-of-way for ditches or canals constructed by the authority of the United States. The patent will be subject to the following covenant: Pursuant to the authority contained in Executive Order 11988 and section 206 of the Act of October 21, 1976 (90 Stat. 2756, 43 U.S.C. 1716), said land, up to an elevation of 6,820 feet above sea level, will be used for agricultural purposes only, and no buildings or dwellings will be constructed, placed, or allowed upon said land. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.


Gordon Staker,
District Manager.

[FR Doc. 92-26875 Filed 11-4-92; 8:45 am]
BILLING CODE 4310-DQ-M

Proposed Continuation of Withdrawal; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that 80 acres of a withdrawal for the Guernsey Reservoir, North Platte Project, continue for an additional 50 years. The lands would remain closed to mining entry, but continue to be open to mineral leasing.

DATES: Comments must be received on or before February 3, 1993.

ADDRESSES: Comments should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Duane Feick, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-775-6127.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that part of the withdrawal made by Secretarial Order of November 21, 1904, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714 (1988). The land is described as follows:

Sixth Principal Meridian
T. 27 N., R. 68 W., Sec. 5, NW¼S½W½; Sec. 15, NW¼S½E½.

The area described contains 80 acres in Platte County.

The purpose of the withdrawal is to protect the Guernsey Reservoir, North Platte Project. The withdrawal segregates the land from operation of the mining laws, but not the mineral leasing laws. This notice supplements FR 14450 (April 11, 1984) which inadvertently left out the described lands. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of ninety (90) days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to Ray Brubaker, State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for...
Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service’s clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–0010), Washington, DC 20503, telephone 202–395–7340.

Title: Mourning Dove Call-Count Survey. OMB Approval Number: 1018–0010.

Abstract: The survey is an annual cooperative effort between State wildlife agencies and the U.S. Fish and Wildlife Service to obtain indices of mourning dove population size. The resulting assessment of the population status serves to guide both the Service and State wildlife agencies in the annual promulgation is regulations for hunting mourning doves. Survey data are also used to plan and evaluate dove management programs and provide specific information necessary for dove research.

Service Fiscal Number(s): 3–139.

Frequency: Annually.

Description of Respondents: U.S. Fish & Wildlife Service and State fish and wildlife biologists. Estimated Completion Time: The reporting burden is estimated to average 2.5 hours per response, including time for reviewing instructions (15 minutes), gathering data during survey stops (2 hours), and completion and review of form (15 minutes).

Annual Responses: 1,062.
Annual Burden Hours: 2,655 (1,062 responses x 2.5 hours per response).


William F. Hartwig,
Acting Assistant Director—Refuges and Wildlife.

FR Doc. 92–28797 Filed 11–4–92; 8:45 am
BILLING CODE 4310–22–M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

Applicant: Jack Clary, Cedar Springs, MI, PRT–773235.

The applicant requests a permit to import the sport-hunted trophy of a male bontebok (Damaliscus dorcas dorcas) culled from the captive-herd of J. C. Troskie, Welkom, South Africa, for enhancement of survival of the species.


The applicant requests a permit to import two pairs of captive-bred Cabot's tragopan (Tragopan caboti) from Glen & Monica Howe, Ontario, Canada for captive-breeding.

Applicant: U.S. Fish and Wildlife Service, Regional Director—Region 1, Portland, OR, PRT–702831.

The applicant requests amendment to their current permit to include take of the following species: Marbled murrelet (Brachyramphus marmoratus), saltwater crocodile (Crocodylus porosus), Myrtle’s silverspot butterfly (Speyeria zerene myrtile), 28 Hawaiian plants and 7 California plants for the purposes of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.


The applicant requests amendment to their current permit to include take of Kanab ambersnail (Oxydona haydeni) spp.] for the purposes of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

Applicant: U.S. Fish and Wildlife Service, Regional Director—Region 4, Atlanta, GA, PRT–697819.

The applicant requests amendment to their current permit to include take of various mammals, fish, mussels and 21 plants, and for import and export of Puerto Rican crested toads (Peltophryne lemur) for purposes of scientific research and enhancement of propagation and survival of the species as prescribed in Service recovery documents.

Applicant: U.S. Fish and Wildlife Service, Regional Director—Region 8, Denver, CO, PRT–704930.

The applicant requests amendment to their current permit to include take of Kanab ambersnail (Oxydona haydeni) spp]: Ute ladies’-tresses (Spiranthes diluvialis); clay reed-mustard (Schoenocrambe agrillacea); Barnaby reed-mustard (Schoenocrambe barnesy); and for import and export of black-footed ferrets (Mustela nigripes) for purposes of scientific research and enhancement of propagation and survival of the species as prescribed in Service recovery documents.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45 – 4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703) 356–2104; FAX: (703) 358–2281.

Susan Jacobsen,
Acting Chief, Branch of Permits, Office of Management Authority.

FR Doc. 92–30869 Filed 11–4–92; 8:45 am
BILLING CODE 4310–65–M

Minerals Management Service

Alaska Outer Continental Shelf; Public Scoping Meetings Regarding the Environmental Impact Statement for Proposed Oil and Gas Lease Sale 158, Gulf of Alaska-Yakutat

The October 5, 1992, Federal Register contained Call for Information and Nominations and Notice of Intent (NOI)
to prepare an Environmental Impact Statement (EIS) for proposed Oil and Gas Lease Sale 158, Gulf of Alaska-Yukutak.

The NOI for the proposed sale announced the scoping process that will be followed for the preparation of each EIS. The scoping process will involve Federal, State, and local governments and other interested parties aiding the Minerals Management Service in determining the significant issues and alternatives to be analyzed in the EIS. This will be done through scoping meetings.

The area included in this sale is described in the Federal Register Notice mentioned above. It is expected that the information received at the scoping meetings will aid in identifying specific proposals and alternatives.

Scoping meetings will be held as follows:

November 17, 1992, Borough Assembly Chambers, Borough Council Meeting (agenda item), 7:30 p.m., Yukutak, Alaska.

November 18, 1992, Council Chambers, City Council Meeting (agenda item), 7 p.m., Cordova, Alaska.

November 23, 1992, 6th Floor Conference Room, 949 East 36th Avenue, 12 to 3 p.m., Anchorage, Alaska.

Additional information concerning these meetings can be obtained from Mr. Paul Lowry, Minerals Management Service, Leasing and Environment Office, 949 E. 36th Avenue, Anchorage, Alaska 99508-4302. Telephone: (907) 271-6574.


Alan D. Powers,
Regional Director, Alaska OCS Region.

Release of Waybill Data

The Commission has received a request from the ALK Associates, Inc for permission to use certain data from the Commission's 91 ICC Waybill Samples. A copy of the request (WB678-10/21/91) may be obtained from the ICC Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data (33 Parts 365 (Sub-No. 2)) are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927-6196.

Sidney L. Strickland, Jr.,
Secretary.

DEPARTMENT OF JUSTICE
Notice of Consent Decree in Action Brought Under the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in United States v. Bradburn, et al., Civil Action No. 91-1375-C, was lodged with the United States District Court for the District of Kansas on October 22, 1992. This Consent Decree resolves a Complaint filed by the United States against Kenneth Bradburn pursuant to section 113 of the Clean Air Act, 42 U.S.C. 7413.

The United States Department of Justice brought this action on behalf of the U.S. Environmental Protection Agency, seeking to recover a civil penalty against defendant Bradburn for alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants for asbestos ("the asbestos NESHAP") during the 1988 demolition of the Colonel Marsh M. Murdock Elementary School in Wichita, Kansas. As part of the settlement in this case, defendant Bradburn will pay the United States a civil penalty of $37,500 and will conduct future demolition and renovation operations in compliance with the inspection, notification, and work practice requirements of the asbestos NESHAP.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to United States v. Bradburn, et al., DOJ number 90-5-2-1-1545.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, District of Kansas, 401 North Market Street, Wichita, Kansas 67202, and at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the proposed Consent Decree may also be obtained from the Consent Decree Library, 601 Pennsylvania Avenue, Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed Consent Decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the Consent Decree, please enclose a check in the amount of $3.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,
Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

BASF Corp., et al.; Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree
United States v. BASF Corporation, et al. Civil Action No. 89-323056-20, was lodged on October 27, 1992, with the United States District Court for the District of South Carolina, Greenville Division. This agreement resolves a judicial enforcement action brought by the United States against the defendants pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 42 U.S.C. 9006 and 9007, for the cleanup of the Golden Strip Septic Tank Superfund Site ("Site") located in Simpsonville, South Carolina, and for the recovery of costs expended by the United States in connection with the Site.

The Consent Decree requires the defendants to implement the remedial action selected by the Environmental Protection Agency ("EPA") for the Site, to clean up the Site, to pay costs, including oversight, and to reimburse the United States for 100 percent of its costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to United States v. BASF Corporation, et al., DOJ Ref. # 90-11-2-721.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 601 Federal Building, 300 East Washington Street, Greenville, South Carolina, 29601; and at the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, D.C. 20004. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, D.C. 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $19.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Vicki A. O'Meara,
Acting Assistant Attorney General, Environment and Natural Resources Division.

Notice of Consent Decree in Action Brought Under the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in United States v. Brodburn, et al., Civil Action No. 91-1375-C, was lodged with the United States District Court for the District of Kansas on October 22, 1992. This Consent Decree resolves a complaint filed by the United States against Wichita Medical Facility, Ltd. pursuant to section 113 of the Clean Air Act, 42 U.S.C. 7413.

The United States Department of Justice brought this action on behalf of the U.S. Environmental Protection Agency, seeking to recover a civil penalty against defendant Wichita Medical Facility, Ltd. for alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants for asbestos ("the asbestos NESHAP") during the 1988 demolition of the Colonel Marsh M. Murdock School in Wichita, Kansas. As part of the settlement in this case, defendant Wichita Medical Facility, Ltd. will pay the United States a civil penalty of $13,500 and will take adequate steps to ensure that future demolition and renovation operations of buildings it owns will be conducted in compliance with the inspection, notification, and work practice requirements of the asbestos NESHAP.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to United States v. Hepworth, et al., DOJ number 90-5-2-1-1545.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, District of Kansas, 401 North Market, Wichita, Kansas 67202, and at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the proposed Consent Decree may also be obtained from the Consent Decree Library, 601 Pennsylvania Avenue, Box 1097, Washington, D.C. 20044. A copy of the proposed Consent Decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the Consent Decree, please enclose a check in the amount of $25,000 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,
Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

B&L Corp.; Notice of Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 23, 1992, a proposed Consent Decree in United States v. B & L Corporation, Civil No. 90-22837, was lodged with the United States District Court for the District of New Jersey. The proposed Consent Decree settles the United States' claims that the defendant had violated various provisions of the Resource, Conservation and Recovery Act. Under the terms of the Consent Decree, the settling defendant will pay $25,000 in civil penalties and implement a testing workplan.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental Protection Agency, Region V, 434 Courtland Street, NE., Atlanta, Georgia, 30385; and at the Consent Decree Library, 601 Pennsylvania Avenue NW., Washington, D.C. 20004, 303-347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, D.C. 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $19.50 (25 cents per page reproduction cost) made payable to Consent Decree Library.

Roger Clegg,
Acting Assistant Attorney General, Environment and Natural Resources Division.

Notice of Consent Decree in Action Brought Under the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in United States v. Bradburn, et al., Civil Action No. 91-1375-C, was lodged with the United States District Court for the District of Kansas on October 22, 1992. This Consent Decree resolves a complaint filed by the United States against Wichita Medical Facility, Ltd. pursuant to section 113 of the Clean Air Act, 42 U.S.C. 7413.

The United States Department of Justice brought this action on behalf of the U.S. Environmental Protection Agency, seeking to recover a civil penalty against defendant Wichita Medical Facility, Ltd. for alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants for asbestos ("the asbestos NESHAP") during the 1988 demolition of the Colonel Marsh M. Murdock School in Wichita, Kansas. As part of the settlement in this case, defendant Wichita Medical Facility, Ltd. will pay the United States a civil penalty of $13,500 and will take adequate steps to ensure that future demolition and renovation operations of buildings it owns will be conducted in compliance with the inspection, notification, and work practice requirements of the asbestos NESHAP.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to United States v. Hepworth, et al., DOJ number 90-5-2-1-1545.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, District of Kansas, 401 North Market, Wichita, Kansas 67202, and at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the proposed Consent Decree may also be obtained from the Consent Decree Library, 601 Pennsylvania Avenue, Box 1097, Washington, D.C. 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $25,000 (25 cents per page reproduction costs) payable to the Consent Decree Library.
Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—CAD Framework Initiative, Inc.

Notice is hereby given that, on July 27, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), CAD Framework Initiative, Inc. ("CFI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the purpose of this additional notification is to disclose the following information: (1) The addition of the following Corporate Members: Compass Design Automation, San Jose, CA; Hitachi, Ltd. Tokyo, JAPAN; Sony Corporation, Kanagawa, JAPAN; and Zyad Corporation, Menlo Park, CA; (2) the addition of the following Associate Members: Intel Corporation, Santa Clara, CA; CPQD-Telebars, Campinas, BRAZIL; Nanyang Technological University, SINGAPORE; Petrotechnical Open Software Corporation, Houston, TX; Hira Ranag, Santa Clara, CA; Bora Prazi, Paris, FRANCE; Peter Haynes, Arden Hills, MN; Alan Smith, Fremont, CA; Patrick Offers, Kanata, ONTARIO, CANADA; Otto Schiebel, Nurnberg, GERMANY; Tueco Tikkanen, Oulu, FINLAND; Mark Schuette, Norcross, GA; John Granacki, Marina Del Ray, CA; (3) Computervision Corporation, Bedford, MA; and Matashita Electric Industries Co., Osaka, JAPAN, have reinstated their Corporate membership in CFI; (4) Ericsson Telecom AG, an existing Corporate Member of CFI, is now listed as Telefonaktiebolaget LM Ericsson, and Harris Semiconductor, an existing Corporate member of CFI, is now listed as Harris Corporation.

On December 30, 1986, CFI filed its original notification pursuant to section 6(a) of the Act. That filing was amended on February 7, 1989. The Department of Justice published a notice concerning the amended filing in the Federal Register pursuant to section 6(b) of the Act of March 13, 1989 (54 FR 10456). A correction notice was published on April 20, 1989 (54 FR 16013).

The last notification was filed with the Department on March 27, 1992. A notice was published in the Federal Register pursuant to section 6(b) of the Act on May 6, 1992 (57 FR 19442). Joseph H. Widmar, Director of Operations, Antitrust Division

DEPARTMENT OF LABOR

Employment and Training Administration

National Advisory Commission on Work-Based Learning; Open Meeting

SUMMARY: The National Advisory Commission on Work-Based Learning was established in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) on December 14, 1990 55 FR 53063 (December 26, 1990). The Commission has broad responsibility to advise the Secretary of Labor on ways to increase the skills levels of the American work force and expand access to work-based learning. The Commission is focusing on three main areas: Developing and expanding private and public work-based learning systems; improving the quality of work-based learning by exploring the development of a voluntary, national system of industry-based skill certification for individuals and accrediting the quality of work-based learning programs; increasing opportunities for employees to make full use of their knowledge and skills in the workplace.

TIME AND PLACE: The seventh meeting will be held on November 18, 1992 from 9 a.m. until 4 p.m. at the Quality Hotel on Capitol Hill, 415 New Jersey Avenue, N.W., Washington, DC 20001, Room: Federal Ballroom North.


The meeting will be open to the public; thirty minutes will be set aside for public comments. Seating will be available for the public on a first-come, first-served basis. Seating will be reserved for the media. Handicapped individuals who may need special accommodations should contact the Office of Work-Based Learning in advance, so that staff can make appropriate accommodations. Individuals or organizations wishing to submit written statements should send five copies to Peter Carlson, Managing Director, National Advisory Commission on Work-Based Learning, FPB S4206, 200 Constitution Ave., NW., Washington, DC 20210 by November 13, 1992.

FOR FURTHER INFORMATION CONTACT: Peter Carlson, Managing Director, National Advisory Commission on Work-Based Learning, U.S. Department of Labor, FPB S4206, 200 Constitution Ave., NW., Washington, DC 20210; Tel. (202) 219-4841.
OFFICE OF NATIONAL DRUG CONTROL POLICY

High Intensity Drug Trafficking Areas; Availability of Funds

AGENCY: Office of National Drug Control Policy.

ACTION: Notice of funds availability.

SUMMARY: Public Law 102–393 directs the Office of National Drug Control Policy (ONDCP) to transfer certain funds to state and local drug control entities in connection with the High Intensity Drug Trafficking Area (HIDTA) program. The purpose of this announcement is to communicate to potential grantees the policies and procedures that will be used in administering the program.

FOR FURTHER INFORMATION CONTACT: Richard Yamamoto, HIDTA Coordinator, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500, Tel. (202) 467-0720.

SUPPLEMENTARY INFORMATION: ONDCP hereby announces its policies and application procedures for funds available under Public Law 102–393 to state and local drug control entities for drug control activities consistent with the approved strategy for each HIDTA.

Eligible Applicants

Public Law 100–462, Nov. 18, 1988, authorized the Director of ONDCP to designate areas meeting certain criteria as HIDTAs. Houston, Los Angeles, Miami, New York and the Southwest Border were so designated as part of the 1990 National Drug Control Strategy. State and local law enforcement agencies located within the specific geographical areas outlined in the 1992 National Drug Control Strategy are eligible to apply for funds under this notice.

Program Objective

The primary objective of the HIDTA program is to identify, target, disrupt and dismantle drug and money laundering organizations operating in the HIDTAs. Under the HIDTA program, State and local jurisdictions focus on cohesive multi-agency law enforcement efforts that target secondary and local drug organizations that support the international core organizations and cartels. Funds must be used strictly for implementing approved drug control plans, and all drug control activities must be consistent with the approved strategy for each HIDTA. The funds cannot be used to supplant existing support for ongoing State or local drug control operations, which should be funded out of the agencies' normal operating budgets.

Available Funds

A total of $36.9 million is available for State and local participation in the five HIDTAs. Of the total, $16 million has been earmarked for the Southwest Border HIDTA and $20 million for the four metropolitan HIDTAs.

Application Procedures

Each applicant must submit a written proposal and grant application to the HIDTA Coordinator in the respective HIDTA. Although the term “grant” will be used throughout this notice, a majority, if not all, of the transfers may be in the form of cooperative agreements. The proposals must include a written statement of the purposes, scope and objective of the initiative; a narrative of the implementation plan and measures of effectiveness; administrative data, including the name and address of the official authorized to enter into the grant agreement between the agency and the U.S. Government; a proposed budget outlining how the funds will be spent; and internal controls which will ensure the funds are spent for stated purposes. The proposals and applications are first submitted to and reviewed by the HIDTA Committee in the HIDTA and, upon approval, forwarded for review by the Department of Justice in the case of the metropolitan HIDTAs, and by the Department of the Treasury in the case of the Southwest Border HIDTA. Next, they are submitted to the Director of ONDCP for review, final approval, and transfer of funds. The applicant may be required to submit additional information deemed necessary prior to approval of the grant.

Funding Mechanism and Restrictions

Upon receipt and approval of the application, the grantee and the government will execute grant agreements specifying the mechanism for receipt of funds and the conditions attendant to initial and continued receipt of the funds. The applicant will be expected to comply with the following conditions prior to the expenditure of any of the funds: all travel funded must be in accordance with published U.S. Government travel regulations; all pertinent information regarding the grant must be made available to the public; applicable civil rights and anti-discrimination statutes must be adhered to; accounting systems and records shall be such that the Comptroller General of the United States shall be able to audit the uses of the grant funds. Other conditions regarding expenditures of grant funds and grantee performance shall be specified in the terms and conditions of the grant that must be executed before any funds may be received.

For any expenditure incurred prior to execution of the grant agreement, detailed transaction records must be submitted along with evidence supporting that the expenditures were for the purposes stated in the legislation. The grant officer will have to approve reimbursement for these expenditures before they can be considered eligible grants costs.

Bob Martinez,
Director.

DATES: Program Solicitation PS 93–02 is scheduled for release approximately November 16, 1992 with proposals due on December 16, 1992.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW, Washington, DC 20506.
FOR FURTHER INFORMATION CONTACT:
William I. Hummel, Director, Contracts and Procurement Division.
[FR Doc. 92-26796 Filed 11-4-92; 8:45 am]
BILLING CODE 7537-01-M

National Endowment for the Arts

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Presenting Development Initiative for Community-based Organizations Section) to the National Council on the Arts will be held on November 16-18, 1992 from 8:30 a.m.-6 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506.

A portion of this meeting will be open to the public on November 18 from 4 p.m.-6 p.m. for policy discussion.

The remaining portions of this meeting on November 16-17 from 8:30 a.m.-6 p.m. and November 18 from 8:30 a.m.-4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1995, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506, 202/682-5532, TTY 202/682-5499, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Yvonne M. Sabine,
Director, Panel Operations, National Endowment for the Arts.
[FR Doc. 92-26684 Filed 11-4-92; 8:45 am]
BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

October 30, 1992.

AGENCY: National Science Foundation.


SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT:
Thomas F. Forhan, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On October 5, 1992 the National Science Foundation published a notice in the Federal Register of permit applications received. A permit was issued to Bill J. Baker, on October 29, 1992.

Thomas F. Forhan,
Permit Office, Division of Polar Programs.
[FR Doc. 92-26858 Filed 11-4-92; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Draft Report on: "A Simplified Model of Aerosol Scrubbing by a Water Pool Overlying Core Debris Interacting With Concrete"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability for comment of Draft NUREG/CR-5501, "A Simplified Model of Aerosol Scrubbing by a Water Pool Overlying Core Debris Interacting with Concrete."

SUMMARY: This notice announces the availability for comment of Draft NUREG/CR-5501, "A Simplified Model of Aerosol Scrubbing by a Water Pool Overlying Core Debris Interacting with Concrete."

Any interested party is invited to submit comments on this report for consideration by the NRC staff. To be assured of consideration, comments must be received by December 31, 1992, or the earliest date noted in the report.
indicated below. Comments received after this date will be considered to the extent possible.

A copy of Draft NUREG/CR-5901 has been placed in the NRC Public Document Room, Gelman Building, 2120 L Street NW, Washington, DC 20555. Free single copies may be obtained by writing to the U.S. Nuclear Regulatory Commission, Attn: Distribution and Mail Services Section, P-370, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley Burson, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Phone (301) 492-3863.

Dated in Rockville, Maryland, this 21st day of September, 1992.
For the Nuclear Regulatory Commission.

Warren Minners,
Director, Division of Safety Issue Resolution,
Office of Nuclear Regulatory Research.

[FR Doc. 92-26884 Filed 11-4-92; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 30-16055-CivP (Civil Penalty)]
Advanced Medical Systems, Inc.,
Appointment of Adjudicatory Employee; Notice

Commissioners: Ivan Selin, Chairman; Kenneth C. Rogers, James R. Courtiss, Forrest J. Remick, E. Cell de Plancue.

Pursuant to 10 CFR 2.4 (1982), notice is hereby given that Dr. Stephen A. McGuire, a Commission employee in the Office of Nuclear Regulatory Research, has been appointed as a Commission adjudicatory employee within the meaning of section 2.4 in order to advise the Commission with respect to issues in this civil penalty proceeding related to four alleged violations of the Commission's radiation protection regulations and of Advanced Medical Systems, Inc.'s license conditions. Dr. McGuire has not been engaged in the performance of any investigative or litigating function in connection with this or any factually related proceeding.

Until such time as a final decision is issued in this matter, interested persons outside the agency and agency employees performing investigative or litigating functions in this proceeding are required to observe the restrictions of 10 CFR 2.780 and 2.781 (1982) in their communications with Dr. McGuire.

For the Commission.

Dated at Rockville, Maryland, this 30th day of October, 1992.
Samuel J. Chilk,
Secretary of the Commission.

[FR Doc. 92-26885 Filed 11-4-92; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 030-20899-EA; ASLB No. 93-670-01-EA]
Geo-Tech Associates, Inc. Geo-Tech Laboratories; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register 37 FR 26710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.


This Board is being established pursuant to a Memorandum and Order issued by the Commission on October 21, 1992 to provide guidance to Presiding Officers regarding the scope of any hearing held on enforcement sanctions imposed for failure to pay user fees (CLI-92-14). More specifically, the Presiding Officer is directed to rule upon the request by Geo-Tech Associates, Inc., the Licensee, for a hearing regarding an Order entitled "Order Revoking License" issued on August 11, 1992 by the NRC's Deputy Chief Financial Officer/Controller revoking Licensee's materials license for failure to pay its annual fee.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:


Robert M. Lazo,
Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 92-20899 Filed 11-4-92; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-029]
Yankee Atomic Electric Co. (Yankee Nuclear Power Station), Exemption

I

The Yankee Atomic Electric Company (YAECC or the licensee) is the holder of Possession Only License No. DPR-3 which authorizes possession and maintenance of the Yankee Nuclear Power Station (YNPS or plant). The license provides, among other things, that the plant is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The facility is a permanently shut down pressurized water reactor, currently in the process of being decommissioned, and is located at the licensee's site in Franklin County, Massachusetts.

II

In a letter dated February 27, 1992, from the licensee, we were informed that YAECC had permanently ceased power operations, removed the fuel from the reactor to the fuel pool, and began to develop detailed plans to decommission the facility. By NRC letter of August 5, 1992, License DPR-3 was modified to a Possession Only License (POL). A condition of the license states: "The licensee is not authorized to operate the reactor. Fuel may not be placed in the reactor vessel."

By letter dated May 22, 1992, the licensee requested an exemption from the requirements of 10 CFR 50—appendix E, sections IV.F.2 and IV.F.3, related to emergency preparedness exercise training requirements. The staff granted this exemption by letter dated July 24, 1992 (57 FR 34156).

A second exemption related to emergency planning was submitted on July 2, 1992, with a concurrent request for NRC approval of a replacement Defueled Emergency Plan (DEP) for the YNPS; this second exemption is the action being evaluated herein. The licensee provided additional information and further clarification of its accident analysis by letters dated July 23, July 30, August 12, August 14, and August 28, 1992.

III

The justification presented by the licensee for the exemption request is that the reactor has been defueled and the fuel removed from the containment (Vapor Container) to the spent fuel storage pool (Spent Fuel Pit) and the reactor cannot be returned to operation because of the August 5, 1992, license amendment. The licensee indicated that
the potential risk to the public was significantly reduced and the range of credible accidents and accident consequences for YNPS were limited for currently configured shutdown and defueled condition. The maximum credible accident for this facility is associated with the spent fuel pit; specifically, a fuel cask handling accident.

The NRC staff has independently calculated the offsite doses resulting from such a fuel handling accident using the assumptions and parameters in the NRC Standard Revised Plan, the Final Safety Analysis Report (FSAR), and the licensee’s submittals of May 22, 1992, and July 2, 1992. The staff's analysis indicates that at the exclusion area boundary, the whole body dose, the thyroid dose, and the skin dose are a small fraction of the Environmental Protection Agency’s (EPA) Protective Action Guidance (PAGs). The licensee’s calculations also show that these doses at the exclusion area boundary are a small fraction of the EPA PAGs. Under the general guidelines defining emergency classifications in NUREG-0854/FEMA-REP-1-Revision 1, “Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Procedures in Support of Nuclear Power Plants,” dated November 1980, for an accident of this nature, the level of severity would not reach a point where offsite protective actions would be warranted. Based on the permanently shut down and defueled status of the facility, the configuration of the stored fuel, and the length of time since power operation, the staff concludes that the YAEc will be fully capable of responding effectively to the spectrum of credible accidents using the proposed DEP.

The NRC staff has reviewed the DEP based on the planning standard of 10 CFR 50.47(b), the requirements of appendix E to 10 CFR part 50, and the guidance criteria of NUREG-0854, taking into consideration the current plant status and inherent low risk posed by the YNPS. The staff also reviewed the DEP using the requirements of 10 CFR 50.47(d) for a license authorizing only fuel loading and low power testing; these requirements address the decreased risk associated with low power operation and are generally appropriate for reviewing the offsite aspects of the DEP.

Based on this review, the Commission has concluded that the YNPS DEP provides an acceptable emergency preparedness program for the YNPS in its permanently shut down status, and the plan provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological accident at the YNPS.

Therefore, an exemption from 10 CFR 50.54(q), which incorporates by reference the standards of 10 CFR 50.47(b) and the requirements of appendix E, would allow YAEC to discontinue offsite planning activities and reduce the scope of its onsite response. The licensee identified the actions that they will take to implement the still applicable portions of the planning standards of 10 CFR 50.47(b) and requirements of appendix E in their DEP.

The Commission will not consider granting an exemption unless special circumstances are present. In the licensee's letter of July 2, 1992, these special circumstances were addressed as follows:

10 CFR 50.12(a)(2)(ii)—Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule.

Licensee's response: The degree of emergency planning and preparedness necessary to provide adequate protection of the public health and safety in a permanently shutdown and defueled condition is significantly less than that provided by the existing Emergency Plan. Therefore, requiring YAEC to comply with the full range of emergency preparedness requirements specified in 10 CFR 50.47(b) and 10 CFR 50, appendix E is not necessary to achieve the underlying purpose of the rule.

10 CFR 50.12(a)(2)(iii)—Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulations were adopted.

Licensee's response: Compliance with the regulations presents an undue hardship to YAEC in that it requires expenditures in excess of those contemplated when the regulation was adopted. The regulation was established for power operation conditions because such conditions could result in the potential for an accident with off-site consequences.

IV

The staff, based on its independent evaluation, agrees with the licensee's analyses and concludes that sufficient bases have been presented for our approval of the exemption request. In addition, the staff finds that there are special circumstances presented that satisfy the requirements of 10 CFR 50.12(a)(2)(ii) and (iii).

V

Based on our Safety Evaluation, the Commission has determined that pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Accordingly, the Commission hereby grants an exemption to the portions of 10 CFR 50.54(q) that apply to operating plants. The exemption will become effective when the YAEc implements its DEP. “Implementation” is defined as completion of all needed procedures and training of personnel.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (57 FR 46885, dated October 13, 1992).

This exemption will become effective when the Defueled Emergency Plan is implemented, as discussed above.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 30th day of October, 1992.

Brian K. Grimes,
Director, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.
[FR Doc. 92-26666 Filed 11-4-92; 8:45 am]
BILLING CODE 7550-01-M

Postal Rate Commission

[Docket No. MC93-1]

United States Postal Service's Request for a Recommended Decision on the Establishment of a Classification and Rates for a Bulk Small Parcel Service and Motion for Adoption of Special Rules of Procedure, and Order

Designating Officer of the Commission and Setting Dates for Intervention and Responses to Motion; Notice

Before Commissioners: George W. Haley, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher, W. H. "Trey" LeBlanc, Ill.; H. Edward Quick, Jr.
October 30, 1992.

Notice is given that on October 28, 1992, the United States Postal Service, pursuant to chapter 36 of title 39 of the United States Code, filed a request with the Postal Rate Commission for a Recommended Decision on establishing a new class of mail for bulk small parcels. Pieces mailed under this classification would have to meet the following requirements: (1) Minimum of 300 pieces per mailings (except for pieces being returned), (2) maximum effective weight of five pounds per piece, (3) maximum size per piece of one-third of a cubic foot, (4) no dimension exceeding 24 inches, (5) prebarcoding, automation compatibility and machinability, and (6) presortation to the BMC (Bulk Mail Center) level. The Postal Service...
anticipateds the class to be used predominantly by firms shipping merchandise to customers.

The Postal Service proposes a per-piece/per-pound rate schedule, with lower rates for pieces remaining within the BMC or SCF (Sectional Center Facility) area in which they are entered, as well as a lower rate for presort to 5-digit ZIP Code areas. The proposed rates are as follows:

<table>
<thead>
<tr>
<th>Inter-BMC Rates:</th>
<th>Intra-BMC Rates:</th>
<th>Destination SCF Rates (5-digit presort required):</th>
<th>Return Rates:</th>
<th>5-digit Presort Discount (available to Inter- and Intra-BMC):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per Piece</td>
<td>Per Piece</td>
<td>Per Piece</td>
<td>Per Piece</td>
<td>Per Piece</td>
</tr>
<tr>
<td>$63.9*</td>
<td>$63.9*</td>
<td>$48.9</td>
<td>$48.9</td>
<td>$42.5</td>
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<tr>
<td>Per Pound</td>
<td>Per Pound</td>
<td>Per Pound</td>
<td>Per Pound</td>
<td>$53.6</td>
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<tr>
<td>$54.1</td>
<td>$63.9</td>
<td>$54.1</td>
<td>$90.3</td>
<td>$90.3</td>
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<tr>
<td>$63.9$</td>
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<td>$53.6</td>
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<td>$63.9$</td>
<td>$90.3</td>
<td>$90.3</td>
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<td>$63.9$</td>
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</tbody>
</table>

There would be no additional charge for forwarding. The original mailer would be offered the option of endorsing the piece so that it would be returned under the rates for this new class with the original mailer, rather than the intended recipient, paying the postage. Current address correction and merchandise return services would be available.

The proposal was accompanied by the filing of direct testimony of five witnesses for the Postal Service. The testimony includes a discussion of costs and rate development, the application of the statutory criteria said to support the proposal, the projected effects on postal revenues and costs, estimates of potential volume conversion to the new class, and the potential benefits to the users of this service.

Intervention

Persons desiring to participate in a proceeding as a limited participator, pursuant to section 20 of the rules of practice (39 CFR 3001.20a) in addition, persons wishing to express their views informally, but not to become a party or limited participator, may file comments pursuant to section 20b of the rules of practice (39 CFR 3001.20b).

The Officer of the Commission

The Officer of the Commission will direct the activities of the Commission personnel assigned to assist him and neither he nor such personnel will participate in, nor advise as to any Commission decision in accordance with 39 CFR 3001.8. The Officer of the Commission shall supply for the record, at the appropriate time, the names of all Commission personnel assigned to assist him in this case.

In this case the Officer of the Commission shall be separately served with three copies of all filings, in addition to and simultaneously with service on the Commission of the 25 copies required by section 10(c) of the rules of practice (39 CFR 3001.10(c)).

Postal Service Motion for Expedited Treatment Under Special Rules

At the same time it filed its Request with the Commission, the Postal Service mailed a Notice of this filing along with a Motion to every participant of record in the Commission's Docket Nos. R90-1 (the most recent omnibus rate case) and R91-1 (a rulemaking to explore methods of improving the Commission's procedures). The Postal Service's Notice described how interested persons could obtain copies of its Request and supporting documents.

In its Motion, the Postal Service asserts that the Commission should consider this Request under special rules, and attached a copy of them to its Motion. The recent Report of the Joint Task Force on Postal Ratemaking, Postal Ratemaking in a Time of Change (D) Stephen A. Gold is appointed Officer of the Commission to represent the interests of the general public in this proceeding. (B) Responses to the Postal Service's Motion for adoption of special rules of procedure in this case are due within 21 days of the publication of this Notice and Order in the Federal Register.

(C) Replies to the responses to the Postal Service's Motion for adoption of special rules of procedure in this case are due seven days after the last day for the filing of the responses.

The Commission Orders

(A) Notices of intervention as full or limited participants in this docket shall be sent to Charles L. Clapp, Secretary, Postal Rate Commission, 1333 H Street, NW., suite 300, Washington, DC 20258-0001 within 21 days of the publication of this Notice and Order in the Federal Register.

(B) Responses to the Postal Service's Motion for adoption of special rules of procedure in this case are due within 21 days of the publication of this Notice and Order in the Federal Register.

(C) Replies to the responses to the Postal Service's Motion for adoption of special rules of procedure in this case are due seven days after the last day for the filing of the responses.

(D) Stephen A. Gold is appointed Officer of the Commission to represent the interests of the general public in this proceeding.

(E) The Secretary of the Commission will have this Notice and Order published in the Federal Register.
SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31382; File No. SR-CBOE-92-02]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing of Amendments to and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing and Trading of Options on the Russell 2000 Index

October 30, 1992.

I. Introduction

On January 21, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposal to list and trade European-style options on the Russell 2000 Index ("Russell 2000" or "Index"), a capitalization-weighted index of domestic equities traded on the New York Stock Exchange ("NYSE"), American Stock Exchange ("Amex") and the National Association of Securities Dealers"s ("NASD") Automated Quotation System ("NASDAQ"). This order approves the CBOE's proposal.

The proposed rule change was noticed for comment in Securities Exchange Act Release No. 30329 (February 3, 1992), 57 FR 4782. No comments were received on the proposed rule change.

Subsequently, the CBOE submitted five amendments to the proposal. Amendment No. 1, filed on February 14, 1992, modifies Exchange Rule 24.9 to allow the listing of capped-style options on the Russell 2000 ("Russell 2000 CAPS"). Specifically, Amendment No. 1 proposes a $20 cap interval for Russell 2000 CAPS and an initial listing of one at-the-money put and call Russell 2000 CAP with an expiration of up to one year. Additional at-the-money series may be listed every two months and, for series with expirations three or more months out, additional series may be listed following a 10-point move in the Index.

Amendment No. 2, filed on April 7, 1992, modifies Exchange Rule 24.14 to include a disclaimer for the Frank Russell Company ("Frank Russell"), the creator of the Index, with regard to the Index.

Amendment No. 3, filed on April 22, 1992, modifies Exchange Rule 24.9(a)(3) to provide for European-style exercise for Index options. In addition, in Amendment No. 3 the CBOE seeks authorization to list long term options ("LEAPS") with expirations from 12 to 36 months after listing. On either the full or reduced value Index ("Russell 2000 Index" or "Index"), the Strike price, interval, bid/ask differential and price continuity rules will not apply to LEAPS until their time to expiration is less than 12 months. The Exchange proposes position limits for Index options equal to 50,000 contracts on the same side of the market, with no more than 30,000 of such contracts in series with the nearest expiration month. Positions in reduced value Index options shall be aggregated with positions in full value Index options, with ten reduced value contracts equal to one full value contract. For reduced value LEAPS, the current and closing Index value would be computed by dividing the Index value by 10 and rounding the resulting figure to the nearest one hundredth (.004 and below would be rounded down to .00 and .005 above would be rounded up to .01). For example, an Index value of 175.46 would become 17.55 for the reduced value LEAPS and an Index

If the Index fails to reach the cap price during the life of the capped option, the option becomes European-style on the last business day before expiration. Due to their characteristics, long capped call options resemble vertical bull spreads (i.e., the combination of one long and one short call position with the same expiration but where the strike price of the short call is higher than the strike price of the long call), except that the capped options achieve the spread position in one transaction. Conversely, long capped put options resemble vertical bear spreads (i.e., the combination of one long and one short put position with the same expiration but where the strike price of the short put is lower than the strike price of the long put); except that the capped options achieve the spread position in one transaction. See Securities Exchange Act Release No. 29885 (October 28, 1991), 56 FR 56255 (order approving File No. SR-CBOE-91-34).

LEAPS is an acronym for Long-Term Anticipation Securities.
value of 175.43 would become 17.54. The reduced Index value would be continuously calculated and disseminated. Other than the reduced value, all Index specifications and calculations would remain the same. Reduced value LEAPS may exist for six-month intervals and, when a new expiration month is listed, series may be near or bracketing the current reduced Index value. Additional series may be added when the value of the underlying Index increases or decreases by 10 to 15%.

Amendment No. 4, filed on September 10, 1992, amends Exchange Rule 24.9(e) to provide that the exercise settlement value for Index options shall be based on an Index value derived from opening prices on the last day of trading prior to expiration (normally a Friday). The proposal also provides that the last day of trading for expiring Index options shall be the day preceding the last day of trading in the underlying securities prior to expiration (normally a Thursday).

Amendment No. 5, filed on October 13, 1992, provides that strike price intervals for Index options will be no less than $5.00 when the Index is above a level of $200.00.

II. Description of the Proposal

A. General

The CBOE proposes to list and trade options on the Russell 2000, Russell 2000 CAPS, and full and reduced value Russell 2000 LEAPS. The Russell 2000 is a capitalization-weighted index developed by Frank Russell and composed of the bottom 2000 of the 3000 largest U.S. equity securities in terms of domestic market capitalization. The Index is designed to track the performance of the domestic small to mid-sized capitalization market. Unlike the Standard & Poor’s (“S&P”) indexes, the Russell 2000 is adjusted for cross ownership, i.e., a company’s weighing is determined after deducting the net capitalization value of securities held by other companies or corporate insiders.

The CBOE also has provided additional data concerning the composition and design of the Index. See letter from Joseph Levin, Vice President, Research, CBOE, to Howard Kramer, Assistant Director, SEC, dated April 27, 1992, and letter from Joseph Levin, Vice President, Research, CBOE, to Thomas R. Gira, Branch Chief, Options Regulation, Division of Market Regulation (“Division”); Commission, dated September 25, 1992 (“CBOE Letter”).

B. Composition of the Index

Currently, 551 stocks in the Index trade on the NYSE, 219 trade on the Amex, 1218 are National Market System (“NMS”) securities traded through the facilities of the NASD’s NASDAQ system, and one stock is a non-NMS security traded on NASDAQ. As of August 31, 1992, 98 industries were represented in the Index and the total capitalization of the Index was approximately $298.2 billion. The mean and median capitalization figures for the 2000 stocks on that date were $150 million and $113 million, respectively. The value of trading of the Index-component stocks over the previous six months averaged approximately $45 million daily, with a median value of $64.4 million per day. The Index’s most highly capitalized stock, Lennar Corp., accounted for 0.105% of the Index, the top 100 stocks in the Index comprised 14.72% of the total Index capitalization, and the bottom 100 stocks accounted for 1.13% of the total Index capitalization. The lowest capitalized stock, RCM Technologies, represented .0015% of the total Index capitalization.

C. Calculation of the Index

Under the proposal, Bridge will calculate the Index every 15 seconds during the trading day and the CBOE will disseminate this information to the Options Price Reporting Authority (“OPRA”). OPRA, in turn, will disseminate the Index value to other financial information vendors such as Reuters, Telerate and Quotron.

As a capitalization-weighted index, the Russell 2000 reflects changes in the capitalization (market value) of the component stocks relative to the capitalization on a base date. The current Index value is calculated by adding the market values of the Index’s component stocks, which are derived by multiplying the price of each stock by the number of shares outstanding, to arrive at the total market capitalization of the 2000 stocks. The total market capitalization of the 2000 stocks is calculated based upon the regular way of dealing on that day. As a result, the Index is subject to higher listing standards.

The Index is maintained at the composition and design of the Index. The Index is subject to semi-annual changes that reflect such events as changes in the country’s weighing, company mergers and acquisitions, company restructurings and other capitalization changes.

The Index value for purposes of settling outstanding Index options contracts upon expiration will be calculated based upon the regular way of dealing on that day. The Index is subject to semi-annual changes that reflect such events as changes in the country’s weighing, company mergers and acquisitions, company restructurings and other capitalization changes.

As of the last trading day of May, to reflect changes in capitalization rankings and shares available. At that time, the largest 3000 U.S. securities are ranked in descending order and the

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4 See CBOE Letter, supra note 6. Real-time last sale reporting recently has been extended to all securities traded over NASDAQ. However, NASDAQ/NMS securities, among other things, are subject to higher listing standards. 5 Among others, the industry groups represented in the Index include: banks (9.7%), computer services (4.1%), pharmaceuticals (4.3%), electronics (3.7%), hospital supplies (3.4%), insurance (4.1%), office and business equipment (3.4%), real estate (2.5%), retailing (5.8%), services (8.2%), and utilities (5.2%). See CBOE Letter, supra note 6.

12 The last trading day prior to expiration is the third Friday of the expiration month. Because opening value will be used, the last full trading day for the Index options will be the Thursday prior to expiration. For a more detailed discussion of the trading days for the Index options, see infra Section II.E.

15 For purposes of the daily dissemination of the Index value, a stock included in the Index has not opened for trading, the CBOE will use the closing value of the stock on the prior trading day when calculating the value of the Index, until the stock opens for trading.
The composition of the Index is updated to incorporate the stocks ranked between 1,001 and 3000. The reconfiguration of the Index is effective as of the last day of June. Replacements are made strictly on the basis of market capitalization, as adjusted for cross ownership (i.e., if a component stock increases significantly in value, it may be deleted from the Index and added to the Index at the 1000 during the next reconstitution). If a stock ceases to trade as a result of a merger or acquisition during the year, the stock is deleted from the Index and replaced during the subsequent annual recapitalization. No interim replacements are made. If a stock is deleted, however, there will be a corresponding change to the index divisor to ensure that the continuity of the Index value is maintained. The 55 stocks deleted from the Index between July 1991 and February 1992 were replaced during the June 1992 reconstitution.

E. Contract Specifications

The proposed options on the Index will be cash-settled, European-style options. Standard options trading hours (8:30 a.m. to 3:15 p.m. Central Standard Time) will apply to the contracts. The Index multiplier will be 100. The CBOE proposes to use strike price intervals of 2½ points for Russell 2000 Index options and full value and reduced value Russell 2000 LEAPS when these Indexes are below a level of 200.00. When these Indexes are above a level of 200.00, the CBOE plans to use strike price intervals of no less than $5.00. In addition, pursuant to CBOE Rule 24.9, there will be six expiration months outstanding at any given time. Specifically, there will be three expiration months from the March, June, September, and December cycle plus three additional near-term months so that the three nearest term months will always be available. For Russell 2000 LEAPS, which expire from 12 to 36 months after listing, the CBOE may list up to six additional expiration months.

The options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Accordingly, since options on the Index will settle based upon opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

In addition, for capped-style Index options, the CBOE proposes a cap interval of $20. Initially, the CBOE plans to list one at-the-money call and put Russell 2000 CAP with expirations of up to one year into the future. Additional series may be listed every two months, or series may be added to expiration months with three or more months remaining if there is a move of 10 points or greater in the Index.

Finally, the Exchange proposes to make Russell 2000 options eligible for automatic execution through the Exchange's Retail Automatic Execution System ("RAES"). If available for a particular series, the RAES order eligibility size limit will be ten contracts.

F. Position and Exercise Limits, Margin Requirements, Trading Halts and Other Applicable Exchange Rules

Under the proposal, the requirements contained in Chapter XXIV of the Exchange Rules that are applicable to the trading of options on broad-based indexes will apply to the trading of options on the Index. Specifically, among others, Exchange rules governing margin requirements and trading halt procedures will apply to Russell 2000 options. In addition, due to the lower level of the Index values in comparison to the value of other indexes underlying options traded on the Exchange, the CBOE proposes position limits of 50,000 contracts, with no more than 30,000 of such contracts in series in the nearest expiration month.

G. Surveillance

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. These procedures include complete access to trading activity in the underlying securities. In addition, the Intermarket Surveillance Group ("ISG") Agreement ("ISG Agreement") dated July 14, 1983, as amended on January 29, 1990, is applicable to the trading of options on the Index.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5). The Commission finds that the trading of options on the Index, including full value and reduced value Index options, will permit investors to participate in the price movements of the 2000 securities on which the Index is based and should allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolio more efficiently and effectively. Accordingly, the Commission believes Russell 2000 options will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of stocks in the small to middle-capitalization range of U.S. equity securities. By increasing the hedging and investment opportunities of investors, the Commission believes that Russell 2000 options will serve to provide the public interest, protect investors, and contribute to the maintenance of fair and orderly markets. Moreover, the Commission believes that reduced value Russell 2000 LEAPS, which will be traded on an index computed at one-tenth the value of the Russell 2000, will serve the needs of retail investors by providing them with the opportunity to use a long-term option to hedge their portfolios from long-term market moves at a reduced cost.

14 See CBOE Letter, supra note 6. Between July 1988 and June 1992, an average of 467 stocks were added to or deleted from the Index as a result of the annual reconstitution of the Index. Prior to 1988, the Index was reconstituted more frequently than once per year and the number of additions and deletions was higher.

15 Id.

16 CPA has indicated that the listing and trading of options on the Index will have no material impact on OPRA's capacity. See memorandum from Joseph Carrigga, OPRA, to Joseph Levin, CBOE, dated April 2, 1982 ("OPRA Memorandum").

17 See October 8 Letter, supra note 7.

18 Pursuant to CBOE Rule 24.11, the margin requirements for the Index options will be (1) for each short option position, 100% of the current market value of the options contract plus 15% of the underlying aggregate Index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10% of the underlying Index value; and (2) for long option positions, 100% of the options premium plus 15% of the underlying Index value.

19 Pursuant to CBOE Rule 24.7, the trading on the CBOE of Index options may be halted or suspended, among other things, whenever the trading in the underlying securities or related market indicator to the maintenance of a fair and orderly market, the activation of price limits on a futures exchange is one of the factors which may constitute an unusual condition or circumstance under CBOE Rule 24.7.

The trading of Russell 2000 options, however, raises several issues, including issues related to index design, customer protection, surveillance and market impact. For the reasons discussed below, the Commission believes that the CBOE has adequately addressed these issues.

A. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act to classify the Index as broad-based, and, thus, to permit Exchange rules applicable to the trading of broad-based index options to apply to Russell 2000 options.\(^{22}\) The Commission also finds that the reduced-value Russell 2000 Index is broad-based because it is comprised of the same component securities as the Index and merely divides the Russell 2000 by ten, which does not alter the basic character of the Index. Specifically, the Commission believes that the Index is broad-based because it reflects a substantial segment of the U.S. equities market, in general, and small to mid-level capitalized U.S. securities, in particular. The Index, whose total capitalization as of August 31, 1992, was approximately $298.2 billion, consists of 2000 actively-traded, small to middle-capitalization domestic securities, including the stocks of companies from 96 different industries, no one of which dominates the Index.\(^{23}\) In addition, as of August 31, 1992, no single stock comprised more than 0.196% of the Index's total value and the percentage weighing of the 100 largest issues in the Index accounted for only 14.72% of the Index's value. Accordingly, the Commission believes it is unlikely that attempted manipulations of the prices of the issues in the Index would affect significantly the Index's value.

The Commission also believes that the general broad diversification, level of capitalization, and trading activity in the markets for the Index's component stocks significantly minimize the potential for manipulation of the Index. First, as discussed above, the Index represents a broad cross-section of domestic small to mid-sized stocks, with no single industry group or stock dominating the Index. Second, the overwhelming majority of the stocks that comprise the Index are not actively traded. The value of trading of the Index's component stocks over the last six months averaged approximately $45 million per day.\(^{24}\) Although the average trading activity for the Russell 2000 stocks is much less than for the stocks of existing broad-based index futures, the sheer number of Russell 2000 stocks and the dispersion of weighting throughout the stocks makes it unlikely that attempted manipulations of the prices of a small number of issues would significantly affect the Index's value. Third, Frank Russell has developed procedures and criteria designed to ensure that the Index maintains its broad representative sample of stocks in the small to middle-capitalization range of U.S. equity securities.

The Commission notes, however, that in the past several Index component securities were deleted from the Index on an intra-year basis due to corporate actions and, pursuant to the Index construction procedures, were not replaced until the next annual reconfiguration of the Index.\(^{25}\) The annual diminution of the number of securities in the Index raises concerns regarding the maintenance of the continuity of the Index value, the diversity of component securities, and the relative weightings of component securities. Given the extremely large number of securities in the Index, the relatively low weighting of each component security of the Index, the adjustments to the Index divisor upon deletions of securities, and the large number of securities that historically have not been deleted between annual reconfigurations, the Commission, nevertheless, believes that the Index will at all times reflect accurately the small to middle-capitalization range of U.S. equity securities.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Russell 2000 Index options, Russell 2000 LEAPS, and Russell 2000 CAPS can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts.

Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Index options and Index LEAPS.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange and any exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. In this regard, the CBOE, Amex, NASD and the NYSE, along with other U.S. securities exchanges, are members of the ISC, which provides for the exchange of all necessary surveillance information.\(^{26}\)

D. Market Impact

The Commission believes that the listing and trading of Index options on the Exchange will not adversely impact the underlying securities markets. First, as described above, the Index is broad-based and no one stock or industry group dominates the Index. Second, as noted above, the stocks contained in the Index generally are not actively traded. Third, existing CBOE stock index options rules and surveillance procedures will apply to Russell 2000 options. Fourth, the Exchange has established reasonable position and exercise limits for the Russell 2000 options that will serve to minimize potential manipulation and market impact concerns. Fifth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation just like any other

\(^{22}\) Previously, the Commission concluded that the Russell 2000 represents a substantial segment of the market for small to mid-level capitalized securities. See letter from William Heyman, Director, Division, SEC, to Brian Fulkerts, Director, Office of Compliance and Governmental Affairs, Commodity Futures Trading Commission ("CFTC"), dated October 13, 1986 (letter not objecting to trading of Russell 2000 futures and futures options on the Chicago Mercantile Exchange); and letter on the Chicago Mercantile Exchange) and letter on the Chicago Mercantile Exchange) and letter objecting to the trading of futures contracts based on the Russell 1000, 2000, and 3000 Indexes on the New York Futures Exchange).

\(^{23}\) See supra note 9.

\(^{24}\) See CBOE Letter, supra note 6.

\(^{25}\) See supra notes 13 and 14 and accompanying text.

\(^{26}\) See supra note 20.
standardized option traded in the United States.

Lastly, the Commission believes that settling Russell 2000 options and reduced value Russell 2000 LEAPS based on the opening prices of component securities is reasonable and consistent with the Act because it may contribute to the orderly unwinding of Index options positions upon expiration.

E. Other Proposed Rule Changes

The Commission also believes that the other rule changes proposed by the CBOE to accommodate the trading of Russell 2000 options are consistent with the Act. First, the Commission believes that it is reasonable for the CBOE to use 2½ point strike price intervals for the Index options when the Index is below a level of 200.00 because, given the relatively low level of the Index and its relatively low volatility, such intervals will enable investors to better tailor their options positions to achieve their investment objectives; in addition, OPRA has represented that it has adequate capacity to accommodate the 2½ point strike price intervals. The Commission also believes that it is reasonable for the CBOE to use strike price intervals of no less than $5.00 when the Index is above a level of 200.00 because such intervals should provide investors with sufficient flexibility to meet their investment objectives and, at the same time, avoid excessive proliferation of options series. Second, the Commission believes that a RAES order size limit of ten contracts for Russell 2000 options is reasonable because it will help to ensure the efficient and timely execution of customer orders. Based on representations from the CBOE, the Commission believes that the Exchange will have sufficient processing capacity to accommodate the anticipated order flow through RAES resulting from this order size limit.

Third, with regard to capped-style Index options, the Commission believes, as it did when it approved the listing of capped-style options, that capped options are an innovative financial product that will provide investors with additional choice and flexibility in their use of derivatives. Because the capped-style options writer's (holder's) maximum loss (gain) is established at the time of the investment by the option's cap interval, capped-style Russell 2000 options will allow investors to participate in the small to mid-level company market at a known and limited cost. By eliminating some of the risks associated with spread positions in options, capped Russell 2000 options may make the market for small to middle-capitalized companies more attractive to a broad range of investors.

In addition, the Commission notes that the capped-style Index options, which are the equivalent of vertical bull and bear spreads traded as a single security, should benefit investors in the small to middle-capitalization range of companies by providing them with a more efficient and cost effective method of achieving the economic results of spread transactions.

The Commission also finds that the specific rules proposed by the CBOE to accommodate capped-style Index options are consistent with the Act. Specifically, the Commission believes that it is reasonable for the CBOE to set a cap interval of 20 for capped-style Index options instead of 30 (which is currently used for the S&P 100 and S&P 500 Indexes) because the level of the Index is lower than either the S&P 100 or S&P 500 Indexes. Accordingly, the Commission believes the cap price for the Russell 2000-capped options is placed sufficiently far from the exercise price so that the capped options will not be exercised automatically on a frequent basis. In addition, the Commission believes that the CBOE's proposal to bring up new at-the-money series of capped-style Index options every two months and after a 10-point move in the Index is consistent with the Act because it will not result in a proliferation of options series.

Fourth, with regard to Russell 2000 LEAPS, the Commission believes, as it has concluded previously, that full value and reduced value Russell 2000 LEAPS will provide investors with an opportunity to hedge their equity portfolios against long-term market risk at a known and limited cost. In addition, the Commission believes that reduced value Russell 2000 LEAPS will serve the needs of retail investors by providing them with the opportunity to use long-term options to protect their portfolios from long-term market moves at a reduced cost. This may result in options premiums more affordable to retail investors.

The Commission finds good cause for approving Amendment Nos. 1, 2, 3, 4 and 5 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Final Amendment Nos. 1 and 3 provide, respectively, for the listing of Russell 2000 CAPS and full and reduced value Russell 2000 LEAPS. Because the stocks comprising the Russell 2000 CAPS and the Russell 2000 LEAPS are identical to the Index, and because both products will be subject to the same rules that apply to other capped options and other index LEAPS traded on the Exchange, the Commission believes that the proposals to list Russell 2000 CAPS and Russell 2000 LEAPS raise no new regulatory issues. In addition, the proposal in Amendment No. 3 providing for European-style exercise of Index options is technical in nature and raises no new regulatory issues.

Second, Amendment No. 4 provides that the final settlement value of expiring Index options will be based on the opening prices of the component stocks on the trading day prior to expiration, instead of their closing prices. The Commission believes that this contract design modification, while significant in terms of the potential market impact of the index options, does not alter significantly the contract design specifications of the Index options contracts. Moreover, the Commission believes that this modification may contribute to the orderly unwinding of positions in Index options and related positions, thereby helping to ensure that the trading of Russell 2000 options will not have any adverse market impacts.

Finally, Amendment No. 2, which provides a disclaimer for Frank Russell, and Amendment No. 5, which provides that the strike price intervals for the Index options can be less than $5.00 when the Index is above a level of $200.00, are technical in nature and raise no new regulatory issues. In addition, the disclaimer for Frank Russell is similar to disclaimers previously approved by the Commission. Therefore, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment Nos. 1, 2, 3.

See OPRA Memorandum, supra note 16.
See letter from Joseph Levin, Vice President, CBOE, to Howard Kramer, Assistant Director, Division of Market Regulation, Commission, dated April 27, 1992.

30 Once the option's cap price (the strike plus the cap interval for a call or the strike price minus the cap interval for a put) has been reached, the capped-style option is exercised automatically. Thus the option writer's (holder's) maximum potential liability is the amount of the cap interval and, conversely, the option holder's (writer's) maximum gain is the amount of the cap interval. See note 4, supra.


32 Other proposed set forth in Amendment No. 3 have been approved previously by the Commission. See Securities Exchange Act Release No. 31243 (November 23, 1992) (order approving File No. SR-CBOE-91-51).
September 2, 1992, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Item I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. This order grants accelerated approval on a temporary basis through March 31, 1992.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise GSCC's rules to allow for the netting of forward-settling trades.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections [A], [B], and [C] below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On April 12, 1990, the Commission approved on a temporary basis, until April 30, 1992, a proposed rule change (SR-GSCC-90-01)\(^2\) that expanded GSCC's netting service to include forward-settling trades in Government securities ("forward trades"). That order was subsequently approved through October 30, 1992.\(^3\) By this filing, GSCC requests that such authority be made permanent by the Commission or, in the alternative, that the Commission further extend on a temporary basis GSCC's authority to net forward trades.

In its approval order of April 12, 1990 (the "Approval Order"),\(^4\) the Commission stated that, "in light of its significance to GSCC and its membership, the proposed netting service for forward-settling transactions should be carefully monitored before it becomes a permanent feature of GSCC's netting system." The Approval Order was a lengthy one; however, the essence of the Commission's concerns regarding the proposal may be said to have been the adequacy of each of the following: (1) GSCC's forward mark allocation payment process; (2) the revised Clearing Fund formula; and (3) GSCC's system prices. Each of these concerns is discussed below.

1. The Forward Mark Allocation Calculation

As was stated in the original rule filing (SR-GSCC-90-01), in designing a system for the netting of forward trades, GSCC considered fully applying market-to-market requirements during the period between trade and settlement, in the same manner as is done for regular-way trading. That is, GSCC considered requiring Netting Members (hereinafter "members") to pay on a daily basis in cash the full amount of mark payments stemming from net settlement positions in forward-settling securities.

In view, however, of the potential for significant amounts of money to have to be passed through GSCC on a daily basis, which might on any particular day drain liquidity from a firm in an unpredictable manner, GSCC chose an alternative approach that realistically reflects, and sufficiently minimizes, the risk of disruption to the settlement process. This method provides for the daily collection of a percentage of any debit mark amount allocable to a forward-settling position (the "forward mark allocation amount") that ensures, on a per-CUSIP basis, that the failure of up to all the five members with the largest debit mark levels on any given day would not disrupt GSCC's ability to successfully settle that day's Government securities trades.

GSCC's experience to date shows that this approach to the margining of forward trades strikes a proper balance between the need for a sufficient margin to ensure GSCC's liquidity and to prevent a loss upon liquidation of a member's position versus the desire to not unduly drain funds from members. Analyses done by GSCC indicate that, in the morning of a typical date for forward trades, when GSCC faces exposure equal to the difference between the amount of forward mark allocation ("FMA") payments collected on the previous business day (which has not yet been...
repeated) and the amount of transaction adjustment payments (“TAP”) owed to GSCC on such day (and not yet paid), the amount already “pre-collected” in FMA payments is a majority (often a large majority) of that day’s TAP amount.

To the extent that GSCC has had concerns with its FMA process, it has been with the increasing activity in non-new-issue securities (in particular, zero coupon securities). Such activity typically is not as evenly spread among members as the activity in normally recurring issues (e.g., the weekly issues of Government bill issues and the monthly issues of two year and five-year Government notes). Instead, it tends to be more concentrated in a few members. For a particular CUSIP, this often leads to the total debit mark level of the five members with the largest such debit marks constituting a higher percentage of the daily liquidation exposure incurred by GSCC as regards that CUSIP than if the activity were more evenly spread. Currently, only a maximum of 75 percent of a member’s debit mark is collected as FMA.

This matter, together with numerous other margining issues, was addressed in a recent filing (SR-GSCC-91-04) by GSCC, wherein GSCC requested authority to raise the cap on a member’s daily FMA payment amount from 75 percent of the calculation to 100 percent. This will increase the dollar amount collected by GSCC in the event that certain members create a relatively large exposure for GSCC vis-a-vis other members.

2. GSCC’s Clearing Fund Formula

With regard to the sufficiency of FMA payments, GSCC notes that the Commission, in the Approval Order, indicated a concern that the FMA payment process provide “adequate collateral protection for forward-settling transactions independently from other liquidity sources designed to protect against risks stemming from the settling of regular-way trades.” Of course, the source of liquidity protection for next-day trades are Clearing Fund deposits. Thus, the Commission has, in effect, indicated that the Clearing Fund formula must factor in exposure arising from next-day and forward trades independently of each other and cumulatively. GSCC’s experience to date confirms that the formula does in fact do so, and that the nature of GSCC’s margining process for forward trades, wherein such trades are both margined for Clearing Fund purposes and are subject to a separate margin requirement (the FMA payment process), is quite conservative and prudent in nature. This is particularly true in light of GSCC’s recent rule filing (SR-GSCC-91-04) noted above.

GSCC’s Clearing Fund formula provides for the collection of 125 percent of the member’s average daily funds-only settlement amount over the most recent 20 business days and the greater of: (1) The margin amount on the member’s net settlement positions taking into account all net settlement positions averaged over the most recent 20 business days or (2) 50 percent of the margin amount for that business day on the member’s net settlement positions calculated without taking into account offsetting positions. Currently, a member’s net securities and funds-only settlement obligations arising from forward trades are factored into the calculation of such member’s Clearing Fund requirement during the post-auction forward-setting period, except that such positions are factored into the 20-day averages only for purposes of determining the current day’s margin calculation. The proposed rule changes in File Number SR-GSCC-91-04 would change this to provide for GSCC to treat forward settlement positions for Clearing Fund calculation purposes essentially as if it does all other net settlement obligations, thus providing for a smoother Clearing Fund collection process and greater amounts of margin received from members.

3. Prices

A significant event that has occurred since the issuance of the Approval Order is the transition over the past two years’ worth of its own price volatility data. This data base now is used in assessing and monitoring the adequacy of its margin factors. GSCC hereby represents that the information contained in this data base is being and will continue to be considered on a periodic basis by GSCC’s Membership and Standards Committee in reviewing the sufficiency of GSCC’s margin factors. In addition, it is noteworthy that GSCC has ensured, and will continue to ensure, the sufficiency of its margining process through the use of conservative margin factor criteria.

With regard to obtaining additional third party Government securities price volatility data, in the past, there has been no available source of data that was sufficiently comprehensive and accurate to consider as an alternative to GSCC’s internal data base. Indeed, GSCC’s own data base is likely always to be more precise than any third-party data source because GSCC receives price data across a broad spectrum of issues and products and is not focused on leading issues within a maturity or product range.

Recently, however, private sector initiatives in the Government securities marketplace have arisen, such as the establishment of GOVPX, Inc., which have made significant steps toward disseminating the type of Government securities price information that would be of particular benefit to GSCC. In view of this, GSCC continues to evaluate the types of third-party price volatility information that are available and the usefulness of such information. GSCC notes in this regard that it continues to believe that its own data base would be able to serve as the most accurate and meaningful source of price volatility data on Government securities in existence if it were to receive trade data from its members on a time-stamped basis.

In sum, in view of GSCC’s positive experience to date in the netting of forward trades, the conservative nature of its margining process for forwards and the general strengthening of the process that has taken place, and its ability now to use internal price volatility data to assess the adequacy of its margin factors, GSCC believes that its method for margining forward trades is an appropriate one and that its authority to net forward trades should be made permanent.

(b) The proposed rule change will encompass forward-settling Government securities transactions within the Netting System and, thus, will further promote the prompt and accurate clearance and settlement of securities transactions for which GSCC is responsible. It is therefore consistent with Section 17A of the Act, and section 17A(b)(3)(A) of the Act in particular.

B. Self-Regulatory Organization’s Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change. Received From Members, Participants, or Others

Comments on the proposed rule changes have not yet been solicited or received. Members will be notified of the rule filings, and comments will be solicited, by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.
III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Sections 17A(b)(3) (A) and (F) of the Act require clearing agencies to have rules and be organized in a manner that will give them the capacity to facilitate and promote the prompt and accurate clearance and settlement of securities transactions for which they are responsible. These sections of the Act also require a clearing agency to have the capacity to assure the safeguarding of securities and funds in its custody or control, or for which it is responsible. The Commission believes that GSCC’s proposal meets these statutory requirements.

In the Release announcing standards for the registration of clearing agencies,7 the Division of Market Regulation stated that clearing agencies should establish an appropriate level of clearing fund contribution based, among other things, on its assessment of the risks to which it is subject. GSCC’s comparison and netting system for forward trades provides an effective means of reducing a member’s settlement obligations, thereby offering a significant reduction in risks to the market place. At the same time, GSCC has designed and expanded safeguards in order to limit the inherent exposure associated with the comparison process of forward trades and reduce the financial risk associated with the netting and settlement of such trades.

GSCC has requested that the Commission find good cause for approving the proposed rule change prior to thirty days after the date of publication of this notice in the Federal Register. The Commission believes there is good cause for approving the proposed rule change prior to the thirty days after the date of publication of this notice so as to permit GSCC to continue netting forward-settling trades while the Commission assesses the results of GSCC’s operations in this area to date. GSCC proposed rule change, File Number SR—GSCC—91—04, will have a substantial impact on forward settling trades and on GSCC’s risk reduction program, including various aspects of GSCC’s clearing fund and forward mark allocations. Thus the Commission believes it is prudent to complete its review process of SR—GSCC—91—01 before granting permanent approval to this proposal.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File Number SR—GSCC—92—10 and should be submitted by November 27, 1992.

V. Conclusion

On the basis of the foregoing, the Commission preliminarily finds that GSCC’s proposed rule change is consistent with the Act and, in particular, with section 17A of the Act and the rules promulgated thereunder. The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the Federal Register.

It is therefore ordered, under section 19(b)(2) of the Act,9 that the proposal

letters of credit for clearing fund deposits and forward mark allocation payments and allow GSCC to reject a letter of credit from a particular institution if letters of credit issued by that institution exceed certain parameters; and (6) make certain other changes to the clearing fund by: (a) granting GSCC the ability to increase clearing fund requirements in times of market stress; (b) expanding the scope of Treasury securities that are eligible as clearing fund collateral; (c) requiring netting members to satisfy a deficiency in the clearing fund deposit on the day of notification of the deficiency; (d) requiring members to make funds-only settlement payments by 8 a.m. (Eastern Time ("E.T.")), an hour earlier than previously required; and (e) correlating quarterly returns of excess margin with refunding periods.

* 15 U.S.C. 78q—1(b)(3) (A) and (F).
* 7 SR—GSCC—92—04 would: (1) Authorize GSCC to see its own price volatility data to determine margin requirements; (2) allow GSCC to include in the calculation of a netting member’s required margin deposit the weighted average of the netting member’s forward net settlement positions over the most recent 30 business days; (3) remove the 75% limitation on the forward mark allocation payments; (4) establish new standards for determining whether a bank or trust company is qualified as an issuer of Government securities.

[Release No. 34—31383; File No. SR—GSCC—92—09]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to the Netting of Zero Coupon Government Securities

October 30, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 2, 1992, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Item I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change on a temporary basis until March 31, 1993.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to continue to include in its netting system book-entry zero coupon Government securities.

II. Self-Regulatory Organization’s Statement of the the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC include statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.


A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(a) On January 31, 1991, the Commission approved on a temporary basis, until April 30, 1992, a proposed rule change (File No. SR-GSCC-90-06) to expand GSCC’s netting service to include zero coupon Government securities (“zeros”). 1 2 Subsequently, the Commission extended its temporary approval of the proposal until October 30, 1992. 2 By this filing, GSCC requests that such authority be made permanent by the Commission, or, in the alternative, that the Commission further extend on a temporary basis GSCC’s authority to net zeros.

In its approval order of January 31, 1991 (“approval order”), the Commission stated that it was approving the proposed rule change on a temporary basis “[i]n light of the significance of this proposal to GSCC and its clearing members, and in light of the probability that GSCC’s methodology for risk analysis will be modified at a future date.” The Commission indicated that “[i]t believes that GSCC’s method of determining the applicable margin factors [for zeros] is reasonable in light of the lack of historical data on which to base the margin assessment.” The Commission noted, however, its concern about “the accuracy with which GSCC’s current methodology reflects the historical and implied volatility of zeros.”

Since the approval order was issued, GSCC has gained almost one year’s experience in the netting of zeros without incurring any problems. GSCC’s margins process for zeros remains conservative and prudent, and now has the benefit of the use of GSCC’s internal price volatility data base. Moreover, as described below, it has modified and improved its risk assessment systems in various respects. In view of the above, GSCC believes that its method for margining zeros is an appropriate one.

1. Use of GSCC’s Internal Price Volatility Data Base to Assess the Adequacy of GSCC’s Margin Factors

As GSCC noted in its original rule filing, it is not aware of any satisfactory third party source of historical price volatility data on zeros from which to establish applicable margin factors.

GSCC stated in that filing that it intended to develop and maintain its own historical price volatility base for zeros, as it does for all other securities eligible for the net, commencing at the time that it started to net zeros.

GSCC now has over one year’s worth of its own price volatility data for zeros; this data base is sufficient for use in assessing and monitoring the adequacy of its margin factors for zeros. GSCC hereby represents that the information contained in this data base will be considered on a periodic basis by the Membership and Standards Committee of GSCC’s Board of Directors (“Board”) in reviewing the sufficiency of GSCC’s margin factors for zeros.

2. Continued Use of a Conservative Margining Process

GSCC, in making zeros eligible for its net, recognized that these securities require different considerations from a margining perspective than do other Treasury securities (“non-zeros”) because zeros generally are subject to greater price volatility than are non-zeros with the same maturity. Thus, GSCC will continue to maintain a separate margin factor schedule for zeros, which takes into account, based on data contained in the Treasury Department’s liquid capital standards, the greater price volatility presented by zeros in general, and the greater price volatility which arises as the remaining maturity of a zero security increases.

The currently applicable margin percentages for zeros range from being the same as those for non-zeros on the short end of the maturity spectrum to two-and-a-half times that applicable to non-zeros on the longest end of the maturity spectrum. GSCC’s internal price volatility data for zeros indicates that these percentages for zeros are prudent and conservative, particularly on the long end of the maturity spectrum, where the greatest exposure exists for GSCC.

3. Strengthening of GSCC’s Margining Process Generally

Since the initial approval order was issued, GSCC has filed a proposed rule change (File No. SR-GSCC-91-04) to implement a number of changes to its margining and funds collection processes that will further strengthen those processes. Certain of these changes will complement GSCC’s process for mitigating the risk arising from guaranteeing net settlement positions in zeros and serve to ensure that this risk is minimal.

In view of GSCC’s positive experience in the netting of zeros, the conservative nature of its margining process for zeros, its ability to use internal price volatility data to assess the adequacy of its margin factor schedule, and the greater price volatility which arises as the remaining maturity of a zero security increases, GSCC believes that its methodology for margining zeros is an appropriate one and that its authority to net zeros should be made permanent.

(b) The proposed rule change will help further GSCC’s ability to ensure orderly settlement in the Government securities marketplace by expanding the scope of Government securities eligible for its netting system. Thus it is consistent with Section 17A of the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization’s Statement on Burden on Competition

GSCC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the proposed rule change and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

Sections 17A(b)(3)(A) and (F) of the Act require clearing agencies to have rules and be organized in a manner that will give them the capacity to facilitate and promote the prompt and accurate clearance and settlement of securities transactions for which they are responsible. Those sections of the Act also require a clearing agency to have the capacity to assure the safeguarding of securities and funds in its custody or control, or for which it is responsible. The Commission believes that GSCC’s proposal meets these statutory requirements.

GSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of this notice. The Commission believes there is good cause for approving the proposed rule change prior to the thirtieth day after the
publication of this notice so as to permit GSCC to continue to offer netting services for zeros without interruption. GSCC's proposed rule change. File Number SR-GSCC-91-04, will have a substantial impact on GSCC's risk reduction programs, including various aspects of GSCC's clearing fund. Thus the Commission believes it is prudent to complete its review process of SR-GSCC-91-04 before permanently approving this proposal.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR-GSCC-92-09 and should be submitted by November 27, 1992.

V. Conclusion

On the basis of the foregoing, the Commission preliminarily finds that GSCC's proposed rule change is consistent with the Act and, in particular, with section 17A of the Act and the rules thereunder. The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the Federal Register.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-GSCC-92-09) be, and hereby is, approved on a temporary basis through March 31, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland, Deputy Secretary.

[FR Doc. 92-26690 Filed 11-4-92; 8:45 am]

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[Release No. 34-31385; File No. SR-GSCC-92-11]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change to Continue GSCC's Authority To Maintain its Current Clearing Fund Formula

October 30, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on September 2, 1992, The Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared substantially by GSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change on a temporary basis through March 31, 1993.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC in continuing to use its current clearing fund formula.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On April 12, 1990, the Commission approved, on a temporary basis, until April 30, 1992, a proposed rule change (SR-GSCC-89-13) that revised GSCC's clearing fund formula in various respects, including allowing offsets of required margin amounts. Subsequently, the Commission approved the revised GSCC clearing fund formula on a temporary basis until October 30, 1992. By this filing, GSCC requests that such authority be made permanent or, in the alternative, that the Commission further extend, temporarily, GSCC's authority to maintain its current clearing fund formula.

In its April 12, 1990, approval order ("Approval Order"), the Commission noted that, "in light of its significance to GSCC and its membership, the proposed revisions to GSCC's Clearing Fund formula should be carefully monitored before they become a permanent feature" of GSCC's Rules and Procedures. The essence of the Commission's concerns expressed in the Approval Order involved the adequacy of the following: (1) GSCC's analysis of price volatility; (2) GSCC's measures of correlation; and (3) the liquidity the Clearing Fund provides to GSCC during periods of high volatility. Each concern is discussed below.

1. Analysis of Price Volatility

The Commission stated in the Approval Order that GSCC should "continue to consider ways to refine its analysis of price volatility, including procedures to consider the effects of dramatic price movements." Since the Commission issued the Approval Order, GSCC has compiled nearly two years' worth of its own price volatility data. This data base is now sufficient for use in assessing and monitoring the adequacy of its margin factors. GSCC continues to ensure the sufficiency of its margining process by using conservative margin factor criteria. In this regard, the information currently considered on a quarterly basis by the Membership and Standards Committee in reviewing the sufficiency of GSCC's margin factors includes: (1)
Historical daily price volatility data prepared by Carol McIntee & McGinley Inc. which looks at the current leading issue in each category and uses means plus two standard deviations and [2] short-term (currently, the past 90 days) and long-term (currently, the past year) GSCC data covering mean plus two standard deviations and, separately, 99 percent of all price movements. GSCC’s internal and third-party price volatility data indicates that its margin factors are prudent and conservative, including on the long end of the maturity spectrum, where the greatest exposure exists for GSCC.

Recently, private sector initiatives in the government securities marketplace have arisen, such as the establishment of GOVFX, Inc., that have made significant steps toward disseminating the type of government securities price information that would benefit GSCC. In view of this development, GSCC continues to evaluate the types of third-party price volatility information that are available and the utility of such information. GSCC continues to believe, however, that its own data base would be the most accurate and meaningful source of price volatility data on government securities if GSCC could receive trade data from its members on a time-stamped basis.

2. Measures of Correlation

GSCC believes its disallowance percentage schedule is a conservative one. Currently, GSCC uses neither internal price data nor third-party data to monitor the accuracy of its disallowance percentage schedule. After evaluating available third-party price volatility information, however, GSCC will be able to determine whether and how to use either its internal price data base or a third-party data source to monitor its disallowance percentage schedule.

3. Ensuring GSCC’s Liquidity Needs

In the Approval Order, the Commission indicated the need for GSCC “to ensure that the Clearing Fund has sufficient liquidity, during periods of high volatility, to protect it from contingencies stemming from participants’ daily net settlement obligations.”

GSCC’s margins process helps ensure that GSCC has sufficient liquidity to meet its settlement guarantees, even during periods of high volatility. Perhaps the area of greatest potential concern in this regard is forward trades, which present the largest exposure to GSCC. GSCC believes the margins process for forward net settlement positions, on which Clearing Fund deposits are taken and which are subject to a separate margin pool (the forward mark allocation payment process), is conservative and prudent, particularly in light of GSCC’s recent rule filing (SR-GSCC-91-04) that makes various changes to GSCC’s margin and funds collection process.*

Considering GSCC’s positive experience to date with the revised Clearing Fund formula, the conservative nature of its margins process, the extent to which that process has been strengthened to ensure GSCC’s liquidity posture, and its ability now to use internal price volatility data to access the adequacy of margin factors and correlations, GSCC believes its Clearing Fund Formula is appropriate and should receive permanent approval. GSCC believes the proposed rule change will help further its ability to ensure orderly settlement in the government securities marketplace. Thus, GSCC believes the proposal is consistent with the requirements of the Act and, in particular, with section 17A because it will promote prompt clearance and settlement.

(B) Self-Regulatory Organization’s Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact on, or impose a burden on, competition.

(C) Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Rejected Received From Members, Participants or Others

Comments on the proposed rule change have neither been solicited nor received. Members will be notified of the proposed rule change, and comments will be solicited, by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes the proposed rule change is consistent with the Act and specifically with section 17A(b)(3)(F) which requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to safeguard securities and funds in its custody or under its control. GSCC’s current Clearing Fund formula is designed to provide the most accurate assessment of the risk created by its clearing members’ positions and to allow GSCC to assess the members’ clearing fund requirements accordingly. Thus, the proposal is consistent with section 17A(b)(3)(F) of the Act.

GSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing in the Federal Register. The Commission believes there is good cause for so approving because (a) the proposed rule change on an accelerated basis will allow GSCC to continue to operate under its current Clearing Fund formula without interruption while the Commission completes review of a related filing whose approval is pending; (b) GSCC has filed a proposed rule change, SR-GSCC-91-04, that will have a substantial impact on GSCC’s risk reduction program, including various aspects of GSCC’s clearing fund and forward mark allocations. Thus the Commission believes it is prudent to complete its review process of SR-GSCC-91-04 before permanently approving this proposal.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and* 15 US.C. §84-1(b)(9)(F)(1988)
* File No. SR-GSCC-92-04 would: (1) Authorize GSCC to use its own price volatility data to determine margin requirements; (2) allow GSCC to include in the calculation of a netting member’s required margin deposit the weighted average of the netting member’s forward net settlement positions over the most recent 20 business days; (3) remove the 75% limitation on the forward mark allocation payments; (4) establish new standards for determining whether a bank or trust company is qualified as an issuer of letters of credit for clearing fund deposits and forward mark allocations and allow GSCC to reject a letter of credit from a particular institution if letters of credit issued by that institution exceed certain parameters; and (5) make certain other changes to the clearing fund by: (a) amending the clearing fund calculation to include in the calculation of a netting member’s required margin deposit the weighted average of the netting member’s forward net settlement positions over the most recent 20 business days; and (b) establish new standards for determining whether a bank or trust company is qualified as an issuer of letters of credit for clearing fund deposits and forward mark allocations and allow GSCC to reject a letter of credit from a particular institution if letters of credit issued by that institution exceed certain parameters; and (5) make certain other changes to the clearing fund: (a) amending the clearing fund calculation to include in the calculation of a netting member’s required margin deposit the weighted average of the netting member’s forward net settlement positions over the most recent 20 business days; and (b) establish new standards for determining whether a bank or trust company is qualified as an issuer of letters of credit for clearing fund deposits and forward mark allocations and allow GSCC to reject a letter of credit from a particular institution if letters of credit issued by that institution exceed certain parameters; and (5) make certain other changes to the clearing fund: (a) amending the clearing fund calculation to include in the calculation of a netting member’s required margin deposit the weighted average of the netting member’s forward net settlement positions over the most recent 20 business days; and (b) establish new standards for determining whether a bank or trust company is qualified as an issuer of letters of credit for clearing fund deposits and forward mark allocations and allow GSCC to reject a letter of credit from a particular institution if letters of credit issued by that institution exceed certain parameters; and (5) make certain other changes to the clearing fund: (a) amending the clearing fund calculation to include in the calculation of a netting member’s required margin deposit the weighted average of the netting member’s forward net settlement positions over the most recent 20 business days; and (b) establish new standards for determining whether a bank or trust company is qualified as an issuer of letters of credit for clearing fund deposits and forward mark allocations and allow GSCC to reject a letter of credit from a particular institution if letters of credit issued by that institution exceed certain parameters; and (5) make certain other changes to the clearing fund: (a) amending the clearing fund calculation to include in the calculation of a netting member’s required margin deposit the weighted average of the netting member’s forward net settlement positions over the most recent 20 business days; and (b) establish new standards for determining whether a bank or trust company is qualified as an issuer of letters of credit for clearing fund deposits and forward mark allocations and allow GSCC to reject a letter of credit from a particular institution if letters of credit issued by that institution exceed certain parameters; and (5) make certain other changes to the clearing fund: (a) amending the clearing fund calculation to include in the calculation of a netting member’s required margin deposit the weighted average of the netting member’s forward net settlement positions over the most recent 20 business days; and (b) establish new standards for determining whether a bank or trust company is qualified as an issuer of letters of credit for clearing fund deposits and forward mark allocations and allow GSCC to reject a letter of credit from a particular institution if letters of credit issued by that institution exceed certain parameters; and (5) make certain other changes to the clearing fund: (a) amending the clearing fund calculation to include in the calculation of a netting member’s required margin deposit the weighted average of the netting member’s forward net settlement positions over the most recent 20 business days; and (b) establish new standards for determining whether a bank or trust company is qualified as an issuer of letters of credit for clearing fund deposits and forward mark allocations and allow GSCC to reject a letter of credit from a particular institution if letters of credit issued by that institution exceed certain parameters; and (5) make certain other changes to the clearing fund: (a) amending the clearing fund calculation to include in the calculation of a netting member’s required margin deposit the weighted average of the netting member’s forward net settlement positions over the most recent 20 business days; and (b) establish new standards for determining whether a bank or trust company is qualified as an issuer of letters of credit for clearing fund deposits and forward mark allocations and allow GSCC to reject a letter of credit from a particular institution if letters of credit issued by that institution exceed certain parameters; and (5) make certain other changes to the clearing fund: (a) amending the clearing fund calculation to include in the calculation of a netting member’s required margin deposit the weighted average of the netting member’s forward net settlement positions over the most recent 20 business days; and (b) establish new standards for determining whether a bank or trust company is qualified as an issuer of letters of credit for clearing fund deposits and forward mark allocations and allow GSCC to reject a letter of credit from a particular institution if letters of credit issued by that institution exceed certain parameters; and (5) make certain other changes to the clearing fund:

Eastern Time, an hour earlier than previously required; and (e) correlating quarterly returns of excess margin with refunding periods.
arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number SR–GSCC–92–11 and should be submitted by November 27, 1992.

V. Conclusion
On the basis of foregoing, the Commission preliminarily finds that GSCC’s proposed rule change is consistent with the Act and in particular with section 17A of the Act and the rules thereunder. The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the Federal Register. It is therefore ordered, pursuant to section 19(b)(2) of the Act, 10 that the proposed rule change (File No. SR–GCS–92–11) be, and hereby is, approved through March 31, 1993.

For the Commission by Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 92–26881 Filed 11–4–92; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 54–31380; File No. SR–NASDAQ–92–38]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Regarding to Charges for Installment Payments of Monetary Penalties


Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 4, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NASD.1 The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission’s receipt of this filing.2 The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a rule change to amend Schedule A to the By-Laws to eliminate the current service charge for processing installment payments of monetary penalties.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under section 11 to Schedule A of the By-Laws, the NASD currently assesses a service charge against members or persons associated with a member who file a request and are approved by the Association to pay on an installment basis monetary penalties imposed pursuant to Article V, section 1 of the Rules of Fair Practice. The service charge is equal to 10% of the monetary penalty imposed and is due and payable in full with the first monthly installment payment. The service charge helps defray administrative and overhead costs incurred by the NASD in the collection of disciplinary fines.

In reviewing its procedures for assessing and collecting fines and penalties, the NASD has determined that substituting a negotiated agreement to pay an outstanding penalty which specifies various terms, including interest, would be more effective than the current service charge.

The NASD is, therefore, proposing to eliminate Section 11 of Schedule A, thereby eliminating the assessment of a service charge on monetary penalties paid on an installment basis. In the future, agreements providing for the installment payment of monetary penalties will bear a market rate of interest.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(3) of the Act, which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges among members. The NASD believes that negotiating agreements to pay outstanding fine balances will provide an enhanced method for collection of monetary penalties as well as a more appealing method of payment for member firms that are party to such arrangements.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder in that it constitutes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,
I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to extend, until October 31, 1993, the pilot for auxiliary closing procedures utilized on “expiration Fridays” for market-at-the-close (“MOC”) orders associated with the expiration and settlement of stock index futures, stock index options, and options on stock index futures. The NYSE has requested accelerated approval of the proposed rule change in order to allow the pilot program to continue without interruption.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Since September 1986, the Exchange has utilized auxiliary closing procedures on days when stock index futures, stock index options and options on stock index futures expire or settle concurrently. Since November, 1988, the Exchange has used these auxiliary closing procedures for each monthly expiration Friday. These procedures currently require the entry by 3 p.m. of all MOC orders in positions relating to any strategy involving any derivative index product. The procedures also require the specialist to make public MOC order imbalances of 50,000 shares or more in the so-called “pilot stocks” as soon as possible after 3 p.m. and then again after 3:30 p.m. and 3:45 p.m. Any MOC orders in the pilot stocks entered after 3 p.m. must liquidate a published imbalance and must not liquidate a position relating to a strategy involving any derivative index product. The procedures prohibit the cancellation or reduction of any MOC order in any stock after 3:45 p.m. except in cases of legitimate error.

The Commission granted approval of the pilot period for the closing procedures discussed above on December 29, 1988, and has renewed the extension of the pilot through October 28, 1991. At the time these procedures were originally filed, the Exchange hoped that during the pilot year all options and futures markets would base the settlement price of their derivative products on the opening, rather than on closing, Exchange prices.

As the settlement price of certain derivative products continues to be based on closing NYSE prices, the Exchange believes it is appropriate to extend the pilot program for auxiliary closing procedures on expiration Fridays for another year. These procedures have proven to be an effective means of reducing some of the excess market volatility which may result from entering MOC orders related to trading strategies involving index derivative products. Accordingly, the Exchange is seeking at this time to continue to use these procedures on expiration Fridays.

The Exchange continues to believe, however, that concerns about excess market volatility that may be associated with the expiration or settlement of derivative index products would be most appropriately addressed if the expiration or settlement value of all such products were based on the NYSE opening rather than the closing price on the last business day prior to the expiration or settlement of the product.

1. Expiration Friday is the one trading day each month when stock index futures, stock index options and options on stock index futures expire or settle concurrently.


3. The “pilot stocks” are the fifty highest capitalized Standard & Poor’s 500 stocks and any component stocks in the Major Market Index which are not included in the first group.


5. See note 2 supra.
(b) Statutory Basis

The basis under the Act for this proposed rule change is section 6(b)(5), which requires that rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission’s Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-92-30 and should be submitted by November 27, 1992.

IV. Commission’s Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE’s proposal to extend the expiration Friday procedures is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. As previously noted, the MOC procedures described herein have been utilized on previous quarterly expirations dating back to September 1986 and on monthly expirations on a pilot basis since November 1988. These procedures were part of efforts by the Commission and the self-regulatory organizations to address stock market volatility associated with the expiration of index derivative products traded in conjunction with stocks as part of index derivative instrument trading strategies.

In our 1991 Approval Order, the Commission extended this pilot program for one year and requested that the NYSE provide the Commission with specific data by July 31, 1992, detailing the NYSE’s experience with the pilot program and containing an analysis of the effectiveness of the expiration Friday procedures in reducing volatility. Specifically, the Commission requested data covering expiration Fridays from October 1991 through June 1992. The Commission requested that the report include:

1. The names of the pilot stocks and the imbalance (if any) at 3:30 p.m. and at the close for those stocks that had an imbalance of MOC orders of 50,000 shares or more at 3 p.m.;
2. The names of the stocks and the imbalance (if any) at the close for those stocks that did not have an imbalance at 3 p.m., but, due to cancellations, had imbalances of 50,000 shares or more at 3:30 p.m.;
3. For those stocks with an imbalance of 50,000 shares or more at 3 or 3:30, the names of the stocks where the imbalance changed from one side of the market (sell or buy) to the other side (buy or sell) due to cancellations of MOC orders;
4. For all pilot stocks, all MOC order imbalances (of any size) as of 4 p.m.;
5. The change in price of the closing transactions from the previous trade for all pilot stocks;
6. The change in price of the closing transactions from the price of transactions at 4 p.m. (if there were no transactions precisely at 4 p.m., the NYSE was to use the price from the transaction effected closest in time to 4 p.m.) for all pilot stocks; and
7. For each pilot stock, the number of shares in MOC orders submitted by 3 p.m. that were canceled for any reason prior to the close.

The NYSE submitted its report to the Commission on October 22, 1992. The NYSE report discusses the MOC changes in procedures that were put into effect in April, 1992, which prohibit cancellations or reductions of MOC orders (except for errors) after 3:45 p.m. The NYSE report states that the average number of shares in imbalance at the close for the five months prior to April 1992 was 2,991,000, while the average imbalance for April through June 1992 was 2,418,100 (equalling 19% lower in the months where MOC order cancellations were prohibited after 3:45). The report also describes market volatility on the November 15, 1991 expiration Friday. The report states that, while the Dow Jones Industrial Average ("DJIA") declined 120.31 points that day, with much of the decline occurring in the final two hours of trading, only sixteen pilot stocks had a decline in the total sell MOC imbalances between 3:30 and the close, with some of the reductions significant in size. The report also describes overall volatility during the period studied in terms of the average change in price from the last regular way trade to the closing trade in the pilot stocks. The NYSE reports that price volatility averaged .165 point per pilot stock over the period studied.

Finally, the NYSE reports that its review of expiration Fridays shows a consistent pattern of reductions in buy or sell imbalances from 3 p.m. and 3:30 p.m. to the close. More specifically, the NYSE states that over 3.8 million shares (an average of over 425,000 shares per month) were entered on the opposite side for pilot stocks that had published imbalances after 3:30 and 3:45 p.m.

The Commission continues to believe that, by requiring early submission of MOC orders and dissimulating imbalances, the NYSE should be able to attract contra-side interest to help alleviate imbalances caused by the liquidation of stock positions related to index derivative product trading strategies. In this regard, the data submitted by the NYSE indicates that the MOC procedures have worked relatively well and may have resulted in more orderly markets at the close of expiration Fridays. As long as some index derivative products continue to expire based on closing stock prices on expiration Fridays, the Commission agrees with the NYSE that such procedures are necessary to provide a mechanism to handle the large imbalances that can be engendered by firms unwinding index derivative related positions. Thus, the Commission is extending the NYSE’s auxiliary closing procedures for expiration Fridays for an additional year. During this time, the Commission expects the

Exchange to continue to evaluate whether the expiration Friday procedures have been effective in reducing excess volatility on expiration Fridays and requests the NYSE to submit a report evaluating the pilot providing the same information previously requested, as described above.

Although the Commission believes that the information supplied by the NYSE to date is helpful in determining the potential benefits of the pilot program, the Commission is requesting additional information in order to review more fully the effects of the pilot on volatility. In addition to the information outlined above, the report should include: (1) The change in the DJIA at the close on each expiration Friday; (2) opening prices and daily trading ranges of the pilot stocks on expiration Fridays, as well as the following Mondays; (3) price volatility as measured by the change in price from the last regular way trade to the closing price, including historical data analyzing price volatility at the close prior to the implementation of the prohibition on cancelling MOC orders after 3:45 and the other MOC procedures.

The NYSE should provide the Commission with its report and analysis, no later than June 1, 1993, which should include data for expiration Fridays through March, 1993. The Commission also is requesting a follow-up report that will analyze the expiration Fridays from April through June, 1993. This should be submitted no later than July 31, 1993. In addition, the NYSE should submit a proposed rule change no later than July 31, 1993 requesting either an extension of the procedures for an additional year or permanent approval of the expiration Friday auxiliary closing procedures.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the procedures to continue on an uninterrupted basis, and will allow the Exchange to apprise interested parties of the procedures’ extension in advance of the November, 1992 expiration. In addition, the procedures proposed here are the identical procedures utilized by the NYSE on earlier expirations, and are intended to reduce excessive market volatility at the close.*

* No comments were received on the proposed rule change which implemented these procedures. nor on the proposed rule changes which extended these procedures through October, 1992 (see note below).

It is therefore ordered, pursuant to section 19(b)(2) that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.*

Margaret H. McFarland, Deputy Secretary.

[FR Doc. 92-26887 Filed 11-4-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31729; File No. SR-OCC-92-23]

Self-Regulatory Organizations; The Options Clearing Corporation; Filing of a Proposed Rule Change Relating to Inclusion of the Wilshire Small Cap Index in the Cross-Margin Agreement With the Board of Trade Clearing Corporation


Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on September 4, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would permit OCC to cross-margin options on the Wilshire Small Cap Index ("Wilshire") with the futures and the options on the futures on the Wilshire.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in...
OCC believes that the proposed rule change is consistent with the Act and requirements of section 17A of the Act because it expands the List of Eligible Clearing Organizations for OCC/BOTCC cross-margining program thereby helping to make the national system for the clearance and settlement of securities transactions more efficient and cost-effective.

B. Self-Regulatory Organization's Statement on the Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to File No. SR-OCC-92-23 and should be submitted by November 27, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-36904 Filed 11-4-92; 8:45 am] BILLING CODE 6010-01-M

DEPARTMENT OF STATE

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: The regulations of the Immigration and Naturalization Service (5 CFR 211.1) establish conditions under which an immigrant alien may return to an unrelinquished lawful permanent residence in the United States without an immigrant visa. Aliens not covered by these regulations must obtain a special immigrant visa as a returning resident under INA section 101(a)(27)(A), 8 U.S.C. 1101(a)(27)(A). The proposed information collection is necessary to enable Department of State consular officers to efficiently determine the eligibility of an alien applicant for special immigrant classification as a returning resident. The following summarizes the information collection proposal submitted to OMB:

Type of request—New.

Originating office—Bureau of Consular Affairs.

Title of information collection—Application to Determine Returning Resident Status.

Frequency—On occasion.

Form No.—DS-177.

Respondents—Lawful permanent resident aliens who wish to apply for returning resident status.

Estimated number of respondents—2,500.

Average hours per response—30 minutes.

Total estimated burden hours—1,250.

Section 3504(h) of Public Law 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook, (202) 647-3538. Comments and questions should be directed to (OMB) Lin Liu, (202) 395-7340.


Anthony C.E. Quainton,
Assistant Secretary for Diplomatic Security.

[FR Doc. 92-26795 Filed 11-4-92; 8:45 am] BILLING CODE 4710-24-M

Office of the Under Secretary for Political Affairs

[Public Notice 1715]

Determination to Waive the Transfer of Foreign Assistance Funds Under the Fisherman's Protective Act

Pursuant to the authority vested in me by Executive Order 11772 and Delegation of Authority 183, as amended by Delegation of Authority 193-1, I hereby certify that it is in the national interest not to transfer to the account established in the Treasury pursuant to section 7(c) of the Fisherman's Protective Act (22 U.S.C. 1977(c)) or to the Fisherman's Protective Fund established by section 8 of the Fisherman's Protective Act (22 U.S.C. 1979) funds from the Foreign Assistance Act of 1961, as amended, programmed for Western Samoa or any funds which might be programmed for Western Samoa in the aggregate amount of $100,300. This amount is equal to the amount of previously unreported payments and certifications made prior to September 31, 1992, which have been reimbursed by the Secretary of State for fishing boat seizures by Western Samoa in accordance with section 3 of the Fisherman's Protective Act.

This determination, which satisfies the requirements of section 5(b) of the Fisherman's Protective Act (22 U.S.C. 1975(b)), shall be reported to the Congress immediately and shall be published in the Federal Register.


Arnold Kanter,
Under Secretary of State for Political Affairs.
Federal Aviation Administration
Aviation Rulemaking Advisory Committee, General Aviation Operations Subcommittee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration General Aviation Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on November 23, 1992, at 10 a.m.

ADDRESS: The meeting will be held at the Aircraft Owners and Pilots Association, 500 E Street, SW., Suite 920, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Myres, Executive Director, General Aviation Operations Subcommittee, Flight Standards Service (APS-850), 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8150; FAX: (202) 267-5230.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the General Aviation Operations Subcommittee to be held on November 23, 1992, at the Aircraft Owners and Pilots Association, 500 E Street, SW., Suite 920, Washington, DC. The agenda for this meeting will include progress reports from the IFR Fuel Reserve, Definition of Emergencies, Operations over the High Seas, Minimum Safe Operating Altitude, and Experimental/Restricted Category Operations Working Groups.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC, on October 29, 1992.

Ron Myres,
Executive Director, General Aviation Operations Subcommittee, Aviation Rulemaking Advisory Committee.

Federal Highway Administration
State Route 68; Environmental Impact Statement: Monterey County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Monterey County, California.

FOR FURTHER INFORMATION CONTACT: John Schultz, Chief, District Operations (A), Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915—Telephone (916) 551-1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to make improvements to California State Route 68 (SR-68), in Monterey County, between Post Mile 3.07 and Post Mile 14.68, a distance of approximately 11 miles.

This project proposes to study several alternatives to alleviate traffic congestion along an 11-mile portion of SR-68, commonly called the Monterey-Salinas Highway. The existing facility was built in 1930 as a two-lane rural arterial. In the 1970s and 1980s, intersection improvements were made and additional turning lanes, bus pullouts and traffic signals were added. Existing traffic volumes are approximately 18,000 to 22,000 vehicles per day with a level of service F (forced flow operations at low speeds) during the A.M. and P.M. peak hours. There is a need to improve traffic conditions as well as limit access to SR-68. A comparison of existing 1990 and future 2010 traffic data shows a marked increase in projected traffic volumes in SR-68.

The alternatives to be investigated include the No-Build Alternative, a Transportation Systems Management Alternative, In Corridor Alternative, and South Fort Ord Alternative.

The In Corridor Alternative predominantly maintains the existing alignment except for a 3.7 mile section diverted slightly to the north and parallel to SR-68. The In Corridor Alternative will be analyzed as a 4-6 lane conventional highway, a 6-8 lane expressway, and a 4-6 lane freeway. The South Fort Ord Alternative proposes realignment of 7.1 miles of SR-68 between the junction of SR-218 and the Toro Park interchange, realigning this portion to the north will have SR-68 going through the south part of the Fort Ord Military Reservation.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A scoping meeting will be held in late October 1992 and a series of public meetings are proposed prior to the public hearing planned for Spring 1994. Public notice will be given of the time and place of meetings and hearing. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)


John Schultz,
Chief, District Operations (A), Sacramento, California.

National Highway Traffic Safety Administration

Docket No. 92-37; Notice 2

Determination That Nonconforming 1990 Mercedes-Benz 230E Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1990 Mercedes-Benz 230E passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that nonconforming 1990 Mercedes-Benz 230E passenger cars are eligible for importation.

Issued in Washington, DC, on October 13, 1992.
because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1990 Mercedes Benz 300E), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of November 5, 1992.


SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that—

(I) the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R-90-009) petitioned NHTSA to determine whether 1989 Mercedes Benz 230E passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on August 7, 1992 (57 FR 35000) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #19 is the vehicle eligibility number assigned.


SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that—

(I) the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R-90-009) petitioned NHTSA to determine whether 1989 Mercedes Benz 230E passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on August 7, 1992 (57 FR 34999) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #20 is the vehicle eligibility number assigned.
to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1989 Mercedes Benz 230E (Model ID 126.026) is substantially similar to a 1989 Mercedes Benz 260E (Model ID 126.023) originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.


Issued on October 30, 1992.

William A. Boehly,
Associate Administrator for Enforcement.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 42 (Rev. 26)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This document gives notice of a delegation of authority to execute consents fixing the period of limitations on assessment or collection under provisions of the 1939, 1954, and 1968 Internal Revenue Codes. The text of the Delegation Order appears below.


FOR FURTHER INFORMATION CONTACT: Melvin M. Mitchell, PR-PD, room 3139, 1111 Constitution Avenue, NW., Washington, DC 20224 (202) 622-6890 (Not a Toll-Free Telephone Call).

Authority To Execute Consents Fixing the Period of Limitations on Assessment or Collection Under Provisions of the 1939, 1954, and 1968 Internal Revenue Codes

1. Pursuant to authority vested in the Commissioner of Internal Revenue by Treasury Order 150–10; 26 U.S.C. 6229; 26 CFR 301.6501(c)-1; 26 CFR 301.6502–1; 26 CFR 301.6901–1(d); and 26 CFR 301.7701–8; the authority to sign all consents fixing the period of limitations on assessment or collection is delegated to the following officials:

   a. Associate Chief Counsels and Deputy Associate Chief Counsels (for matters under their respective jurisdictions);
   b. Assistant Commissioner (International);
   c. Assistant Commissioner (Employee Plans and Exempt Organizations) but limited to Form 872–C, Consent Fixing Period of Limitations Upon the Assessment of Tax Under section 4940 of the Internal Revenue Code;
   d. Regional Counsel;
   e. Regional Directors of Appeals;
   f. Service Center Directors;
   g. Director, Austin Compliance Center; and
   h. District Directors.

2. This authority may be redelegated but not below the following levels for each activity:

   a. Service Centers—Chief, Accounting Branch; Chief, Quality Assurance; Chief, Adjustment/Correspondence; Revenue Officers and Collection Branch managers Grade GS–9 or higher; Chief, Classification function; and personnel assigned to the Examination Support Unit, Grade GS–11 or higher;
   b. Austin Compliance Center—Underreporter Division–Branch Chiefs; Collection Division—all Branch Chiefs and Chief, Quality Analysis Staff; Examination Division—Chiefs, Examination Branches; Chief, Quality Assurance Staff; Chief, Classification Branch; and personnel assigned to the Windfall Profits Staff, GS–11;
   c. Collection—Revenue Officers; Collection Support function managers Grade GS–9 or higher; Automated Collection Branch managers, Grade GS–9 or higher;
   d. Examination—Reviewers, Grade GS–11 or higher; Group managers (including large case managers); Chiefs, Planning and Special Programs and personnel assigned thereto Grade GS–11 or higher; Returns Classification Specialists and Returns Classification Officers, Grade GS–11;
   e. Criminal Investigation—Chiefs, Criminal Investigation Divisions, except in those districts where the Criminal Investigation group managers report directly to the District Directors, the authority is limited to the District Director;
   f. Appeals—Appeals Officers; and
   g. Assistant Commissioner (International)—Representatives at foreign posts; Revenue Agents, Tax Auditors, and Special Agents on foreign assignments; and levels indicated in c, d, and e above;
   h. EP/EO—For Form 872–C, Exempt Organizations Technical Division Branch Chiefs, Assistants to the Branch Chiefs, Conference/Reviewers, and Branch Reviewers;
   i. District Employee Plans and Exempt Organizations—Reviewers, Grade GS–11 or higher; and Group managers.

3. No authority is delegated under this Order to the District Counsel.

4. To the extent that the authority previously exercised consistent with this Order may require ratification, it is hereby approved and ratified.

5. Delegation Order No. 42 (Rev. 25), effective October 1, 1991, is superseded.


Approved:

David G. Blattner,
Chief Operations Officer.

BILLING CODE 4802–01–M

UNITED STATES INFORMATION AGENCY

Public and Private Non-Profit Organizations in Support of International Educational and Cultural Activities

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) announces a request for proposals from not-for-profit organizations to conduct two initiative grant exchange programs that are designed to encourage increased private sector commitment to and involvement in international exchanges involving U.S., North African, Near Eastern and South Asian audiences. All international participants will be nominated by USIA personnel overseas. Interested applicants are urged to read the complete Federal Register announcement before addressing inquiries to the Office or submitting their proposals.

ANNOUNCEMENT NUMBER: The announcement number is E/P–93–3. Please refer to this number in all correspondence and telephone calls to the Agency.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, January 8, 1993. Faxed documents will not be accepted, nor will documents postmarked January 8, 1993, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by...
the above deadline. Grants should begin after May 8, 1993.

**ADDRESSES:** The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, REF: Citizen Exchange: Initiative Grant Competition FY-93-3, Office of Grants Management (E/GE), Room 336, 301 4th Street, SW., Washington, DC 20547.

**FOR FURTHER INFORMATION CONTACT:** Interested organizations/institutions should contact the U.S. Information Agency, Office of Citizen Exchanges (E/P), 301 4th Street, SW., room 224, Washington, DC, 20547. Telephone: (202) 615-5326, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation guidance. Please specify the name of USIA Program Officer Michael Weider on all inquiries and correspondence.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Bureau’s authorizing legislation, “programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.”

**Providing for Social Welfare in the United States and the Middle East**

This program will include a six-week U.S. study tour/workshop conducted in Arabic for up to 12 Middle Eastern participants and a series of consultations and discussions in the Middle East by a team of up to five American counterparts. The program should reach out to community leaders in Islamic countries who have had no first-hand experience with American society and culture and would provide direct exposure for American audiences to various Middle Eastern customs, practices and traditions in an effort to promote dialogue and mutual understanding.

All Middle Eastern participants will be selected by USIS posts and may include Arabic-speaking sociologists, social welfare experts, and religious leaders involved in delivering social services to diverse cross-sections of their respective societies. Major goals of the project are to: Provide a basic overview of American and Middle Eastern governmental, social and cultural systems; to compare and contrast the delivery of social services by public, private, religious and non-religious organizations; to emphasize the common elements of compassion and humanitarienism in Islamic and U.S. societies; to provide participants exposure to programs and scholarly materials which promote better intercommunal understanding.

**Tolerance and Pluralism in Multi-Ethnic Societies**

This will be a two-way exchange program beginning with a three-week U.S. seminar/study tour for up to ten South Asian citizens from the private and public sectors to observe and discuss the issues of pluralism and tolerance of minorities in multi-ethnic societies. The program should take place in medium and small-sized municipalities in the United States. The program should analyze methods and techniques used to promote and expand coexistence between majority and minority communities and analyze how institutions are developed to deal with multi-ethnic tolerance issues. The program should also review and discuss curricula and teaching materials which have been developed to promote tolerance in the schools and various workplaces.

The follow-on program will be a two-week, multi-site exchange designed for a delegation of up to five Americans, and it will conclude with a symposium examining major issues relevant to the program.

**Funding**

Competition for USIA funding is keen. The selection of grantee institutions will depend on program substance, cross-cultural sensitivity, the applicant's familiarity with the program themes addressed in this solicitation, and ability to carry out the program successfully. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support.

A proposal’s cost-effectiveness—including in-kind contributions and ability to keep administrative costs low—is a major consideration in the review process. Pands requested from USIA cannot exceed $260,000 for support of the Social Welfare program and $125,000 for the Tolerance and Pluralism program. However, organizations with less than four years of successful experience in managing international exchange programs are limited to grants of $60,000 for each program.

Administrative costs. USIA-funded administrative costs are limited to twenty-two (22%) percent of the total funds requested from USIA.

Administrative costs are defined as salaries, benefits, other direct and indirect costs. Important note for universities: The U.S. Information Agency's Bureau of Educational and Cultural Affairs defines American faculty salaries as an administrative expense, regardless of how the faculty time is to be used.

**Application Requirements**

Proposals must be structured in accordance with the instructions contained in the application package.

**Review Process**

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals are reviewed by USIS and by USIA's Office of North African, Near Eastern and South Asian Affairs and the Office of Contracts. Proposals may also be reviewed by the Agency's Office of the General Counsel.

Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

The award of any grant is subject to the availability of funds.

The Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense. USIA will not award funds for activities conducted prior to the actual grant award.

**Review Criteria**

USIA will consider proposals based on the following criteria:

1. **Quality of Program Idea**

Proposals must exhibit originality, substance, rigor, and relevance to Agency mission. They should demonstrate the matching of U.S. resources to a clearly defined need.

2. **Institution Reputation/Ability Evaluations**

Institutional grant recipients should demonstrate potential for program excellence and/or track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as
determined by USIA's Office of Contracts (M/KG). Relevant evaluation results of previous projects are part of this assessment.

3. Project Personnel
Personnel's thematic and logistical expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal and no longer than two pages each.

4. Program Planning
Detailed agenda and relevant work plan should demonstrate substance and logistical capacity.

5. Thematic Expertise
Proposal should demonstrate expertise in the subject area.

6. Cross-Cultural Sensitivity/Area Expertise
Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area.

7. Ability to Achieve Program Objectives
Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the grantee institution will meet the program's objectives.

8. Multiplier Effect
Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties.

9. Cost-Effectiveness
The overhead and administrative components should be kept as low as possible. All other items should be necessary and appropriate to achieve the program's objectives.

10. Cost-Sharing
Proposals should maximize cost-sharing through other private sector support as well as institution direct funding contributions.

11. Follow-on Activities
Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-supported programs are not isolated events.

12. Project Evaluation
Proposal should include a plan to evaluate the activity's success.

Notice
The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification
All applicants will be notified of the results of the review process on or about April 2, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Barry Fulton,
Acting Associate Director, Bureau of Educational and Cultural Affairs.
[FR Doc. 92-29671 Filed 11-4-92; 8:45 am]
BILLING CODE 8220-01-M

Public and Private Non-Profit Organizations in Support of International Educational and Cultural Activities
AGENCY: United States Information Agency.
ACTION: Notice—request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) announces a request for proposals from not-for-profit organizations to conduct three initiative grant exchange programs that are designed to encourage increased private sector commitment to and involvement in international exchanges involving U.S., East Asian and Pacific participants. All international participants will be nominated by USIA personnel overseas. Interested applicants are urged to read the complete Federal Register announcement before addressing inquiries to the Office or submitting their proposals.

ANNOUNCEMENT NUMBER: E/P-93-4.
Please refer to this number in all correspondence and telephone calls to the Agency.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, January 15, 1993. Faxed documents will not be accepted, nor will documents postmarked January 15 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants should begin after May 15, 1993.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to:
U.S. Information Agency, REP: Citizen Exchange Initiative Competition FY-93-4, Office of Grants Management (E/EX)/.
Room 336, 301 4th Street SW, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact the Office of Citizen Exchanges (E/P), room 224, USIA, Washington, DC, 20547, Telephone: (202) 619-5326, to request detailed application packets which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation guidance. Please specify the name of USIA Program Officer Elroy Carlson on all inquiries and correspondence.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, "programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life."

Melanesian Youth Development Program

This will be a three-week program for an incoming delegation of six to eight government officials and educators responsible for the education, training, and employment of young people in Papua New Guinea, the Solomon Islands, and Vanuatu. In all three countries only a small fraction of the eligible population ever completes 12 years of schooling. A rapidly evolving economy spurred by new oil discoveries has created a host of skilled job opportunities for which few of the region's young people qualify. The purpose of this project is to expose selected officials from the region to U.S. public and private programs that prepare young people with limited education for participation in a modern workforce. The visit will include an examination of U.S. public service programs that offer career opportunities for disadvantaged youth, and exposure to vocational and technical school programs. Additional attention will be given to the role of voluntary youth organizations in preparing students to address the challenges of the post-colonial world. Part of the program involves bringing the officials to the U.S. for a three week period of visits and
discussions with appropriate government and private experts. Part two consists of a follow-on visit to the three countries by two or three American specialists several months after conclusion of the U.S. side of the program.

Intellectual Property Rights Study Group

This will be a two-week study program in the U.S. for eight to ten officials from selected East Asian countries to examine Intellectual Property Rights (IPR) issues. The rapid economic development of East Asian nations has been market and export driven. Patent, trademark, and copyright violations have accompanied this economic expansion. While some measures have been taken to correct past IPR violations regarding export products, violations associated with production of goods for internal markets continues and has led to bilateral trade frictions. During a two-week visit to the U.S., eight to ten mid-level officials from selected East Asian countries will examine IPR issues regarding print, audio, video, and film materials: computer software; pharmaceutical; and new food stuffs. In talks with trade experts in both the public and private sectors, participants will discuss economic development aspects of IPR; implications of the U.S. signing of the Berne Convention; enforcement of copyright, trademark, and patent regulations; and the process by which trade policy decisions are made in the U.S.

U.S. Congressional Staff Functions a Project for Taiwanese Legislative Staff

This will be a 21-day program in the U.S. for eight or nine assistants to members of the Taiwanese Legislative Yuan (LY) and/or members of the Legislative Research Service. As a result of recent elections and because of retirements among its more senior members, the LY is regarded as an increasingly representative body. Expectations by voters for continued reform have placed new demands on the legislators and their small support staffs, however. The purpose of this project will be to expose selected Taiwanese legislative staff members to the work of U.S. Congressional staff aides; view the range of information and research resources available to members of Congress; demonstrate how a legislation gains access to information shapes policy formulation; and provide participants with an overview of the relationships among the executive, legislative, and judicial branches of the U.S. federal and state governments. The project may include a follow-up visit to Taiwan by two or three American specialists on these issues within several months after conclusion of the American side of the program.

Funding

Competition for USIA funding is keen. The selection of grantee institutions will depend on program substance, cross-cultural sensitivity, the applicant's familiarity with program themes addressed in this solicitation, and ability to carry out the programs successfully. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support.

A proposal's cost-effectiveness—including in-kind contributions and ability to keep administrative costs low—is a major consideration in the review process. Funds awarded from USIA cannot exceed $15,000 for support of the Melanesian Youth Development Program; $85,000 for support of the Intellectual Property Rights Program; and $85,000 for support of the Taiwanese Project. However, organizations with less than four years of successful experience in managing international exchange programs are limited to grants of $60,000 for each program.

Administrative costs. USIA-funded administrative costs are limited to twenty-two (22%) percent of the total funds requested from USIA. Administrative costs are defined as salaries, benefits, other direct and indirect costs. Important note for universities: The U.S. Information Agency's Bureau of Educational and Cultural Affairs defines American faculty salaries as an administrative expense, regardless of how the faculty time is to be used.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the application package.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals are reviewed by USIS posts and by USIA’s Office of East Asian and Pacific Affairs and the Office of Contracts. Proposals may also be reviewed by the Agency's Office of the General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA’s contracting officer. The award of any grant is subject to the availability of funds.

The Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense.

USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on the following criteria:

1. Quality of Program Idea: Proposals should exhibit originality, substance, rigor, and relevance to Agency mission. They should demonstrate the matching of U.S. resources to a clearly defined need.

2. Institution Reputation/Ability Evaluations: Institutional grant recipients should demonstrate potential for program excellence and/or track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's office of Contracts (M/KG). Relevant evaluation results of previous projects are part of this assessment.

3. Project Personnel: Personnel's thematic and logistical expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal and no longer than two pages each.

4. Program Planning: Detailed agenda and relevant work plan should demonstrate substance and logistical capacity.

5. Thematic Expertise: Proposal should demonstrate expertise in the subject area.

6. Cross-Cultural Sensitivity/Area Expertise: Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area.

7. Ability to Achieve Program Objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the grantee institution will meet the program's objectives.

8. Multiplier Effect: Proposed programs should strengthen long-term mutual understanding, to include
maximum sharing of information and establishment of long-term institutional and individual ties.

9. Cost-Effectiveness: The overhead and administrative components should be kept as low as possible. All other items should be necessary and appropriate to achieve the program's objectives.

10. Cost-Sharing: Proposals should maximize cost-sharing through other private sector support as well as institution direct funding contributions.

11. Follow-on Activities: Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA supported programs are not isolated events.

12. Project Evaluation: Proposals should include a plan to evaluate the activity's success.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about April 9, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: November 2, 1992.

Barry Fulton,
Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-26905 Filed 11-4-92; 8:45 am]

BILLING CODE 8230-01-M
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).

FEDERAL COMMUNICATIONS COMMISSION
Deletion of Agenda Item From November 5th Open Meeting

The following item has been deleted from the list of agenda items scheduled for consideration at the November 5, 1992, Open Meeting and previously listed in the Commission's Notice of October 29, 1992.

Item No., Bureau, and Subject
5—Private Radio—Title: Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allocated to the Specialized Mobile Radio Service (PR Docket No. 89-553, RMs-6724 and 6579). Summary: The Commission will consider adoption of a Report and Order concerning the licensing of the 200 channels in the 900 MHz band allocated for use in the Specialized Mobile Radio Service.

Federal Communications Commission.
William F. Calon, Acting Secretary.

FEDERAL ELECTION COMMISSION
DATE AND TIME: Tuesday, November 10, 1992 at 10:00 a.m.
PLACE: 999 E Street, N.W., Washington, D.C.
STATUS: This Meeting Will Be Closed to the Public.
ITEMS TO BE DISCUSSED:
Compliance matters pursuant to 2 U.S.C. § 437g.

FEDERAL ELECTION COMMISSION
DATE AND TIME: Thursday, November 5, 1992
PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)
ITEMS TO BE DISCUSSED:
Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1992-38: Christine Vamey on behalf of the Clinton/Gore Campaign
Administrative Matters
PERSON TO CONTACT FOR INFORMATION:
Mr. Fred Eiland, Press Officer,
Telephone: (202) 219-4155.
Delores Hardy,
Administrative Assistant

STATE JUSTICE INSTITUTE
TIME AND DATE:
4:00 P.M., THURSDAY, NOVEMBER 12, 1992.
PLACE: Sheraton Grand on Harbor Island, 1590 Harbor Island Drive, San Diego, California 92101, (619) 291-6400.
STATUS: Open.
MATTERS TO BE CONSIDERED:
1. Approval of Minutes of Previous Open Meeting.
3. Board Action on Request for Comments: Operating Fee Scale Revision.
5. Fiscal Year 1993 Operating Fee Scale.
FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board,
Telephone (202) 683-9600.
Becky Baker,
Secretary of the Board.

NCUA'S RULES AND REGULATIONS
TIME AND DATE:
4:00 P.M., THURSDAY, NOVEMBER 12, 1992.
PLACE: Sheraton Grand on Harbor Island, 1590 Harbor Island Drive, San Diego, California 92101, (619) 291-6400.
STATUS: Open.
BOARD BRIEFINGS:
3. Legislative Update.
MATTERS TO BE CONSIDERED:
1. Approval of Minutes of Previous Open Meeting.
3. Board Action on Request for Comments: Operating Fee Scale Revision.
5. Fiscal Year 1993 Operating Fee Scale.
FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board,
Telephone (202) 683-9600.
Becky Baker,
Secretary of the Board.

BILLING CODE 6820-SC-M

STATE JUSTICE INSTITUTE
TIME AND DATE:
9:00 a.m. to 5:00 p.m., November 20, 1992
9:00 a.m. to 1:00 p.m., November 21, 1992
PLACE: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.
STATUS: The meeting will be open to the public.
MATTERS TO BE CONSIDERED: Approval of the institute's FY 1993 operating budget; discussion of internal personnel issues; action on pending grant applications.
PORTIONS OPEN TO THE PUBLIC: Business meeting (except as noted below) and grant discussions.
PORTIONS CLOSED TO THE PUBLIC: Internal personnel discussions.
CONTACT PERSON FOR INFORMATION:
David I. Tevelin, Executive Director,
State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.
(703) 684-6100.

BILLING CODE 753B-01-M
Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 552 and 570

[APD 2800.12A, CHGE 41]

General Services Administration Acquisition Regulation; Real Property Leasing Clauses

Correction

In rule document 92-19796 beginning on page 37891 in the issue of Friday, August 21, 1992, make the following corrections:

552.270-10 [Corrected]
1. On page 37891, in the first column, in section 552.270-10, in the clause, in paragraph (f), in the first line, “means” should read “mean” and in the fourth line, after “limitation” the period should be a colon.

552.270-28 [Corrected]
2. On page 37893, in the first column, in section 552.270-28, in the clause, in paragraph (a), in the fifth line, “prosecute” should read “persecute”. 3. On the same page, in the second column, in section 552.270-28, in the clause, in paragraph (c) (2), in the sixth and tenth lines, “Contracting Office” should read “Contracting Officer” each time it appears.

552.270-37 [Corrected]
4. On page 37894, in the third column, in section 552.270-37, in the clause, in the fourth line, “on” should read “no”.

570.203 [Corrected]
5. On page 37895, in the second column, in section 570.203(a)(9), in the second line, “it’s” should read “its”.

570.303 [Corrected]
7. On page 37896, in the second column, in section 570.303, in the last line, insert “a” after “during”.

570.702-30 [Corrected]
8. On page 37900, in the first column, in the section heading for 570.702-30, “obligations” should read “obligation”.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 205

RIN 0907-AA82

Aid to Families With Dependent Children; Adult Public Assistance: Revised Quality Control System

Correction

In rule document 92-24317 beginning on page 46792 in the issue of Tuesday, October 31, 1992, make the following corrections:
1. On page 46794, in the first column, in the 2d complete paragraph: a. In the 1st line, delete “not” following “does”. b. In the 11th line, after “date” insert “on”.
2. On page 46791, in the first column, in the first complete paragraph, in the fifth line, “property” should read “properly”.
3. On page 46792:
   a. In the 1st column, in the 3d complete paragraph, in the 20th line, “that” should read “the”.
   b. In the 2d column, in the last paragraph, in the 18th and 19th lines, delete “Directors, branch specialists at the Regional!”. c. In the 2d column, in the last paragraph, in the 24th line, after “who” insert “provides”.
   d. In the 3d column, in the 1st complete paragraph, in the 12th line, “procedures” should read “procedure”.
4. On page 46794:
   a. In the second column, in the last paragraph, in the ninth line, “recipient” should read “receipt”.
   b. In the third column, in the second complete paragraph, in the ninth line, after “requirement” insert “under”.
5. On page 46797:
   a. In the second column, in the fourth complete paragraph, in the fifth line, “They” should read “They”.
   b. In the third column, in the last line, “ACF” should read “ACR”.
6. On page 46798, in the second column:
   a. In the fourth line, “of” should read “on”.
   b. In the first complete paragraph, in the fourth line, the first “or” should read “of”.
7. On page 46799, in the first column, in the third complete paragraph, in the third line, after “number” insert “of”.
8. On page 46800:
   a. In the first column, in the last paragraph, in the second line “believes” should read “believed” and in the third line, “only” should read “open”.
   b. In the 2d column, in the 1st paragraph, in the 10th line, “State” should read “States”.
   c. In the third column, in the last paragraph, in the second line, after “amount of” insert “a”.
9. On page 46801, in the 1st column, in the 2d complete paragraph, in the 12th line, after “adjustment to” insert “be!”.
10. On page 46802, in the first column, in the second paragraph, in the eighth line, “The” should read “They”. § 205.40 [Corrected]
11. On page 46803, in the first column, in § 205.40(b)(6), in the third line, “October 1,” should read “October 1.”
§ 205.41 [Corrected]
12. On page 46806, in the third column:
§ 205.42 [Corrected]
13. On page 46807, in the third column, in § 205.42(b)(1)(ii), in the third line, delete the word “a”.
14. On page 46808, in the third column, in § 205.42(e)(1)(ii), in the third line, “case” should read “cases”.
15. On the same page, in the same column, in § 205.42(f)(1), in the third line, “plans” should read “plan”.
16. On page 46809, in the 3d column, in § 205.42(f)(4), in the 4th line, “panel” should read “Panel”.
17. On page 46810, in the first column, in § 205.42(g)(3), in the last line, “years” should read “year.”.
§ 205.43 [Corrected]
18. On page 46810, in the first column, in § 205.43(b)(2), in the fifth line, “[b][1][ii]” should read “[b][1][i]”.
19. On the same page, in the same column, in § 205.43(b)(4), in the sixth line, after “taken” insert a period and delete “by all States for the fiscal year, to the total number of negative case actions taken.”.
20. On page 48591:
   a. In the first column, in § 205.43(e)(4)(ii)(B), in the seventh line, “rat” should read “rate”.
   b. In the second column, in § 205.43(e)(5), in the second column of the table, the entry “14.04%” should read “14.0%” and for clarification, the “Calculation” paragraphs following the table are reprinted as follows:

Calculation:
1. State adjusted overpayment rate, paragraph—
   (e)(1)...8.0—3.0=5.0=7.8%
2. Basic disallowance amount, paragraph—
   (e)(2)(i)...$5,000,000
   (e)(2)(ii)...7.8—6.0=1.8%
   (e)(2)(iii)...1.8/6.0=0.30
Amount = $5,000,000 × 1.8% × 0.30 = $27,000
3. Reduction for overpayment recoveries, paragraph—
   (e)(3)...$5,000
   (e)(3)(ii)...1.8/7.8=0.231
Amount = $5,000 × 0.231 = $1,155
4. Reduction for improvement in child support collections, paragraph—
   (e)(4)...$27,000—$1,155=$25,845
   (e)(4)(ii)(A)...16.0—12.0=4.0=0.333
   (e)(4)(ii)(B)...16.0—14.0=2.0=0.133
Since 0.333 is larger than 0.133, then the —
   Amount = $25,845 × 0.333 = $8,600
5. Final disallowance, paragraph—
   (e)(5)...$27,000 — ($1,155 + $8,600)=$17,239

BILING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Social Security Administration
20 CFR Part 416
RIN 0960-AC38
Supplemental Security Income for the Aged, Blind, and Disabled; Parent-to-Child Deeming
Correction
In rule document 92–425945 beginning on page 485599 in the issue of Tuesday, October 27, 1992, make the following correction:
   On the same page, in the same column, in the second line, “November 2, 1992,” should read “November 1, 1992.”

BILING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR
Bureau of Land Management
[75484, WYW 75485]
[52827]
Proposed Modification, Continuation, and Termination of Bureau of Reclamation Withdrawals, Riverton Reclamation Project; Wyoming
Correction
In notice document 92–246905 beginning on page 46595 in the issue of Friday, October 9, 1992, make the following corrections:
   1. On page 46595, in the second column, under DATES, in the second line, “January 7, 1992” should read “January 7, 1993”.
   2. On the same page, in the same column, in the land description, in T. 3 N., R. 1 E., in sec. 28, “W½NE¼,” should read “W½SE¼NE¼.”
   3. On page 46596, in the first column, in T. 3 N., R. 3 E., in sec. 14, “N¼SW¼ SW¼,” should read “N½SW¼SW¼.”

BILING CODE 1505-01-D

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1
[T.D. 8440]
RIN 1545—AN76
Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards
Correction
In rule document 92–23731 beginning on page 45711 in the issue of Monday, October 5, 1992, make the following corrections:
§ 1.382–1T [Added]
1. On page 45712, in the second column, the heading above Par. 4. is corrected to read as set forth above.

§ 1.382–2T [Corrected]
2. On the same page, in the same column, in Par. 6., in amendment 1. to § 1.382–2T, in the second line, “§ 1.382–[a](3)” should read “§ 1.382–2(a)(3),”.

§ 1.382–3 [Corrected]
3. On the same page, in the third column, in Par. 9., in amendment 3. to § 1.382–3, in the table: 
   a. In the first column (Paragraph), in the fifth line, “[ii]” should read “[iii].”
   b. In the second column (Remove), in the second line, “[a][i][i]” should read “[a][ii][ii].”
   c. In the third column (Add), the fifth and sixth lines from the bottom should read “Examples 1, 2, and 3 of.”

§ 1.382–11 Effective dates. [Reserved]
4. On page 47513, in the second column, the second section heading from the top should have read as set forth above.

BILING CODE 1505-01-D
Part II

International Trade Commission

19 CFR Parts 210 and 211
Proposed Final Rules Governing Investigations and Enforcement Procedures Pertaining to Unfair Practices in Import Trade; Proposed Rule
INTERNATIONAL TRADE COMMISSION

19 CFR Parts 210 and 211

Proposed Final Rules Governing Investigations and Enforcement Procedures Pertaining to Unfair Practices in Import Trade


ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Commission proposes to adopt final rules of practice and procedure relating to investigations and related proceedings under section 337 of the Tariff Act of 1930 for 19 CFR part 210. This rulemaking is being undertaken in response to: Public comments requesting changes in the interim rules; the need to revise certain interim rules to more accurately reflect actual Commission practice; and the need for Commission rules concerning matters that are not currently provided for in the interim rules. The proposed final rules will replace the interim rules that currently appear in 19 CFR parts 210 and 211. Part 211 would then be removed from title 19 of the Code of Federal Regulations.

DATES: Comments on the proposed final rules will be considered if received on or before January 4, 1993.

ADDRESSES: A signed original and 17 copies of each set of comments, along with a cover letter stating the nature of the commenter’s interest in the proposed rulemaking, should be submitted to Paul R. Bardos, Acting Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed final rules may be directed to P.N. Smigels, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3061. Hearing-impaired individuals can obtain information concerning the proposed final rules by contacting the Commission’s TDD terminal at 202-205-1610.

SUPPLEMENTARY INFORMATION: Like the interim rules they are expected to replace, the proposed final rules are not major rules for purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, the Commission also certifies that the proposed final rules will not have a significant adverse impact on small business entities.

Background

Part 210 currently sets forth procedures for adjudicative investigations under section 337 of the Tariff Act of 1930 (Tariff Act) (19 U.S.C. 1337). Part 211 currently establishes procedures for advisory opinions as well as the enforcement, modification, or revocation of remedial or consent orders issued under section 337.

The current rules in parts 210 and 211 were adopted on an interim basis in 1988 to implement the amendments to section 337 of the Tariff Act that were effected by the Omnibus Trade and Competitiveness Act of 1988, Public Law No. 100-418, 102 Stat. 1107 (1988) (Omnibus Trade Act). Publication of this notice of proposed rulemaking is the first step toward replacing the interim rules with final rules in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 551 et seq.).

In addition to the substantive changes described below, the proposed final versions of many part 210 rules have been renumbered and relocated from their position in the interim rules. Also, the rule provisions which currently appear in part 211 have been revised and merged into the proposed final version of part 210. To readily locate the proposed final version of a particular interim rule, consult the table located at the end of this preamble.

A section-by-section analysis of the proposed final rules is set forth below.

Subpart A - Rules of General Applicability

Section 210.1

Proposed final rule 210.1, which is derived from interim rules 210.1, 211.01, and 211.50 (a) and (b), states the applicability of and the statutory authority for the proposed final rules in part 210. Since the rule provisions that previously appeared in part 211 have been merged into part 210, proposed final rule 210.1 indicates that part 210 rules cover section 337 investigations and related proceedings. (See proposed final rule 210.3 for a definition of the term “related proceeding.”)

Section 210.2

Proposed final rule 210.2 is based on interim rule 210.2, which articulates (1) the Commission’s policy of conducting section 337 investigations as expeditiously as possible, and (2) the concomitant obligation of participants and the presiding administrative law judge (ALJ) to make every effort to avoid delay at each stage of the investigation. Proposed final rule 210.2 has been drafted to apply these provisions to investigations and related proceedings.

Section 210.3

Proposed final rule 210.3 provides definitions for part 210. Those definitions include the five that appear in interim rule 210.4, with minor editorial changes. The Commission also has added a sentence to the definition of the term “administrative law judge” to indicate that if the Commission so directs or if a rule in part 210 so provides, an ALJ may preside during stages of a related proceeding, in addition to presiding over the taking of evidence in a section 337 investigation.

Proposed final rule 210.3 also contains definitions of the following five terms that do not appear in interim rule 210.4: “intervenor,” “investigation,” “proposed intervenor,” “proposed respondent,” and “related proceeding.”

Definitions of the terms “investigation” and “related proceeding” have been added because of the expanded scope of the proposed final rules in part 210 to include investigations and related proceedings that previously were covered in part 211. The definition of “investigation” lists the kinds of postinstitution activities that constitute a section 337 investigation. It also explains that final termination of an investigation occurs when the Commission issues a nonappealable determination, order, or notice which ends the investigation.4 or when any administrative or judicial appeal relating to the final Commission

1 Interested persons should note that the Commission has abandoned the proposed final rulemaking announced at 53 FR 48400 (Nov. 7, 1988) (preinstitution duty of candor rules for section 337 complainants). In addition, the proposed changes to rules that currently appear in part 211, which were published at 53 FR 40453 (Oct. 17, 1988), have been incorporated into the proposed final rules published herein.

4 This is based on the Commission’s settlement agreement and consent order procedure. Terminations based on settlement agreements or consent orders often are effected without a determination on violation of section 337 or any Commission findings on underlying issues such as validity or infringement of a disputed intellectual property right. See 19 U.S.C. 1337(c); proposed final rules 210.21(b)(2) and (c); and interim rules 210.21(b) and (c). Moreover, every consent order agreement or stipulation must contain an express waiver of each settling party’s right to seek judicial review or to otherwise challenge or contest the validity of the consent order. See proposed final rule 210.21(c)(3)(ii) and Interim rule 211.22(a).

Proposed final rule 210.21(c)(3)(ii) also provides that the stipulation must contain a waiver of the right to seek court-ordered limitations on the Commission’s efforts to gather information in determining whether the consent order is being complied with and whether the conditions that led to issuance of the consent order have changed.

5 See 5 U.S.C. 553. The Commission will issue final rules after reviewing public comments on the proposed rules. The final rules will be published in the Federal Register at least 30 days before their effective date.

6 See 5 U.S.C. 553. The Commission will issue final rules after reviewing public comments on the proposed rules. The final rules will be published in the Federal Register at least 30 days before their effective date.
action has ended, or the time for seeking such appeals has expired. The definition of the term "related proceeding" identifies the kinds of proceedings that are covered by that term—namely, preinstitution proceedings, certain types of sanction proceedings, temporary relief bond forfeiture proceedings, proceedings to modify, revoke, or enforce a remedial or consent order issued under section 337, and advisory opinion proceedings. The Commission has included definitions of the terms "intervenor," "proposed intervenor," and "proposed respondent" in proposed final rule 210.3 to facilitate implementation of certain other proposed final rules, such as 210.4(b), which imposes signature and certification requirements for every written submission filed by a party or proposed party to a section 337 investigation or related proceeding, and 210.19, which establishes the procedure for intervening in an investigation or a related proceeding.

Section 210.4

Proposed final rule 210.4 governs written submissions filed by parties or proposed parties in connection with a section 337 investigation or a related proceeding under part 210. Paragraph (a). Paragraph (a) of proposed final rule 210.4 is based on paragraph (a) of interim rule 210.5, which lists the required information that generally appears in the front of written submissions filed in connection with a section 337 investigation. The key differences between the proposed final rule and the interim rule are enumerated below.

1. The requirements of paragraph (a) of the proposed final rule apply to written submissions filed prior to the institution of an investigation, as well as those filed by a party or a proposed party during an investigation or a related proceeding.

2. Paragraph (a) of the proposed final rule states that each section 337 complaint must list "all proposed respondents" instead of listing "all or the primary parties to the proceeding." This change is appropriate because the complainant is not necessarily in a position to know, when the complaint is being prepared, the names of all persons or firms that will be parties if and when an investigation is instituted in response to the complaint. The complainant also may not have enough information to determine which persons or firms can be considered the "primary parties to the proceeding." 7

3. Paragraph (a) of the proposed final rule also does not require that each response to the complaint contain a listing of "all or the primary parties to the proceeding." While there is some utility to having a roster of proposed respondents on the front of a complaint, similar justification does not exist for requiring a roster of parties on the front of each response to the complaint. A response is filed after the Commission has issued a notice of investigation identifying all parties. Copies of the notice are served on all parties and are readily accessible to other interested persons and the Commission staff. Hence, there is no need for each response to the complain to provide a roster of parties.

Paragraph (b). Paragraph (b) of proposed final rule 210.4 is based on paragraph (b) of interim rule 210.5, which provides signature and certification requirements for written submissions and sanctions for filing a document that has been signed in violation of those requirements. The key provisions of the proposed final rule are discussed below.

In paragraph (b)(1) of the proposed final rule, the signature and certification requirements apply to all written submissions filed by proposed parties, as well as those filed by parties—regardless of whether the submission is addressed to the ALJ or the Commission.8 10

The remaining differences between paragraph (b)(1) of the proposed final rule and paragraph (b) of the interim rule are editorial. Consistent with Rule 11 of the Federal Rules of Civil Procedure (FRCP), the certification provision in the proposed final rule refers to the signer's knowledge, information, and belief "formed" (instead of "founded") after reasonable inquiry. The proposed final rule also states that if a pleading, motion, or other paper is not signed, it should be stricken unless the omission is brought to the attention of "the submitter" (instead of "the pleader or movant").

Paragraph (b)(2) of proposed final rule 210.4 clarifies that a submission need not be frivolous in its entirety in order for the Commission or the ALJ to find that it was signed and filed in violation of the signature and certification requirements of paragraph (b)(1). This clarification is consistent with Federal court practice and Commission precedent. Paragraph (b)(2) also states that in determining whether a submission was filed in violation of those requirements, the ALJ and the Commission will consider whether the submission or the disputed portion thereof was "objectively reasonable" under the circumstances.

Paragraph (b)(3) of proposed final rule 210.4 states that monetary sanctions may be imposed if a written submission is signed and filed in violation of paragraph (b)(1). As the preamble to interim rule 210.5(b) explained, the Omnibus Trade Act amendments to section 337 authorized the Commission to adopt rules imposing sanctions for abuse of process in section 337 investigations to the extent provided in a motion to amend the complaint and notice of investigation to add the proposed respondent as a party to the investigation. See proposed final rules 210.19 and 210.15(a)(2) and (c).

8 Shortly after interim rule 210.5(b) was adopted, the Commission considered the adoption of supplemental preinstitution duty of candor rules of complainants. See 53 FR 44900 (Nov. 7, 1988). The adoption of such rules is no longer being considered. The Commission intends for proposed final rule 210.4(b) to serve as the truth and veracity standard for all written submissions filed by a party or proposed party to an investigation or a related proceeding under part 210. This includes complaints and other submissions that are filed before the Commission determines whether to institute an investigation on the basis of the complaint. See also proposed final rule 210.12(b), a new provision imposing a duty to supplement the complaint if a change in a pleaded material fact and law occurs after the complaint is filed and before the Commission institutes an investigation in response to the complaint.

9 This is based on Commission precedent. See, e.g., Inv. No. 337_TA-222, Certain Microporous Nylon Membranes and Products Containing Same, 56 FR 19563 (Apr. 3, 1991) ("the end of an investigation occurs upon exhaustion of the appeals process").
The Commission accordingly drafted paragraph (b) of interim rule 210.5 to correspond to the signature, the certification, and most of the sanction provisions of FRCP 11.14 The only sanction provisions of FRCP 11 that were intentionally omitted from the interim Commission rule were those providing for the payment of another party's costs and attorney's fees as a sanction for signing a submission in violation of a signature provision. The Omnibus Trade Act amendments provided the Commission discretionary authority to impose sanctions.14 The Commission thought it inappropriate to exercise that authority to impose the payment of costs and attorneys' fees in interim rules that were being adopted on an emergency basis without prior public comment.15

The Federal Register notice announcing interim rule 210.5(b) stated that the Commission would determine at a later date whether to publish proposed cost and fee sanction rules.16 Interested persons responded by filing written comments urging the Commission to adopt such rules. Paragraph (b)(3) of proposed final rule 210.4 accordingly provides for the imposition of cost and attorney's fee sanctions in certain instances when a submission is found to have been signed in violation of the signature and certification requirements.17 Paragraph (b)(3) also permits the Commission to impose fines in addition to costs and attorneys' fees in particularly egregious cases. The sanction provisions of paragraph (b)(3) in the proposed final rule apply to the written submissions of parties or proposed parties to investigations or related proceedings, regardless of whether the submission is addressed to the ALJ or the Commission.

Sanctions for violation of the signature and certification requirements of paragraph (b)(1) are, however, not mandatory. As noted above, although FRCP 11 states that sanctions for abuse of process shall be imposed, the Commission's authority to impose sanctions to the extent authorized by FRCP 11 is discretionary. Paragraph (b)(2) of proposed final rule 210.4 thus states that an appropriate sanction may be imposed when a written submission is signed and filed in violation of paragraph (b)(1).18

Paragraph (c). Paragraph (c) of proposed final rule 210.4 is derived from paragraph (c) of interim rule 210.5, which imposes specifications for written submissions in section 337 investigations by citing provisions of Commission rule 201.6.19 Paragraph (c)(1)(i) of the proposed final rule imposes spacing and print-size requirements for written submissions that are addressed to the Commission in a section 337 investigation or a related proceeding. The Commission believes that these requirements are necessary and appropriate to prevent evasion of the intended effect of the page limitations in proposed final rules 210.06(c) and (e)(2) by utilizing unusually small spacing in submissions.20 The specific requirements imposed in paragraph (c)(1)(i) of proposed rule 210.4 are identical to those applied to briefs filed in the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) in appeals from Commission determinations under section 337.21

The specifications in paragraph (c)(1)(i) of proposed final rule 210.4 do not apply to written submissions that are addressed to an ALJ. Paragraph (c)(1)(ii) allows the ALJ to impose any specifications he deems appropriate for written submissions addressed to the ALJ.

Paragraph (c)(2) of the proposed final rule states the number of copies that must be filed along with the signed original of each submission. This paragraph does not differ from the corresponding provision of interim rule 210.5(c).

Paragraph (c)(3) of the proposed final rule provides that if certain specified types of submissions contain confidential business information, the submitter must file and serve nonconfidential copies by a specified deadline. The Commission has observed that parties in section 337 investigations and related proceedings frequently fail to file public inspection copies of their confidential submissions, unless the docket section staff in the Office of the Secretary calls to remind them or the ALJ or the Commission orders such filing. Paragraph (c)(3) of the proposed final rule accordingly provides that unless the Commission, the ALJ, or another rule in part 210 provides otherwise, any person who files a written submission of the kind specified in paragraph (c)(3) that contains confidential business information must file and serve nonconfidential treatment, the nonconfidential copies of the submission on the other parties within 10 business days after filing the confidential version. If the submitter's ability to prepare the nonconfidential copies is dependent upon receipt of a document from the Commission, the ALJ, or the Secretary indicating whether certain information is entitled to confidential treatment, the nonconfidential copies of the submission must be filed and served within 10 business days after service of that document. The ALJ or the Commission may extend or shorten the 10-day deadline, if necessary.

Paragraph (d). Paragraph (d) of proposed final rule 210.4 is based on paragraph (d) of interim rule 210.5, which was intended to provide that written submissions are to be served in the manner specified in Commission rule 201.16(b) (i.e., by mail or hand-delivery), unless the presiding ALJ, the Commission, or another rule in part 210 states otherwise.

The proposed final rule differs from the interim rule essentially in two respects. First, the erroneous reference to service in the manner specified in § 210.16(b) of this Chapter, which appears in paragraph (d) of interim rule 210.5, has been corrected to refer to § 201.16(b) of this Chapter in paragraph (d) of proposed final rule 210.4. Second, the service requirements of the proposed final rule are applicable to written submissions filed by proposed parties, as well as those filed by parties, to investigations or related proceedings.

Although paragraph (d) of the proposed rule provides that written submissions are to be served in the manner specified in § 201.16(b) (i.e., by mail or delivery to the intended recipient's principal place of business or the office of his attorney (if the person is represented by counsel)), the presiding ALJ, the Commission, or another rule in part 210 may state otherwise. A presiding ALJ thus may order service of a particular submission by other means, such as by fax.
Section 210.5

Proposed final rule 210.5 is derived from interim rule 210.6 concerning confidential business information.

Paragraph (a). Paragraph (a) of interim rule 210.6 cites the rules for defining, identifying, and submitting confidential business information in a written submission filed in connection with a section 337 investigation or a related proceeding. Paragraph (a) of proposed final rule 210.5 is essentially the same as paragraph (a) of the interim rule, with two minor differences. First, the typographical errors in the interim rule which resulted in erroneous citations to "§ 210.6(a)" instead of "§ 201.6(a)", and "§ 210.6(c)" instead of "§ 201.6(c)" have been corrected in the proposed final rule. Second, paragraph (a) of the proposed final rule also indicates that confidential business information is to be submitted in accordance with § 201.6(c) in the absence of a Commission or ALJ order stating otherwise.

Paragraph (b). Paragraph (b) of proposed final rule 210.5 is based on paragraph (b) of interim rule 210.6, which imposes restrictions on the disclosure of confidential business information.

The Omnibus Trade Act amended section 337 by creating statutory restrictions on the disclosure of confidential business information without the consent of the submitter. The Commission accordingly drafted paragraph (b) of interim rule 210.6 to mirror the statutory provisions.

The public comments on the interim rule focused on paragraph (b)(1)—persons granted access to confidential business information under an administration protective order issued under interim rule 210.37. Submissions filed by American Telephone & Telegraph Co. (AT&T) and by Texas Instruments Inc. (Texas Instruments) along with 10 other companies commented that the Commission should adopt a rule or policy that no distinction will be drawn between in-house counsel and retained counsel in determining the propriety of disclosing confidential information under a protective order in a section 337 investigation. Texas Instruments noted that the presumption against granting in-house counsel access to confidential business information had been dropped in countervailing duty and antidumping investigations under title VII of the Tariff Act and that the 1988 interim rules governing those investigations authorized the granting of a protective order application filed by an in-house attorney who was not involved in "competitive decisionmaking," as defined in United States Steel v. United States, 730 F.2d 1465 (Fed. Cir. 1984). Texas Instruments seemed to favor a standard in section 337 investigations, with the additional requirement that the in-house counsel applicant must not have been involved in the negotiation of patent licenses or the prosecution of applications for patents in the subject or field at issue in the investigation. AT&T and Texas Instruments noted that the presumption against granting in-house counsel access to confidential business information under an administration protective order issued under interim rule 210.6 has been drafted to state that service shall be in accordance with § 210.14 of this chapter and § 201.16(d) if applicable. Instead of citing § 201.14 alone. Second, a sentence has been added to proposed final rule 210.6 to explain that when a deadline must be computed on the basis of the service date of a document that was served by mail, the additional time allotted under Commission rule 201.16(d) is to be added to the end of the prescribed period and not the beginning. This provision codifies a longstanding Commission practice.

Interested persons should also note that proposed final rule 210.6 provides that computation of time shall be in accordance with Commission rules 201.14 and 201.16(d) if applicable. The legislative history indicates that Commission personnel are responsible for maintaining the record of the investigation or related proceeding.

Paragraph (c) and (d). Paragraphs (c) and (d) of proposed final rule 210.5 are now provisions. Following publication of interim rule 210.6 in 1988, the ITC Trial Lawyers Association (ITCTLA) commented that the final rule should identify the final arbiter on the question of whether information designated confidential by the submitter is entitled to confidential treatment under the Commission rules. The Commission agrees. Paragraph (c) of proposed final rule 210.5 accordingly describes confidentiality determinations during the preinstitution proceedings. Paragraph (d) describes confidentiality determinations during investigations and related proceedings.

Section 210.6

Proposed final rule 210.6 is based on interim rule 210.7, which pertains to the computation of time, additional hearings, postponements, continuances, and extensions of time. The proposed final rule differs from the interim rule in two respects. First, proposed final rule 210.6 has been drafted to state that service shall be in accordance with § 201.14 of this chapter and § 201.16(d) if applicable. Instead of citing § 201.14 alone. Second, a sentence has been added to proposed final rule 210.6 to explain that when a deadline must be computed on the basis of the service date of a document that was served by mail, the additional time allotted under Commission rule 201.16(d) is to be added to the end of the prescribed period and not the beginning. This provision codifies a longstanding Commission practice.

Interested persons should also note that proposed final rule 210.6 provides that computation of time shall be in accordance with Commission rules 201.14 and 201.16(d) if applicable—unless the presiding ALJ, the Commission, or another rule in part 210 states otherwise. Accordingly, while an investigation or a related proceeding is before the ALJ, he is free to impose his own rules for computing time to take action in response to a document, regardless of the manner in which the
document was served. The ALJ thus may grant extra time for responding to a document that was served by hand-delivery, fax, express courier, or international express courier.

Section 210.7

Proposed final rule 210.7 is based on interim rule 210.8, which states that service of "process and other documents" shall be in accordance with Commission rule 210.16, unless the Commission, the ALJ, or another rule in part 210 states otherwise.

The ITCTLA commented that the meaning of interim rule 210.8 was unclear in light of interim rule 210.5(d), which pertains to "service of submissions." The ITCTLA suggested that if the two rules apply to different documents, that should be made clear; otherwise, rule 210.8 should be omitted from the proposal final version of part 210.

In response to the ITCTLA's concerns, the Commission has drafted proposed final rule 210.7 to expressly cover the service of (1) process all documents issued by or on behalf of the Commission or an ALJ, and (2) all documents issued by parties under the discovery and compulsory process rules (proposed final rules 210.27 through 210.34).

Subpart B—Commencement of Preinstitution Proceedings and Investigations

Section 210.8

Proposed final rule 210.8 is essentially the same as interim rule 210.10, which describes the commencement of Commission proceedings to determine whether to institute a section 337 investigation. The proposed final rule differs from the interim rule in the following respects: First, since the definitions and other provisions of the proposed final rules distinguish between investigations and related proceedings, proposed final rule 210.8 is entitled "Commencement of Preinstitution Proceedings" instead of "Commencement of Proceedings." Also, the word "preinstitution" has been inserted in front of "proceeding" in the first sentence of paragraph (a) of the proposed final rule and in the sentence constituting paragraph (b) of the proposed final rule.

Section 210.9

Proposed final rule 210.9 describes the Commission's actions upon receipt of a complaint, i.e., the preinstitution processing of a complaint. There is no substantive difference between this rule and interim rule 210.11, except for the omission of cross-references in the proposed final rule to rules governing the format, filing, and content of a section 337 complaint in the proposed final rule.

Section 210.10

Proposed final rule 210.10 is based on interim rule 210.12, which describes the time and manner in which the Commission institutes—or declines to institute—a section 337 investigation in response to a complaint. The proposed final rule reflects actual Commission practice more accurately and in greater detail than the interim rule—particularly with respect to cases in which the complaint is accompanied by a motion for temporary relief. The proposed final rule also provides that written notice will be given to all proposed respondents (as well as to the complainant) if the Commission determines not to institute an investigation in response to the complaint.

In connection with the Commission's examination of a section 337 complaint and its informal investigatory activity under proposed final rule 210.9(b), potential complainants (and any proposed respondent who files a preinstitution submission with the Commission) should note that they will be expected to provide supplemental information to the Commission, if such information is requested, prior to the Commission's decision on whether to institute an investigation in response to the complaint. Proposed final rule 210.12(h) imposes a duty to supplement the complaint under certain circumstances. The obligation of a complainant (and any proposed respondent who files a preinstitution submission to provide supplemental preinstitution information to the Commission upon request exists even though the information requested might not fall within the limited category of mandatory supplements under proposed final rule 210.12(h).

Section 210.11

Proposed final rule 210.11 is based on interim rule 210.13, and governs service of the complaint and notice of investigation by the Commission—which is the operative service for computing the deadline for responding to the complaint and notice. The Secretary usually serves the complaint and notice of investigation on each respondent by certified mail and requests a return receipt bearing the signature of the person to whom the mailing was delivered and the date the delivery occurred. The provisions of interim rule 210.13 constitute paragraph (a) of proposed final rule 210.11.

Paragraph (b) of proposed final rule 210.11 is a new provision stating that parties may, with leave from the presiding ALJ, try to serve the complaint and notice of investigation by personal service if proof of Commission service by certified mail cannot be obtained. Personal service of the complaint and notice of investigation by a party may be necessary or desirable when a respondent to whom the Commission has not been able to serve by mail is not participating in the investigation and another party wants the Commission to have personal jurisdiction over that respondent.26

Subpart C—Pleadings

Section 210.12

Proposed final rule 210.12 is based on interim rule 210.20, which describes the general requirements for all complaints as well as the specific requirements for complaints based on various specific types of unfair acts or unfair methods of competition. The differences between the interim rule and paragraph (a) of the proposed final rule are discussed below.

1. Paragraph (a) of proposed final rule 210.12 expressly requires compliance with confidentiality rule 210.5 in addition to proposed final rule 210.4 and Commission rule 210.3.

2. Paragraphs (a)(6) through (a)(9) of proposed final rule 210.12 are arranged somewhat differently from the corresponding paragraphs in interim rule 210.20 and also have been shortened to make them easier to read.

3. The domestic industry data requirements of paragraphs (a)(6) and (a)(7) of proposed final rule 210.12 have been drafted to correspond more closely to the purpose and intent of the Omnibus Trade Act amendments concerning the "domestic industry" for complaints based on infringement of a U.S. patent or a federally registered trademark, copyright, or mask work.28

26 Such jurisdiction may be required to support a cease and desist order against a domestic respondent.

28 An importation or sale involving infringement of a patent or a registered trademark, copyright, or mask work is a violation of section 337 if a domestic industry exists or is in the process of being established. See 19 U.S.C. 1337(a) (1) and (2). The Omnibus Trade Act amendments to section 337...
Moreover, paragraph [a](6)(iii) provides for complaints alleging that a domestic industry is in the process of being established, as well as complaints alleging that a domestic industry exists.30 The Commission received adverse comments concerning interim paragraph (a)(9)(vi) from the Ad-Hoc Association of Inventors and Licensing Companies (AAILC), a group of independent, freelance, U.S. inventors and licensing companies, many of whose products are not being manufactured or produced in the United States. The AAILC was concerned that paragraph (a)(6)(iii) of the interim rule does not adequately reflect the Congressional intent that compliance with the "substantial investment" criterion for a domestic industry is to be based on the facts and circumstances of each case and should not be construed in a manner that precludes small businesses (like members of the AAILC) from obtaining relief solely because they are incapable of manufacture at the time the complaint is filed, have not met any requisite dollar threshold of investment, lack the resources to fund large-scale research and development facilities available to industries engaged in manufacturing, or do not have full-time laboratory personnel or patent counsel on staff. The Commission does not consider it necessary to draft proposed final rule 210.12(a)(6) in the manner the AAILC has suggested. For the benefit of potential section 337 complainants who have not commenced manufacture of the product or use of the process relating to the intellectual property right asserted in the complaint, the preamble to the final rule will state that the substantial investment factor and other statutory rules will state that the substantial investment factor and other statutory rules relevant to the existence of a domestic industry will be evaluated on a case-by-case basis.

4. Paragraph (a)(9)(ii) of interim rule 210.20 requires the complainant in a patent infringement case to provide, among other things, a showing of domestic production of the patented or domestic utilization of the patented process. The ITCTLA commented that the Commission should omit those requirements from the final rule. The ITCTLA noted that under the Omnibus Trade Act amendments to section 337, domestic production or utilization is a factor that may be proven to support a finding of domestic industry, but it is not required. The ITCTLA thus believes that interim paragraph (a)(9)(vii) is inconsistent with the statute and Congressional intent.

The ITCTLA noted also that the principal purpose of interim paragraph (a)(9) appears to be to obtain information from the complainant for use in judging the sufficiency of the allegations concerning infringement and that this can be achieved without requiring a showing of domestic production or utilization (e.g. through the claim comparison chart required by interim paragraph (a)(9)(vii)). The Commission notes that information concerning domestic production is useful for showing the exploitation of the subject patent. The Commission has drafted paragraph (a)(9) of the proposed final rule, however, in the manner that the ITCTLA has suggested.

5. The final substantive difference between paragraph (a) of interim rule 210.20 and paragraph (a) of proposed final rule 210.12 relates to paragraph (a)(10). Paragraph (a)(10) of the interim rule states that a complainant seeking temporary relief must file a motion for such relief along with the complaint. Proposed final rule 210.53 permits a complainant to file a motion for temporary relief after a complaint is filed, however, as long as filing occurs before the Commission has determined whether to institute an investigation on the basis of the complaint. Paragraph 210.53 of proposed final rule 210.12 accordingly states that a motion for temporary relief should accompany the complaint, as provided in proposed final rule 210.52(a), or may follow the complaint, as provided in proposed final rule 210.53(a).

Paragraph (b). Paragraph (b) of proposed final rule 210.12, which provides for the submission of samples of the domestic and imported articles at issue in a complaint as exhibits, is essentially the same as paragraph (b) of interim rule 210.20.

Paragraph (c). Paragraph (c) of proposed final rule 210.12 is based on paragraph (c) of interim rule 210.20, which describes additional material that must accompany a section 337 complaint based on alleged patent infringement. There are two minor differences between the interim rule and the proposed final rule. The first is that the term "U.S." has been inserted before "Patent and Trademark Office" in paragraph (c)(3) of the proposed final rule. And in paragraph (c)(3) of the proposed final rule, the words "file wrapper" have been deleted in favor of "prosecution history," which is the preferred term.

Paragraphs (d), (f), and (g). Paragraphs (d), (f), and (g) of interim rule 210.20 list additional material that must be provided in or with a section 337 complaint alleging infringement of a federally registered trademark, copyright, or mask work. The ITCTLA commented that, like a patent-based complaint, a complaint based on infringement of any of the aforesaid intellectual property rights should be accompanied by three copies of the federal registration, a list of all licensees, and all licensing agreements (or a representative agreement).

The Commission agrees. Three copies of such documents are needed because the original goes in the docket file in the Secretary's Office, one copy goes in the public inspection file in the Secretary's Office, one copy goes to the Office of Unfair Import Investigations (OUII), and one copy goes to Office of the General Counsel. Paragraphs (d), (f), and (g) of proposed final rule 210.12 accordingly have been drafted in the manner the ITCTLA recommended.

Paragraph (e). Paragraph (e) of the interim rule 210.20 lists additional information that must be provided with a complaint alleging infringement of a nonfederally registered trademark (i.e., a "common-law" trademark). Unlike the interim rule, paragraph (e) of proposed final rule 210.12 provides that complaints alleging infringement of a common-law trademark must contain a "detailed and specific" description of the alleged trademark. This requirement has been added because the Commission believes that there are significant public interest reasons for requiring a party to define the metes and bounds of the asserted trademark—particularly since the Commission is now authorized to grant default remedial orders under section 337 as amended by the Omnibus Trade Act.31 For example: If the Commission determines to issue a limited exclusion order in a litigated investigation or in a default case, the order should be drafted with sufficient specificity to enable the U.S. Customs Service to enforce it without impeding legitimate trade or forcing every would-be importer to seek an advisory opinion from the
Commission as to whether the importation of its merchandise would violate the order. Precise delineation of the subject trademark in the remedial order also will make it easier for competitors to redesign their articles or trademarks, if necessary, to avoid infringement of the complaint's trademark and exclusion of their imported merchandise.

Paragraph (h). Paragraph (h) of proposed final rule 210.12 is a new provision which requires a complaint to bring to the Commission's attention new information that changes the accuracy of a pleaded material fact or law in the complaint after the complaint is filed or which makes some portion of the complaint misleading. The Commission believes that the ex parte nature of the proceedings that are conducted to determine whether to institute a section 337 investigation makes it incumbent upon complaints to ensure that the Commission is fully advised of material legal or factual developments that could affect its analysis of the merits of the complaint. Likewise, proposed respondents also should be made aware of new developments that could affect their approach to discovery. Suppose, for example, that after a firm files a complaint and motion for temporary relief, its board of directors votes to move some portion of the firm's production operations offshore. That development could affect the Commission's analysis of whether the complainant has sufficiently pled the existence of a domestic industry or is entitled to temporary relief. It also would provide proposed respondents notice of a potentially relevant issue to pursue in discovery.

Section 210.13

Proposed final rule 210.13 is based on interim rule 210.21, which governs the content and filing of a response to a section 337 complaint and notice of investigation. There are several differences between the interim rule and the proposed final rule. First, since proposed final rule 210.59 allows respondents 10 days (instead of 20 days) to file responsive pleadings in temporary relief cases that have not been declared "more complicated," paragraph (a) of proposed final rule 210.13 cites that exception to the 20-day filing deadline.23

23 Paragraph (a) of proposed final rule 210.13 also reflects the fact that the complaint and notice of investigation may be served by the Commission pursuant to proposed final rule 210.11(a) or by a party pursuant to proposed final rule 210.11(b).

Next, paragraph (b) of the proposed final rule 210.13 directs respondents who are not manufacturing their accused imports must provide the name and address of the firm that supplied their imports. Respondents who are importers must provide the Tariff Schedules of the United States item number(s) for importations of the subject articles occurring before January 1, 1989, and the Harmonized Tariff Schedule item number(s) for importations occurring on or after January 1, 1989. Paragraph (b) of proposed final rule 210.13 also authorizes the ALJ to waive any of the prescribed substantive requirements for responses to complaints and notices of investigations, or to impose additional requirements, for good cause.24 Paragraph (c) of proposed final rule 210.13 pertains to the submission of the involved imported articles as exhibits. It differs from the corresponding paragraph of interim rule 210.21 by not requiring respondents to submit such exhibits if the complainant has already supplied them pursuant to proposed final rule 210.12(b).

Section 210.14

Paragraphs (a)-(c). Paragraphs (a) through (c) of proposed final rule 210.14 are based on interim rule 210.22, which governs amendments to pleadings and notices of investigation. The difference between the interim rule and the proposed final rule is that the provisions of interim paragraphs (a) and (b) have been reorganized in the corresponding paragraphs of proposed final rule 210.14 for improved clarity.25 Paragraph (a) of the proposed final rule addresses preinstitution amendment of the complaint at the complaint's direction. Paragraph (b)(1) discusses postinstitution amendment of the complaint or the notice of investigation by leave of the Commission. Paragraph (b)(2) discusses differences between the interim rule—which pertains to conformance of the pleadings and notice of investigation to the evidence—and paragraph (c) of the proposed final rule.

Paragraph (d). Paragraph (d) of proposed final rule 210.14 is identical to interim rule 210.23, which governs the filing of supplemental submissions at the discretion of the presiding ALJ.

Subpart D—Motions

Section 210.15

Proposed final rule 210.15 contains the provisions of paragraphs (a) through (d) of interim rule 210.24, which pertain to the content, filing, responses to, and disposition of motions in section 337 investigations. Proposed final rule 210.15 is limited to the forms of default provided for in sections 337(g) and (h) of the Tariff Act—i.e., (1) failure to respond or to otherwise appear to answer the complaint and notice of investigation, and (2) a finding of default as a sanction for abuse of process under proposed final rule 210.4 (the Commission analog to FRCP 11) or failure to make or cooperate in discovery under proposed final rule 210.33 (the Commission analog to FRCP 37).26 Proposed final rule 210.17 relates to failures to act other than the statutory forms of default. It also provides that the subject failures to act can result in the ALJ or the Commission making inferences, findings of fact, conclusions of law, determinations (on violation of section 337 or other issues), and orders that are adverse to the party who failed to act. Proposed final rules 210.16 and 210.17 are responsive to comments from the ITCTLA and the International Electronics Manufacturers and Consumers of America (IEMCA) which criticized interim rule 210.25 for not distinguishing between statutory and nonstatutory default, not covering certain types of nonstatutory failures to act, and not expressly authorizing the ALJ or the Commission to draw adverse inferences in certain circumstances.

Paragraph (b) of proposed final rule 210.16 sets forth the procedure for determining statutory default. Paragraph (b)(1) provides for the filing of motions for default based on a respondent's...
failure to respond to the complaint and notice of investigation in the manner required under the Commission rules or to otherwise fail to appear to answer the complaint and notice of investigation. Paragraph (b)(2) provides for the filing of motions for default based on a respondent's abuse of process or failure to make or cooperate in discovery. Paragraphs (b)(1) and (b)(2) also indicate that an ALJ's decision granting a motion for a finding of default shall be in the form of an initial determination (ID) and that a decision denying a motion for default shall be in the form of an order. Paragraph (b)(3) lists the rights that a respondent loses if it is found to be in default.

Paragraph (c)(1) of proposed final rule 210.16 permits a complainant to file a declaration seeking immediate entry of relief against the respondent in default. The rule does not specify, however, a point in time at which the Commission is required to issue a remedial order against a defaulting respondent (i.e., whether the Commission will issue such relief immediately after the respondent is found to be in default or only after the Commission has adjudicated the violation issues). The Commission believes it necessary and appropriate to retain the flexibility to issue limited remedial orders immediately or at the end of the investigation. There may be cases in which time is of the essence and the complainant should not be forced to wait until the end of the investigation to obtain relief against defaulting respondents. There also will be cases in which the rapid issuance of limited relief is not critical and it would be more appropriate to wait until the end of the investigation. In most cases, the Commission is likely to defer decisions on issuing default relief pending the adjudication of any defenses by participating respondents that may have a bearing on the public interest factors. The Commission is particularly interested, however, in receiving comment from interested parties on whether the final rules should specify the point at which a default remedy should be issued.

Paragraph (c)(2) of proposed final rule 210.16 governs the issuance of general exclusion orders in default cases.
practice by adding other provisions by which an investigation may be
terminated in whole or part, viz.,
termination based upon withdrawal of
the complaint or withdrawal of certain
allegations in the complaint. The
Commission believes that the ITCTLA’s
suggested modification is appropriate
and has drafted paragraph (a) of
proposed final rule 210.21 accordingly.
Current and prospective complainants
should bear in mind that a motion to
terminate an investigation under
paragraph (a)(1) or (a)(2) of proposed
final rule 210.21 will not exempt the
complainant from possible sanctions
under proposed final rules 210.4(b) and
210.25 if the Commission subsequently
determines that the complainant or its
representative have abused the section
337 process in signing and filing of the
complaint or related submissions.41

Paragraph (b). Paragraph (b) of
proposed final rule 210.21 concerns
settlements based on licensing or other
agreements. It is virtually identical to
interim rule 210.51(b).

Paragraph (c). Paragraph (c) of
proposed final rule 210.21 discusses
settlement by consent order. This
paragraph incorporates provisions of
interim rules 211.20, 211.21, and 211.22.

Paragraph (c)(1). Paragraph (c)(1) of
proposed final rule 210.21 is based on
interim rule 211.20, which provides
opportunities to submit proposed
consent orders to the Commission.

Paragraph (c)(t). Paragraph (c)(t) of proposed final rule
210.21 essentially incorporates the
revised version of interim rule 211.20 as
it appeared in the October 17, 1988,
note of proposed rulemaking
concerning part 211. That notice stated
that the Commission was considering
revision of interim rule 211.20 to provide
for the submission of proposed consent
orders prior to institution of an
investigation under section 337 only
during proceedings under section 603 of

This change was proposed in order to
simplify the preinstitution
procedure.

In addition, the term “presiding
officer” was replaced by the more
correct term “administrative law judge.”
The Commission also thought it
appropriate to delete the word
“proposed,” which modified “consent
order agreement,” because the
agreement (now called “stipulation” in
the proposed final rule published in the
present notice) exists before the
Commission considers it. The
Commission proposed to revise interim
rule 211.20 further by eliminating as
unnecessary the provision for issuing a
Federal Register notice upon receipt by
the Commission of an ID concerning
termination of an investigation on the
basis of a consent order.

Finally, interim rule 211.20 also was
revised to streamline the consent order
process by eliminating the requirement
that the complainant and the
Commission investigate attorney must
participate in the filing of a motion to
terminate an investigation on the basis
of a consent order. The complainant and
the Commission investigative attorney
were, however, still permitted to file
such a motion with the respondents.

The changes reflected in the proposed
revised version of interim rule 211.20 that
appeared in the October 17, 1988,
note are carried over into paragraph
(c)(t) of proposed final rule 210.21 in the
present notice, which also replaces the
term “consent order agreement” with
the more appropriate term “consent
order stipulation,” in view of the fact
that such a document can be filed by
one party.

The ITCTLA urged that denial of a
motion to terminate an investigation
should not be by ID, and that a
respondent should not have to submit a
consent order agreement along with its
motion to terminate, if the respondent
was not required to obtain the
complainant’s agreement. Paragraph
(c)(t) of proposed final rule 210.21
provides that an ID will issue only upon
the granting of a motion to terminate the
investigation, as is the case with most
rulings on motions affecting the scope or
timing of an investigation. Paragraph
(c)(t) does not eliminate, however, the
requirement that a motion to terminate
an investigation on the basis of a
consent order is to contain a consent
order stipulation. The participation of
the complainant in the stipulation is
desired, although not required, and the
consent order stipulation contains
important information bearing on the
desirability of issuing a consent order.

Paragraph (c)(2). Paragraph (c)(2) of proposed
final rule 210.21 incorporates
interim rule 211.21, which establishes
the procedure by which the Commission
deals with requests for issuance of
consent orders. The revised version of
interim rule 211.21 which appeared in
the October 17, 1988, notice of proposed
rulemaking corrected an erroneous
cross-reference and eliminated as
unnecessary the requirement that the
Commission give reasons for issuing a
consent order. That provision was
considered unnecessary because the
Commission normally issues every
consent order for the same reasons, i.e.,
the consent order complies with the
Commission’s rules and is not
inappropriate in view of the public
interest factors listed in interim rule
211.21. The phrase “reject the proposed
agreement and deny the motion” was
replaced by “reverse the initial
determination” to conform to
Commission procedure. The final two
sentences of paragraph (b), which had
been inadvertently deleted from interim
rule 211.21, were restored in the revised
version of interim rule set forth in the
October 17, 1988, notice of proposed
rulemaking. The changes reflected in the
proposed revised version of interim rule
211.21 as it appeared in the October 17,
1988, notice are carried over into
paragraph (c)(2) of proposed final rule
210.21 in the present notice.

Paragraph (c)(3). Paragraph (c)(3) of
proposed final rule 210.21 incorporates
the existing provisions of interim rule
211.22, which specify certain provisions
that a consent order stipulation must
include. The revised version of interim
rule 211.22 which appeared in the
October 17, 1988, notice of proposed
rulemaking required each consent order
agreement to specify that the agreement
will not apply to intellectual property
rights which have expired or been found
invalid or unenforceable, if the finding
has been upheld on appeal or the time
for appeal has expired. The revised
version of interim rule 211.22 took into
account that the Commission does not
order relief based on invalid or
unenforceable intellectual property
rights. The October 17, 1988, notice of
rulemaking pointed out that the
Commission considers, as part of its
determination on the public interest,
whether the issuance of a consent order
is appropriate if a finding of
noninfringement or of no violation of
section 337 has been made. The revised
interim rule 211.22 also was drafted to
change the interim rule’s reference to
respondent’s admission of violation of
section 337 to admission that an unfair
act has been committed. This change
was made because the elements of
violation other than the unfair act are
typically matters for the Commission’s
decision, not respondent’s admission.
The second sentence of paragraph (b) of
the interim rule was deemed
unnecessary because the Commission
construes the terms of consent orders
according to general principles of contract law. The changes reflected in the proposed revised version of interim rule 210.22 as it appeared in the October 17, 1988, notice are carried over into paragraph (c)(3) of proposed final rule 210.22 in the present notice.

The IEMCA requested that in all cases, consent order agreements be required to state that the consent order terminates when complainant's claim is judged invalid or unenforceable. The Commission has not drafted the proposed final rule in that manner. Paragraph (c)(3) of proposed rule 210.22 states that only for intellectual property-based investigations, because the statement in question appears to be applicable only to intellectual property-based investigations.

Paragraph (c)(3) of proposed final rule 210.22 also requires that any consent order stipulation must contain a clause in which parties agree not to seek court limitations on the Commission's efforts to gather information relating to the consent order. This is based on the Commission's recent experience in Inv. No. 337-TA-299, Certain Electrical Discharge Machining Apparatus and Components Thereof, where respondents sought and obtained court-ordered restrictions on complainants' ability to seek enforcement of a cease and desist order.

Paragraph (d). Paragraph (d) of proposed final rule 210.22 is based on the corresponding paragraph of interim rule 210.51, which states that an order of termination issued by the ALJ constitutes an ID and that an order of termination issued by the Commission is a Commission determination under interim rule 210.56(c) ("Determination on review of [an ID]"). Proposed final rule 210.22(b) does not include, however, the interim provision concerning an order of termination issued by the Commission, which now appears at proposed final rule 210.41.

Section 210.22

Proposed final rule 210.22 governing motions for a "more complicated" designation is based on interim rule 210.39. Paragraph (a) of proposed final rule 210.22 provides the definition of a "more complicated" investigation. Paragraph (b) provides that the designation may be imposed for the permanent relief phase of an investigation by order of the ALJ or the Commission. Paragraph (b) also discusses the parties' right to appeal the designation when it is imposed by the ALJ.

Paragraph (c) of proposed final rule 210.22 governs the "more complicated" designation as applied to the temporary relief phase of an investigation (under proposed final rule 210.59). This paragraph is essentially the same as the corresponding provision of interim rule 210.56(b) in that paragraph (c) of the proposed final rule provides that the "more complicated" designation may be applied by order of the ALJ or the Commission. Unlike the interim rule, however, paragraph (c) of proposed final rule 210.22 does not refer to extending the time to adjudicate a motion for temporary relief "as well as the issue of bonding." The reference to the issue of bonding in the interim rule is based on an erroneous interpretation of the final rule 210.22 as surplusage. Bonding by the complainant is a required aspect of the motion for temporary relief under the proposed final rules and, hence, need not be referred to as a separate issue.

The provisions governing computation of the extended deadline for the permanent relief or temporary relief phase of a "more complicated" investigation appear in proposed final rule 210.22. Paragraphs (b) and (c) of proposed final rule 210.22 accordingly state that the extended deadline for continuing the investigation (as to temporary relief or permanent relief) shall be computed in the manner specified in that rule.

Interested persons will note that proposed final rule 210.22 does not contain a provision similar to paragraph (c) of interim rule 210.59, which pertains to designating an investigation "complicated" (as opposed to "more complicated"). Paragraph (c) of the interim rule was adopted in response to section 1342(d)(2) of the Omnibus Trade Act, which provided that any section 337 investigation due to be completed within 180 days after the effective date of the Omnibus Trade Act amendments to section 337 could be declared "complicated," and the 13-month or 18-month statutory deadline for concluding the investigation (under section 337(b) of the Tariff Act) could be extended up to 90 days. Paragraph (c) of interim rule 210.59 established procedures for implementing that authority. The effective date of the Omnibus Trade Act was August 23, 1988, and the Commission's authority to apply the "complicated" designation to a pending investigation was limited to investigations with statutory deadlines on or before February 18, 1989. Paragraph (c) of interim rule 210.59 has therefore not been incorporated into proposed final rule 210.22.

Section 210.23

Proposed final rule 210.23 is a new rule governing motions for suspension of investigations. Interim rule 210.59 acknowledges the Commission's authority to apply the statute. See 79 U.S.C. 1337(b)(1).

The provisions governing computation of the extended deadline for the permanent relief or temporary relief phase of a "more complicated" investigation appear in proposed final rule 210.22. Paragraphs (b) and (c) of proposed final rule 210.22 accordingly state that the extended deadline for continuing the investigation (as to temporary relief or permanent relief) shall be computed in the manner specified in that rule.

Interested persons will note that proposed final rule 210.22 does not contain a provision similar to paragraph (c) of interim rule 210.59, which pertains to designating an investigation "complicated" (as opposed to "more complicated"). Paragraph (c) of the interim rule was adopted in response to section 1342(d)(2) of the Omnibus Trade Act, which provided that any section 337 investigation due to be completed within 180 days after the effective date of the Omnibus Trade Act amendments to section 337 could be declared "complicated," and the 13-month or 18-month statutory deadline for concluding the investigation (under section 337(b) of the Tariff Act) could be extended up to 90 days. Paragraph (c) of interim rule 210.59 established procedures for implementing that authority. The effective date of the Omnibus Trade Act was August 23, 1988, and the Commission's authority to apply the "complicated" designation to a pending investigation was limited to investigations with statutory deadlines on or before February 18, 1989. Paragraph (c) of interim rule 210.59 has therefore not been incorporated into proposed final rule 210.22.

Section 210.23

Proposed final rule 210.23 is a new rule governing motions for suspension of investigations. Interim rule 210.59 acknowledges the Commission's authority to apply the statute. See 79 U.S.C. 1337(b)(1).

The provisions governing computation of the extended deadline for the permanent relief or temporary relief phase of a "more complicated" investigation appear in proposed final rule 210.22. Paragraphs (b) and (c) of proposed final rule 210.22 accordingly state that the extended deadline for continuing the investigation (as to temporary relief or permanent relief) shall be computed in the manner specified in that rule.

Interested persons will note that proposed final rule 210.22 does not contain a provision similar to paragraph (c) of interim rule 210.59, which pertains to designating an investigation "complicated" (as opposed to "more complicated"). Paragraph (c) of the interim rule was adopted in response to section 1342(d)(2) of the Omnibus Trade Act, which provided that any section 337 investigation due to be completed within 180 days after the effective date of the Omnibus Trade Act amendments to section 337 could be declared "complicated," and the 13-month or 18-month statutory deadline for concluding the investigation (under section 337(b) of the Tariff Act) could be extended up to 90 days. Paragraph (c) of interim rule 210.59 established procedures for implementing that authority. The effective date of the Omnibus Trade Act was August 23, 1988, and the Commission's authority to apply the "complicated" designation to a pending investigation was limited to investigations with statutory deadlines on or before February 18, 1989. Paragraph (c) of interim rule 210.59 has therefore not been incorporated into proposed final rule 210.22.

Section 210.23

Proposed final rule 210.23 is a new rule governing motions for suspension of investigations. Interim rule 210.59 acknowledges the Commission's authority to apply the statute. See 79 U.S.C. 1337(b)(1).
Interested persons will note that, like the interim rule, paragraphs (a) and (b) of the proposed final rule prohibit interlocutory appeals for ALJ rulings on matters related to temporary relief. This prohibition is necessary because of the stringent statutory deadlines for completing temporary relief proceedings and the undue burden that would be imposed on the parties and the Commission if they are required to participate in an interlocutory appeal concurrently with temporary relief proceedings.

Section 210.25

Proposed final rule 210.25 is a new rule concerning the filing and adjudication of motions for sanctions for abuse of process under proposed final rule 210.4(b), abuse of discovery under proposed final rule 210.27(d), failure to make or cooperate in discovery under proposed final rule 210.33(c), or violation of a protective order under proposed final rule 210.34(c). Proposed final rule 210.25 provides several procedures for the adjudication of such motions, depending on when the motion was filed and whether it was addressed to the Commission or the ALJ.

Section 210.26

Proposed final rule 210.26 is a new rule, which deals with motions pertaining to subjects other than those covered in proposed final rules 210.16 through 210.25. This rule states that motions pertaining to discovery shall be filed in accordance with proposed final rule 210.15 and the pertinent provision(s) of subpart E of part 210 (proposed final rules 210.27 through 210.34). Proposed final rule 210.26 also provides that motions pertaining to evidentiary hearings and prehearing conferences shall be filed in accordance with proposed final rule 210.15 and the pertinent provision(s) of subpart F of part 210 (proposed final rules 210.35 through 210.40). Proposed final rule 210.25 also provides that motions for temporary relief shall be filed as provided in subpart H of part 210 (i.e., proposed final rules 210.52 through 210.57).

Subpart E—Discovery and Compulsory Process

Section 210.27

Proposed final rule 210.27 is based on interim rule 210.30, which is based on FRCP 26 and covers the permissible methods and subject matter of discovery, time constraints on discovery, and supplementation of responses to discovery requests.

Paragraphs (a) and (c). Paragraph (a) of proposed final rule 210.27 is based on paragraph (a) of interim rule 210.30 and FRCP 26(a), which outline permissible methods of discovery. Paragraph (c) of the proposed final rule 210.27 corresponds to paragraph (d) of interim rule 210.30 and FRCP 26(c) regarding the supplementation of a response to a discovery request.44

Paragraph (b). Paragraph (b) of the proposed final rule 210.27 is based on paragraph (b) of interim rule 210.30 and FRCP 26(b) concerning the permissible subject matter of discovery. Paragraph (b) of the proposed final rule states that the scope of discovery for the temporary relief phase of an investigation is governed by proposed final rule 210.61. Unlike paragraph (b) of interim rule 210.30, paragraph (b) of proposed final rule 210.27 also expressly allows discovery on the issues of remedy and bonding by the respondents in connection with the permanent relief phase of an investigation. The Commission believes this change is appropriate for the following reasons: First, the grounds for Commission decisions on remedy and bonding are essentially factual in most cases. Furthermore, the ALJ is required under proposed final rule 210.42(a)(1)(ii) to issue a recommended determination (RD) on the issues of remedy and bonding by the respondents. Hence, discovery on those issues in connection with the granting or denial of permanent relief could generate useful information.45

44 There is no provision in proposed final rule 210.27 that corresponds to paragraph (c) of interim rule 210.30, the interim rule governing discovery in connection with a motion for temporary relief. See instead proposed final rule 210.61 on that subject.

45 Serious questions as to whether the granting of permanent relief would have an adverse impact on the public interest arise relatively infrequently. Moreover, the scope of evidence and information that conceivably could be categorized as relating to the public interest is potentially so vast as to make discovery and findings by the ALJ concerning the public interest impracticable. For those reasons, paragraph (b) of proposed final rule 210.27 does not require ALJs to allow discovery, to take evidence, or to make findings or recommendations to the Commission concerning the public interest in connection with the grant or denial of permanent relief. The Commission remains free, however, to order an ALJ to take evidence and to make findings on the public interest in appropriate cases. See 19 CFR 201.4(b) regarding waiver of Commission rules and proposed final rule 210.35(b)(2) concerning the ALJ’s ability to take evidence, hear argument, and make findings concerning the public interest in connection with settlements by agreement or consent orders.

In determining what types of information are relevant to the issues of remedy and bonding by the respondents and, hence, are properly discoverable, the ALJ is expected to look to prior Commission opinions for guidance. E.g., Certain Airlines Paint Spray Pumps and Components Therefor, Inv. No. 337-TA-90, USITC Publication 1199 (November 1981), Commission Opinion at 18–19 (factors relevant to the issuance of a general or a limited exclusion order).

Paragraph (d). Paragraph (d) of proposed final rule 210.27 is a new provision based on FRCP 26(g). It imposes signature and certification requirements (similar to those imposed in FRCP 11 and proposed final Commission rule 210.4(b)) for discovery requests, responses, and objections. It also provides for cost and fee sanctions (like those authorized in FRCP 37 and proposed final Commission rule 210.33(c)). FRCP 26(g) is not cited in section 337(h). In that context, one of the Federal Rules the Commission is to use as a standard for imposing cost and fee sanctions is section 337 investigations. Section 337(h) does state, however, that the Commission may by rule prescribe sanctions for abuse of discovery to the extent authorized by FRCP 37,46 and FRCP 26(g) is derived from FRCP 37.47 The Commission’s ALJs have advised the Commission that there is a need for a Commission rule based on FRCP 26(g).48 In that regard, the Commission notes that it has the authority under section 335 of the Tariff Act to adopt any rules it deems necessary to carry out its functions and duties.49

Section 210.28

Proposed final rule 210.28 is based on interim rule 210.31, which governs depositions in section 337 investigations.
Paragraph (a). Paragraph (a) of interim rule 210.31 provides, among other things, that a complainant must seek leave from the presiding ALJ if the complainant wishes to depose any person before expiration of the 20th day after institution of the investigation. The ITCTLA commented that forcing the complainant to wait 20 days before it can take depositions is impracticable in a temporary relief proceeding in light of the stringent administrative deadlines for concluding proceedings before the ALJ. The ITCTLA proposed that the waiting period in temporary relief cases be shortened to 10 days after Commission service of the complaint, notice, and motion for temporary relief.

The Commission has determined to delete all deadlines in the proposed final discovery rules (210.27 through 210.33). Each proposed final discovery rule states instead that the presiding ALJ in each investigation will set the necessary deadlines. Consequently, paragraph (a) of proposed final rule 210.28 has not been drafted in the manner the commenters have suggested. Paragraph (e) simply states that the period or deadlines for the taking of depositions will be determined by the presiding ALJ.

Paragraph (c). Paragraph (c) of proposed final rule 210.28 is based on paragraph (e) of interim rule 210.31, which establishes the procedure for giving notice of a deposition. The interim rule states that a party desiring to depose a person is required to give 10 days notice to the other parties to the investigation if the deposition is to be taken in the United States and 15 days notice if the deposition is to be taken elsewhere. Paragraph (c) of proposed final rule 210.28 contains no deadlines and states that the presiding ALJ will determine the amount of advance notice that is required for each deposition.

Paragraphs (b), (e), (g), and (h). Paragraph (b), (e), (g), and (h) of interim rule 210.31 discuss the following subjects: Persons before whom depositions may be taken; depositions of nonparty officers or employees of the Commission or of other Government agencies; the admissibility of depositions; and the use of depositions. Paragraphs (b), (e), (g), and (h) of proposed final rule 210.28 match the corresponding paragraphs of the interim rule.

Paragraph (d). Paragraph (d) of proposed final rule 210.28 is virtually identical to paragraph (d) of interim rule 210.31, which concerns the taking of depositions. The only difference is that paragraph (d) of proposed final rule contains a cross-reference to the new paragraph (j) of final rule 210.28, which provides that errors and irregularities in depositions are waived in the absence of a timely objection.

Paragraph (f). Paragraph (f) of proposed final rule 210.28 is a revised version of paragraph (f) of interim rule 210.31. The interim rule bears the heading "Filing of Depositions." It states that the party taking a deposition shall file a copy of the deposition with the Commission investigative attorney and give prompt notice of such filing to all other parties. Paragraph (f) of the proposed final rule reflects actual Commission practice. The heading of that paragraph is "Service of Deposition Transcripts on the Commission Staff." The text provides that the party taking the deposition must promptly serve a copy of the deposition transcript on the Commission investigative attorney.

Paragraph (j). Paragraph (j) of proposed final rule 210.28 is a new provision corresponding to FRCP 32(d), which pertains to the effect of errors or irregularities in depositions. Paragraph (i) provides that errors and irregularities in depositions are waived in the absence of a timely objection. Unlike FRCP 32(d), however, paragraph (j) of the proposed final Commission rule does not provide a deadline for serving objections to the form of written questions. Instead, paragraph (j) indicates that the presiding ALJ will set the deadline for such service.

Section 210.29

Proposed final rule 210.29 is based on interim rule 210.32 concerning interrogatories.

Paragraph (a). Paragraph (a) of proposed final rule 210.29 discusses the scope of interrogatories in section 337 investigations and the use of interrogatories at evidentiary hearings. It is virtually identical to the corresponding paragraph in interim rule 210.32.

Paragraph (b). Paragraph (b)(a) of proposed final rule 210.29 states that interrogatories may be served upon any other party after the publication of the Federal Register notice instituting the investigation. Paragraph (b)(1) is identical to the corresponding paragraph in interim rule 210.32.

Paragraph (b)(2) of proposed final rule 210.29 provides deadlines for the service of answers and objections to interrogatories. It matches the corresponding provision in the interim rule 210.32, except that there is no prescribed deadline for serving such answers and objections. Instead, the deadline is to be set by the presiding ALJ.

Paragraph (b)(3) of proposed final rule 210.29 discusses whether an answer to an interrogatory may be considered objectionable and need not be answered. Paragraph (b)(3) of the proposed final rule is identical to the corresponding paragraph of interim rule 210.32.

Paragraph (c). Paragraph (c) of proposed final rule 210.29 discusses the option to produce records in response to an interrogatory. Paragraph (c) is identical to the corresponding paragraph of interim rule 210.32, except for the last sentence. The last sentence in the proposed final rule has been drafted to correspond more closely to FRCP 33. The sentence reads as follows: "The specifications provided shall include sufficient detail to permit the interrogating party to locate and identify, as readily as can the party served, the documents from which the answer may be ascertained." [Emphasis added to reflect new text.]

Section 210.30

Proposed final rule 210.30 is based on interim rule 210.38 concerning requests for the production of documents and things and entry upon land. Paragraph (a) of the proposed final rule discusses the permissible scope of such requests and is identical to paragraph (a) of the interim rule.

Paragraph (b) of proposed final rule 210.30 outlines the procedure for making, serving, and responding to requests for the production of documents and things and entry upon land. The only difference between it and paragraph (b) of interim rule 210.38 is that paragraph (b) of the proposed final rule does not set a deadline for responding to such requests. Paragraph (b) of the proposed final rule provides that the presiding ALJ will determine the deadline for responding.

Paragraph (c) of proposed final rule 210.30 is identical to paragraph (c) of interim rule 210.33, and states that there is no prohibition against the issuance of an order to permit entry upon land against a person who is not a party to the investigation.

Section 210.31

Proposed final 210.31 is based on interim rule 210.34 concerning requests for admission.

Paragraph (a). Paragraph (a) of proposed final rule 210.31 is virtually identical to paragraph (a) of interim rule 210.34, concerning the form, content, and service of requests for admission. The proposed final rule does not impose a
deadline, however, for serving a request for admission. The proposed final rule provides that the deadline for such service is to be set by the presiding ALJ.

Paragraph (b). Paragraph (b) of proposed final rule 210.31 discusses answers and objections to requests for admission, and is virtually identical to paragraph (b) of interim rule 210.34. The difference is that paragraph (b) in the proposed final rule does not specify a date by which a matter may be deemed admitted unless the party to whom the request for admission was directed serves a written answer or objection to the proposed admission. The proposed final rule indicates that the ALJ will determine the effective date of a proposed admission for which there has been no written response or objection.

Paragraphs (c) and (d). Paragraph (c) of proposed final rule 210.31 discusses the sufficiency of answers to requests for admission. Paragraph (d) discusses the effect of admissions and withdrawal or amendment of an admission. Paragraphs (c) and (d) of proposed final rule 210.31 are identical to paragraphs (c) and (d) of interim rule 210.34.

Section 210.32

Proposed final rule 210.32 is based on interim rule 210.35, which governs the issuance of subpoenas.

Paragraph (a). Paragraph (a) of proposed final rule 210.32 is substantially the same as the corresponding paragraph of the interim rule. The only difference is that the Commission has added a new paragraph (a)(3) to the proposed final rule, which expressly authorizes a presiding ALJ to rule upon applications for the issuance of a subpoena ad testificandum or a subpoena duces tecum and to issue such subpoenas when warranted. The Commission believes that giving its ALJs express authority to issue subpoenas in section 337 investigations is appropriate because ALJs already have such authority under the APA.51 and the ALJs have exercised that authority in the past.52 The Commission notes also that it has agreed to seek judicial enforcement of such subpoenas in the past and that the U.S. District Court for the District of Columbia has granted such enforcement.53

Paragraph (b). Paragraph (b) of proposed final rule 210.32 is the same as the corresponding paragraph of interim rule 210.35, which discusses the use of a subpoena for discovery.

Paragraph (c). Paragraph (c) of proposed final rule 210.32 is the same as the corresponding paragraph of interim rule 210.35, which deals with applications for subpoenas for nonparty Commission records or personnel, or for records of other Government agencies. The only difference is that the Commission has added a new paragraph (c)(2) to the proposed final rule, which states that the ALJ may issue such subpoenas when warranted.54

Paragraph (d). Paragraph (d) of proposed final rule 210.32 matches the corresponding paragraph of interim rule 210.35, and deals with motions to limit or quash subpoenas. The only difference between the two provisions is that paragraph (d) of the proposed final rule contains no prescribed deadline for filing such motions. It states instead that such motions may be filed within the period set by the ALJ.

Paragraph (e). Paragraph (e) of proposed final rule 210.32 is the same as the corresponding paragraph of interim rule 210.35, which establishes the procedure for applications for subpoenas.

Paragraph (f). Paragraphs (f)(1) and (f)(2) of proposed final rule 210.32 are new provisions establishing responsibility for the payment of witness fees. They indicate that payment is to be made on or before the subpoena compliance date, by the party who subpoened the deponent or witness.

Paragraph (g). This paragraph of proposed final rule 210.32 is a new provision establishing the procedure for seeking to have the Commission obtain judicial enforcement of a subpoena issued by the ALJ. The procedure is as follows: (1) The ALJ shall certify, on motion or sua sponte, a request for such enforcement; (2) the order shall be accompanied by copies of relevant papers and a written report from the ALJ concerning the purpose, relevance, and reasonableness of the subpoena; and (3) the Commission will issue a notice announcing its decision on the request.

The report from the ALJ that must accompany a judicial enforcement certification order will be particularly important to the Commission in determining whether to seek judicial enforcement of the subpoena and, if so, to what extent.55 The report will help the Commission’s counsel (i.e., the Office of the General Counsel) demonstrate the relevancy and reasonableness of the subpoena to the court when judicial enforcement is sought.

Section 210.33

Proposed final rule 210.33 is based on interim rule 210.36, which provides sanctions for failure to make or cooperate in discovery.

Paragraph (a). Paragraph (a) of proposed final rule 210.33 is the same as paragraph (a) of interim rule 210.36, which governs the filing of motions for orders compelling discovery.

Paragraph (b). Paragraph (b) of proposed final rule 210.33 is based on FRCP 37 as well as paragraph (b) of interim rule 210.36, which lists various kinds of sanctions that may be imposed if a party fails to comply with a discovery order. The Omnibus Trade Act amendments to section 337 gave the Commission express authorization to impose sanctions for abuse of discovery to the extent provided in FRCP 37.56 The interim rule matched the pre-Omnibus Trade Act rule 210.36, which provided sanctions comparable to those available under FRCP 37, except for costs and attorney’s fees. The Federal Register notice announcing the Commission’s adoption of interim rule 210.36 stated that the Commission would determine at a later date whether to include cost and fee sanctions provisions in the proposed final rule based on interim rule 210.36.57
Paragraph (b) of proposed final rule 210.33, which provides for non-monetary sanctions, matches FRCP 37 more closely than paragraph (b) of interim rule 210.36. The key differences between the interim rule and the proposed final rule are enumerated below.

1. The heading of paragraph (b) of the interim rule is “Failure to comply with order compelling discovery.” The heading of paragraph (b) of proposed final 210.33 is “Non-monetary sanctions for failure to comply with order compelling discovery.”

2. Paragraph (b) of the proposed final rule includes a new paragraph (b)(6) which covers “any other non-monetary sanction that would be available under Rule 37 of the Federal Rules of Civil Procedure.” 58

Paragraph (c). Paragraph (c) of proposed final rule 210.35 is a new provision with the heading “Monetary sanctions for failure to comply with order compelling discovery.” It contains provisions similar to the monetary sanction provisions of proposed final rule 210.4(b) concerning abuse of process. The filing and adjudication of a motion for monetary sanctions for failure to make or cooperate in discovery are governed by proposed final rule 210.25.

Section 210.34

Proposed final rule 210.34 is based on interim rule 210.37, which governs administrative protective orders in section 337 investigations.

Paragraphs (a) and (b). Paragraphs (a) and (b) of proposed final rule 210.34, match the corresponding provisions of interim rule 210.37, which provide for the issuance of section 337 protective orders and the procedure to be followed in the event that there is an unauthorized disclosure of confidential information covered by a protective order.

Paragraph (c). Paragraph (c) of proposed final rule 210.34 is similar to the corresponding paragraph of interim rule 210.37, to the extent that it enumerates the kinds of sanctions that may be imposed for violation of a section 337 protective order. Unlike the interim rule, however, paragraph (c) of the proposed final rule provides that sanction proceedings may be initiated and that a sanction may be imposed on the Commission’s own initiative, as well as in response to a motion by a party or the ALJ. Paragraph (c) also states that an ALJ’s ruling on a motion for sanctions during an investigation shall be in the form of an order (instead of an ID).

Paragraph (d). Paragraph (d)(1) of proposed final rule 210.34 is a new provision requiring each person subject to a section 337 protective order to report to the Commission immediately upon learning that the confidential business information disclosed to him pursuant to the protective order is the subject of a subpoena, court or administrative order (other than an order of a court reviewing a Commission decision), discovery request, or agreement requiring disclosure of that information to persons who may not be entitled to see that information under the Commission’s protective order or proposed final rule 210.5(b).

The Commission believes that the reporting requirement is appropriate for several reasons. The Commission has statutory responsibility for protecting the confidentiality of confidential business information.59 Timely notice to the Commission will enable the Commission to prevent improper disclosure of that information. The Commission also has strong institutional interests in preventing unauthorized disclosure of such information. To a great extent, the Commission relies on the voluntary submission of confidential business information in its section 337 investigations. Inadequate protection of that information would chill such cooperation.

Paragraph (d)(2) of proposed final rule 210.34 provides that failure to comply with the reporting requirement may result in a sanction or other action by the Commission.

Subpart F—Prehearing Conferences and Hearings

Section 210.35

Proposed final rule 210.35 is essentially the same as interim rule 210.40, which governs prehearing conferences. The only difference is in the last sentence of paragraph (d) of the proposed final rule, which concerns the order issued by the presiding ALJ after a prehearing conference. The last sentence in paragraph (d) of the interim rule states that the order will control the subsequent course of the hearing, “unless modified to prevent manifest injustice.” In paragraph (d) of the proposed final rule, the last sentence states that the ALJ’s order will control the subsequent course of the hearing, “unless the administrative law judge modifies the order.”

Section 210.36

Proposed final rule 210.36 is based on interim rule 210.41, which contains general provisions for evidentiary hearings before ALJs in connection with temporary or permanent relief. The differences between the interim rule and the proposed final rule are reflected in paragraphs (a) and (d) of the proposed final rule.

Paragraph (a). Paragraph (a)(1) of proposed final rule 210.36 provides that an opportunity for a hearing shall be provided in accordance with the APA. (The interim rule states that an opportunity for a hearing will be required unless the Commission orders otherwise.) Paragraph (a)(1) of the proposed final rule also indicates that an opportunity for a hearing will be provided not only for the purpose of determining whether there is a violation of section 337 but also for the purpose of facilitating the making of findings and recommendations by the ALJ relevant to the issues of remedy and bonding by the respondents.60

Paragraph (a)(2) of proposed final rule 210.36 states that an opportunity for a hearing will be provided in connection with every motion for temporary relief. (The interim rule states that “unless otherwise ordered by the Commission,” an opportunity for a hearing will be provided, except as indicated in interim rule 210.24(e)(13)—which lists the circumstances under which a hearing would not be provided, such as the granting of a motion for summary determination in favor of the respondents or other parties opposing the motion for temporary relief. The interim rule also indicates that the hearing will cover the issue of bonding by the complainant if the complainant is seeking a temporary cease and desist order.)

Paragraph (a)(2) of proposed final rule 210.36 does not attempt to outline circumstances in which a hearing would or would not be held nor does it explicitly articulate or (indicate by referring to another rule) every issue that will be addressed at a hearing held in connection with a motion for temporary relief. Paragraph (a)(2) simply provides that an opportunity for an evidentiary hearing in accordance with the APA will be provided in connection with a motion for temporary relief.

60 The ALJ is required to issue a recommended determination on those issues pursuant to proposed final rule 210.41(a)(1)(iii).

58 The description of possible non-monetary sanctions under the interim Commission rule does not correspond exactly to the provisions of FRCP 37. The proposed paragraph (b)(6) is appropriate in order to cover a case in which a party desires a non-monetary sanction specified in FRCP 37 that may not appear to be provided for in interim rule 210.36 as currently worded.

59 See, e.g., 19 U.S.C. § 1337[n].
Paragraph (d). Paragraph (d) of proposed final rule 210.36 lists the rights of parties at evidentiary hearings in section 367 investigations. Unless the corresponding paragraph of interim rule 210.41, paragraph (d) of proposed final rule 210.36 states that the hearing will be conducted in accordance with sections 554 through 556 of the APA. In addition, the listing of parties’ rights in paragraph (d) of the proposed final rule indicates that every party shall have the right of “adequate notice” instead of “due notice.”

Section 210.37

Proposed final rule 210.37 matches interim rule 210.42, which governs the treatment of evidence at prehearing conferences and hearings in section 337 investigations.

Section 210.38

Proposed final rule 210.38 is based on interim rule 210.43. The interim rule describes what constitutes the administrative record in a section 337 investigation. It also contains procedures for reporting and transcribing hearings, correcting hearing transcripts, and certification of the record to the Commission by the presiding ALJ in connection with the issuance of an ID. The only differences between interim rule 210.43 and proposed final rule 210.38 are reflected in paragraphs (c) and (d) of the proposed final rule.

Paragraph (c). Paragraph (c) of interim rule 210.43 states that a transcript will be corrected if an error affects the substance of the text and the ALJ orders such correction after an opportunity for a hearing or after approving a stipulation by the parties providing for the correction. Paragraph (c) of proposed final rule 210.38 states that changes in the official transcript will be made only if they involve the correction of errors affecting substance, and that a motion to correct a transcript shall be addressed to the ALJ, who may order that the transcript be changed to reflect such corrections as are warranted, after consideration of any objections that may be made.

Paragraph (d). To be consistent with the content of proposed final rule 210.65 governing certification of the record that supports a temporary relief ID, paragraph (d) of proposed final rule 210.38 does not include the interim rule provision requiring the ALJ, when possible, to certify the record of a temporary relief proceeding to the Commission prior to issuance of the temporary relief ID.

Section 210.39

Proposed final rule 210.39 contains the provisions of paragraphs (a) through (d) of interim rule 210.44, which governs in-camera treatment of confidential business information in section 337 investigations.

Section 210.40

Proposed final rule 210.40 is based on interim rule 210.52, which governs the filing of proposed findings of fact, conclusions of law, and briefs from parties while an investigation is before the ALJ. There is only one difference between the interim rule and the proposed final rule. In proposed final rule 210.40, the reference to service of proposed findings, conclusions, and briefs “in accordance with [interim] § 210.8” has been changed to refer to service “in accordance with § 210.4(d),”

Subpart G—Determinations and Actions Taken

Section 210.41

Proposed final rule 210.41 is derived from interim rule 210.51(d) and states that a Commission order of termination is a Commission determination under proposed final rule 210.45(c) (“Review of initial determinations on matters other than temporary or permanent relief”).

Rulings by an ALJ (Generally)

Persons who are not familiar with section 337 practice and procedure should be aware that a decision by an ALJ can be in one of three forms:

1. an ID that is subject to discretionary Commission review (with certain limitations on the matters that are reviewable), and that automatically becomes the Commission’s determination if the Commission does not order review of the ID by a prescribed deadline;
2. an order that may not be appealed prior to the issuance of the ALJ’s ID on permanent relief or termination of the investigation unless the requirements for an interlocutory appeal are satisfied; or
3. an RD, which is automatically reviewed by the Commission and does not automatically become the Commission’s determination by a certain date.

The following are examples of matters as to which an ALJ’s decision must be in the form of an order:

1. the granting of a motion for summary determination pursuant to proposed final rule 210.18(f);
2. the granting of a motion to intervene in an investigation under proposed final rule 210.19;
3. the granting of a motion to terminate an investigation on various grounds under proposed final rule 210.21;
4. the granting of a motion to suspend an investigation pursuant to proposed final rule 210.23;
5. the granting or denial of permanent relief pursuant to proposed final rule 210.42(a)(1)(i); and
6. a decision on whether a temporary relief bond posted by a complainant should be forfeited in whole or part under proposed final rule 210.70(b); and
7. a decision in a formal enforcement proceeding under proposed final rule 210.75—i.e., a decision on whether a consent or remedial order is being violated and, if so, what action the Commission should take (if any).

The following are examples of matters as to which an ALJ’s decision must be in the form of an order:

1. the denial of a motion to amend the complaint and notice of investigation pursuant to proposed final rule 210.14(b);
2. the granting or denial of a motion to file a supplemental submission under proposed final rule 210.14(d);
3. the granting or denial of a motion for waiver of the substantive requirements for a response to a complaint and notice of investigation under proposed final rule 210.13(b);
4. the granting or denial of motions concerning computation of time, additional hearings, postponements, continuances, and extensions of time pursuant to proposed final rules 210.6 and 210.19;
5. the granting or denial of a motion for service of documents by means other than those prescribed in proposed final rules 210.4(d) or 210.7 and Commission rule 210.16;
6. the granting or denial of a motion for confidential treatment under proposed final rule 210.5 or in camera treatment under proposed final rule 210.38;
7. the denial of a motion to find a respondent in default under proposed final rule 210.16(a) or (b);
8. the denial of a motion for summary determination under proposed final rule 210.18;
9. the denial of a motion to intervene in an investigation under proposed final rule 210.19;
10. the denial of a motion to terminate an investigation on various grounds under proposed final rule 210.21;
11. the denial of a motion to suspend an investigation pursuant to proposed final rule 210.23;
12. the granting or denial of a motion to designate the temporary relief phase or the permanent relief phase of an investigation "more complicated" under proposed final rule 210.22;
13. the granting or denial of motions for sanctions for abuse of process, failure to make or cooperate in discovery, or violation of a protective order pursuant to proposed final rule 210.25(b) or (d);
14. the granting or denial of various discovery motions under proposed final rules 210.27 through 210.34, including a motion for certain types of subpoenas under proposed final rule 210.32 or a motion for sanctions for signing and filing a discovery request, response, or an objection in violation of proposed final rule 210.27(d)(1);
15. the granting or denial of a motion for leave to seek an interlocutory appeal under proposed final rule 210.24(b);
16. the granting or denial of a motion for adverse inferences, findings of fact, conclusions of law, determinations, or orders against a party based on its failure to act, under proposed final rule 210.17;
17. the granting or denial of a motion for leave to file a reply to responses in opposition or support of a previous motion by the movant, under proposed final rule 210.15(c);
18. the granting or denial of a motion pertaining to the conduct of— or arising during the course of—a prehearing conference or an evidentiary hearing under proposed final rule 210.35 or 210.36; and
19. the granting or denial of a motion pertaining to evidence under proposed final rule 210.37 or the record pursuant to proposed final rule 210.38.

The following are examples of matters as to which an ALJ’s decision must be in the form of an ID:
1. the granting or denial of a motion for sanctions for abuse of process, failure to make or cooperate in discovery, or violation of a protective order, pursuant to proposed final rule 210.25(c) or (f); and
2. a decision on a petition for modification or rescission of a consent or remedial order under proposed final rule 210.76(h).

Section 210.42
Proposed final rule 210.42 is based on interim rule 210.53 and is the general rule concerning IDs.

Paragraph (a). Paragraph (a) of proposed final rule 210.42 is based on paragraph (a) of interim rule 210.53, which governs the issuance of IDs.

Paragraph (b). Paragraph (b) of proposed final rule 210.42 is based on paragraph (b) of interim rule 210.53, which concerns IDs on temporary relief, and on paragraph (f) of interim rule 210.53, which concerns IDs on the possible forfeiture of a complainant’s temporary relief bond.

Paragraph (c). Paragraph (c) of proposed final rule 210.42 is based on paragraph (c) of interim rule 210.53, which provides for the issuance of IDs on matters other than permanent relief, declassification of confidential information, and temporary relief.

The ITCTLA commented that the proposed final rule which replaces paragraph (c) of interim rule 210.53 should state that an ALJ’s decision granting a motion to designate permanent relief proceedings "more complicated" will be considered the final determination of the Commission and will not be subject to Commission review. The ITCTLA argued that such modification is appropriate for the same reasons that the Commission allows an ALJ’s designation temporarily relief proceedings "more complicated" to be the final determination of the Commission, viz., that allowing review of the ALJ’s decision is too disruptive in view of time constraints for concluding the proceedings.

The Commission agrees with the ITCTLA. Paragraph (c) of proposed final rule 210.42 thus does not provide for the issuance of an ID when the ALJ grants a motion to designate the permanent relief phase of an investigation "more complicated." As discussed previously, proposed final rule 210.22(b) provides that an ALJ’s decision granting or denying a motion of that kind is to be in the form of an order, not an ID. The ITCTLA also commented that the proposed final rule which replaces paragraph (c) of interim rule 210.53 should require the issuance of an ID on sanctions for violation of a protective order if the ALJ’s ruling grants such sanctions. The ITCTLA explained that this change is consistent with other types of IDs and that it was not clear why an ALJ ruling denying such sanctions should be in the form of an ID.

The Commission has drafted proposed final rule 210.34(c) to provide that an ALJ’s decision granting or denying sanctions for violation of a protective order shall be in the form of an order if the motion for sanctions is filed while the investigation is before the ALJ.

Interested persons who are participating in the interim rules will note that unlike paragraph (c) of interim rule 210.53, paragraph (c) of proposed final rule 210.42 does not cover IDs designating an investigation "complicated" (as opposed to "more complicated"). As this notice explains below in connection with proposed final rule 210.51, the Commission’s statutory authority to apply the "complicated" designation has expired.

Paragraph (d). Paragraph (d) of proposed final rule 210.42 is identical to paragraph (c) of interim rule 210.53, which lists the required contents of an ID.

Paragraph (e). Paragraph (e) of proposed final rule 210.42 corresponds to paragraph (e) of interim rule 210.53, which discusses Commission consultation with other federal agencies prior to determining whether to review an ID.

Paragraph (f). Paragraph (f) of proposed final rule 210.42 is based on paragraph (f) of interim rule 210.53, which provides that IDs generally will

84 The Commission may determine that section 337 has been violated even if the presiding ALJ found no violation. In such a case, the Commission would be required to decide the remedy and bonding issues under proposed final rule 210.50(a).
be made by the ALJ who presided over the investigation. Paragraph (f) of the proposed final rule also indicates that the method of determining the appropriate ALJ to rule on a motion for declassification of information improperly designated confidential is governed by proposed final rule 210.20(a).

Paragraph (g). Paragraph (g) of proposed final rule 210.42 is identical to the corresponding paragraph of interim rule 210.53, which discusses reopening the record for the presiding ALJ to receive additional evidence prior to issuing an ID.

Paragraph (h). Paragraph (h) of proposed final rule 210.42 is based on paragraph (h) and (j) of interim rule 210.53, which list the effective dates for IDs on various matters in the absence of Commission review. There are several noteworthy differences between the interim rules and the proposed final rule. 1. Paragraph (h)(1) of proposed final rule 210.42 provides that an ID under proposed final rule 210.42(a)(2) granting a motion to declassify confidential information will become the determination of the Commission within 45 days after service of the ID unless the Commission orders a review.

Paragraph (i). Paragraph (i) of proposed final rule 210.42 provides that the ALJ’s RD concerning remedy and bonding by the respondents will be considered by the Commission in reaching a determination on the issues of remedy and bonding by the respondents. (The Commission also will solicit submissions on remedy, the public interest, and bonding from parties and non-parties in accordance with proposed final rule 210.50(a).)

Paragraph (j). Paragraph (j) of proposed final rule 210.42 indicates that an ID with a 30-day effective date will become the Commission’s determination on the 30th day after service of the ID unless the Commission orders review or extends the deadline for determining whether to order review. This codifies a longstanding Commission practice.

4. Interested persons will also note that paragraph (b)(6) of proposed final rule 210.42 makes reference to the 45-day effective date for IDs on forfeiture of a complainant’s temporary relief bond under proposed final rule 210.70. [That information was previously provided in paragraph (j) of interim rule 210.53.]

Paragraph (k). Paragraph (k) of proposed final rule 210.42 is based on paragraph (k) of interim rule 210.53, which discusses notice of the Commission’s determination on whether to review an ID. There is one difference between the interim rule and the proposed final rule. The interim rule states that such notice will be given "except as provided in § 210.24(e)(17.

Paragraph (l). Paragraph (l) of proposed final rule 210.42 reflects actual Commission practice—which is that the parties are served with copies of a Commission notice announcing the Commission’s decision on whether to review an ID, regardless of whether the ID concerns temporary relief or some other subject. Section 210.43.

Proposed final rule 210.43 is based on interim rule 210.54, the general interim rule governing petitions for review of an ID. Proposed final rule 210.43 is limited, however, to petitions for review of IDs dealing with matters other than permanent or temporary relief. 63 Paragraph (a). Paragraph (a) of proposed final rule 210.43 is based on paragraph (a)(1) of interim rule 210.54, which establishes deadlines for filing petitions for review and responses to such petitions. Paragraph (a)(2) of the proposed final rule is similar to paragraph (a)(3) of the interim rule, except that the deadlines to IDs on permanent or temporary relief have been left out and the deadlines for filing petitions and responses are counted from the date that the ID was issued instead of the date the ID was served.

Paragraph (b). Paragraph (b) of proposed final rule 210.43 is based on provisions of paragraph (a)(1) and (a)(2) of interim rule 210.54, which articulate (1) the standard for review and the grounds that must be asserted in the petition as justification for seeking review of specific issues, and (2) the consequence of a party’s failure to petition for review of an issue decided adversely to the party.

Interested persons will note first that paragraph (b) of proposed final rule 210.43 clarifies that a party filing a petition for review must cite, for each issue as to which review is being sought, the specific grounds that warrant such review. Paragraph (b) of the proposed final rule also states that any issue not raised in the petition for review will be deemed to have been abandoned by the party and may be disregarded by the Commission in reviewing the ID. Paragraph (b) is identical to paragraph (a)(2) of interim rule 210.54 in that respect.

The Federal Circuit has construed paragraph (a)(2) of interim rule 210.54 to mean that parties to the Commission for review waive their right to raise additional or different issues in a subsequent appeal to the Federal Circuit, while parties who do not file petitions for review may raise all issues on appeal. Thus, interim rule 210.54(a)(2) and proposed final rule 210.43(b) permit the parties to elect to bypass Commission review, and may thereby reduce the effectiveness of the Commission’s review procedures.

For those reasons, the Commission specifically requests public comment on whether it should adopt an alternative provision to that in proposed final rule 210.43(b) stating that: (1) a party is required to file a petition for review of an ID in which issues had been decided adversely to that party, in order to preserve the party’s right to judicial review of any final Commission determination based on some or all of the same grounds as the ID; and (2) a party’s failure to file a petition for review would be deemed to be abandonment of all issues decided adversely to that party in the ID.

Paragraph (c). Paragraph (c) of proposed final rule 210.43 is based on paragraph (a)(3) of interim rule 210.54, which discusses responses to a petition for review. The proposed final rule does not differ substantively from the interim rule.

Paragraph (d). Paragraphs (d)(1), (d)(2), and (d)(3) of proposed final rule 210.43 are based on paragraphs (b)(3), (b)(2), and (b)(3) of interim rule 210.54, which discuss the manner in which the Commission determines whether to grant or deny a petition for review in whole or part. Paragraph (d)(2) of proposed final rule 210.43 has been drafted to codify actual Commission practice—i.e., that the Commission will grant a petition for review if it appears that an error or abuse of the type described in paragraph (b) is present or if the petition raises a policy matter connected with the ID, which the Commission thinks it necessary or appropriate to address.

Section 210.44

the Commission's own initiative. Like interim rule 210.55, proposed final rule 210.44 does not apply to review of IDs on temporary relief. The proposed final rule differs from the interim rule, however, by not applying to review of IDs on permanent relief. (Proposed final rule 210.46 discusses the manner in which the Commission will decide whether to review an ID on permanent relief in response to a petition or on the Commission's own initiative.)

Section 210.45

Proposed final rule 210.45 is based on interim rule 210.56, which describes (1) the procedures involved in Commission review of an ID, and (2) the action that the Commission may take upon completion of the review (i.e., that the Commission may affirm, modify, reverse, or set aside the ID in whole or part). Like interim rule 210.56, proposed final rule 210.45 does not apply to review of IDs on temporary relief. The proposed final rule also differs from the interim rule, however, by not covering review of IDs on permanent relief.

Section 210.46

Proposed final rule 210.46 is a new rule concerning petitions for and subsequent review of IDs on permanent or temporary relief.

Paragraph (a). Paragraph (a) of proposed final rule 210.46 implements a proposed new procedure for processing IDs on permanent relief. That procedure entails the following steps:

1. any party who intends to seek review of the ID must file and serve, within 10 days after issuance of the ID, notice of an intent to seek such review;
2. petitions for review must be filed within 15 days after issuance of the ID (i.e., within 5 days after the filing of the notice of intent to seek review of the ID);
3. responses to the petitions for review must be filed within 25 days after issuance of the ID (i.e., within 10 days after the filing of the petitions for review);
4. reply submissions may be filed by the petitioners within 30 days after issuance of the ID (i.e., within 5 days after the filing of the responses to the petitions for review); and
5. approximately 43 days after issuance of the ID, the Commission will issue a notice setting deadlines for written submissions from the parties, other Federal agencies, and interested members of the public on the issues of remedy, the public interest, and bonding by the respondents; the notice also may require the parties to file supplemental briefs on issues selected by the Commission;
6. supplemental briefs, if requested by the Commission, must be filed within 53 days after issuance of the ID (i.e., within 10 days after issuance of the Commission notice concerning such briefs) and the submissions on remedy, the public interest, and bonding must be filed on the dates specified in the aforesaid notice; and
7. The Commission will issue a Federal Register notice on or before the statutory deadline for concluding the investigation announcing the Commission's decision on the ID and on the issues of violation of section 337, remedy, the public interest, and bonding.

The Commission believes that this amended and streamlined appeal procedure affords the following significant benefits to the parties: (1) Parties who petition for review will be able to file reply submissions; (2) the petitioners will have to make only counterarguments, not anticipate opposing parties' arguments and then make counterarguments; and (3) the Commission will have the parties' submission sooner than it does under the interim rules and, as a result, will have additional time to reach a decision on the ID and to prepare the requisite determinations, opinions, orders. Federal Register notice, and letters. The Commission encourages section 337 practitioners and other interested persons to comment on the advantages or disadvantages of processing permanent relief IDs in the manner discussed above and set forth in proposed final rule 210.46(a).

Paragraph (b). Paragraph (b) of proposed final rule 210.46 simply states that temporary relief IDs will be processed in the manner set forth in proposed final rule 210.66.

Sections 210.47 and 210.48

Proposed final rule 210.47 is identical to interim rule 210.60, which discusses petitions for reconsideration of a Commission determination and responses to such petitions. Proposed final rule 210.48 is identical to interim rule 210.61, which describes the action the Commission may take in disposing of the petition.

Section 210.49

Proposed final rule 210.49 is based on interim rule 210.57, and describes the manner in which the Commission implements final actions (i.e., remedial or consent orders) under section 337. The differences between the interim rule and the proposed final rule are essentially editorial.

Section 210.50

Proposed final rule 210.50 is based on provisions of interim rule 210.58 that describe final Commission actions, assessment of the public interest, and bonding by respondents.

Paragraph (a). Paragraph (a) of proposed final rule 210.50 is based on paragraph (a) of interim rule 210.58, which discusses (1) the various forms of temporary and permanent relief that are available under section 337, (2) the public interest factors that may preclude such relief, (3) the computation of a respondent's bond, and (4) the filing of written submissions by the parties, other Federal agencies, and the public on the issues of remedy, the public interest, and bonding by the respondents.

Paragraph (a)(3) of proposed final rule 210.50 differs from paragraph (a)(3) of interim rule 210.58 in the following manner:

1. The benefits of persons who are not familiar with section 337, paragraph (a)(3) of the proposed final rule indicates that the bond referred to is that posted by a respondent during the Presidential review period following issuance of temporary or permanent relief under section 337(d), (e), (f), or (g) of the Tariff Act.

2. The statement of the computation formula for respondents' bonds has been revised as well. Paragraph (a)(3) of interim rule 210.58 alludes to "persons" benefiting from importation of the articles in question, but the focus of the bond computation formula is on the respondent who will have to post the bond. Furthermore, the Commission generally requires bonds from respondents to secure cease and desist orders prohibiting U.S. sales of an imported articles—as well as requiring bonds to secure exclusion orders or cease and desist orders that prohibit importations. Paragraph (a)(3) of proposed final rule 210.50 accordingly states that in determining the amount of the bond in a given case, the Commission will consider, among other things, the amount that would offset any competitive advantage to the respondent resulting from its alleged unfair acts in the importation or sale of the article in question.

Paragraph (a)(4) of proposed final rule 210.50 differs from the corresponding paragraph of interim rule 210.58 in the following respects:

1. In the proposed final rule, the words "the public" have been deleted from the first sentence of paragraph (a)(4) as surplusage. The erroneous citation to "section 210[e]" which appears in the last sentence of paragraph (a)(4) of the
interim rule also has been omitted in the proposed final rule.

2. The provisions of paragraph (a)(4) of the interim rule, which pertain to service of submissions and requests for oral argument or hearings, have been placed beneath paragraph (a)(4) of the proposed final rule as text.

3. The new text beneath paragraph (a)(4) in the proposed final rule also indicates that when one of the matters under consideration is whether to grant permanent relief, the submissions on remedy, the public interest, and bonding by respondents must be filed on the dates specified in the Commission notice issued pursuant to proposed final rule 210.46(f)(5).

4. The new text also states that when one of the matters under consideration is whether to grant temporary relief, such submissions must be filed by the deadlines listed in proposed final rule 210.67(b) unless the Commission orders otherwise.

5. Finally, contrary to what is stated in paragraph (a)(4) of the interim rule, the new text in the proposed final rule states that the only submissions that must be served on the parties are those filed by other parties. Paragraphs (b)(1) and (b)(2). Paragraphs (b)(1) and (b)(2) of proposed final rule 210.50 are based on paragraphs (b)(1) and (b)(2) of interim rule 210.58. Paragraph (b)(1) of proposed final rule 210.50 deals with the presiding ALJ’s ability to address the issues of appropriate Commission action, the public interest, and bonding by the respondents for purposes of an ID on permanent relief under proposed final rule 210.42(a)(1)(i) or an RD on remedy and bonding under proposed final rule 210.42(a)(1)(ii). Paragraph (b)(2) of proposed final rule 210.50 discusses assessment of the public interest in connection with a motion for termination under proposed final rules 210.21(b) or (c) on the basis of a settlement agreement or a consent order.

New Regulations Governing Respondents’ Bonds

As a result of the Federal Circuit’s ruling in connection with Inv. No. 337–TA–276, Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Same and Processes for Making Such Memories, the Commission now prescribes and administers bonds posted by respondents pursuant to section 337(j)(3) of the Tariff Act in connection with a temporary or permanent cease and desist order prohibiting U.S. sales of the subject imported articles during the Presidential review period. Because that ruling was issued in 1989, the interim rules do not contain procedures governing the administration of such bonds. In the absence of such regulations, the Commission has applied the provisions of interim rule 210.58(b) to the posting of a respondent’s bond administered by the Commission, and has decided whether to permit the return of such bonds based on the facts of each case, rather than the forfeiture provisions in interim rule 210.58(c).

Proposed rules governing Commission administration of respondents’ bonds will be prepared and published at a later date.

Section 210.51

Proposed final rule 210.51 is derived from interim rule 210.59, which discusses (1) designating an investigation “more complicated,” (2) designating an investigation “complicated,” and (3) the statutory deadlines for concluding ordinary, “more complicated,” and “complicated” investigations. Proposed final rule 210.51 provides deadlines for concluding the temporary and permanent relief phases of an ordinary investigation as well as one designated “more complicated.” There is no provision, however, in proposed final rule 210.51 for designating an investigation “complicated” in the manner described in paragraph (c) of interim rule 210.50.

Paragraph (c) of interim rule 210.59 was adopted to implement section 1342(d)(2) of the Omnibus Trade Act, which provided that any section 337 investigation due to be completed within 180 days after the effective date of the Omnibus Trade Act amendments to section 337 of the Tariff Act could be declared “complicated” and the 12-month or 18-month deadline for concluding the investigation could be extended up to 90 days.

The effective date of the Omnibus Trade Act was August 23, 1988. The Commission’s authority to apply the “complicated” designation to a pending investigation was limited to investigations with deadlines on or before February 18, 1989. Proposed final rule 210.51 thus does not contain a provision based on paragraph (c) of interim rule 210.59.

Subpart H—Temporary Relief

The Omnibus Trade Act amendments governing temporary relief imposed stringent deadlines for the Commission to determine whether to grant motions for such relief. The Commission also was given express authorization to take the following action: (1) require the posting of a bond by complainant as a prerequisite to the issuance of temporary relief; (2) issue temporary cease and desist (TCD) orders in addition to or in lieu of temporary exclusion orders (TEOs); and (3) grant temporary relief under section 337 to the same extent that federal courts can issue temporary restraining orders and preliminary injunctions.

Proposed final rules 210.52 through 210.57 govern the content, the filing, and the adjudication of motions for temporary relief. Proposed final rules 210.68 through 210.70 govern a complainant’s posting and possible forfeiture of a temporary relief bond. These procedures are intended to ensure procedural consistency in adjudicating motions for temporary relief and Commission compliance with the stringent statutory deadlines.

Section 210.52

Proposed final rule 210.52 is based on interim rule 210.24(e)(1), which governs the filing and content of motions for temporary relief. Paragraph (a). Paragraph (a) of proposed final rule 210.52 states that a complaint requesting temporary relief must be accompanied by a motion for such relief containing information relevant to the four factors the Commission will consider in determining whether to grant temporary relief. Paragraph (a) of proposed final rule 210.52 was adopted to implement section 1342(d)(2) of the Omnibus Trade Act, which included a provision requiring the filing of motions and a statement of the reasons therefor.

88 See 19 U.S.C. 1337(e)(2).
89 See 19 U.S.C. 1337(e)(2), (e)(3), and (f).
rule 210.52 explains that in determining whether to grant temporary relief, the Commission will apply the standards the U.S. Court of Appeals for the Federal Circuit uses in determining whether to affirm lower court decisions granting preliminary injunctions and that the motion for temporary relief must contain a detailed statement of specific facts bearing on the factors the Federal Circuit would consider.

The relevant factors are not listed, however, In paragraph (a) of proposed final rule 210.52, The Commission’s current articulation of those factors is set forth below. The factors are:

1. whether there is reason to believe that section 337 has been violated and the complainant’s likelihood of success on the merits or the complaint;
2. whether there will be immediate and substantial harm to the domestic industry in the absence of temporary relief;
3. The harm, if any, to the respondents if temporary relief is granted; and
4. The effect, if any, that the issuance of temporary relief would have on the public interest. The Commission’s actual practice is to balance the harm to the parties. See Certain Pressure Transmitters, Trade Publication 2392 (June 1991), Commission Opinion at 210.53.

The Commission applies these standards because (1) the Omnibus Trade Act amendments and legislative history provide that in determining whether to grant temporary relief under section 337, the Commission is to apply the same standards that federal courts apply in determining whether to grant preliminary injunctions, and (2) the Federal Circuit is the court of review for Commission determinations under section 337.

The Commission considered articulating the four factors in paragraph (a) of proposed final rule 210.52, but decided not to do so because subsequent judicial decisions that reverse or modify any of the four factors would create a concomitant need for revision of the commission rule.

The IEMCA commented that the final rule which replaces interim rule 210.24(e)(i) should state that the complainant has the burden of proof on each factor the Commission considers in determining whether to grant temporary relief and that such relief will not be granted unless the complainant satisfies that burden. The IEMCA based this argument on a colloquy in the Congressional Record that was incorporated into the Conference Committee Report accompanying the Omnibus Trade Act amendments to section 337. There is no question that Congress intended for the Commission to follow federal court practice in the adjudication of motions for temporary relief under section 337. Although the aforesaid colloquy states that the plaintiff must prove that its injury outweighs any injury to the defendant that would be caused by the issuance of temporary relief, subsequent to the publication of that colloquy, the Federal Circuit explicitly stated that such a showing by the plaintiff is not necessary. See Hybritech Inc. v. Abbott Laboratories, 849 F.2d 1446, 1457 (Fed. Cir. 1988). The Commission thus has not drafted paragraph (a) of proposed final rule 210.52 in the manner the IEMCA recommended.

Paragraph (b) of proposed final rule 210.52 is similar to interim rule 210.24(e)(1)(ii), which lists the bonding issues that must be addressed in a motion for temporary relief. The interim rule indicates that the specified issues should be addressed if the complainant is seeking a TEO. Paragraph (b) of proposed final rule 210.52 requires the complainant to address those issues regardless of whether the complainant is seeking a TEO or a TCD order.

The Commission believes that a bond may be required as a prerequisite to the issuance of a preliminary injunction or a restraining order. The rationale for requiring a bond or other security in a district court action and the computation of the amount of the bond or other security differs from that for and computation of a temporary relief bond in a section 337 investigation. The Commission believes that the issuance of the bond requirement in FRCP 63 is a reasonable basis for the Commission rules to provide for the posting of a bond in connection with the issuance of a TCD order as well as a TEO. The Commission notes that the presumption of a need for a bond in every case, coupled with the “potentially exorbitant” amount of the bond as prescribed by the interim rules, is not in proportion to any perceived need to deter frivolous or improperly motivated motions for temporary relief.
and will deter the filing of meritorious motions. The AIPLA argued further that if a presumption in favor of a bond is to be retained in the final rules, the presumption should be in favor of a small bond unless the specific circumstances in a particular investigation lead the Commission to conclude that a more substantial bond is necessary.

The Commission does not think it necessary to dispense with the presumption in favor of a bond for the proposed final rulemaking. As the preamble to the interim rules explained, that policy is consistent with the stated purposes of the statutory bonding provision,80 which are to deter frivolous motions for temporary relief or use of the temporary relief process to harass respondents or to accomplish some other improper purpose. The question of whether a small bond would impose an undue hardship on the complainant is one of the factors the Commission considers in determining whether to require a bond.81 The strength of complainant's case also is considered,82 and has resulted in Commission determinations to require a bond that was half the minimum amount prescribed in the rules or to dispense with the bond altogether. For those reasons, the Commission believes that retention of the presumption in favor of a bond in proposed final rule 210.52 should not result in deterring meritorious motions for temporary relief by complainants whose financial resources are limited.

Paragraph (d). Paragraph (d) of proposed final rule 210.52 is based on interim rule 210.24[e][1][iv] and lists specific types of documents and information a complainant must provide in or with a motion for temporary relief. There are no substantive differences between the interim rule and paragraph (d) of the proposed final rule.

Paragraph (e). Paragraph (e) of proposed final rule 210.52 is based on interim rule 210.24[e][1][v] and describes how the Commission is likely to compute the amount of the complainant's bond (if one is required as a prerequisite to the issuance of a TEO or a TCD order).83 Paragraph (e) also describes the specific information that should be provided by the complainant to aid the Commission in computing the amount of the bond.

The preamble to interim rule 210.24[e][1][v] explained that the Commission's goal in computing the amount of the bond is to select an amount that will be sufficient to deter the complainant in question from misusing the temporary relief process or the temporary remedial order. Since the legislative history contains no practical guidelines for computing the amount of temporary relief bonds, the Commission decided to try using, on an interim basis, a specific formula that would accomplish the following objectives: (1) Make the computation relatively easy; (2) ensure that the bonding provision is applied in a consistent fashion; and (3) give potential complainants some idea of the bond amount that could be required if they were to seek and be granted a temporary remedial order.84

Interim rule 210.24[e][1][v] provides that in cases where a domestic industry exists and domestic sales have commenced and have not been de minimis, the Commission will generally require a bond in an amount ranging from 10 to 100 percent of sales revenues and licensing royalties from the domestic product at issue, as reported in the complainant's audited annual financial statements for the most recently completed fiscal year. In cases where the prescribed formula could not or should not be applied for some reason, interim rule 210.24[e][1][v] permits the Commission to use instead a formula or criteria that are appropriate under the circumstances. The complainant is required to take the initiative on that issue, however, by (1) demonstrating in its motion for temporary relief that the prescribed bond computation formula is inappropriate, and (2) providing an alternative formula or criteria for computing the amount of the bond.

The public comments on the interim bond computation formula were mixed, but for the most part were negative. The AIPLA seemed to approve of the fact that interim provisions offer some flexibility as to whether a bond should be required in a given case and in computing the amount of the bond. The IEMCA and the ITCTLA argued, however, that the interim provisions are too complex and provide parties with too little guidance or certainty as to the amount of the bond. The IEMCA also complained that the prescribed formula does not adequately protect respondents because it relies on past rather than future sales levels. The AIPLA and the ITCTLA asserted that the formula is adverse to complainants because it is likely to result in a bond amount that would be prohibitive to most businesses and would force them to forgo temporary relief (either by choosing not to seek it or by deciding not to accept the temporary remedial order after the Commission has agreed to issue one, because the bond is beyond the complainant's means).

All commenters suggested alternative bond computation formulas for incorporation into the final rules. The IEMCA suggested that the Commission calculate bond amounts by estimating the likely economic and competitive benefits the complainant accrues from the temporary relief. Such benefits would be measured by (1) the complainant's allegation of irreparable injury (which is a required element of every motion for temporary relief), or (2) economic projections of prospective sales (if the irreparable injury allegation provides inadequate or unsuitable for the purpose of computing the temporary relief bond), or (3) the competitive harm a respondents incurring as a consequence of the temporary relief (as a proxy for the benefit to the complainant).85

The AIPLA appeared to favor computing the amount of the bond on the basis of a percentage of complainant's annual profits from the product at issue—i.e., a bond amounting to no more than 10 percent of such profits, unless there are indicia or a substantial likelihood that the complainant in question may be abusing the temporary relief process (or is likely to abuse the temporary remedial order).

The ITCTLA recommended using a tiered schedule in which the amount of the bond is determined by the complainant's sales for the product at issue during the 12-month period immediately preceding the filing of the complaint. The ITCTLA acknowledged the wisdom, however, of having the Commission retain flexibility to adjust the scheduled bond amount in particular cases, provided that such adjustments

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80 See 53 FR 49112 (Dec. 6, 1988).
81 See interim rule 210.24[e][1][ii][c] and paragraph (c) of proposed final section 210.52.
82 See id.
83 Paragraph (e) of proposed final rule 210.52 differs from interim rule 210.24[e][1][v] by applying to the computation of bonds for TEOs and TCD orders.
84 The third approach was considered by the Commission prior to adoption of the interim rules and was found to have some merit. It was not incorporated into the interim rules, however, because the Commission believed that it would be too speculative and difficult to apply within the very limited time available for deciding whether to grant a motion for temporary relief. See 53 FR 49112 (Dec. 6, 1988). The IEMCA commented in response that the Commission should try that approach before adopting final rules so that the Commission can determine whether that approach is really as impracticable as the Commission believed it to be.
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occurred rarely and were clearly warranted in each case.

The ITCTILA also offered the following additional alternative bond computation formulas which had been suggested by various ITCTILA members or the organization’s economic consultant. Of these percentage of the amount of sales rather than utilizing an arbitrary schedule of increasing steps: [2] the value of the competing goods that are to be excluded under the TEO since this is the quantitative effect of the harm felt by the public, i.e., the consumer; or [3] the amount of profit realized during the proceeding year for the product at issue.

In considering the propriety of changing the interim bond computation formula, the Commission noted that in the temporary relief cases conducted to date, neither the presiding ALJ nor the Commission found it appropriate for the Commission to require a bond in an amount within 10 to 100 percent range of the complainant’s sales and licensing royalties.41

In light of the adverse public comments criticizing the 10-to-100 percent formula, the Commission decided to abandon the interim formula for the proposed final rulemaking and to utilize a tiered schedule very similar to that proposed by the ITCTILA. The Commission believes that a tiered bond schedule will come closer to achieving the results the Commission hoped for when it adopted the 10-to-100-percent-of-sales-and-royalties formula on an interim basis in 1988. For example: The bond amounts imposed pursuant to the schedule will be sufficiently high to deter most complaints from filing a frivolous motion for temporary relief, but not so high that meritorious motions will be foregone because the complainant cannot afford the costs of litigating the bond issues, or passing the burden of proof on to the respondents in order to avoid forfeiting it.42 The schedule also will provide greater certainty than the 10-to-100 percent formula did, and will enable prospective complainants contemplating temporary relief to better assess the costs and risks before proceeding. Finally, use of the schedule in appropriate cases will ultimately benefit the parties, the presiding ALJ, and the Commission by reducing the issues, the costs, and the time that must be spent on bonding in an already compressed period of intense activity.

The bond computation schedule incorporated into the proposed final rule differs from the ITCTILA’s proposal in two respects. First, in the schedule in the proposed final rule, the bond amount is linked to sales of the product at issue and licensing royalties from the asserted intellectual property right instead of sales alone. Second, the schedule in the proposed final rule does not mandate adherence to the schedule in cases in which the schedule would not be appropriate.43 The proposed final rule provides that the appropriate bond in those cases will be determined on a case-by-case basis. The proposed rule also provides that the Commission will retain the option to require bonds in higher or lower amounts than prescribed under the schedule in exceptional cases where the criteria for the schedule are satisfied—that is, domestic sales have commenced and have not been de minimis, but the bond amount that would be required under the schedule is clearly inadequate for some reason.44

Paragraph (f). Paragraph (f) of proposed final rule 210.52 is based on interim rule 210.24(e)(1)(vi), and directs the parties to adhere to the rules governing identification and submission of confidential business information if the motion for temporary relief contains such information. There is no difference between the interim rule and paragraph (f) of the proposed final rule.

Section 210.53

Proposed final rule 210.53 is based on interim rules 210.24(e)(2) and (e)(3). Paragraph (a) of proposed final rule 210.53 is identical to interim rule 210.24(e)(2) and discusses the procedure for filing a motion for temporary relief after the complaint has been filed, but before the Commission has determined whether to institute an investigation in response to the complaint. Paragraph (b) of proposed final rule 210.53 is identical to interim rule 210.24(e)(3) and prohibits the filing of a motion for temporary relief after an investigation has been instituted.

As stated previously, the Omnibus Trade Act amendments to section 337 created stringent statutory deadlines for the Commission to determine whether to grant a motion for temporary relief, i.e., 90 days after institution of an ordinary investigation and 150 days after institution in a “more complicated” investigation.45 Because of the short time allotted the fact that the deadlines are measured from the date an investigation is instituted, interim rule 210.24(e)(1)(i) provides that a motion for temporary relief must be filed with the complaint. Interim rule 210.24(e)(2) permits the filing of a motion for temporary relief after the filing of a complaint only if certain conditions are met and the motion is filed before the Commission has determined whether to...

41 An example of such a case would be one in which the following circumstances existed: (1) The complainant is a giant multinational firm with vast financial resources; (2) the complainant’s licensing royalties and sales of the product at issue during the 12-month period preceding the filing of the complaint amounted to $700,000; (3) the motion for temporary relief does not appear to be frivolous, but the complainant’s case is not particularly strong; (4) the respondents are relatively small businesses with limited financial resources; and (5) the respondents expect to lose—and the complainant expects to gain—$60,000 in sales if a TEO or TCD order is issued and remains in effect during the pendency of the investigation. In such a case, the $100,000 bond prescribed by the schedule would seem to be inadequate. The Commission thus would be justified, under the legislative history of the bonding provision, in requiring a more substantial bond in order to overcome in hesitation to grant temporary relief.

42 19 U.S.C. 1337(e)(2).
Institute an investigation in response to the complaint. Interim rule 210.24(e)(2) also provides that filing a motion for temporary relief after the filing of the complaint restarts the clock for computing the Commission's administrative deadline for determining whether to institute an investigation on the basis of the complaint. Finally, interim rule 210.24(e)(3) flatly prohibits the filing of a motion for temporary relief after an investigation has begun.

The ITCTLA objected to the aforesaid interim rules because they effectively require a complainant who did not seek temporary relief when the complaint was filed but decided after institution that there was a need for such relief to withdraw and re-file the complaint in order to file a motion for temporary relief. The ITCTLA believes that this constitutes too extreme a procedure and that there may be instances in which a complainant should be permitted to file a postinstitution motion for temporary relief because of extraordinary circumstances. The ITCTLA commented that a better balance of the interests of the parties and the Commission could be achieved by adopting the following procedure: (1) Requiring a showing of extraordinary changed circumstances and due diligence by the complainant as a precondition to the filing of a postinstitution motion for temporary relief; (2) requiring that the complainant waive the benefit of the 90-day or 150-day statutory deadline for the Commission to determine whether to grant the motion to the extent that the postinstitution filing of the motion would mean that the motion would have to be decided in less than 90 days in an ordinary investigation or less than 150 days in a "more complicated" investigation; (3) authorizing the presiding ALJ to suspend the running of the clock on the deadline for the Commission's final determination on violation while the temporary relief issues are being adjudicated; and (4) requiring the complainant to waive any objection to that suspension.

The Commission has not incorporated the ITCTLA's proposal in proposed final rule 210.53. As the Commission explained in the preamble to the interim rules, the prohibition of postinstitution motions for temporary relief was adopted because a reduction of time for adjudicating the motion resulting from the complainant's delay in seeking temporary relief would be prejudicial to the rights of the other parties (regardless of the reason for the delay) and could jeopardize the Commission's ability to adjudicate the motion in a timely fashion.\(^1\)

The Commission lacks authority to suspend the statutory deadlines, and if the Commission were to permit postinstitution motions for temporary relief, it would be difficult for the Commission to carry out the procedures listed in the interim rule and still meet the statutory deadline. The Commission would have to review the motion to determine whether it was properly filed. Because the respondents could be prejudiced, fairness would require that the respondents be permitted to file their arguments on whether the motion should be accepted despite the late filing. If the motion was accepted, the respondents would then need time to file their responses to the motion. The Commission does not see how it can carry out those steps, conduct an inter partes hearing on the merits of the motion, and render a final decision on the motion by the statutory deadline. The Commission notes also that it lacks the power to extend a temporary relief proceeding beyond the statutory deadline for deciding the motion for temporary relief, even if the complainant does not object. For those reasons, the Commission has not modified the proposed final rules to incorporate the procedure outlined by the ITCTLA.

Section 210.54

Proposed final rule 210.54 is based on interim rule 210.24(e)(4), which requires a complainant seeking temporary relief to serve nonconfidential copies of the complaint and motion for temporary relief on each proposed respondent before filing them with the Commission and to provide proof, when the complaint and motion for temporary relief are served on the proposed respondent, that the complaint and motion were tiled, that the service has been initiated. In addition, the proposed final rule requires the complainant to file, within 10 calendar days after filing the complaint and motion, instead of requiring profiling service copies of the complaint and motion, that the complaint and motion for temporary relief be served on the respondents who may have to translate the complaint and motion. The ITCTLA also suggested that if a complainant is unable (after due diligence) to have the prefilling service copies delivered to the respondents before filing the complaint and motion for temporary relief with the Commission, the Commission should extend the deadline for filing a response to the complaint and motion.

The short statutory deadline for the Commission to decide whether to grant a motion for temporary relief benefits the complainant and imposes a heavy burden on the respondents. For that reason, the Commission agrees with the ITCTLA that the complainant should be required to ensure that copies of the complaint and motion for temporary relief are served on the proposed respondents and the appropriate embassies as soon as possible. The certificate of service that must be filed with the motion for temporary relief should describe the manner in which service has been initiated. In addition, proposed final rule 210.54 requires the complainant to file, within 10 calendar days after filing the complaint and motion for temporary relief, actual proof of service—or a serious attempt to make service—of the complaint and motion on each proposed respondent and embassy.

If the requirements of proposed final rule 210.54 are not satisfied, the Commission may extend its 35-day deadline for determining whether to institute an investigation and provisionally accept the motion for temporary relief. Thus, if a proposed respondent notifies the Commission that it did not receive the complaint and motion for temporary relief and the Commission subsequently determines that the complainant did not make a...

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serious attempt to serve the proposed respondent, the Commission may order the complainant to serve the proposed respondent and may reset, as of the date of such service, the 35-day period for determining whether to institute an investigation and provisionally accept the motion for temporary relief.

Section 210.55

Proposed final rule 210.55 is based on interim rule 210.24(e)(6), which discusses redaction of confidential business information from the service copies of the complaint and motion for temporary relief. To deter and remedy abuse of the confidential designation by complainants in the preparation of the nonconfidential service copies of the complaint and motion for temporary relief, the proposed final rule contains a new paragraph (b). That paragraph provides for the filing and service of new nonconfidential copies of the complaint and motion for restarting the 35-day period for determining whether to institute an investigation and provisionally accept the motion for temporary relief, when the redactions of allegedly confidential information are excessive.

Potential complainants should note also that abuse of the confidential designation and the consequent over-redaction of confidential information from the service copies of a complaint and motion for temporary relief may be sanctioned under interim rule 210.5(b) and proposed final rule 210.4(b) depending on the facts.

Section 210.56

Proposed final rule 210.56 is based on interim rule 210.24(e)(6), and provides that each prefilling service copy of the complaint and motion for temporary relief shall be accompanied by a notice that states the date the complaint and motion will be filed with the Commission and describes the process by which the Commission will determine whether to provisionally accept the motion and institute an investigation on the basis of the complaint.

The proposed final rule differs from the interim rule in several respects. The rule has been divided into two paragraphs. Paragraph (a) sets forth the required content of the notice. Paragraph (b) discusses the filing and service of a supplementary notice in the event that the complaint and motion for temporary relief are filed after the date specified in the original notice.

In paragraph (b) concerning the required text of the original notice, the Commission has updated the telephone numbers that are listed for the Secretary and OUII. Also, every reference to parts 210 and 211 of the Commission's rules which appeared in the interim rule has been replaced with a reference to part 210, since the proposed final versions of interim rules in part 211 have been merged into the proposed final version of part 210. Finally, the fact that various proposed final rules provide exceptions to the Commission's 35-day deadline for determining whether to institute an investigation and provisionally accept a motion for temporary relief is noted in the text set forth in proposed final rule 210.56.

Section 210.57

Proposed final rule 210.57 is based on interim rule 210.24(e)(7), which governs an amendment of a motion for temporary relief before and after the Commission's determination on whether to institute an investigation based on the complaint and provisionally accept the temporary relief motion for further processing. Interim rule 210.24(e)(7) provides, among other things, that an amendment to a motion for temporary relief that expands the scope of the motion or changes the complainant's assertions on whether it should be required to post a bond must be served on the embassy in Washington, DC. of each foreign respondent. The ITCTLA commented that serving an embassy with a copy of an amendment to the motion for temporary relief should be required only if the amendment adds a new respondent who is represented by the embassy in question.

The Commission does not agree. The Commission's practice of serving embassies with copies of section 337 complaints and motions for temporary relief was adopted partly because some foreign governments requested it. A foreign government with an interest in a particular section 337 investigation should have a complete copy of the complaint and the motion for temporary relief that form the basis for the preinstitution proceedings and any resulting investigation. The Commission sees no reason to adopt a final rule restricting service of an amendment to a motion for a temporary relief based on a complainant's or the Commission's perception of what would or would not be of interest to a particular foreign government.

Interim rule 210.24(e)(7) also provides that the 35-day period for the Commission to determine whether to institute an investigation and provisionally accept the motion for temporary relief begins to run anew from the date the complainant files an amendment to the motion, if the amendment expands the scope of the motion or changes the complainant's assertions on bonding. The ITCTLA commented that the proposed final rule should indicate who determines whether the scope of a motion for temporary relief has been expanded by an amendment to the motion in a way that warrants restarting the clock on the Commission's 35-day period.

The Commission agrees. In the temporary relief cases conducted to date, the Commission has not had occasion to invoke that provision of interim rule 210.24(e)(7). Proposed final rule 210.57, however, states that the determination as to whether a particular amendment should restart the administrative clock will be made by the Commission.

Interim rule 210.24(e)(7) prohibits amendment of a motion for temporary relief after an investigation has been instituted. This rule also precluded adverse comment. The AIPLA commented that the prohibition on postinstitution amendments is unrealistic, because discovery or a response to the complaint may disclose information pertinent to the issue of temporary relief or bonding by the complainant. For that reason, the AIPLA suggested that postinstitution amendments to motions for temporary relief should not be flatly prohibited, but should be allowed or disallowed on a case-by-case basis after Commission consideration of such factors as (1) the ability of the complainant to have ascertained the information contained in the proposed amendment prior to filing the motion for temporary relief, (2) whether there was any concealment of information by the respondent(s), (3) the possibility of undue prejudice to the parties, and (4) the effect of the new matter (in the proposed amendment) on the ALJ's ability to dispose of the issues on the merits within the time provided under the rules.

The Commission's view is that any substantive postinstitution amendment that would expand the scope of the temporary relief inquiry cannot be accommodated, because there is not enough time to do so. Although the approach suggested by the AIPLA seems reasonable, it will take time for the Commission to make the prescribed determination. It cannot properly be made solely on the basis of the assertions in the complainant's motion to amend; the opposing parties must be given an opportunity to present their arguments, particularly on the issues of undue prejudice and possible

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88 See, e.g., proposed final rules 210.21(c) and 210.71 through 210.79.
concealment of information. If leave to file the amendment is granted, the respondents will have to be given an opportunity to file a response to the amendment. Given that the Commission's statutory deadline for determining whether to grant a motion for temporary relief is computed from the date the investigation is instituted, the additional activities involved in determining whether to allow the postinstitution amendment to the motion and in processing the amendment if it is permitted are almost certain to hinder the Commission's ability to comply with the statutory deadline. The Commission notes also that even if the complainant agreed to waive the deadline, the Commission could not do so without a change in the statute.

Proposed final rule 210.57 accordingly retains the prohibition on postinstitution amendments to a motion for temporary relief. The rule clarifies that this prohibition applies to amendments that would expand the scope of a temporary relief inquiry, not those that would reduce the number of issues to be adjudicated.

Section 210.58

Proposed final rule 210.58 is based on interim rule 210.24(e)(8), which describes the manner in which the Commission will determine whether to provisionally accept a motion for temporary relief for further processing, and on interim rule 210.24(e)(10), which states that a provisionally accepted motion for temporary relief will be assigned to an ALJ for issuance of an ID.

There are two minor differences between the interim rule and the proposed final rule. The first difference is that the statement in interim rule 210.24(e)(8) that the Commission's determination on whether to provisionally accept a motion for temporary relief and institute an investigation in response to the complaint will be made in 35 days has been changed in the proposed final rule to indicate that the 35-day deadline applies unless the clock is restarted pursuant to specified proposed final rules or "exceptional circumstances" preclude adherence to the deadline, as provided in proposed final rule 210.10. The second change pertains to the sentence concerning referral of the motion to an ALJ for an ID. As the IEMCA pointed out in its comments, the customary practice is for a complaint and motion for temporary relief to be forwarded to the chief ALJ for assignment to a presiding ALJ. Proposed final rule 210.58 has been drafted to reflect that fact.

Section 210.59

Proposed final rule 210.59 is based on interim rule 210.24(e)(9), which lists the format, mandatory content, and deadline for filing a response to a motion for temporary relief. The proposed final rule differs from the interim rule in the manner described below.

1. Since this rule is rather long, the Commission has divided it into three paragraphs. Paragraph (a) provides deadlines for responding to a motion for temporary relief in an ordinary investigation and in a "more complicated" investigation. Paragraph (b) outlines the required content of the response. Paragraph (c) provides that each response to a motion for temporary relief must be accompanied by a response to the complaint and notice of investigation.

2. Since interim rule 210.24(e)(9) contains no reference to the possible inclusion of confidential business information in a response to a motion for temporary relief, the first sentence in paragraph (b) contains a citation to proposed final rule 210.5 to remind complainants that if a response to a motion for temporary relief or a response to the complaint and notice of investigation contains confidential business information, that information should be identified and submitted in accordance with proposed final rule 210.9(a), Commission rules 201.6 (a) and (c), and any protective order issued by the presiding ALJ.

3. The next-to-the-last sentence in paragraph (b) requires each response to address to the extent possible, the complainant's assertions on bonding as a requisite to temporary relief and the amount of the bond.

4. Since the Commission has omitted from proposed final rule 210.52 a recitation of the four factors the Commission considers in determining whether to grant a motion for temporary relief, item (2) in paragraph (b) of proposed final rule 210.59 is written in a corresponding manner.

5. In item (3) of paragraph (b) of the proposed final rule, the interim rule requirement that the respondent provide a memorandum of points and authorities in opposition to the motion for temporary relief has been changed in the proposed final rule to require the filing of a memorandum in support of the respondent's response to the motion. A respondent may not wish to oppose every aspect of the motion, and there may even be cases in which a respondent chooses not to oppose the granting of temporary relief (e.g., for financial reasons).

Interim rule 210.24(e)(11) and proposed final rule 210.60 allow the Commission or the presiding ALJ to designate an investigation "more complicated" because of complexities arising in the adjudication of a motion for temporary relief. The IEMCA commented that in cases where an investigation is designated "more complicated" after the 10-day deadline for filing a response to a motion for temporary relief, the respondents should be permitted as a matter of right to file a supplemental response to the motion within two weeks after the date of designation, in order to ensure that respondent have additional time to investigate the complainant's allegations and to prepare any additional affirmative defenses. The IEMCA added that any new information developed during the additional time could be used to amend the respondent's earlier pleading. The Commission has not drafted proposed final rule 210.59 to give respondents the right to file supplemental responses in the manner proposed by the IEMCA. Furthermore, the grant or denial of leave to file a supplemental submission while the investigation is before the ALJ is a matter of discretion for the ALJ under interim rule 210.23 and proposed final rule 210.14(d).

The Commission thinks that it should be left to the discretion of the presiding ALJ to decide whether a respondent should be permitted to file supplemental pleadings if an investigation is designated "more complicated" after the 10-day deadline for respondents to respond to the complaint and motion for temporary relief. The Commission also thinks, however, that it may be appropriate for the rules to allow respondents more than 10 days to respond to the complaint and motion for temporary relief if the investigation is designated "more complicated" by the Commission when it provisionally accepts the motion or by the presiding ALJ prior to expiration of the customary 10-day period for responding to the complaint and motion for temporary relief. For that reason, the Commission has drafted proposed final rule 210.59(a) to provide that, unless otherwise ordered by the presiding ALJ, a response to a motion for temporary relief in an ordinary investigation is due 10 days after service of the motion by the Commission pursuant to proposed final rule 210.11, and in a "more complicated" investigation the response shall be due within 20 days after service.
The governing designation offers investigation as "more complicated." Although the Commission does not favor adoption of the provision suggested by the IEMCA, interested persons should be aware that the fact that the Commission does not designate an investigation "more complicated" when it determines to provisionally accept a motion for temporary relief reflects the ALJ to be required to determine as soon as possible—preferably before the investigation is instituted—whether that designation is warranted for adjudication of the motion for temporary relief. The Commission thinks it would be inappropriate to add such requirements to proposed final rule 210.60. The Chief ALJ designates a presiding ALJ only after investigation has been instituted. Furthermore, there may be instances in which the presiding ALJ may wish to see the responses to the motions for temporary relief before making a determination on whether the temporary relief proceedings should be declared "more complicated." Although the Commission does not favor adoption of the provision suggested by the IEMCA, interested persons should be aware that the fact that the Commission does not designate an investigation "more complicated" when it determines to provisionally accept the motion for temporary relief should not inhibit the provisions of the Act from doing so whenever such a designation is appropriate in his or her opinion. The propriety of ordering the designation should be considered by the ALJ as early as possible in the proceeding.

The IEMCA's second suggestion was that the proposed final rule should specify a standard for designation the temporary relief proceedings of an investigation as "more complicated." The IEMCA noted that the legislative history of the statutory provisions governing motions for temporary relief offers specific guidelines for determining which cases should receive that designation, and that the Commission should use those guidelines as examples—in the proposed final rule—of cases for which a "more complicated" designation would clearly be appropriate.4

Section 210.60
Proposed final rule 210.60 is based on interim rule 210.24(e)(11), which permits the Commission or the ALJ (on behalf of the Commission) to designate the temporary relief phase of an investigation as "more complicated" based on the complexity of the issues and the need for additional time to adjudicate a motion for temporary relief.

The IEMCA suggested that, in cases in which the Commission does not designate an investigation "more complicated" when it determines to provisionally accept a motion for temporary relief, the ALJ should be considered by the ALJ as temporary relief proceedings of an appropriate in his or her opinion. The Commission does not designate a presiding ALJ only after investigation has been instituted. Furthermore, there may be cases involving unquestionably complex patent claims that can be adjudicated in 90 days—particularly if unusually able counsel are involved or adjudication of the motion for temporary relief involves substantially fewer patent claims, respondents, or affirmative defenses than the complaint. Conversely, there also may be instances in which a "straight-forward" patent or copyright case "blows up" and is designated "more complicated" because of unforeseen procedural problems or novel issues of law or policy. For those reasons, the Commission thinks that the appropriateness of the "more complicated" designation to temporary relief proceedings should be made on a case-by-case basis.

Accordingly, the only difference between the interim rule and proposed final rule 210.60 is that the last two sentences of the proposed final rule indicate that a "more complicated" designation may be conferred by the Commission or the presiding ALJ on the basis of the complexity of the issues raised in the motion for temporary relief or the responses thereto—or for other good cause.

The Commission does not agree with the IEMCA's recommendation that the standard for designating a temporary relief proceeding "more complicated" should incorporate the "necessary to assure adequate presentation of evidence by all the parties" standard. It is likely that some respondents are of the opinion that 90 days is never long enough to "assure adequate presentation of the evidence." Incorporating that standard will thus create a bias against the ALJ for declaring almost all cases "more complicated." The Commission also does not think it appropriate to adopt a rule articulating the presumptions proposed by the IEMCA. The question of whether a particular type of intellectual property right is "complex" or "relatively straightforward" is often a difficult one, and articulating an objective standard that can be codified in a Commission rule and applied by all parties would not be easy. Furthermore, there may be cases involving unquestionably complex patent claims that can be adjudicated in 90 days—particularly if unusually able counsel are involved or adjudication of the motion for temporary relief involves substantially fewer patent claims, respondents, or affirmative defenses than the complaint. Conversely, there also may be instances in which a "straight-forward" patent or copyright case "blows up" and is designated "more complicated" because of unforeseen procedural problems or novel issues of law or policy. For those reasons, the Commission thinks that the appropriateness of the "more complicated" designation to temporary relief proceedings should be made on a case-by-case basis.

Accordingly, the only difference between the interim rule and proposed final rule 210.60 is that the last two sentences of the proposed final rule indicate that a "more complicated" designation may be conferred by the Commission or the presiding ALJ on the basis of the complexity of the issues raised in the motion for temporary relief or the responses thereto—or for other good cause.

Section 210.61
Proposed final rule 210.61 is based on interim rule 210.24(e)(12) and addresses discovery and compulsory process in temporary relief proceedings.

The IEMCA voiced three criticisms of the interim rule: (1) It can be interpreted as permitting the ALJ to restrict the subject matter of discovery because of time constraints for concluding the temporary relief proceedings; (2) It also appears improperly to limit the ALJ's authority to compel discovery to specific issues rather than all issues that Congress intended for the Commission to consider in determining whether to grant temporary relief; and (3) Such restrictions are inconsistent with federal court practice (which is to serve as a model for the Commission's temporary relief adjudications under section 337), and with the Commission's interim rule 210.38(b) governing discovery in section 337 investigations.

The Commission finds merit in the IEMCA's concerns about possible misinterpretations of interim rule 210.24(e)(12) because of its ambiguous wording. In drafting the interim rule, the Commission's intent was expressly to authorize a presiding ALJ to limit the timing and circumstances of discovery because of the stringent administrative and statutory deadlines for determining whether to grant a motion for temporary relief. The Commission did not intend to create the impression that the specific subject matter of temporary relief discovery should be limited because of time constraints, nor did the Commission mean to limit the matters about which the ALJ is authorized to compel discovery.

Proposed final rule 210.61 states that the presiding ALJ shall have the authority to compel discovery with respect to any matter relevant to the motion for temporary relief and the responses thereto, including the issues of appropriate remedy, the public interest, and bonding by the respondents. Proposed final rule 210.61 also states that the presiding ALJ will set all deadlines for discovery.

Section 210.62
Proposed final rule 210.62 is derived from interim rule 210.24(e)(13) and pertains to the evidentiary hearing that may be conducted in connection with a motion for temporary relief.

Some of the public comments focused on this rule's identification of the circumstances in which an evidentiary hearing would or would not be required for adjudicating a motion for temporary relief. The ITCTLA, for example, had...
problems with the interim rule’s identification of the circumstances in which a hearing would be required. The ITCTLA commented that the implication that a summary determination granted in favor of a respondent necessitates denial of complainant’s motion for temporary relief is inappropriate because it introduces the standard of the existence of a genuine issue of material fact, which may not be necessarily be the standard for ruling on a motion for temporary relief.95 The ITCTLA also criticized interim rule 210.24(e)(13) because it does not acknowledge that a motion for temporary relief may be granted without a hearing when the respondent against whom such relief is requested has defaulted and the complainant wishes to waive the hearing.

In view of these perceived deficiencies, the ITCTLA suggested that the question of whether a hearing is necessary for the adjudication of a motion for temporary relief in a particular case should be left to the presiding ALJ and that the proposed final rule should provide that a motion for temporary relief may be ruled upon without a hearing by the ALJ.

The IEMCA was critical of interim rule 210.24(e)(13) because it enumerates circumstances in which a hearing is not required, but does not explicitly state that a hearing is required in all other circumstances. To avoid any uncertainty about whether a hearing is necessary in a given case and to be consistent with Congressional intent, the IEMCA requested that the Commission establish the proposed final rule to state that no motion for temporary relief may be granted without an inter partes hearing in accordance with the procedures established in the APA.

The Commission thinks that the criticisms of interim rule 210.24(e)(13) have some merit.96 Instead of drafting proposed final rule 210.62 in the ways suggested by the ITCTLA or the IEMCA, however, the Commission has decided not to attempt to delineate the circumstances in which an evidentiary hearing would or would not be required. Proposed final rule 210.62 simply states that an opportunity for an evidentiary hearing will be provided in every temporary relief proceeding. This language corresponds to the language of section 357 regarding APA notice and hearing requirements for TEO determinations.97 This language also will give the parties the discretion to waive a hearing if the circumstances in a particular case make a hearing unnecessary.

The second aspect of interim rule 210.24(e)(13) that generated adverse public comment concerns the procedures to be followed at an evidentiary hearing for temporary relief. Interim rule 210.24(e)(13) does not discuss specific procedures; it states that “[i]f a hearing is conducted, the precise form and scope of the hearing are left to the discretion of the administrative law judge.” The IEMCA commented that the hearing procedures should not be left completely to the presiding ALJ’s discretion. The IEMCA pointed out that the legislative history of the Omnibus Trade Act specifically states that the Commission must hold “an inter partes hearing as required by the [APA],” and that the APA describes specific procedures to be applied in evidentiary hearings.98 For those reasons, the IEMCA urged the Commission to craft the proposed final rule to include a provision on procedures that corresponds to the APA. “The Commission should not find it necessary to refer to APA hearing procedures in proposed final rule 210.62, because the Commission already has a rule that refers to such procedures, viz., interim rule 210.41(d).” (“General provisions for hearings” and proposed final rule 210.36(d). The Commission believes that the results desired by the IEMCA have been achieved by the Commission’s drafting of proposed final rule 210.62 to indicate that, if a hearing is conducted on a motion for temporary relief, the relevant provisions of proposed final rule 210.36 will apply.

The final aspect of interim rule 210.24(e)(13) that generated adverse public comment is the recitation of issues to be addressed at an evidentiary hearing on temporary relief. The IEMCA commented that the recitation is incomplete and confusing because it does not correspond to the list of factors that the motion and the responses thereto are required to address pursuant to interim rules 210.24(e)(1) and 210.24(e)(6).

The IEMCA also objected to the current provision of interim rule 210.24(e)(13) which gives the presiding ALJ the option, but does not require him, to take evidence and to make findings on the issues of remedy, the public interest, and bonding by the respondents under sections 337(e)(1), (f)(1), and (j)(3) of the Tariff Act. The IEMCA argued that since the resolution of those issues is a prerequisite to the issuance of temporary relief, proposed final rule 210.62(b), which replaces interim rule 210.24(e)(13), should permit the parties to address those issues at the evidentiary hearing on temporary relief.

The Commission concurs with the IEMCA’s assessment of the current description in interim rule 210.24(e)(13) of the issues that must be addressed at an evidentiary hearing on temporary relief. Proposed final rule 210.62 therefore does not contain similar provisions. Since proposed final rule 210.62 provides that an opportunity for an evidentiary hearing will be provided with respect to “every motion for temporary relief,” the Commission does not think it necessary to outline the mandatory issues involved. The Commission does not agree, however, with the IEMCA’s position that the ALJ should be required to address the issues of remedy, the public interest, and bonding by the respondents at the hearing.

Section 210.63

Proposed final rule 210.63 is based on interim rule 210.24(e)(14), which provides that the ALJ shall determine whether and, if so, to what extent the parties will be permitted to submit briefs and proposed findings of fact and conclusions of law to the ALJ in connection with the adjudication of a motion for temporary relief. There are editorial changes but no substantive differences between proposed final rule 210.63 and the interim rule.
Section 210.64

Proposed final rule 210.64 is based on interim rule 210.24(e)(15), which provides that there will be no interlocutory appeals of an ALJ’s ruling on any matter related to the grant or denial of a motion for temporary relief. Interim rule 210.24(e)(15) also states that the right of Commission review of such matters after issuance of a temporary relief ID is limited to the issues outlined elsewhere in the interim rules governing temporary relief.

The ITCTLA questioned the appropriateness of precluding all interlocutory appeals of matters connected with the ALJ’s adjudication of a motion for temporary relief, as certain matters decided in connection with temporary relief may affect the subsequent proceedings on permanent relief. The ITCTLA went on to say that it was unclear what prejudice would result from an interlocutory appeal filed during the temporary relief proceedings since the pendency of such an appeal would not stay the investigation.

The Commission believes that the prohibition on interlocutory appeals from temporary relief proceedings should be retained. Congressionally mandated procedural requirements (i.e., an opportunity for an inter partes hearing prior to the issuance of a TEO) and the stringent statutory deadlines for determining whether to grant a motion for temporary relief make it impracticable for the parties and the Commission and its staff to be involved in an interlocutory appeal concurrently with temporary relief proceedings. The Commission notes also that any issue decided by an ALJ which has an impact on the permanent relief proceedings may be the basis for an interlocutory appeal during the permanent relief proceedings or may provide grounds for Commission review of the permanent relief ID under interim rule 210.54(a)(1)(ii). (See also proposed final rule 210.24 concerning interlocutory appeals and proposed final rule 210.49 concerning petitions for review of IDs on permanent relief).

The only difference between interim rule 210.24(e)(15) and proposed final rule 210.64 is that the Commission has omitted any discussion of restrictions on Commission review of issues decided in a temporary relief ID from the proposed final rule. The Commission believes this omission is appropriate because that information appears elsewhere (in the provisions concerning Commission action on a temporary relief ID) and is not relevant to the matter of interlocutory appeals.

Section 210.65

Proposed final rule 210.65 is based on interim rule 210.24(e)(17) and discusses the point at which an ALJ is to certify the record of a temporary relief proceeding to the Commission. The interim rule indicates that the ALJ should certify the record to the Commission before issuing the temporary relief ID, if feasible.

The ITCTLA commented that it is inappropriate for the interim rule to require or even to suggest that the ALJ certify the evidentiary record to the Commission before issuance of the temporary relief ID. In the ITCTLA’s opinion, Commission receipt of the record without the ID undermines the role and authority of the ALJ and creates ambiguity with respect to the identity of the decision-maker and the basis for the decision. Furthermore, because interim rule 210.24(e)(17) currently provides that the Commission will not review and modify or vacate a temporary relief ID solely on the basis of errors of fact, the ITCTLA questioned why the Commission should receive the record before the ID.

The Commission notes that the advancement certification provision was proposed as one means of commencing temporary relief decision-making at the Commission level prior to the issuance of the ID. Such a headstart was thought to be necessary because of the short amount of time allotted for the Commission to decide whether to adopt the ID prior to the statutory deadline for issuing a final determination on the motion for temporary relief. The plan was that the Commission could start reviewing the evidence and considering the issues before the start of the 20-day or 30-day period for disposing of the temporary relief ID.

Since the ALJ has very little time to write the ID and must include specific citations to the record pursuant to interim rule 210.53(d) (and proposed final rule 210.42(d)), the Commission now questions whether it will ever be feasible for the ALJs to send the record up to the Commission before issuing the ID. The Commission notes also that under interim rule 210.53(g) (and proposed final rule 210.42(g)), the ALJ may reopen the record to receive additional evidence at any time prior to filing the ID. The Commission thus has not included the advance certification requirement in proposed final rule 210.65.

Section 210.66

Proposed final rule 210.66 is based on interim rule 210.24(e)(17), which governs on temporary relief and Commission action thereon.

Paragraph (a). Paragraph (a) of proposed final rule 210.66 is based on interim rule 210.24(e)(17)(ii), which lists the deadlines for issuance of a temporary relief ID, as well as the mandatory and optional contents of such an ID.

Paragraph (a) of proposed final rule 210.66 differs from the interim rule in the following manner:

1. Paragraph (a) of the proposed final rule states that the temporary relief ID will be issued “on or before” (instead of “on”) the 70th day after publication of the notice of investigation in an ordinary investigation or “on or before” the 120th day after such publication in a “more complicated” investigation.

2. Paragraph (a) of the proposed final rule also indicates that if the 70th or 120th day is a Saturday, Sunday, or Federal holiday, the temporary relief ID must be filed by 12 noon on the next business day. This filing deadline increases the likelihood that the Docket staff may be able to process the ID, distribute it to the appropriate Commission offices, and make it available to the parties by the close of business on filing day.

3. The interim rule’s list of mandatory issues to be addressed in the ID is not included in paragraph (a) of the proposed final rule. The proposed final rule simply states that the ID must address the issues listed in proposed final rules 210.61 and 210.62.

Paragraph (b). Paragraph (b) of proposed final rule 210.66 is derived from interim rule 210.24(e)(17)(ii), which imposes deadlines for the processing of a temporary relief ID. The differences between the interim rule and the proposed final rule are enumerated below:

1. In paragraph (b) of proposed final rule 210.66, the Commission has corrected the statement of the effective date of an ID on temporary relief. Contrary to what the interim rule indicates, every ID on temporary relief does not become the Commission’s determination within 30 days if no review is ordered. The 30-day deadline applies only in a “more complicated” case. In an ordinary investigation, the effective date of the ID is the 20th day after issuance.

2. Paragraph (b) of proposed final rule 210.66 also provides that if the 20-day or 30-day deadline for final Commission action on the temporary relief ID falls on a Saturday, Sunday, or Federal holiday, the effective date of the ID will be extended to the next business day. Paragraph (b) also states, however, that
if a temporary relief ID is issued before the 70-day or 120-day deadline, the Commission will not be held to a 20-day or 30-day deadline for determining what action to take on the ID, i.e., the Commission will be able to take the remainder of the statutory period for determining whether to grant temporary relief.

3. The final difference between interim rule 210.24(e)(17)(ii) and paragraph (b) of proposed final rule 210.66 is that paragraph (b) refers to the possible modification, reversal, or setting aside of the ID in whole or in part (instead of the possible modification or vacation of the ID).

Paragraphs (c) and (e). Paragraph (c) of proposed final rule 210.66 is based on interim rule 210.24(e)(17)(iii), which discusses the subject matter, the page limits, and the filing deadlines for the parties' written comments concerning the temporary relief ID. Paragraph (e) of proposed final rule 210.66 is based on interim rule 210.24(e)(17)(v), which sets the page limits and filing deadlines for replies to written comments concerning the temporary relief ID. That interim rule also sets expedited service requirements for parties' original comments to facilitate timely filing of replies.

Interim rule 210.24(e)(17)(iii) permits parties to file comments concerning, inter alia, the absence of errors in a temporary relief ID. Given the short time available for parties to respond to other parties' comments, it is likely that the party who prevails in the ID will want to devote its full time and attention to anticipating the adverse comments of the losing parties and formulating suitable responses. Paragraph (c) of proposed final rule 210.66 therefore does not provide for initial comments concerning the absence of errors in the ID.

Paragraph (e)(1) of proposed final rule 210.66 gives parties the right to reply to each other's comments on a temporary relief ID. Unlike the interim rule, however, paragraph (e)(1) has been worded to clarify that each party to the investigation may file a reply to each set of comments on a temporary relief ID that were filed by other parties.

Paragraph (e)(1) also states that in no case shall a party have less than two calendar days to file its reply comments. Another noteworthy difference between the interim rules and proposed final rule 210.66 is the prescribed page limits for parties' comments on the temporary relief ID. Interim rules 210.24(e)(17)(iii) and (v) impose the same page limits for all comments, regardless of whether the temporary relief phase of the investigation has or has not been declared "more complicated." The Commission thinks that a greater number of pages should be permitted for initial and reply comments in "more complicated" investigations. Paragraph (c) of proposed final rule 210.66 accordingly states that the limit for initial comments in "more complicated" investigations is 35 pages in an ordinary investigation, and 45 pages in a "more complicated" investigation. Paragraph (e)(2) states that the page limit for reply comments is 20 pages in an ordinary investigation and 30 pages in a "more complicated" one.

Another difference between the interim rules and proposed final rule 210.66 pertains to the service of parties' initial comments on a temporary relief ID. Interim rule 210.24(e)(17)(v) refers to service of parties' initial comments by "the fastest means available." Paragraph (c) of the proposed final rule requires that service be effected "by messenger, courier, express mail, or equivalent means." The IEMCA commented that the time allotted for parties to file comments on the ID and responses to each other's comments is too short, and is particularly unfair to respondents located outside the United States. The Commission is not unsympathetic to respondents' plight, but believes that the deadlines cannot be extended unless the Commission reduces the period for the presiding ALJ to issue a temporary relief ID or eliminates responses to the initial comments. The Commission believes that neither of these options is practicable or appropriate.

Paragraph (e)(1) of proposed final rule 210.66 corrects an inconsistency between interim rules 210.24(e)(17)(ii) and (v) which affects the deadlines for filing reply comments. Interim rule 210.24(e)(17)(iii) provides that the deadline for filing comments on the temporary relief ID is measured from the date of service of the ID, while interim rule 210.24(e)(17)(v) provides that the deadline for reply comments is to be measured from the date of issuance of the ID. To resolve that inconsistency, paragraphs (c) and (e)(1) of proposed final rule 210.66 state that the deadlines for filing comments and reply comments are to be measured from the date of issuance of the ID. Saturdays, Sundays, and Federal holidays are to be included in the computation of filing periods except that when the ID is issued on Friday, the filing deadlines are to be measured from the following Monday or from the first business day after such service if Monday is a Federal holiday. Also, if the last day of the filing period is a Saturday, Sunday, or Federal holiday, the filing deadline shall be extended to the next business day. Paragraph (e)(1) of proposed final rule 210.66 also provides, however, that in no case shall a party have less than two calendar days to file its reply comments.

The Commission also has changed the substantive standards for parties' comments and Commission action on a temporary relief ID (i.e., modification, reversal, or setting aside of the ID). One of the most controversial aspects of interim rules 210.24(e)(17)(ii) and (iii) is that they do not provide for the submission of comments requesting modification or reversal of an ID based on an alleged error of fact. In fact, interim rule 210.24(e)(17)(ii) states that "[n]o review of a [temporary relief ID] will be ordered on the basis of alleged errors of fact." The Commission adopted this restriction as a means of meeting the statutory deadlines for determining whether to grant a motion for temporary relief by reducing the number of requests by parties for modification or revocation of temporary relief IDs. Prior to the adoption of the interim rules, the IEMCA argued that the Commission's decision to adopt a rule that would disallow revocation or modification of a temporary relief ID solely on the basis of alleged errors of fact would constitute an unlawful delegation of factfinding responsibility to the ALJ and would effectively preclude any review of bonding and public interest matters. The Commission rejected that argument, noting among other things that the stringent statutory deadlines and the requirement of an inter parties hearing on a motion for temporary relief made it unnecessary for the Commission to impose limits on the availability of Commission review of a temporary relief ID. The Commission also noted, however, that it was necessary to draft interim rule 210.24(e)(17)(iii) in a manner that would permit review of the largely factual bonding and public interest matters. Following publication of interim rules, the IEMCA reasserted its previous objections.

After further consideration of the propriety of restricting adverse Commission action on temporary relief IDs due to errors of law and policy matters, the Commission has not drafted paragraph (c) of proposed final rule 210.66 to prohibit modification or reversal of a temporary relief ID on the basis of alleged errors of fact. Paragraph (c) indicates that the Commission may modify, reverse, or set aside a temporary relief ID if the Commission finds that a statement of material fact is clearly erroneous (or that the ID contains an error of law, or that there is

a policy matter warranting discussion by the Commission). The Commission drafted the proposed final rule in this matter for the following reasons: Some questions of law that may be decided in a temporary relief ID in connection with likelihood of success on the merits and whether there is reason to believe that section 337 has been violated are questions of law to be determined on the facts.\(^\text{100}\) Interim rules 210.24(e)(17)(ii) and (iii) as currently written would preclude review of such issues. Other aspects of the Commission's temporary relief analysis are purely factual and cannot properly be considered matters of policy that would be reviewable under the Interim rules.\(^\text{101}\) Paragraph (c) of proposed final rule 210.66 accordingly provides that Commission clarification, reversal, or setting aside of a temporary relief ID in whole or part may be ordered if there is a material fact is clearly erroneous, the ID contains an error of law, or the ID involves a matter of Commission policy which the Commission feels it necessary or appropriate to address.

Paragraph (d). Paragraph (d) of proposed final rule 210.66 is based on interim rule 210.54(e)(17)(iv), which states that other agencies will be served with copies of the temporary relief ID and will have 10 days to file comments on the ID. The differences between the interim rule and the proposed final rule are essentially editorial. Among other things, the proposed final rule clarifies that the term "other agencies" means those listed in proposed final rule 210.50(a)(2).

Following publication of the interim rule, the ITCTLA commented that a 10-day deadline for agency comments may not be feasible in most cases for a number of reasons. The ITCTLA noted that (1) the Commission only has 20 days to act in an ordinary case, (2) the nonconfidential version of the ID cannot be prepared without input from the parties, and (3) input from the parties on the issue of confidentiality may be delayed to a certain extent because the parties' time and attention will be consumed by the preparation of comments concerning the ID that must be filed within a very short time.

The Commission acknowledges that a 10-day filing deadline for agency comments may be problematic for the reasons stated by the ITCTLA. The Commission does not think it necessary to change the prescribed deadline, however. Comments from other agencies concerning IDs in section 337 investigations are very rare.

Moreover, if another agency has an interest in a particular investigation, that agency is likely to formally intervene or to participate like a party at various stages of the proceeding.\(^\text{102}\) If a nonparty agency wishes to comment on a temporary relief ID but cannot comply with the 10-day deadline, the Commission can waive or extend the deadline, extend its own deadline for determining whether to adopt the ID, or designate the investigation "more complicated" (depending on the circumstances).

Paragraph (f). Paragraph (f) of proposed final rule 210.66 is based on interim rule 210.24(e)(17)(vii), and discusses final Commission action on a temporary relief ID. Unlike the interim rule, paragraph (f) of the proposed final rule states that the Commission will issue a Federal Register notice announcing whether it has adopted the ID. Paragraph (f) also uses slightly different terminology to describe possible adverse Commission action on the ID—i.e., the words "modify, reverse, or set aside" are used in place of "modify or vacate." The changed terminology makes paragraph (f) consistent with other proposed rules on that subject. The final difference between interim rule 210.24(e)(17)(vi) and paragraph (f) of the proposed final rule is that paragraph (f) refers to the possibility that a bond may be required as a prerequisite to the issuance of a temporary exclusion order.

Proposed final rule 210.67 is based on interim rule 210.24(e)(18), which describes the manner in which the issues of remedy, the public interest, and bonding by the respondents will be decided pursuant to sections 337(e), (f), and (j) of the Tariff Act. The only differences between interim rule 210.24(e)(18) and proposed final rule 210.67 pertain to paragraph (b) of the proposed final rule. Specifically:

1. The first sentence in interim rule 210.24(e)(18)(ii) provides that the parties may file written comments on the issues of remedy, the public interest, and bonding. Paragraph (b) of proposed the final rule indicates that parties shall file such submissions.

2. Paragraph (b) of the proposed final rule provides that parties to an investigation must file their written submissions on the issues of remedy, the public interest, and bonding by respondents on the 65th (instead of the 60th) day after institution of the investigation in an ordinary case. It also states that such submissions are due on the 110th (instead of the 105th) day after institution of the investigation in a "more complicated" investigation.

3. Paragraph (b) of proposed final rule 210.67 also states that interested persons may file comments on those issues on the same date as the parties.

Section 210.68

Proposed final rule 210.68 is based on interim rules 210.58(b)(3) through (b)(6), which govern the form and content of a complainant's temporary relief bond. There are only a few difference between the interim provisions and proposed final rule 210.68. Paragraph (a) of the proposed final rule discusses the kinds of bonds that are acceptable for the complainant to post in order to obtain temporary relief, while the corresponding interim rule 210.58(b)(3) indicates that the complaint is only required to post a bond as a prerequisite to the issuance of a TEO. Item (2) of paragraph (a) indicates that the complainant may submit "[t]he surety bond of an individual, a trust, an estate, a partnership, or a corporation." (A typographical error resulted in omission of the reference to a corporation in item (ii) of interim rule 210.58(b)(3).) Finally, paragraph (b) of the proposed final rule indicates that if the complainant fails to submit a bond within the prescribed period by the Commission, "temporary relief" will not be issued. (The interim rule indicated that a TEO would not be granted.)

Section 210.69

Proposed final rule 210.69 is based on interim rules 210.58(b)(7) and (8), which describe the process by which the Commission approves (or disapproves) a temporary relief bond posted by a complainant. The only difference between the interim rules and the proposed final rule is that the proposed final rule refers to bonds that are

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\(^{100}\) E.g., the question of whether a particular patent claim is invalid for obviousness under 35 U.S.C. 103, See Akzo N.V. v. United States International Trade Commission, 808 F.2d 1471, 1480 (Fed. Cir. 1986).

\(^{101}\) Such matters would include the questions of whether the respondents or the public interest would be harmed if the motion for temporary relief were granted and any findings of fact by the ALJ on the issues of remedy, the public interest, and bonding by the respondents under sections 337(e)(11) and (j)(3).
submitted as a prerequisite to temporary relief, whereas the interim provisions refer to bonds posted to obtain a TEO. Paragraph (a) of the proposed final rule accordingly states that, if the bond submitted by the complainant is not approved by the Commission, 
temporary relief" will not be issued. Item (2) in paragraph (d) of proposed final rule 210.69 states that the Commission may revoke or vacate the aforesaid "temporary relief" on public interest grounds or for other reasons.

Section 210.70

Proposed final rule 210.70 is based on interim rule 210.58(c), which governs the possible forfeiture of a complainant’s temporary relief bond.

The legislative history of the Omnibus Trade Act amendments to section 337 authorizing the Commission to require a complainant to post a bond as a prerequisite to the issuance of a TEO states that the Commission may require forfeiture of the bond to the U.S. Treasury if the Commission determines, after issuing a TEO conditioned on a bond, that the respondents have not violated section 337. The aforesaid legislative history also indicates that the forfeiture is to be effected in the same way that respondents’ section 337 bonds “revert” to the U.S. Treasury when the Commission determines that imported articles permitted to enter the United States under a bond violated section 337.

Interim rule 210.58(c) concerning forfeiture of temporary relief bonds posted by complainants is modeled largely on Custom’s regulations and procedures. In drafting the aforesaid interim rule, the Commission decided to adopt a policy of neither favoring nor disfavoring forfeitures. The preamble to this rule accordingly stated that forfeiture decisions would be made on a case-by-case basis.

Paragraphs (a) and (b). Paragraphs (a) and (b) of proposed final rule 210.70 are based on interim rules 210.58(c)(1) and (2). Interim rule 210.58(c)(1) describes the manner in which forfeiture inquiries begin and the issues the complainant must address in its written submission on whether forfeiture should be ordered. Interim rule 210.58(c)(2) provides for responses to the complainant’s submission.

The IEMCA objected to the fact that there is no presumption in favor of forfeiture embodied in the aforesaid interim rules. The IEMCA argued that the final rules should provide at least a rebuttable presumption of forfeiture in order to increase the deterrent value of the bond.

The IEMCA commented further that a presumption in favor of forfeiture also is necessary in order for the rules to allocate properly the burdens of proof and persuasion in a bond forfeiture proceeding. In the IEMCA’s opinion, the fact that the Commission adopted an interim policy and rules that neither favor nor disfavor forfeiture means that the Commission has opted, in effect, for no rule at all, since there are no guidelines to help the parties or the Commission in particular cases and no standards to confine the Commission’s otherwise “unlimited and unguided” discretion.

The AIPLA and the ITCTLA also found the interim rules objectionable, but for different reasons. The AIPLA and the ITCTLA were dissatisfied because the rules provide for an automatic forfeiture inquiry in every case regardless of the facts, and because the complainant must show cause, in effect, why forfeiture should not be ordered. The commenters went on to say that abuse or improper motivation on the part of the complainant may not always merit Commission consideration in every case. And when there is no question in the minds of the respondents or the Commission investigative attorney of any abuse or improper motivation by the complainant, an automatic forfeiture inquiry is a waste of the parties’ and the Commission’s time and resources.

The AIPLA noted also that the interim rule’s requirement of an automatic forfeiture inquiry in every case regardless of the facts, provides an additional deterrent to the filing of good faith motions for TEOs.

The AIPLA and the ITCTLA commented that a better approach would be for the rules to provide that forfeiture proceedings will be initiated only upon the filing of a motion by the Commission investigative attorney or a respondent. The ITCTLA suggested a filing deadline of 10 days after the effective date of the final Commission determination of no violation.

The Commission notes that the possibility that improper motivation by the complainant might not be an issue in every forfeiture case is one reason that the interim rule does not contain a presumption in favor of forfeiture. The Commission notes also that the need for a rule requiring automatic forfeiture proceedings as a deterrent to abuse of the temporary relief process will be less compelling if the Commission ultimately adopts proposed final rule 210.4(b) authorizing monetary sanctions for abuse of process.

The next issue that generated adverse public comment relevant to interim rule 210.58(c)(1) was the recitation of factors the Commission will consider in determining whether to order forfeiture. The IEMCA commented generally that these factors lack specificity, are unusable, and are of little real help in deciding forfeiture questions. At the very least, the IEMCA argued, the final rules should provide examples of circumstances in which forfeiture is or is not likely to be required. The IEMCA went on to say, however, that the Commission should adopt a rule stating that in any case in which a complainant obtains a TEO, benefits from it, and ultimately loses its case on the merits, forfeiture will be required in the absence of extenuating circumstances (such as the change in a material legal precedent).

The AIPLA and the ITCTLA also were dissatisfied with the forfeiture analysis prescribed in the interim rules. But unlike the IEMCA, which found the interim forfeiture considerations unsatisfactory in their entirety, the ITCTLA, and the AIPLA apparently had problems with only factor (ii), i.e., whether the complainant’s assertions with respect to the violation alleged as the basis for obtaining a TEO were substantially justified, taking into account the record of the investigation as a whole. As the preamble to interim rule 210.58(c) acknowledged, the wording of factor (ii) was borrowed from the FRCP 11, which is not the purpose, intent, or application of the Equal Access to Justice Act. The AIPLA and the ITCTLA argued that instead of using the language of an inapposite statute for factor (ii), the Commission should use the standard of conduct articulated in interim rule 210.5(b) in determining whether a complainant’s TEO bond should be forfeited. The arguments the AIPLA and the ITCTLA cited in favor of incorporating a rule 210.5(b) standard into the bond forfeiture analysis under rule 210.58 were the following:

(1) Adoption of a single standard of conduct would eliminate the need to rationalize the differences between the two rules.

(2) Since interim rule 210.5 is based on FRCP 11 and the legal standard of FRCP 11 has been discussed and litigated extensively in the federal courts, a well-developed body of law already exists to which the parties and the Commission can look for guidance.
(3) Finally, by including forfeiture of complainant’s bond among the sanctions for violating rule 210.5(b), the Commission would eliminate the need for potentially duplicative proceedings concerning bond forfeiture on the one hand and abuse of process sanction issues on the other. The Commission agrees with the commenters’ recommendations in part and disagrees in part. The Commission does not agree with the IEMCA’s position that the current list of forfeiture considerations is useless in its entirety. Factors (i) and (iii)—i.e., the extent to which the Commission has determined that section 337 has not been violated, and whether forfeiture would be consistent with the legislative intent of the forfeiture authority (which is to provide a “disincentive” to the abuse of temporary relief by complainants)—were based on the legislative history of the Omnibus Trade Act authorizing the Commission to require TEO bond forfeitures by complainants. Factor (iv)—i.e., whether forfeiture would be in the public interest—is appropriate because of Congressional intent that the public interest be paramount in the administration of section 337. Factor (v)—i.e., any other legal, equitable, or policy considerations that are relevant to the issue of forfeiture—is appropriate because the Commission has had no experience with TEO bond forfeitures and there may be facts and circumstances in a particular case that would have a bearing on the propriety of ordering (or declining to order) forfeiture in that case.

As for factor (ii)—i.e., whether the complainant’s assertions with respect to the violation alleged as the basis for obtaining a TEO were substantially justified, taking into account the record of the investigation as a whole—the Commission agrees with the APLA and the ITCTLA that the use of the standard specified in interim rule 210.5(b) is preferable to the current language borrowed from the Equal Access to Justice Act, for the reasons the commenters cited. The key similarities and differences between the proposed final rule 210.70 and interim rules 210.58(c) (1) and (2) are the following:

1. Since the Commission expects to adopt monetary sanctions rules for abuse of process (proposed final rule 210.4(b)), the Commission is maintaining the current policy of neither favoring nor disfavoring bond forfeitures by complainants. Unlike interim rule 210.58(c)(1) paragraph (a) of proposed final rule 210.70 indicates that forfeiture proceedings will be initiated in response to a motion by the respondents or the Commission investigative attorney. The Commission is not foreclosed, however, from self-initiating such proceedings in an appropriate case. Paragraph (a) provides that forfeiture proceedings may be initiated by the Commission spontaneously, in a manner analogous to the initiation of monetary sanction proceedings under proposed final rules 210.4(b) and 210.25.

2. Unlike factor (ii) of the Commission’s forfeiture analysis under interim rule 210.58(c) (1), item (2) in paragraph (c) of proposed final rule 210.70 incorporates the standard of conduct articulated in proposed final rule 210.4(b).

Interim rule 210.58(c)(5) provides that forfeiture proceedings will not be stayed pending judicial review of the Commission determination of no violation. The interim rule also discusses how a complainant can obtain a refund of the forfeited bond amount if the Commission’s determination of no violation is overturned on judicial review. The preamble to the interim rules explained that the “no stay” provision was included in interim rule 210.56(c)(5) for two reasons: (1) The Customs procedures for obtaining payment on a respondent’s bond contain a similar provision, and (2) a “no stay” policy is consistent with and advances the deterrent effect Congress intended for the bond forfeiture authority to have.

There is no difference between paragraph (d) of proposed final rule 210.70 and interim rule 210.58(c)(5). The Commission is particularly interested in receiving public comments on the proposed final rule, however.

Interim rule 210.56(c)(3) states the Commission’s policy on forfeiture in settlement cases. The preamble to this rule explained that the legislative history authorizing the Commission to order forfeiture of the bond only provides for forfeiture after the Commission has determined that there is no violation of section 337 and, for that reason, the Commission believed that it could not properly order forfeiture in a case that was settled and terminated without such a determination.

The IEMCA commented that the Commission may have been reading the legislative history too narrowly, but did not explain that comment or request that the “no determination/no forfeiture” policy be changed. The IEMCA went on to note its appreciation of the Commission warning in the preamble to the interim rules that complainants who abuse the temporary relief process and then decide not to continue the investigation may face certain consequences. The IEMCA requested that similar provisions be incorporated in the final rules. The IEMCA also requested that the final rules confirm that section 337 does not preempt state unfair competition laws, which ordinarily would be available to a party whose competitors may have abused judicial or administrative processes (including section 337 process) for anticompetitive reasons.

The Commission finds nothing ambiguous or equivocal in the relevant legislative history concerning the conditions under which the Commission may order forfeiture of a complainant’s temporary relief bond. Forfeiture may be ordered if there is a final determination of no violation. The Commission also did not find it necessary to draft proposal final rule 210.70 to note that the aforesaid policy on forfeiture sanctions would not preclude monetary sanctions under proposed final rule 210.4(b) in an appropriate case, as discussed in the preamble to the interim rules.

Finally, the Commission does not believe that the final rule should include a provision concerning the availability of additional relief under state unfair competition laws, as the IEMCA has recommended. State courts and state legislatures, not the Commission, are the arbiters of whether a person is or is not precluded from obtaining relief under state laws in addition to Commission remedial actions under section 337.

For the foregoing reasons, there is no difference between interim rule 210.56(c)(3) and paragraph (e)(3) of proposed final rule 210.70.

Subpart I—Enforcement Procedures and Advisory Opinions

Section 210.71

Proposed final rule 210.71 is based on interim rule 211.51 and concerns the gathering of information relevant to the enforcement of Commission orders. The October 17, 1988, notice of proposed rulemaking indicated that the Commission intended to delete, as unnecessary, the second sentence of paragraph (b) and the last sentence of paragraph (c) of the interim rule. In addition, the beginning of paragraph (d) was reworded to eliminate the reference.
Proposed final rule 210.72 is based on interim rule 211.52 and specifies that confidential information will be protected. The interim rule is essentially the same as the preexisting rule. The October 17, 1988, notice of proposed rulemaking indicated that the Commission intended to revise the interim rule to clarify the procedure for requesting confidential treatment, by cross-referencing Commission rule 201.9. The changes proposed in the October 17, 1988, notice are implemented in proposed final rule 210.72.

Proposed final rule 210.72 is based on interim rule 211.52 and specifies that confidential information will be protected. The interim rule is essentially the same as the preexisting rule. The October 17, 1988, notice of proposed rulemaking indicated that the Commission intended to revise the interim rule to clarify the procedure for requesting confidential treatment, by cross-referencing Commission rule 201.9. The changes proposed in the October 17, 1988, notice are implemented in proposed final rule 210.72.

The changes proposed in the October 17, 1988, notice of proposed rulemaking indicated that the Commission stated its intention to renumber interim rule 211.55 as 211.54, because existing interim rule 211.54 would be relocated to its own subpart. The Commission also stated that it planned to retitle the new interim rule 211.54 as “Modification of reporting requirements,” and to extend its coverage to exclusion orders in order to cover the eventuality that information requirements are imposed in exclusion orders. In addition, the phrase, “proposed modified” was deleted as incorrect, since the reference should be to the original consent order. The proposed changes announced in the October 17, 1988, notice (except for designating the revised interim rule 211.55 as 211.54) have been implemented in proposed final rule 210.74.

Proposed final rule 210.75 is based on interim rule 211.56, and sets out the procedure to be used in proceedings to enforce exclusion orders, cease and desist orders, and consent orders. The interim rule differed from the previous rule by adding a provision covering the issuance of seizure and forfeiture orders, in order to implement section 1342(a)(5)(B) of the Omnibus Trade Act. The interim rule also replaced a reference to the Unfair Import Investigation Division with a reference to OUI.

In the October 17, 1988, notice of proposed rulemaking, the Commission stated its intention to renumber interim rule 211.56 as 211.55 and to rearrange its paragraphs in a more logical order, starting with informal proceedings (current paragraph (a)), followed by formal proceedings (current paragraph (c)), and ending with court proceedings (current paragraph (b)).

The Commission stated that it also planned to revise the paragraph concerning formal proceedings to permit the institution of an enforcement proceeding after the filing of a complaint by the complainant in the original investigation or by the Commission on its own initiative. In light of that change, a notice of institution, rather than the entire complaint, would be published in the Federal Register. In addition, respondents would have 15 days from service of the complaint to answer, rather than the existing 15 days from receipt.

Proposed final rule 210.75 is based on interim rule 211.56 and concerns the modification of reporting requirements. The interim rule is essentially the same as the preexisting rule. In the October

Section 210.72

Proposed final rule 210.72 is based on interim rule 211.52 and specifies that confidential information will be protected. The interim rule is essentially the same as the preexisting rule. The October 17, 1988, notice of proposed rulemaking indicated that the Commission intended to revise the interim rule to clarify the procedure for requesting confidential treatment, by cross-referencing Commission rule 201.9. The changes proposed in the October 17, 1988, notice are implemented in proposed final rule 210.72.

Proposed final rule 210.73 is based on interim rule 211.53 and concerns the review of reports relating to compliance with Commission orders. The interim rule replaced references to the “Unfair Import Investigations Division” with references to the “Office of Unfair Import Investigations.” In the October 17, 1988, notice of proposed rulemaking, the Commission stated its intention to revise interim rule 211.53 by clarifying paragraph (b) and deleting the last clause of paragraph (a) as unnecessary. The changes proposed in the October 17, 1988, notice are implemented in proposed final rule 210.73.

Proposed final rule 210.74 is based on interim rule 211.55 and concerns the modification of reporting requirements. The interim rule is essentially the same as the preexisting rule. In the October

Section 210.74

Proposed final rule 210.74 is based on interim rule 211.55 and concerns the modification of reporting requirements. The interim rule is essentially the same as the preexisting rule. In the October
The Commission has not followed the IEMCA’s recommendation that the seizure and forfeiture provision should apply only to “identical or substantially identical” goods. The Commission believes that the IEMCA’s proposed language does not accord with the language of the statute.110 The Commission also has not adopted the IEMCA’s recommendation concerning the manner in which notice of possible seizure and forfeiture should be made. Such notice is a matter for the U.S. Customs Service to decide. The Commission also is of the opinion that there is no need for the Commission rules to provide for expedited relief in case of improper seizure. Such a circumstance is likely to be rare, and is largely a matter for the Customs Service.

The law firm of Adduci, Mastriani, Meeks & Schill recommended that the seizure and forfeiture procedure of interim rule 211.55 be accelerated to prevent repeated illegal importations. The proposal would have the Commission include in each exclusion order a stipulation that upon first refusal of entry Customs would notify the Commission of the attempted entry at the same time Customs notified the importer that a second importation attempt at another port might result in seizure and forfeiture.

The Commission is of the opinion that this stipulation is unnecessary. Under current Customs procedure, attempted entries are already reported promptly to the Commission.

Proposed final rule 210.75(b) provides that complaints may also be filed by OUI, not just by complainant. Proposed final rule 210.75(b)(4) also makes clear that the Commission may modify or revoke more than one type of order at the same time.

Section 210.76

Proposed final rule 210.76 is based on interim rule 211.57, and governs proceedings for the modification or rescission of exclusion orders, cease and desist orders, and consent orders. The interim rule differed from the previous rule by renumbering paragraphs, changing references to “dissolution” of Commission orders to “rescission” of such orders, and changing references to “petition” to “motion,” to implement section 1342(a)(6)(B) of the Omnibus Trade Act.

In the October 17, 1988, notice of proposed rulemaking, the Commission stated its intention to renumber interim rule 211.57 as 211.56.

The Commission also proposed to revise interim rule 211.57 to require that petitions be served on all parties to the original investigation, to provide for the filing of oppositions to petitions, to streamline procedure by replacing the existing system of provisional acceptance with an institution procedure similar to that used for the institution of section 337 investigations, and to delete as unnecessary the penultimate sentence of paragraph (b). The Commission noted that it prefers to issue an advisory opinion rather than to modify or dissolve an order, if the issuance of an advisory opinion can resolve the question raised by the person requesting modification or dissolution of an order.

The changes proposed for interim rule 211.57 in the October 17, 1988, notice are carried over into proposed final rule 210.76.

Section 210.77

Proposed final rule 210.77 is based on interim rule 211.58, and provides for temporary emergency action. The interim rule differed from the previous rule by adding a provision for issuing temporary seizure and forfeiture orders pending the institution of formal enforcement proceedings. In the October 17, 1988, notice of proposed rulemaking, the Commission proposed to renumber interim rule 211.58 and 211.57.

The IEMCA argued that the Commission should replace the “substantial harm” standard with an “irreparable injury” standard, as in the case of TEOs. The IEMCA also argued that complainant should be required to post a bond in a temporary seizure and forfeiture situation.

Proposed final rule 210.77 does not contain the provision for issuing temporary seizure and forfeiture orders, because nothing in the statute or its legislative history suggests that the Commission must conduct adversary proceedings as a condition precedent to the issuance of such orders. The Commission currently issues seizure and forfeiture orders in a ministerial fashion. Even if the Commission were to decide that adversary seizure and forfeiture proceedings were necessary or appropriate in a given case, the Commission would lack authority to require the complainant to post a bond as a condition precedent to the granting of any form of temporary relief other than a TEO issued in accordance with section 337(e) of the Tariff Act.

Section 210.78

Proposed final rule 210.78 is based on interim rule 211.59, and provides for giving notice of enforcement actions to other Government agencies. The interim rule differed from the previous rule by adding a reference to seizure and forfeiture to harmonize with other rules. In the October 17, 1988, notice of proposed rulemaking, the Commission stated its intention to renumber interim rule 211.59 as 211.58. The changes proposed for interim rule 211.59 in the October 17, 1988, notice are carried over into proposed final rule 210.78.

Section 210.79

Proposed final rule 210.79 is based on interim rule 211.54, and governs advisory opinions. The interim rule did not differ significantly from the previous rule. In the October 17, 1988, notice of proposed rulemaking, the Commission stated its intention to create a new subpart C to comprise new interim rule 211.59, which was identical to the old interim rule 211.54, except for the old paragraph (a), which the Commission proposed to delete on the grounds that the Commission does not in practice give the subject advice.

The Commission also proposed additional changes to bring interim rule 211.54 into line with Commission practice. For example, the Commission proposed to eliminate the restriction that only respondents can request an advisory opinion. The Commission also proposed to delete, as unnecessary, the word “new” in the first sentence of paragraph (b), and the words “rescind” and “rescission” in paragraph (a).

The Commission proposed to eliminate the phrase “or section 337” from the first sentence of paragraph (b) to preserve the limited scope of advisory opinions which have, in practice, addressed the coverage of orders rather than issues concerning violation, such as patent validity or injury to domestic industries.

The proposed revisions also added to the end of paragraph (b) the first two clauses imposed by the Commission on requesters of advisory opinions in Inv. No. 337-TA-68, Certain Surveying Devices. As to the third criterion of Surveying Devices, the Commission noted that it continues to require that the requester of an advisory opinion fully state its request in its first submission to the Commission, since the Commission does not wish to issue seriatim advisory opinions to the same requester on the same subject.
The proposed revisions also included the addition of a statement that advisory opinion proceedings are not subject to specified sections of the APA. This last charge was proposed to stress that advisory opinion proceedings (1) may be less formal than full investigations under section 337, (2) are limited in scope to advice concerning existing Commission orders, and (3) do not result in a determination of violation of section 337.

The changes proposed in the October 17, 1988, notice are carried over into proposed final rule 210.79.

The ITCTLA argued that advisory opinion proceedings should be delegable to an ALJ, and should be appealable to a court. The Commission believes that neither the interim rules as presently constituted, nor the corresponding proposed final rules, prohibit the Commission from delegating an advisory opinion proceeding to an ALJ. In fact, the Commission has made such a delegation in several cases.

The Commission also has determined that advisory opinion proceedings will not be subject to APA strictures because there is a need to retain flexibility as to how such proceedings are conducted. The Commission notes also that advisory opinions have been held by Federal Circuit to be nonappealable. Allied Corp. v. U.S. Intern. Trade Comm'n, 850 F.2d 1573, 7 USPQ2d 1303 (Fed. Cir. 1989), cert. denied, 109 S.Ct. 79 (1989).

The IEMCA also requested that the Commission limit advisory opinion requests to those that are not "presenting general questions of interpretation, or posing hypothetical situations, or regarding the activity or conduct of adverse or third parties." The requester should only be able to request an advisory opinion as to its own conduct, in the IEMCA's opinion. The IEMCA also believes that advisory opinion proceedings should be subject to APA procedures "when appropriate." The IEMCA also requested the rules provide for the publication of advance notice of a forthcoming advisory opinion. In order to give interested persons an opportunity to comment.

The Commission did not find it necessary to add additional criteria to the list in proposed final rule 210.79 on advisory opinions. In particular, the criteria provide for the issuance of an advisory opinion only where a requester has a compelling business need for the advice. When appropriate, the Commission may subject advisory opinion proceedings to APA procedures without a rule that so specifies. Also when appropriate, the Commission publishes notice in the Federal Register of the institution of an advisory opinion proceeding, and sees no need to provide for such notice by rule.111

### Derivation Table

To readily locate the proposed final version of an interim rule, consult the following table:

<table>
<thead>
<tr>
<th>Interim rule</th>
<th>Proposed final rule</th>
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111 Section 337 practitioners may have noticed that there is no proposed final rule based on interim rule 211.10, which deals with informal disposition of possible violations of Commission orders through voluntary compliance. The interim rule corrected certain cross-references which had appeared in the previous rule. In the October 17, 1988, notice of proposed rulemaking, the Commission stated that it intended to delete interim rule 211.10 on the grounds that it was [1] vague in its description of the procedure contemplated, and [2] unnecessary in view of the fact that it has never been used. The Commission decided not to include a proposed final rule based on interim rule 211.10 for the same reasons.

### List of Subjects

19 CFR Part 210

Administrative practice and procedure, Advisory opinions, Business and industry, Customs duties and inspection, imports, and investigations, Enforcement, modification, revocation of orders and cease and desist orders, or consent orders. Investigations of unfair acts and unfair...
methods of competition in U.S. import trade.

19 CFR Part 217

Advisory Opinions

32 Subpoenas.
33 Failure to make or cooperate in discovery; sanction.
34 Protective orders.

Subpart F—Prehearing Conferences and Hearings

35 Prehearing conferences.
36 General provisions for hearings.
37 Evidence.
38 Record.
39 In camera treatment of confidential information.
40 Proposed findings and conclusions.

Subpart G—Determinations and Actions Taken

41 Termination of investigation.
42 Initial determinations.
43 Petitions for review of initial determinations on matters other than permanent or temporary relief.
44 Commission review on its own motion of initial determinations on matters other than permanent or temporary relief.
45 Review of initial determinations on matters other than temporary or permanent relief.
46 Petitions for and sua sponte review of initial determinations on permanent or temporary relief.
47 Petitions for reconsideration.
48 Disposition of petitions for reconsideration.
49 Implementation of Commission action.
50 Commission action, the public interest, and bonding.
51 Period for concluding an investigation.

Subpart H—Temporary Relief

52 Motions for temporary relief.
53 Motion filed after complaint.
54 Service of the motion by complainant.
55 Content of the service copies.
56 Notice accompanying the service copies.
57 Amendment of the motion.
58 Provisional acceptance of the motion.
59 Responses to the motion and the complaint.
60 Designating an investigation “more complicated” for the purpose of adjudicating a motion for temporary relief.
61 Discovery and compulsory process.
62 Evidentiary hearing.
63 Proposed findings and conclusions and briefs.
64 Interlocutory appeals.
65 Certification of the record.
66 Initial determination concerning temporary relief and Commission action thereon.
67 Remedy, the public interest, and bonding by respondents.
68 Complaint’s temporary relief bond.
69 Approval of complainant’s temporary relief bond.
70 Forfeiture of complainant’s temporary relief bond.

Subpart I—Enforcement Procedures and Advisory Opinions

71 Information gathering.
72 Confidentiality of information.
73 Review of reports.
74 Modification of reporting requirements.
75 Proceedings to enforce exclusion orders, cease and desist orders, consent orders, and other Commission orders.
76 Modification or rescission of exclusion orders, cease and desist orders, consent orders, and other Commission orders.
77 Temporary emergency action.
78 Notice of enforcement action to Government agencies.
79 Advisory opinions.


Subpart A—Rules of General Applicability

§ 210.1 Applicability of part.


§ 210.2 General policy.

It is the policy of the Commission that, to the extent practicable and consistent with requirements of law, all investigations and related proceedings under this part shall be conducted expeditiously. The parties, their attorneys or other representatives, and the presiding administrative law judge shall make every effort at each stage of the investigation or related proceeding to avoid delay.

§ 210.3 Definitions.

As used in this part—

Administrative law judge means the person appointed under section 3105 of Title 5 of the United States Code who presides over the taking of evidence in an investigation under this part. If the Commission so orders or a section of this part so provides, an administrative law judge also may preside over stages of a related proceeding under this part.

Commission investigative attorney means a Commission attorney designated to engage in investigatory activities in an investigation or a related proceeding under this part.

Complainant means a person who has filed a complaint with the Commission under this part alleging a violation of section 337 of the Tariff Act of 1930.

Intervener means a person who has been granted leave by the Commission.
§ 210.4 Written submissions.

(a) Caption; names of parties. The front page of every written submission filed by a party or a proposed party to an investigation or a related proceeding under this part shall contain a caption setting forth the name of the Commission, the title of the investigation or related proceeding, the docket number or investigation number, if any, assigned to the investigation or related proceeding, and in the case of a complaint, the names of all proposed respondents.

(b) Signing of pleadings, motions, and other papers; sanctions. (1) Every pleading, motion, and other paper of a party or proposed party who is represented by an attorney in an investigation or a related proceeding under this part shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party or proposed party who is not represented by an attorney shall sign, or his duly authorized officer or agent shall sign, the pleading, motion, or other paper, and shall state the address of the party or proposed party on whose behalf the document has been signed. Pleadings, motions, and other papers need not be under oath or accompanied by an affidavit, except as provided in §§ 210.12(a)(1), 210.13(b), 210.18, 210.52(d), 210.59(b), or another section of this part or an order of the administrative law judge or the Commission. The signature of an attorney, or a party or proposed party, or the party's or proposed party's duly authorized officer or agent constitutes certification that:

(i) He is duly authorized to sign the pleading, motion, or other paper;

(ii) He has read the document;

(iii) To the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(iv) The document is not being filed in whole or in part for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the investigation or related proceeding. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the submitter.

(2) If a pleading, motion, or other written submission is signed in violation of paragraph (b)(1) of this section, the administrative law judge or the Commission, upon motion or sua sponte under § 210.25 of this part, may impose an appropriate sanction upon the person who signed the document, the party or proposed party represented, or both. A written submission need not be frivolous in its entirety in order for the administrative law judge or the Commission to determine that it was signed in violation of paragraph (b)(1) of this section. If any portion of a submission is found to be false, frivolous, misleading, or otherwise in violation of paragraph (b)(1), a sanction may be imposed. In determining whether a submission or a portion thereof was signed and filed in violation of paragraph (b)(1), the administrative law judge or the Commission will consider whether the submission or disputed portion thereof was objectively reasonable under the circumstances.

(3) An appropriate sanction may include an order to pay to the other parties or proposed parties the amount of reasonable expenses incurred, including a reasonable attorney's fee, or a fine in addition to attorneys' fees, to the extent authorized by Rule 11 of the Federal Rules of Civil Procedure. Monetary sanctions shall not be imposed under this section against the United States, the Commission, or a Commission investigative attorney.

(4) Monetary sanctions imposed to compensate the Commission for expenses incurred by a Commission investigative attorney or the Commission's Office of Unfair Import Investigations will include reimbursement for costs but not attorneys' fees.

(c) Specifications; filing of documents. (1) Written submissions that are addressed to the Commission during an investigation or a related proceeding shall comply with § 201.8 of this chapter. The number of copies of the submission that are required to be submitted shall be governed by paragraph (c)(2) of this section. Written submissions may be produced by standard typographic printing or by a duplicating or copying process which produces a clear black image on white paper. If the submission is produced by other than the standard typographical process used by commercial printers, type matter shall not exceed 6 and 1/2 by 9 and 1/2 inches using 10-pitch (pica) or larger pitch type or 5 and 1/2 by 8 and 1/2 inches using 11-point or larger proportional spacing type, and shall be double-spaced between each line of text using the standard of 6 lines of type per inch. Quotations more than two lines long in the text or footnotes may be indented...
§ 210.5 Confidential business information.

(a) Definition and submission.
Confidential business information shall be defined and identified in accordance with § 201.6(a) and (c) of this chapter. Unless otherwise ordered by the Commission or the administrative law judge, confidential business information shall be filed in accordance with § 201.6(c) of this chapter.

(b) Restrictions on disclosure.
Information submitted to the Commission or exchanged among the parties in connection with an investigation or a related proceeding under this part, which is properly designated confidential under paragraph (a) of this section and § 201.8(a) of this chapter, may not be disclosed to anyone other than the following persons without the consent of the submitter:

(1) Persons who are granted access to confidential information under § 201.39(a) or a protective order issued pursuant to § 201.34(a) of this part;

(2) An officer or employee of the Commission who is directly concerned with carrying out or maintaining the records of the investigation or related proceeding for which the information was submitted;

(3) An officer or employee of the United States Government who is directly involved in a review conducted pursuant to section 337(j) of the Tariff Act of 1930; or

(4) An officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under section 337(d) or 337(g) of the Tariff Act or an entry under bond under section 337(e) of the Tariff Act resulting from the investigation for which the information was submitted.

(c) Confidentiality determinations in preinstitution proceedings. After a complaint is filed under section 337 of the Tariff Act of 1930 and before an investigation is instituted by the Commission, confidential business information designated confidential by the supplier shall be submitted in accordance with § 201.6(b) of this chapter. The Secretary shall decide, in accordance with § 201.6(d), whether the information is entitled to confidential treatment. Appeals from the ruling of the Secretary shall be made to the Commission as provided in § 210.6(e) and (f). The Commission shall decide, with respect to all orders, notices, opinions, and other documents issued by or on behalf of the Commission, whether information designated confidential by the supplier is entitled to confidential treatment.

§ 210.6 Computation of time, additional hearings, postponements, continuances, and extensions of time.

Unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise, the computation of time and the granting of additional hearings, postponements, continuances, and extensions of time shall be in accordance with §§ 201.14 and 201.16(d)
§ 210.7 Service of process and other documents.

The service of process and all documents issued by or on behalf of the Commission or the administrative law judge—and the service of all documents issued by parties under § 210.27 through 210.34 of this part—shall be in accordance with § 210.16 of this chapter, unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

Subpart B—Commencement of Preinstitution Proceedings and Investigations

§ 210.8 Commencement of preinstitution proceedings.

(a) Upon receipt of complaint. A preinstitution proceeding is commenced by filing with the Secretary the original and 14 true copies of a complaint, plus one copy for each person named in the complaint as violating section 337 of the Tariff Act of 1930 and one copy for the government of each foreign country of any person or persons so named. If the complainant is seeking temporary relief, one additional copy of the motion for such relief also must be filed for each proposed respondent and for the government of the foreign country of the proposed respondent. The additional copies of the complaint and motion for temporary relief for each proposed respondent and the appropriate foreign government are to be provided notwithstanding the procedures applicable to a motion for temporary relief, which require service of the complaint and motion for temporary relief by the complainant.

(b) Upon the initiative of the Commission. The Commission may upon its initiative commence a preinstitution proceeding based upon any alleged violation of section 337 of the Tariff Act of 1930.

§ 210.9 Action of Commission upon receipt of complaint.

Upon receipt of a complaint alleging violation of section 337 of the Tariff Act of 1930, the Commission shall take the following actions:

(a) Examination of complaint. The Commission shall examine the complaint for sufficiency and compliance with the applicable sections of this chapter.

(b) Informal investigatory activity. The Commission shall identify sources of relevant information, assure itself of the availability thereof, and, if deemed necessary, prepare subpoenas therefore, and give attention to other preliminary matters.

§ 210.10 Institution of investigation.

(a)(1) The Commission shall determine whether the complaint is properly filed and whether an investigation should be instituted on the basis of the complaint. That determination shall be made within 30 days after the complaint is filed, unless—

(i) Exceptional circumstances preclude adherence to a 30-day deadline;

(ii) Additional time is allotted under other sections of this part in connection with the preinstitution processing of a motion by the complainant for temporary relief;

(iii) The complainant requests that the Commission postpone the determination on whether to institute an investigation; or

(iv) The complainant withdraws the complaint.

(2) If exceptional circumstances preclude Commission adherence to the 30-day deadline for determining whether to institute an investigation on the basis of the complaint, the determination will be made as soon after that deadline as possible.

(3) If additional time is allotted in connection with the preinstitution processing of a motion by the complainant for temporary relief, the Commission will determine whether to institute an investigation and provisionally accept the motion within 35 days after the filing of the complaint.

(4) If the complainant desires to have the Commission postpone making a determination on whether to institute an investigation in response to the complaint, the complainant must file a written request with the Secretary. If the request is granted, the determination will be rescheduled for whatever date is appropriate in light of the facts.

(5) The complainant may withdraw the complaint as a matter of right at any time before the Commission votes on whether to institute an investigation. To effect such withdrawal, the complainant must file a written notice with the Commission. If a motion for temporary relief was filed in addition to the complaint, the motion must be withdrawn along with the complaint, and the complainant must serve copies of the notice of withdrawal on all proposed respondents and the embassies that were served with copies of the complaint and motion pursuant to § 210.54 of this part.

(b) An investigation shall be instituted by the publication of a notice in the Federal Register. The notice will define the scope of the investigation and may be amended as provided in § 210.14(b) and (c) of this part.

(c) If the Commission determines not to institute an investigation on the basis of the complaint, the complaint shall be dismissed, and the complainant and all proposed respondents will receive written notice of the Commission's action and the reason(s) therefor.

§ 210.11 Service of complaint and notice of investigation.

(a) Notwithstanding the provisions of § 210.54 requiring service of the complaint by the complainant, the Commission, upon institution of an investigation, shall serve copies of the complaint and the notice of investigation (and any accompanying motion for temporary relief) upon the following:

(1) Each respondent;

(2) The U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other agencies and departments as the Commission considers appropriate; and

(3) The U.S. embassy in Washington, DC of the government of each foreign country represented by each respondent.

All respondents named after an investigation has been instituted and the governments of the foreign countries they represent shall be served as soon as possible after the respondents are named.

(b) With leave from the presiding administrative law judge, a party may attempt to effect personal service of the complaint and notice of investigation upon a respondent, if the Secretary's efforts to serve the respondent by certified mail have been unsuccessful. If the party succeeds in serving the respondent by personal service, the party must notify the administrative law judge and file proof of such service with the Secretary.
Subpart C—Pleadings
§ 210.12 The complaint.

(a) Contents of the complaint. In addition to conforming with the requirements of § 210.8 of this chapter and §§ 210.4 and 210.5 of this part, the complaint shall—

(1) Be under oath and signed by the complainant or his duly authorized officer, attorney, or agent, with the name, address, and telephone number of the complainant and any such officer, attorney, or agent given on the first page of the complaint;

(2) Include a statement of the facts constituting the alleged unfair methods of competition and unfair acts; and

(3) Describe specific instances of alleged unlawful importations or sales, and shall provide the Tariff Schedules of the United States item number(s) for importations occurring prior to January 1, 1989, and the Harmonized Tariff Schedule of the United States item number(s) for importations occurring on or after January 1, 1989;

(4) State the name, address, and nature of the business (when such nature is known) of each person alleged to be violating section 337 of the Tariff Act of 1930;

(5) Include a statement as to whether the alleged unfair methods of competition and unfair acts, or the subject matter thereof, are or have been the subject of any court or agency litigation, and, if so, include a brief summary of such litigation;

(6) If the complaint alleges a violation of section 337 based on infringement of a U.S. patent, or a Federally registered copyright, trademark, or mask work under section 337(a)(1)(B), (C), or (D) of the Tariff Act of 1930, include a description of the relevant domestic industry as defined in section 337(a)(3) that allegedly exists or is in the process of being established, including the relevant operations of any licensees. Relevant information includes but is not limited to:

(A) Significant investment in plant and equipment;

(B) Significant employment of labor or capital; or

(C) Substantial investment in the exploitation of the subject patent, copyright, trademark, or mask work, including engineering, research and development, or licensing; or

(ii) If the complaint alleges a violation of section 337 of the Tariff Act of 1930 based on unfair methods of competition or unfair acts that have the threat or effect of destroying or substantially injuring an industry in the United States or preventing the establishment of such an industry under section 337(a)(1)(A)(i) or (ii), include a description of the domestic industry affected, including the relevant operations of any licensees; or

(iii) If the complaint alleges a violation of section 337 of the Tariff Act of 1930 based on unfair methods of competition or unfair acts that have the threat or effect of restraining or monopolizing trade and commerce in the United States under section 337(a)(1)(A)(iii), include a description of the trade and commerce affected.

(7) Include a description of the complainant’s business and its interests in the relevant domestic industry or the trade and commerce described above in paragraph (a)(6) of this section. For every intellectual property based complaint (regardless of the type of intellectual property right involved), include a showing that at least one complainant is the owner or exclusive licensee of the subject property; and

(ii) If the alleged violation involves an unfair method of competition or an unfair act other than those listed in paragraph (a)(6)(i) of this section, state a specific theory and provide corroborating data to support the allegation(s) in the complaint concerning the existence of a threat or effect to destroy or substantially injure a domestic industry, to prevent the establishment of a domestic industry, or to restrain or monopolize trade and commerce in the United States. The information that should ordinarily be provided includes the volume and trend of production, sales, and inventories of the involved domestic articles; a description of the facilities and number and type of workers employed in the production of the involved domestic article; profit-and-loss information covering overall operations and operations concerning the involved domestic article; pricing information with respect to the involved domestic article; when available, volume and sales of imports; and other pertinent data.

(9) Include, when a complaint is based upon the infringement of a valid and enforceable U.S. patent—

(i) The identification of each U.S. letters patent and a certified copy thereof (a legible copy of each such patent will suffice for each required copy of the complainant);

(ii) The identification of the ownership of each involved U.S. letters patent and a certified copy of each assignment of each such patent (a legible copy thereof will suffice for each required copy of the complaint);

(iii) The identification of each licensee under each involved U.S. letters patent;

(iv) When known, a list of each foreign patent, each foreign patent application (not already issued as a patent), and each foreign patent application that has been denied corresponding to each involved U.S. letters patent, with an indication of the prosecution status of each such foreign patent application;

(v) A nontechnical description of the invention of each involved U.S. letters patent;

(vi) A reference to the specific claims in each involved U.S. letters patent that allegedly cover the article imported or sold by each person named as violating section 337 of the Tariff Act of 1930, or the process under which such article was produced;

(vii) A showing that each person named as violating section 337 of the Tariff Act of 1930 is importing or selling the article covered by, or produced under, the involved process covered by, the above specific claims of each involved U.S. letters patent. The complainant shall make such showing by appropriate allegations, and when practicable, by a chart that applies an exemplary claim of each involved U.S. letters patent to a representative involved domestic article or process and to a representative involved article of each person named as violating section 337 of the Tariff Act or to the process under which such article was produced; and

(viii) Drawings, photographs, or other visual representations of both the involved domestic article or process and the involved article of each person named as violating section 337 of the Tariff Act of the Tariff Act of 1930, or of the process utilized in producing the imported article, and, when a chart is furnished under paragraph (a)(9)(vii) of this section, the parts of such drawings, photographs, or other visual representations should be labeled so that they can be read in conjunction with such chart; and

(10) Contain a request for relief, and if temporary relief is requested under sections 337(e) or (f) of the Tariff Act of 1930, a motion for such relief shall accompany the complaint as provided in § 210.52(a) or may follow the complaint as provided in § 210.53(a).

(b) Submissions of articles as exhibits. At the time the complaint is filed, if practicable, the complainant shall submit both the domestic article and all imported articles that are the subject of the complaint.

(c) Additional material to accompany each patent-based complaint. There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by, or
produced under a process covered by the claims of a valid U.S. letters patent the following:

1. Three copies of each license agreement arising out of each involved U.S. letters patent, except that, to the extent that a standard license agreement is used, three copies of the standard license agreement and a list of the licensees operating under such agreement will suffice;
2. One certified copy of the U.S. Patent and Trademark Office prosecution history for each involved U.S. letters patent, plus three additional copies thereof; and
3. Four copies of each patent and applicable pages of each technical reference mentioned in the prosecution history of each involved U.S. letters patent.

(d) Additional material to accompany each registered trademark-based complaint. There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a Federally registered trademark, one certified copy of the Federal registration and three additional copies, three copies of each license agreement (if any) concerning use of the trademark, except that if a standard license agreement is used, three copies of that agreement and a list of the licensees operating under it will suffice;

(e) Additional material to accompany each complaint based on a non-Federally registered trademark. There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a non-Federally registered trademark the following:

1. A detailed and specific description of the alleged trademark;
2. Information concerning prior attempts to register the alleged trademark; and
3. Information on the status of current attempts to register the alleged trademark.

(f) Additional material to accompany each copyright-based complaint. There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a copyright one certified copy of the Federal Register and three additional copies, three copies of each license agreement (if any) concerning use of the copyright, except that if a standard license agreement is used, three copies of that agreement and a list of the licensees operating under it will suffice;

(g) Additional material to accompany each registered mask work-based complaint. There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of a semiconductor mask in a manner that constitutes infringement of a Federally registered mask work, one certified copy of the Federal Register and three additional copies, three copies of each license agreement (if any) concerning use of the mask work, except that if a standard license agreement is used, three copies of that agreement and a list of the licensees operating under it will suffice;

(b) Duty to supplement complaint. Complainant shall supplement the complaint prior to institution of an investigation if complainant obtains information upon the basis of which he knows or reasonably should know that a material legal or factual assertion in the complaint is false or misleading.

§ 210.13 The response.

(a) Time for response. Except as provided in § 210.59(a) and unless otherwise ordered in the notice of investigation or by the administrative law judge, respondents shall have 20 days from the date of service of the complaint and notice of investigation by the Commission under § 210.11(a) or by a party under § 210.11(b) within which to file a written response to the complaint and the notice of investigation. When the investigation involves a motion for temporary relief and has not been declared “more complicated,” the response to the complaint and notice of investigation must be filed along with the response to the motion for temporary relief—i.e., within 10 days after service of the complaint, notice of investigation, and the motion for temporary relief by the Commission under § 210.11(a) or by a party under § 210.11(b). (See § 210.59.)

(b) Content of the response. In addition to conforming to the requirements of § 201.8 of this chapter and §§ 210.4 and 210.5 of this part, each response shall be under oath and signed by respondent or his duly authorized officer, attorney, or agent with the name, address, and telephone number of the respondent and any such officer, attorney, or agent given on the first page of the response. Each respondent shall respond to each allegation in the complaint and in the notice of investigation, and shall set forth a concise statement of the facts constituting each ground of defense. There shall be a specific admission, denial, or explanation of each fact alleged. In the complaint and notice, or if the respondent is without knowledge of any such fact, a statement to that effect.

Allegations of a complaint and notice not thus answered may be deemed to have been admitted. Each response shall include, when available, statistical data on the quantity and value of imports of the involved article. Respondents who are importers must also provide the Harmonized Tariff Schedule item number(s) for imports of the accused imports occurring on or after January 1, 1989. Each response shall also include a statement concerning the respondent’s capacity to produce the subject article and the relative significance of the United States market to its operations. Respondents who are not manufacturing their accused imports shall state the name and address of the supplier(s) of those imports. Affirmative defenses shall be pleaded with as much specificity as possible in the response. When the alleged unfair methods of competition and unfair acts are based upon the claims of a valid U.S. letters patent, the respondent is encouraged to make the following showing when appropriate:

1. If it is asserted in defense that the article imported or sold by respondents is not covered by, or produced under a process covered by, the claims of each involved U.S. letters patent, a showing of such noncoverage for each involved claim in each U.S. letters patent in question shall be made, which showing may be made appropriate allegations and, when practicable, by a chart that applies that involved claims of each U.S. letters patent in question to a representative involved imported article of the respondent or to the process under which such article was produced;

2. Drawings, photographs, or other visual representations of the involved imported article of respondent or the process utilized in producing such article, and, when a chart is furnished under paragraph (b)(1) of this section, the chart of such drawings, photographs, or other visual representations, should be labeled so that they can be read in conjunction with such chart; and

3. If the claims of any involved U.S. letters patent are asserted to be invalid or unenforceable, the basis for such assertion, including, when prior art is relied on, the showing of how the prior art renders each claim invalid or unenforceable and a copy of such prior art. For good cause, the presiding administrative law judge may waive any of the requirements imposed under this paragraph or may impose additional requirements.
Subpart D—Motions

§210.15 Motions.

(a) Presentation and disposition. (1) During the period between the institution of an investigation and the assignment of the investigation to a presiding administrative law judge, all motions shall be addressed to the chief administrative law judge. During the time that an investigation or related proceeding is before an administrative law judge, all motions therein shall be addressed to the administrative law judge.

(b) Content. All written motions shall state the particular order, ruling, or action desired and the grounds therefor.

(c) Responses to motions. Within 10 days after the service of any written motions, or within such longer or shorter time as may be designated by the administrative law judge or the Commission, a nonmoving party, or in the instance of a motion to amend the complaint or notice of investigation to name an additional respondent after institution shall be served on the proposed respondent. All motions shall be filed with the Secretary and shall be served upon each party.

§210.16 Default.

(a) Definition of default. (1) A party shall be found in default if it fails to respond to the complaint and notice of investigation in the manner prescribed in §§210.13 or 210.59(c), or otherwise fails to answer the complaint and notice, and fails to show cause why it should not be found in default.

(b) Procedure for determining default. (1) If a respondent has failed to respond or appear in the manner described in paragraph (a) of this section, a party may file a motion for default. The administrative law judge may issue upon his own initiative, an order directing that respondent to show cause why it should not be found in default. If the respondent fails to make the necessary showing, the administrative law judge shall issue an initial determination finding the respondent in default an administrative law judge's decision denying a motion for a finding of default under paragraph (a)(1) of this section shall be in the form of an order.

(c) Relief against a respondent in default. (1) After a respondent has been found in default by the Commission, the complainant may file with the Commission a declaration that it is seeking immediate entry of relief against the respondent in default. The facts alleged in the complaint will be presumed to be true as to the defaulting respondent. The Commission may issue an exclusion order, a cease and desist order, or both, affecting the respondent in default. The facts alleged in the complaint will be presumed to be true as to the defaulting respondent. The Commission may issue an exclusion order, a cease and desist order, or both, affecting the defaulting respondent. The Commission may issue a declaration that it is seeking immediate entry of relief against the defaulting respondent. The Commission may issue an exclusion order, a cease and desist order, or both, affecting the defaulting respondent.

(d) Motions for extensions. A matter of discretion, the administrative law judge or the Commission may waive the requirements of this section as to motions for extension of time, and any rule upon such motions ex parte.

§210.17 Supplemental submissions.

(a) Supp人都ment to pleadings and notice; supplemental submissions.

(b) Preinstitution amendments generally. (1) After an investigation has been instituted, the complaint or notice of investigation may be amended only by leave of the Commission for good cause shown and upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation. A motion for amendment must be made to the presiding administrative law judge. If the proposed amendment of the complaint would require amending the pleadings other than complaints upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation. A motion for amendment must be made to the presiding administrative law judge. If the proposed amendment of the complaint would require amending the pleadings other than complaints upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation.

(c) Postinstitution amendments to conform to evidence. When issues not raised by the pleadings or notice of investigation, but reasonably within the scope of the pleadings and notice, are considered during the taking of evidence by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings and notice. Such amendments of the pleadings and notice as may be necessary to make them conform to the evidence and to raise such issues shall be allowed at any time, and shall be effective with respect to all parties who have expressly or impliedly consented.

(d) Supplemental submissions. The administrative law judge may, upon reasonable notice and on such terms as are just, permit service of a supplemental submission setting forth transactions, occurrences, or events that have taken place since the date of the submission sought to be supplemented and that are relevant to any of the issues involved.

(e) Amendments to pleadings and notice; supplemental submissions.

(f) Procedure for determining default. (1) If a respondent has failed to respond or appear in the manner described in paragraph (a) of this section, a party may file a motion for default. The administrative law judge may issue upon his own initiative, an order directing that respondent to show cause why it should not be found in default. If the respondent fails to make the necessary showing, the administrative law judge shall issue an initial determination finding the respondent in default an administrative law judge's decision denying a motion for a finding of default under paragraph (a)(1) of this section shall be in the form of an order.

(g) Any party may file a motion for default of, or the administrative law judge may issue on his own initiative, an initial determination finding a party in default for abuse of process under §210.4(b) or failure to make or cooperate in discovery under §210.33(b). A motion for a finding of default as a sanction for abuse of process or failure to make or cooperate in discovery shall be granted by initial determination or denied by order.

(h) A party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation.

(i) Relief against a respondent in default. (1) After a respondent has been found in default by the Commission, the complainant may file with the Commission a declaration that it is seeking immediate entry of relief against the respondent in default. The facts alleged in the complaint will be presumed to be true as to the defaulting respondent. The Commission may issue an exclusion order, a cease and desist order, or both, affecting the defaulting respondent. The Commission may issue an exclusion order, a cease and desist order, or both, affecting the defaulting respondent. The Commission may issue a declaration that it is seeking immediate entry of relief against the defaulting respondent.

(j) Procedure for determining default. (1) If a respondent has failed to respond or appear in the manner described in paragraph (a) of this section, a party may file a motion for default. The administrative law judge may issue upon his own initiative, an order directing that respondent to show cause why it should not be found in default. If the respondent fails to make the necessary showing, the administrative law judge shall issue an initial determination finding the respondent in default an administrative law judge's decision denying a motion for a finding of default under paragraph (a)(1) of this section shall be in the form of an order.

(k) Any party may file a motion for default of, or the administrative law judge may issue on his own initiative, an initial determination finding a party in default for abuse of process under §210.4(b) or failure to make or cooperate in discovery under §210.33(b). A motion for a finding of default as a sanction for abuse of process or failure to make or cooperate in discovery shall be granted by initial determination or denied by order.

(l) A party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation.

(m) Relief against a respondent in default. (1) After a respondent has been found in default by the Commission, the complainant may file with the Commission a declaration that it is seeking immediate entry of relief against the respondent in default. The facts alleged in the complaint will be presumed to be true as to the defaulting respondent. The Commission may issue an exclusion order, a cease and desist order, or both, affecting the defaulting respondent. The Commission may issue an exclusion order, a cease and desist order, or both, affecting the defaulting respondent. The Commission may issue a declaration that it is seeking immediate entry of relief against the defaulting respondent.

(n) Procedure for determining default. (1) If a respondent has failed to respond or appear in the manner described in paragraph (a) of this section, a party may file a motion for default. The administrative law judge may issue upon his own initiative, an order directing that respondent to show cause why it should not be found in default. If the respondent fails to make the necessary showing, the administrative law judge shall issue an initial determination finding the respondent in default an administrative law judge's decision denying a motion for a finding of default under paragraph (a)(1) of this section shall be in the form of an order.

(o) Any party may file a motion for default of, or the administrative law judge may issue on his own initiative, an initial determination finding a party in default for abuse of process under §210.4(b) or failure to make or cooperate in discovery under §210.33(b). A motion for a finding of default as a sanction for abuse of process or failure to make or cooperate in discovery shall be granted by initial determination or denied by order.

(p) A party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation.
violation of section 337 of the Tariff Act is established by substantial, reliable, and probative evidence, and only after considering the aforementioned public interest factors.

§ 210.17 Failures to act other than the statutory forms of default.

Failures to act other than the defaults listed in § 210.16 of this part may provide a basis for the presiding administrative law judge or the Commission to draw adverse inferences and to issue findings of fact, conclusions of law, determinations (including a determination on violation of section 337 of the Tariff Act of 1930), and orders that are adverse to the party who fails to act. Such failures include, but are not limited to:

(a) Failure to respond to a motion that materially alters the scope of the investigation or a related proceeding;
(b) Failure to file a brief to a motion for temporary relief pursuant to § 210.58;
(c) Failure to respond to a motion for summary determination under § 210.18;
(d) Failure to appear at a hearing before the administrative law judge after filing a written response to the complaint or motion for temporary relief—or failure to appear at a hearing before the Commission;
(e) Failure to file a brief or other written submission requested by the administrative law judge or the Commission during an investigation or a related proceeding;
(f) Failure to respond to a petition for review of an initial determination, a petition for reconsideration of an initial determination, or an application for interlocutory review of an administrative law judge's order;
(g) Failure to file a brief or other written submission requested by the administrative law judge or the Commission; and
(h) Failure to participate in temporary relief bond forfeiture proceedings under § 210.70.

The presiding administrative law judge or the Commission may take action under this rule sua sponte or in response to the motion of a party.

§ 210.18 Summary determinations.

(a) Motions for summary determinations. Any party may move with any necessary supporting affidavits for a summary determination in his favor upon all or any part of the issues to be determined in the investigation. Counsel or other representatives in support of the complaint may so move at any time after 20 days following the date of service of the complaint and notice instituting the investigation. Any other party or a respondent may so move at any time after the date of publication of the notice of investigation in the Federal Register. Any such motion by any party in connection with the issue of permanent relief, however, must be filed at least 30 days before the date fixed for any hearing provided for in § 210.36(a)(1). Any motion for summary determination filed in connection with the temporary relief phase of an investigation must be filed on or before the deadline set by the presiding administrative law judge.

(b) Opposing affidavits; oral argument; time to withdraw basis for determination. Any nonmoving party may file opposing affidavits within 10 days after service of the motion for summary determination. The administrative law judge may, in his discretion or at the request of any party, set the matter for oral argument and call for the submission of briefs or memoranda. The determination sought by the moving party shall be deemed established if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.

(c) Affidavits. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The administrative law judge may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or other evidence.

(d) Motion for summary determination. When a motion for summary determination is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of the opposing party's pleading, but the opposing party's response, by affidavits, answers to interrogatories, or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue of fact for the evidentiary hearing under § 210.36(a)(1) or (2). If the opposing party does not so respond, a summary determination, if appropriate, shall be rendered against the opposing party.

(e) Order establishing facts. If on motion under this section a summary determination is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the administrative law judge, by examining the pleadings and the evidence and by interrogating counsel if necessary, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The administrative law judge shall thereupon make an order specifying the facts that appear without substantial controversy and directing such further proceedings in the investigations as are warranted. The facts so specified shall be deemed established.

(f) Order of summary determination. An order of summary determination shall constitute an initial determination of the administrative law judge.

§ 210.19 Intervention.

Any person desiring to intervene in an investigation or a related proceeding under this part shall make a written motion. The motion shall have attached to it a certificate showing that the motion has been served upon each party to the investigation or related proceeding in the manner described in § 201.16(b) of this chapter. Any party may file a response to the motion in accordance with § 210.15(c), provided that the response is accompanied by a certificate confirming that the response was served on the proposed intervenor and all other parties. The Commission, or the administrative law judge by initial determination, may grant the motion to the extent and upon such terms as may be proper under the circumstances.

§ 210.20 Declassification of confidential information.

(a) Any party may move to declassify documents (or portions thereof) that have been designated confidential by the submitter but that do not satisfy the confidentiality criteria set forth in § 201.6(a). All such motions, whether brought at any time during the investigation or after conclusion of the investigation shall be addressed to and ruled upon by the presiding administrative law judge, or if the
investigation is not before a presiding administrative law judge, by the chief administrative law judge or such administrative law judge as he may designate.

(b) Following issuance of a public version of the decision, determination on whether there is a violation of section 337 of the Tariff Act of 1930 or an initial determination that would otherwise terminate the investigation (if adopted by the Commission), the granting of a motion, in whole or part, to declassify information designated confidential shall constitute an initial determination, except as to that information for which no submissions in opposition to declassification have been filed.

§ 210.21 Termination of investigations.

(a) Motions for termination. (1) Any party may move at any time prior to the issuance of an initial determination on violation of section 337 of the Tariff Act of 1930 for an order to terminate an investigation in whole or in part as to any or all respondents, on the basis of withdrawal of the complaint or certain allegations contained therein, or for good cause other than the grounds listed in paragraph (a)(2) of this section. The presiding administrative law judge may grant the motion in an initial determination upon such terms and conditions as he deems proper.

(2) Any party may move at any time for an order to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement, or a consent order, as provided in paragraphs (b) and (c) of this section.

(b) Termination by Settlement. (1) An investigation before the Commission may be terminated as to one or more respondents or, as provided in paragraph (a)(2) of this section and pursuant to section 337(c) of the Tariff Act of 1930 on the basis of a licensing or other settlement agreement. A motion for termination by settlement shall contain copies of the licensing or other agreement, any supplemental agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. If the licensing or other settlement agreement contains confidential business information within the meaning of § 201.6(a) of this chapter, a copy of the agreement with such information deleted shall accompany the motion.

(2) The motion and agreement(s) shall be certified by the administrative law judge to the Commission with an initial determination if the motion for termination is granted. If the licensing or other agreement or the initial determination contains confidential business information, copies of the agreement and initial determination with confidential business information deleted shall be certified to the Commission simultaneously with the confidential portions of such documents. The Commission shall promptly publish a notice in the Federal Register stating that an initial determination has been received, that nonconfidential versions of the initial determination and the agreement are available for inspection in the Office of the Secretary, and that interested persons may submit written comments concerning termination of the respondents in question within 10 days of the date of publication of the notice in the Federal Register. An order of termination by settlement need not constitute a determination as to violation of section 337 of the Tariff Act of 1930.

(c) Termination by entry of consent order. An investigation before the Commission may be terminated as provided in paragraph (a)(2) of this section and pursuant to section 337(c) of the Tariff Act of 1930 on the basis of a consent order. An order of termination by consent order need not constitute a determination as to violation of section 337.

(1) Opportunity to submit proposed consent order. (1) Prior to institution of an investigation. Where time, the nature of the proceeding, and the public interest permit, any person being investigated may, before the issuance of a notice of institution of investigation in whole or in part, file with the Commission simultaneously with the notice of its action. Should the Commission reverse the initial determination according to the procedures of §§ 210.42 through 210.45. An order of termination by consent order need not constitute a determination as to violation of section 337. The Commission shall promptly serve copies of the nonconfidential version of the initial determination and the consent order stipulation on the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other departments and agencies as the Commission deems appropriate.

(ii) The Commission, after considering the effect of the settlement by consent order upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles, the effect of the settlement by consent order to the U.S. economy, and U.S. consumers in the United States, and U.S. consumers in the manner provided by § 210.50(a)(1) and (4), shall dispose of the initial determination according to the procedures of §§ 210.42 through 210.45. An order of termination by consent order need not constitute a determination as to violation of section 337. The Commission shall publish in the Federal Register and serve on all parties notice of its action. Should the Commission reverse the initial determination, the parties are in no way bound by their proposal in later actions before the Commission.

(3) Contents of consent order stipulation. (i) Contents. (A) Every consent order stipulation shall contain, in addition to the proposed consent order, the following:

(J) An admission of all jurisdictional facts;
...
§ 210.25 Sanctions.

(a) Any party may file a motion for sanctions for abuse of process under § 210.24(b)(1) or (b)(2) above shall not exceed 15 pages and may be filed within five days after service of the administrative law judge’s determination. An answer to the motion may be filed within five days after service of the application for review. Thereupon, the Commission may, in its discretion, permit an appeal. Unless otherwise ordered by the Commission, the Commission, review, if permitted, shall be confined to the application for review and answer thereto, without oral argument or further briefs.

(c) Investigation not stayed. Application for review under this section shall not stay the investigation, unless the administrative law judge or the Commission shall so order.

§ 210.26 Other motions.

Motions pertaining to discovery shall be filed in accordance with § 210.15 and the pertinent provisions of subpart E of this chapter (§§ 210.27 through 210.34). Motions pertaining to discovery, including motions for temporary relief phase of an investigation, or in the Commission, shall be filed in accordance with § 210.15 and the pertinent provisions of subpart F of this chapter (§§ 210.35 through 210.40). Motions for temporary relief phase of an investigation, or in the Commission, shall be filed as provided in subpart H of this chapter (i.e., §§ 210.52 through 210.57).

Subpart E—Discovery and Compulsory Process

§ 210.27 General provisions governing discovery.

(a) Discovery methods. The parties to an investigation may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; production of documents or things or permission to enter upon land or other property for inspection or other purposes; and requests for admissions.

(b) Scope of discovery. Regarding the scope of discovery for the temporary relief phase of an investigation, see § 210.61 of this part. For the permanent relief phase of an investigation, unless otherwise ordered by the administrative law judge, a party may obtain discovery regarding any matter, not privileged, that is relevant to the following:

1. The claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things;

2. The identity and location of persons having knowledge of any discoverable matter;

3. The appropriate remedy for a violation of section 337 of the Tariff Act of 1930 (see § 210.42(a)(1)(ii)(A) of this part);

4. The appropriate bond for the respondents, under section 337(j) of the Tariff Act of 1930, during Presidential review of the remedial order (if any) issued by the Commission (see § 210.42(e)(1)(ii)(B) of this part). It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include
information thereafter acquired, except under the following circumstances:

(1) A party is under a duty to seasonably supplement his response with respect to any question directly addressed to—

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

(ii) The identity of each person expected to be called as an expert witness at a hearing, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(2) A party is under a duty to seasonably amend a prior response if he obtains information upon the basis of which—

(i) The party knows that the response was incorrect when made; or

(ii) The party knows that the response was not correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the administrative law judge, agreement of the parties, or at any time prior to a hearing through new requests for supplementation of prior responses.

(d) Signing of Discovery Requests, Responses, and Objections. (1) Every request for discovery, response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and shall state the party's address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry, the request, objection, or response is

(i) Consistent with §§ 201.8, 210.4, 210.5, and other relevant provisions of this chapter and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(ii) Not interpolated for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(iii) Not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the submitter, and a party shall not be obligated to take any action with respect to the request, response, or objection until it is signed.

(2) If a request, response, or objection is certified in violation of paragraph (d)(1) of this section, the administrative law judge or the Commission to determine that it was certified in

(i) Violation of paragraph (d)(1). If any portion of the document is found to be false, frivolous, misleading, or otherwise in violation of paragraph (d)(1), a sanction may be imposed.

In determining whether a request, objection, response, or a portion thereof was certified in violation of this paragraph, the administrative law judge or the Commission will consider whether the document or disputed portion was objectively reasonable under the circumstances.

(3) An appropriate sanction may include an order to pay to the other parties or proposed parties the amount of reasonable expenses incurred because of the violation, including a reasonable attorney's fee, or a fine in addition to attorneys' fees, to the extent authorized by Rule 204(a) of the Federal Rules of Civil Procedure. Monetary sanctions shall not be imposed under this section against the United States, the Commission, or a Commission investigative attorney.

(4) Monetary sanctions imposed to compensate the Commission for expenses incurred by a Commission investigative attorney or the Commission's Office of Unfair Import Investigations will include reimbursement for costs but not attorneys' fees.

§ 210.28 Depositions.

(a) When depositions may be taken. Following publication in the Federal Register of a Commission notice instituting the investigation, any party may take the testimony of any person, including a party, by deposition upon oral examination or written questions. The presiding administrative law judge will determine the permissible dates or deadlines for taking such depositions.

(b) Persons before whom depositions may be taken. Depositions may be taken before a person having power to administer oaths by the laws of the United States or of the place where the examination is held.

(c) Notice of examination. A party desiring to take the deposition of a person shall give notice in writing to every other party to the investigation. The administrative law judge shall determine the appropriate period for providing such notice. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. A notice may provide for the taking of testimony by telephone, but the administrative law judge may, on motion of any party, require that the deposition be taken in the presence of the deponent. The parties may stipulate in writing, or the administrative law judge may upon motion, order that the testimony at a deposition be recorded by other than stenographic means. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(d) Taking of deposition. Each deponent shall be duly sworn, and any adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds of objections relied upon. Evidence objected to shall be taken subject to the objections, except that privileged communications and subject matter need not be disclosed. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, after which the deposition shall be subscribed by the deponent (unless the parties by stipulation waive signing on the deponent is ill or cannot be found or refuses to sign) and certified by the person before whom the deposition was taken. If the deposition is not subscribed by the deponent, the person administering the oath shall state on the record such fact and the reason therefor. When a deposition is recorded by stenographic means, the stenographer shall certify on the transcript that the witness was sworn in the stenographer's presence and that the transcript is a true record of the testimony of the witness. When a deposition is recorded by other than stenographic means and is thereafter transcribed, the person transcribing it shall certify that the person heard the witness sworn on the recording and that the transcript is a correct writing of the recording.
Thereafter, that person shall forward one copy to each party who was present or represented at the taking of the deposition. See paragraph (i) of this section concerning the effect of errors and irregularities in depositions.

(e) Depositions of nonparty officers or employees of the Commission or of other Government agencies. A party desiring to take the deposition of an officer or employee of the Commission other than the Commission investigative attorney, or of an officer or employee of another Government agency, or to obtain documents or other physical exhibits in the custody, control, and possession of such officer or employee, shall proceed by written motion to the administrative law judge for leave to apply for a subpoena under § 210.32(c). Such a motion shall be granted only upon a showing that the information expected to be obtained thereby is within the scope of discovery permitted by § 210.27(b) or § 210.61 and cannot be obtained without undue hardship by alternative means.

(f) Service of deposition transcripts on the Commission staff. The party taking the deposition shall promptly serve one copy of the deposition transcript on the Commission investigative attorney.

(g) Admissibility of depositions. The fact that a deposition is taken and filed with the Commission investigative attorney as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the investigation. Only such part of a deposition as is received in evidence at a hearing shall constitute a part of the record in such investigation upon which a determination may be based. Objections may be made at the hearing to receiving in evidence any deposition or part thereof for any reason that would require exclusion of the evidence if the witness were then present and testifying.

(h) Use of depositions. A deposition may be used as evidence against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

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

(2) The deposition of a party may be used by an adverse party for any purpose;

(3) The deposition of a witness, whether or not a party, may be used by any party for any purposes if the administrative law judge finds—

(I) That the witness is dead; or

(II) That the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

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

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

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

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part that ought in fairness to be considered with the party introduced, and any party may introduce any other parts.

(i) Effect of errors and irregularities in depositions.

(1) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party offering the notice.

(2) As to disqualified person before whom the deposition is to be taken. Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

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

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

(iii) Objections to the form of written questions submitted under this section are waived unless served in writing upon the party propounding them. The presiding administrative law judge shall set the deadline for service of such objections.

(4) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the person before whom it is taken are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

§ 210.29 Interrogatories.

(a) Scope; use at hearing. Any party may serve upon any other party written interrogatories to be answered by the party served. Interrogatories may relate to any matters that can be inquired into under § 210.27(b) or § 210.61, and the answers may be used to the extent permitted by the rules of evidence.

(b) Procedure. (1) Interrogatories may be served upon any party after the date of publication in the Federal Register of the notice of investigation.

(2) Parties answering interrogatories shall repeat the interrogatories being answered immediately preceding the answers. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within the time specified by the administrative law judge. The party submitting the interrogatories may move for an order under § 210.33(a) with respect to any objection to or other failure to answer an interrogatory.

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

(c) Option to produce records. When the answer to an interrogatory may be derived or ascertained from the records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it
is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. The specifications provided shall include sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the documents from which the answer may be ascertained.

§ 210.30 Requests for production of documents and things and entry upon land.

(a) Scope. Any party may serve on any other party a request: (1) To produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained), or to inspect and copy, test, or sample any tangible things that are in the possession, custody, or control of the party upon whom the request is served; or (2) To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of § 210.27(b).

(b) Procedure. (1) The request may be served upon any party after the date of publication in the Federal Register of the notice of investigation. The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(2) The party upon whom the request is served shall serve a written response within the time specified by the administrative law judge. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of any item or category, the part shall be specified. The party submitting the request may move for an order under § 210.33(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or organize and label them to correspond to the categories in the request.

(c) Persons not parties. This section does not preclude issuance of an order against a person not a party to permit entry upon land.

§ 210.31 Requests for admission.

(a) Form, content, and service of request for admission. Any party may serve on any other party a written request for admission of the truth of any matters relevant to the investigation and set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been otherwise furnished or are known to be, and in the request are stated as being, in the possession of the other party. Each matter as to which an admission is requested shall be separately set forth.

The request may be served upon a party whose complaint is the basis for the investigation after the date of publication in the Federal Register of the notice of investigation. The administrative law judge will determine the period within which a party may serve a request upon other parties.

(b) Answers and objections to request for admission. A party answering a request for admission shall repeat the request for admission immediately preceding his answer. The matter may be deemed admitted unless, within the period specified by the administrative law judge, the party to whom the request is directed serves upon the party requesting the admission a sworn written answer or objection addressed to the matter. If objection is made, the reason thereof shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter as to which an admission is requested, he shall specify as much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known to or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter as to which an admission has been requested presents a genuine issue for a hearing may not object to the request on that ground alone; he may deny the matter or set forth reasons why he cannot admit or deny it.

(c) Sufficiency of answers. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objecting party sustains his burden of showing that the objection is justified, the administrative law judge shall order that an answer be served. If the administrative law judge determines that an answer does not comply with the requirements of this section, he may order either that the matter is admitted or that an amended answer be served. The administrative law judge may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to a hearing under this part.

(d) Effect of admissions; withdrawal or amendment of admission. Any matter admitted under this section may be conclusively established unless the administrative law judge on motion permits withdrawal or "amendment" of the admission. The administrative law judge may permit withdrawal or amendment when the presentation of the issues of the investigation will be unobserved thereby and the party who obtained the admission fails to satisfy the administrative law judge that withdrawal or amendment will prejudice him in maintaining his position on the issue of the investigation. Any admission made by a party under this section is for the purpose of the pending investigation only and is not an admission by him for any other purpose, nor may it be used against him in any other proceeding.

§ 210.32 Subpoenas.

(a) Application for issuance of a subpoena. (1) Subpoena ad testificandum. An application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at a hearing shall be made to the administrative law judge.

(2) Subpoena duces tecum. An application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition, at a prehearing conference, at a hearing, or under any other circumstances, shall be made in writing to the administrative law judge and shall specify the material to be produced as precisely as possible, showing the general relevancy of the material and
the reasonableness of the scope of the subpoena.

(3) The administrative law judge shall rule on all applications filed under paragraph (a)(1) or (a)(2) of this section and may issue subpoenas when warranted.

(b) Use of subpoena for discovery.

Subpoenas may be used by any party for purposes of discovery or for obtaining documents, papers, books or other physical exhibits for use in evidence, or for both purposes. When used for discovery purposes, a subpoena may require a person to produce and permit the inspection and copying of nonprivileged documents, papers, books, or other physical exhibits that constitute or contain evidence relevant to the subject matter involved and that are in the possession, custody, or control of such person.

(c) Application for subpoenas for nonparty Commission records or personnel or for records and personnel of other Government agencies.

(1) Procedure. An application for issuance of a subpoena requiring the production of nonparty documents, papers, books, physical exhibits, or other material in the records of the Commission, or requiring the production of records or personnel of other Government agencies shall specify as precisely as possible the material to be produced, the nature of the information to be disclosed, or the expected testimony of the official or employee, and shall contain a statement showing the general relevancy of the material, information, or testimony and the reasonableness of the scope of the application, together with a showing that such material, information, or testimony or their substantial equivalent could not be obtained without undue hardship or by alternative means.

(2) Ruling. Such applications shall be ruled upon by the administrative law judge, and he may issue such subpoenas when warranted. To the extent that the motion is granted, the administrative law judge shall provide such terms and conditions for the production of the material, the disclosure of the information, or the appearance of the official or employee as may appear necessary and appropriate for the protection of the public interest.

(3) Application for subpoena grounded upon the Freedom of Information Act.

No application for a subpoena for production of documents grounded upon the Freedom of Information Act (5 U.S.C. 552) shall be entertained by the administrative law judge.

(d) Motion to limit or quash. Any motion to limit or quash a subpoena shall be filed within such time as the administrative law judge may allow.

(e) Ex parte rulings on applications for subpoenas. Applications for the issuance of the subpoenas pursuant to the provisions of this section may be made ex parte, and, if so made, such applications shall remain ex parte unless otherwise ordered by the administrative law judge.

(f) Witnesses Fees. (1) Depositions and witnesses. Any person compelled to appear in person to depose or testify in response to a subpoena shall be paid the same mileage as are paid witnesses with respect to proceedings in the courts of the United States; provided, that salaried employees of the United States summoned to depose or testify as to matters related to their public employment, irrespective of the party at whose instance they are summoned, shall be paid in accordance with the applicable Federal regulations.

(2) Responsibility. The fees and mileage referred to in paragraph (f)(1) of this section shall be paid by the party at whose instance deponents or witnesses appear. Fees due under this paragraph shall be tendered no later than the date for compliance with the subpoena issued under this section. Failure to timely tender fees under this paragraph shall not invalidate any subpoena issued under this section.

(g) Obtaining judicial enforcement. In order to obtain judicial enforcement of a subpoena issued under paragraphs (a)(1), (a)(2), or (c)(2) of this section, the administrative law judge shall certify to the Commission, on motion of sua sponte, a request for such enforcement. The request shall be accompanied by copies of relevant papers and a written report from the administrative law judge concerning the purpose, relevance, and reasonableness of the subpoena. The Commission will subsequently issue a notice stating whether it has granted the request and authorized its Office of the General Counsel to seek such enforcement.

§ 210.33 Failure to make or cooperate in discovery; sanctions.

(a) Motion for order compelling discovery. A party may apply to the administrative law judge for an order compelling discovery upon reasonable notice to other parties and all persons affected thereby.

(b) Non-monetary sanctions for failure to comply with an order compelling discovery. If a party or an officer or agent of a party fails to comply with an order including, but not limited to, an order for the taking of a deposition or the production of documents, an order to answer interrogatories, an order issued pursuant to a request for admissions, or an order to comply with a subpoena, the administrative law judge, for the purpose of permitting resolution of relevant issues and disposition of the investigation without unnecessary delay despite the failure to comply, may take such action in regard thereto as is just, including, but not limited to the following:

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

(2) Rule that for the purposes of the investigation the matter or matters concerning the order or subpoena issued be taken as established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely upon testimony by the party, officer, or agent, or documents, or other material in support of his position in the investigation;

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

(5) Rule that a motion or other submission by the party concerning the order or subpoena issued be stricken or rule by initial determination that a determination in the investigation be rendered against the party, or both; or

(6) Order any other non-monetary sanction available under Rule 37(b) of the Federal Rules of Civil Procedure.

Any such action may be taken by written or oral order issued in the course of the investigation or by inclusion in the initial determination of the administrative law judge. It shall be the duty of the parties to seek, and that of the administrative law judge to grant, such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of withheld testimony, documents, or other evidence. If, in the administrative law judge’s opinion such relief would not be sufficient, the administrative law judge shall certify to the Commission a request that court enforcement of the subpoena or other discovery order be sought.

(c) Monetary sanctions for failure to make or cooperate in discovery: (1) In lieu of or in addition to taking action listed in paragraph (b) of this section, the administrative law judge or the Commission, upon motion or sua sponte under § 210.25 of this part, may impose an appropriate monetary sanction upon a party who fails to make or cooperate with discovery in any manner described
in paragraph (b) of this section or in 
Rule 37 of the Federal Rules of Civil 
Procedure, the party’s attorney, or both. 
An appropriate monetary sanction may 
include an order to pay to the other 
parties the amount of reasonable 
expenses incurred, including a 
reasonable attorney’s fee, or a fine in 
addition to attorneys’ fees, to the extent 
authorized by Rule 37 of the Federal 
Rules of Civil Procedure. Monetary 
sanctions shall not be imposed under 
this section against the United States, 
the Commission, or a Commission 
investigative attorney.

(2) Monetary sanctions imposed to 
compensate the Commission for 
expenses incurred by a Commission 
investigative attorney or the 
Commission’s Office of Unfair Import 
Investigations will include 
reimbursement for costs but not 
attorneys’ fees.

§ 210.34 Protective orders.
(a) Issuance of protective order. Upon 
motion by a party or by the person from 
whom discovery is sought or by the 
administrative law judge on his own 
initiative, and for good cause shown, the 
administrative law judge may make any 
order that may appear necessary and 
appropriate for the protection of the 
public interest or that justice requires to 
protect a party or person from 
annoyance, embarrassment, oppression, 
or undue burden or expense, including 
one or more of the following:
(1) That discovery not be had;
(2) That the discovery may be had 
only on specified terms and conditions, 
including a designation of the time or 
place;
(3) That discovery may be had only by 
a method of discovery other than that 
selected by the party seeking discovery;
(4) That certain matters not be 
inquired into, or that the scope of 
discovery be limited to certain matters;
(5) That discovery be conducted with 
no one present except persons 
designated by the administrative law 
judge;
(6) That a deposition, after being 
sealed, be opened only by order of the 
Commission or the administrative law 
judge;
(7) That a trade secret or other 
confidential research, development, or 
commercial information not be disclosed 
or be disclosed only in a designated 
way; and
(8) That the parties simultaneously file 
specified documents or information 
enclosed in sealed envelopes to be 
opened as directed by the Commission 
or the administrative law judge. If the 
motion for protective order is denied, 
in whole or in part, the Commission or 
the administrative law judge may, on 
such terms and conditions as are just, 
order that any party or person provide 
or permit discovery. The Commission 
also may, upon motion or sua sponte, 
issue protective orders or may continue 
or amend a protective order issued by 
the administrative law judge.
(b) Notification and disclosure of 
information. If confidential business 
information submitted in accordance 
with the terms of a protective order is 
disclosed to any person other than in a 
manner authorized by the protective 
order, the party responsible for the 
disclosure must immediately bring all 
pertinent facts relating to such 
disclosure to the attention of the 
submitter of the information and the 
administrative law judge or the 
Commission, and, without prejudice to 
other rights and remedies of the 
recipient of such information, make 
every effort to prevent further disclosure 
of such information by the party or the 
recipient of such information.
(c) Violation of protective order. Any 
individual who has agreed to be bound 
by the terms of a protective order issued 
pursuant to paragraph (a) of this section, 
and who is determined to have violated 
the terms of the protective order, may be 
subject to one or more of the following:
(1) An official reprimand by the 
Commission;
(2) Disqualification from or limitation 
of further participation in a pending 
investigation;
(3) Temporary or permanent 
disqualification from practicing in any 
capacity before the Commission 
pursuant to § 201.15(a) of this chapter;
(4) Referral of the facts underlying the 
violation to the appropriate licensing 
authority in the jurisdiction in which the 
individual is licensed to practice;
(5) Sanctions as enumerated in 
§ 210.35(b), or such other action as may 
be appropriate.

The issue of whether sanctions should 
be imposed may be raised on a motion 
by a party, the administrative law 
judge’s own motion, or the 
Commission’s own initiative in 
accordance with § 210.25. The 
Commission or the administrative law 
judge shall allow the parties to make 
written submissions and, if warranted, 
to present oral argument bearing on the 
issues of violation of a protective order 
and sanctions therefor. When the 
motion is addressed to the 
administrative law judge, he shall grant 
or deny a motion for sanctions by 
issuing an order.

(d) Reporting requests for confidential 
business information. (1) Reporting 
Requirement. Each person subject to 
protective order issued pursuant to 
paragraph (a) of this section shall report 
in writing to the Commission 
immediately upon learning that 
confidential business information 
disclosed to him or her pursuant to the 
protective order is the subject of a 
subpoena, court or administrative order 
(other than an order of a court reviewing 
a Commission decision), discovery 
request, agreement, or other written 
request seeking disclosure, by him or 
any other person, of that confidential 
information to persons who are not, or may not be, permitted access to 
that information pursuant to either a 
Commission protective order or 
§ 210.5(b) of this part.

(2) Sanctions and other actions. After 
providing notice and an opportunity to 
comment, the Commission may impose 
a sanction upon any person who willfully 
fails to comply with paragraph (d)(1) 
of this section, or it may take other action.

Subpart F—Prehearing Conferences 
and Hearings

§ 210.35 Prehearing conferences.
(a) When appropriate. The 
administrative law judge in any 
investigation may direct counsel or 
other representatives for all parties to 
meet with him for one or more 
conferences to consider any or all of the 
following:
(1) Simplification and clarification of 
the issues;
(2) Scope of the hearing;
(3) Necessity or desirability of 
amendments to pleadings subject, 
however, to the provisions of § 210.14;
(4) Stipulations and admissions of 
either fact or the content and 
authenticity of documents, 
physical exhibits that will be introduced 
and the number of expert, economic, or technical 
witnesses; and
(5) Such other matters as may aid in 
the orderly and expeditious disposition 
of the investigation including disclosure 
of the names of witnesses and the 
exchange of documents or other 
physical exhibits that will be introduced 
in evidence in the course of the hearing.
(b) Subpoenas. Prehearing 
conferences may be convened for the 
purpose of accepting returns on 
subpoenas duces tecum issued pursuant 
to the provisions of § 210.32(a)(2).
(c) Reporting. In the discretion of the 
administrative law judge, prehearing 
conferences may or may not be 
stenographically reported and may or 
may not be public.
(d) Order. The administrative law 
judge may enter in the record an order.
that recites the results of the conference. Such order shall include the
administrative law judge’s rulings upon
matters considered at the conference,
together with appropriate direction to
the parties. The administrative law
judge’s order shall control the
subsequent course of the hearing, unless
the administrative law judge modifies
the order.
§ 210.36 General provisions for hearings.
(a) Purpose of hearings. (1) An
opportunity for a hearing shall be
provided in each investigation under
this part, in accordance with the
Administrative Procedure Act. At the
hearing, the presiding administrative
law judge will take evidence and hear
argument for the purpose of determining
whether there is a violation of section
337 of the Tariff Act of 1930, and for the
purpose of making findings and
recommendations, as described in
§ 210.42(a)(1)(i), concerning the
appropriate remedy and the amount of
the bond to be posted by respondents
during Presidential review of the
Commission’s action, under section
337(f) of the Tariff Act.
(2) An opportunity for a hearing in
accordance with the Administrative
Procedure Act shall also be provided in
connection with every motion for
temporary relief filed under this part.
(b) Public hearings. All hearings in
investigations under this part shall be
public unless otherwise ordered by the
administrative law judge.
(c) Expedition. Hearings shall proceed
with all reasonable expedition, and,
insofar as practicable, shall be held at
one place, continuing until completed
unless otherwise ordered by the
administrative law judge.
(d) Rights of parties. Every
hearing under this section shall be
conducted in accordance with sections
554 through 556 of the Administrative
Procedure Act (5 U.S.C. 554 through
556).
Hence, every party shall have the right
of adequate notice, cross-examination,
presentation of evidence, objection,
motion, argument, and all other rights
essential to a fair hearing.
(e) Presiding official. An
administrative law judge shall preside
over each hearing unless the
Commission shall otherwise order.
§ 210.37 Evidence.
(a) Burden of Proof. The proponent of
any factual proposition shall be required
to sustain the burden of proof with
respect thereto.
(b) Admissibility. Relevant, material,
and reliable evidence shall be admitted.
Irrelevant, immaterial, unreliable, and
unduly repetitious evidence shall be
excluded. Immaterial or irrelevant parts
of an administrable document shall be
segregated and excluded as far as
practicable.
(c) Information obtained in
investigations. Any documents, papers,
books, physical exhibits, or other
materials or information obtained by the
Commission under any of its powers
may be disclosed by the Commission
investigative attorney when necessary in
connection with investigations and
may be offered in evidence by the
Commission investigative attorney.
(d) Official notice. When any decision
of the administrative law judge rests in
whole or in part upon any taking of
official notice of a material fact not
appearing in evidence of record,
opportunity to dispute such noticed
fact shall be granted any party making
timely motion therefor.
(e) Objections. Objections to evidence
shall be made in timely fashion and
shall briefly state the grounds relied
upon. Rulings on objections shall appear
on the record.
(f) Exceptions. Formal exception to an
adverse ruling is not required.
(g) Excluded evidence. When an
objection to a question propounded to a
witness is sustained, the examining
party may make a specific offer of what
he expects to prove by the answer of the
witness, or the administrative law judge
may in his discretion receive and report
the evidence in full. Rejected exhibits,
adequately marked for identification,
shall be retained with the record so as
to be available for consideration by any
reviewing authority.
§ 210.38 Record.
(a) Definition of the record. The
record shall consist of all pleadings, the
notice of investigation, objections and
responses, and other documents and
things properly filed with the Secretary
in accordance with § 210.4(b), in
addition to all orders, notices, and initial
determinations of the administrative law
judge, orders and notices of the
Commission, hearing and conference
transcripts, evidence admitted into the
record, and any other items certified
into the record by the administrative law
depth or the Commission.
(b) Reporting and transcription.
Hearings shall be reported and
transcribed by the official reporter of the
Commission under the supervision of
the administrative law judge, and the
transcript shall be a part of the record.
(c) Corrections. Changes in the official
transcript may be made only when they
involve errors affecting substance. A
motion to correct a transcript shall be
addressed to the administrative law
judge, who may order that the transcript
be changed to reflect such corrections as
are warranted, after consideration of
any objections that may be made. Such
 corrections shall be made by the official
reporter by furnishing substitute typed
pages, under the usual certificate of the
reporter, for insertion in the transcript.
The original uncorrected pages shall be
retained in the files of the Commission.
(d) Certification of record. The record
shall be certified to the Commission by
the administrative law judge upon his
filing of an initial determination or at
such earlier time as the Commission
may order.
§ 210.39 In camera treatment of
confidential information.
(a) Definition. Except as hereinafter
provided and consistent with §§ 210.5
and 210.34, confidential documents and
testimony made subject to protective
orders or orders granting in camera
treatment are not made part of the
public record and are kept confidential in
an in camera record. Only the persons
identified in a protective order, persons
identified in § 210.5(b), and court
personnel concerned with judicial
review shall have access to confidential
information in the in camera record.
The right of the administrative law judge
and the Commission to disclose confidential
data under a protective order (pursuant
to § 210.34) to the extent necessary for
the proper disposition of each
proceeding is specifically reserved.
(b) In camera treatment of documents
and testimony. The administrative law
judge shall have authority to order
documents or oral testimony offered in
evidence, whether admitted or rejected,
to be placed in camera.
(c) Part of confidential record. In
camera documents and testimony shall
constitute a part of the confidential
record of the Commission.
(d) References to in camera
information. In submitting proposed
findings, briefs, or other papers, counsel
for all parties shall make an attempt in
good faith to refrain from disclosing the
specific details of in camera documents
and testimony. This shall not preclude
references in such proposed findings,
briefs, or other papers to such
documents or testimony including
generalized statements based on their
contents. To the extent that counsel
consider it necessary to include specific
details in camera data in their
presentations, such data shall be
incorporated in separate proposed
findings, briefs, or other papers marked
“Business Confidential,” which shall be
placed in camera and become a part of the
confidential record.
§ 210.40 Proposed findings and conclusions.
At the time a motion for summary determination under § 210.18(a) or a motion for termination under § 210.21(a) is made, or when it is found that a party is in default under § 210.16 (a) or (b), or at the close of the reception of evidence in any hearing held pursuant to this part (except as provided in § 210.63), or within a reasonable time thereafter fixed by the administrative law judge, any party may file proposed findings of fact and conclusions of law, together with reasons therefor. When appropriate, briefs in support of the proposed findings of fact and conclusions of law may be filed with the administrative law judge for his consideration. Such proposals and briefs shall be in writing, shall be served upon all parties in accordance with § 210.4(d), and shall contain adequate references to the record and the authorities on which the submitter is relying.

Subpart G—Determinations and Actions Taken

§ 210.41 Termination of investigation.
Except as provided in § 210.21 (b)(2) and (c) of this part, an order of termination issued by the Commission shall constitute a determination of the Commission under § 210.45(c).

§ 210.42 Initial determinations.
(a)(1) On issues concerning permanent relief. (i) Unless otherwise ordered by the Commission, the administrative law judge shall certify the record to the Commission and shall file an initial determination on whether there is a violation of section 337 of the Tariff Act of 1930 within nine months after publication of the notice of investigation in an ordinary case or within 14 months after such publication in a "more complicated" case.
(ii) Unless the Commission orders otherwise, within 14 days after issuance of the initial determination on permanent relief, the administrative law judge shall issue a recommended determination containing findings of fact and recommendations concerning—
(A) The appropriate remedy for any violation that has been found, and
(B) The amount of the bond to be posted by the respondents during Presidential review of Commission action under section 337(j) of the Tariff Act of 1930.
(2) On certain motions to declassify information. Following issuance of the public version of an initial determination under paragraph (a)(1)(i) of this section, the decision of an administrative law judge granting a motion to declassify information, in whole or in part, shall be in the form of an initial determination as provided in § 210.20(b) of this part.
(b) On issues concerning temporary relief or forfeiture of temporary relief bonds. Certification of the record and the disposition of an initial determination concerning a motion for temporary relief are governed by §§ 210.65 and 210.66 of this part. The disposition of an initial determination concerning possible forfeiture of a complainant's temporary relief bond, in whole or in part, is governed by § 210.70 and paragraph (c) below.
(c) On other matters. The administrative law judge shall grant by the following types of motions by issuing an initial determination or shall deny them by issuing an order: a motion to amend the complaint or notice of investigation pursuant to § 210.14(b); a motion for a finding of default pursuant to § 210.16 (a) or (b); a motion for summary determination pursuant to § 210.18(a); a motion for intervention pursuant to § 210.21; a motion to suspend an investigation pursuant to § 210.23; or a motion for forfeiture of a complainant's temporary relief bond pursuant to § 210.70.
(d) Contents. The initial determination shall include: an opinion stating findings (with specific page references to principal supporting items of evidence in the record) and conclusions and the reasons or bases therefor necessary for the disposition of all material issues of fact, law, or discretion presented in the record; and a statement that, pursuant to § 210.42(h), the initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to § 210.42(a) or § 210.42(a) or (d) of this part. The initial determination containing findings of fact and conclusions of law and recommended findings and recommendations shall include: an opinion stating findings (with specific page references to principal supporting items of evidence in the record) and conclusions and the reasons or bases therefor necessary for the disposition of all material issues of fact, law, or discretion presented in the record; and a statement that, pursuant to § 210.42(h), the initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to § 210.42(a) or § 210.42(a) or (d) of this part. Orders on its motion for a finding of default pursuant to § 210.16(a) or (b); a motion for summary determination pursuant to § 210.18(a); a motion for intervention pursuant to § 210.21; a motion to suspend an investigation pursuant to § 210.23; or a motion for forfeiture of a complainant’s temporary relief bond pursuant to § 210.70.

(5) The disposition of an initial determination granting or denying a motion for temporary relief is governed by the provisions of § 210.66.

(6) The disposition of an initial determination concerning possible forfeiture of a complainant’s temporary relief is governed by § 210.70.

(7) On notice of determination. A notice stating the Commission’s decision on whether to review an initial determination will be issued by the Secretary, served on the parties, and published in the Federal Register.
§ 210.43 Petitions for review of initial determinations on matters other than permanent or temporary relief.

(a) Filing of the petition. Except as provided elsewhere in this paragraph, any party to an investigation may request Commission review of an initial determination issued under § 210.42(c) or § 210.70(c) by filing a petition with the Secretary. A petition for review of an initial determination issued under § 210.42(c) must be filed within five business days after issuance of the initial determination. A petition for review of an initial determination issued under § 210.70(c) must be filed within 10 days after issuance of the initial determination. A party may not petition for review, however, of any issue as to which the party has been found to be in default. Similarly, a party or proposed respondent who did not file a response to the motion addressed in the initial determination may be deemed to have consented to the relief requested and may not petition for review of the issues raised in the motion.

(b) Content of the petition. A petition for review filed under this section shall identify the party seeking review and shall specify the issues upon which review is sought, and shall, with respect to each such issue, specify one or more of the following grounds upon which review is sought:

(1) That a finding or conclusion of material fact is clearly erroneous;
(2) That a legal conclusion is erroneous, without governing precedent, or § 210.70(c) by filing a petition with the Secretary, the Federal Trade Commission, the Department of Justice, the Federal Trade Commission, the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other departments and agencies as the Commission deems appropriate.

§ 210.44 Commission review on its own motion of initial determinations on matters other than permanent or temporary relief.

Within the time provided in § 210.42(d), the Commission may order review of an initial determination—or certain issues in the initial determination—when at least one of the participating Commissioners votes for ordering review. A self-initiated Commission review of an initial determination will be ordered if it appears that an error or abuse of the type described in paragraph (b) of this section is present or if the petition raises a policy matter connected with the initial determination, which the Commission thinks is necessary or appropriate to address.

(c) Responses to the petition. Any party may file a response to a petition for review within five business days after service of the petition—except that a party who has been found to be in default may not file a response to any issue as to which the party has defaulted.

(d) Grant or denial of review. (1) The Commission shall decide whether to grant, in whole or in part, a petition for review of an initial determination filed pursuant to § 210.70 within 45 days of the service of the initial determination on the parties, or by such other time as the Commission may order. The Commission shall decide whether to grant, in whole or in part, a petition for review filed pursuant to § 210.42(c) within 30 days of the service of the initial determination on the parties, or by such other time as the Commission may order.

(2) The Commission shall decide whether to grant a petition for review, based upon an initial determination or response thereto, without oral argument or further written submissions unless the Commission shall order otherwise. A petition will be granted and review will be ordered if it appears that an error or abuse of the type described in paragraph (b) of this section is present or if the petition raises a policy matter connected with the initial determination, which the Commission thinks is necessary or appropriate to address.

The Commission shall grant a petition for review and order review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review. In its notice, the Commission shall establish the scope of the review and the issues that will be considered and make provisions for filing of briefs and oral argument if deemed appropriate by the Commission. The notice that the Commission has granted the petition for review shall be served by the Secretary on all parties, the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other departments and agencies as the Commission deems appropriate.

§ 210.45 Review of initial determinations on matters other than temporary or permanent relief.

(a) Briefs and oral argument. In the event the Commission orders review of an initial determination pertaining to issues other than temporary or permanent relief, the parties may be requested to file briefs on the issues under review at a time and of a size and nature specified in the notice of review. The parties, within the time provided for filing the review briefs, may submit a written request for a hearing to present oral argument before the Commission, which the Commission in its discretion may grant or deny. The Commission shall grant the request when at least one of the participating Commissioners votes in favor of granting the request.

(b) Scope of review. Only the issues set forth in the notice of review, and all subsidiary issues therein, will be considered by the Commission.

(c) Determination on review. On review, the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge. The Commission may also make any findings or conclusions that in its judgment are proper based on the record in the proceeding.

§ 210.46 Petitions for and sua sponte review of initial determinations and permanent or temporary relief.

(a) Permanent relief. Except as provided elsewhere in this section, any party to an investigation may request Commission review of an initial determination issued under § 210.42(a)(1)(i) by filing a petition with the Secretary subject to the following conditions:

(1) Notice requirement. A party who intends to seek review of the initial determination must file with the Secretary and serve on all other parties, within 10 days after issuance of the initial determination, notice of the party's intent to seek such review. The issues as to which the party intends to seek review must be articulated in the notice with specificity. The notice also must cite the specific grounds upon which review of each issue is sought, in accordance with § 210.43(b). Only parties who file notices of intent to seek review are permitted to file petitions for review. The petitions of those parties may not include any issue that was not articulated with specificity in the party's notice of intent to seek review. A party also may not petition for review of any issue as to which the party has been found to be in default.

(2) The petition. The petition for review must be filed within 15 days after issuance of the initial determination and must comply with the standards articulated in § 210.43(b). Any issue not raised in the petition for review, however, of any issue as to which the party has been found to be in default.

(3) Grant or denial of review. (1) The Commission shall decide whether to grant, in whole or in part, a petition for review of an initial determination filed pursuant to § 210.70 within 45 days of the service of the initial determination on the parties, or by such other time as the Commission may order. The Commission shall decide whether to grant, in whole or in part, a petition for review filed pursuant to § 210.42(c) within 30 days of the service of the initial determination on the parties, or by such other time as the Commission may order.

(2) The Commission shall decide whether to grant a petition for review, based upon an initial determination or response thereto, without oral argument or further written submissions unless the Commission shall order otherwise. A petition will be granted and review will be ordered if it appears that an error or abuse of the type described in paragraph (b) of this section is present or if the petition raises a policy matter connected with the initial determination, which the Commission thinks is necessary or appropriate to address.

The Commission shall grant a petition for review and order review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review. In its notice, the Commission shall establish the scope of the review and the issues that will be considered and make provisions for filing of briefs and oral argument if deemed appropriate by the Commission. The notice that the Commission has granted the petition for review shall be served by the Secretary on all parties, the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other departments and agencies as the Commission deems appropriate.
review will be deemed to have been abandoned and may be disregarded by the Commission in reviewing an initial determination.

(3) Responses to the petition. Each party may file a response to a petition for review under this section within 25 days after issuance of the initial determination—except that a party who has been found to be default or by overnight delivery, if the party has defaulted.

(4) Reply submissions. Each party that filed a petition for review under this section may file a reply to each other party’s response to the petition, within 30 days after issuance of the initial determination.

(5) Additional submissions. After the reply submissions have been filed pursuant to paragraph (a)(4) of this section, the Commission will issue a notice setting deadlines for written submissions from the parties, other federal agencies, and interested members of the public on the issues of remedy, the public interest, and bonding by the respondents. The notice also may require the parties to file briefs on issues chosen by the Commission.

(6) Sua sponte review. The Commission shall order review on its own initiative when at least one of the participating Commissioners votes in favor of doing so.

(7) Commission action on the initial determination. On or before the deadline prescribed in §210.51(a) of this part for concluding the investigation, the Commission will issue a notice stating whether the Commission has affirmed, modified, reversed, or set aside the initial determination in whole or in part. The notice will also state the Commission’s determinations on the issues of remedy, the public interest, and bonding.

(8) Service. The notice, petition for review, responses, reply submissions, and any supplemental briefs filed under this section by a party must be served on the other parties by hand-delivery within standard business hours, if the party being served is not represented by local counsel, or by overnight delivery, if the party being served is not represented by local counsel.

(b) Temporary relief. Commission action on an initial determination concerning temporary relief is governed by the provisions of §210.66.

§210.47 Petitions for reconsideration.

Within 14 days after service of a Commission determination, any party may file with the Commission a petition for reconsideration of such determination or any action ordered to be taken thereunder, setting forth the relief desired and the grounds in support thereof. Any petition filed under this section must be confined to new questions raised by the determination or action ordered to be taken thereunder and upon which the petitioner had no opportunity to submit arguments. Any party desiring to oppose such a petition shall file an answer thereto within five days after service of the petition upon such party. The filing of a petition for reconsideration shall not stay the effective date of the determination or action ordered to be taken thereunder or toll the running of any statutory time period affecting such determination or action ordered to be taken thereunder unless specifically so ordered by the Commission.

§210.49 Implementation of Commission action.

(a) Service of Commission determination upon the parties. A Commission determination pursuant to §210.45(c) or a termination on the basis of a license or other agreement or a consent order pursuant to §210.21(b) or (c) respectively, shall be served upon each party to the investigation.

(b) Service of Commission determination upon the President. A Commission determination that there is a violation of section 337 of the Tariff Act of 1930 or that there is reason to believe that there is such a violation, together with the action taken relative to such determination, or Commission action taken pursuant to subpart 1 of this chapter, shall promptly be published in the Federal Register and transmitted to the President, together with the record upon which the determination and the action are based.

(c) Enforceability of Commission action. Unless otherwise specified, any Commission action other than an exclusion order or an order directing seizure and forfeiture of articles imported in violation of an outstanding exclusion order shall be enforceable upon receipt by the affected party of notice of such action. Exclusion orders and seizure and forfeiture orders shall be enforceable upon receipt of notice thereof by the Secretary of the Treasury.

(d) Finality of affirmative Commission action. If the President does not disapprove the Commission’s action within a 60-day period beginning the day after a copy of the Commission’s action is delivered to the President, or if the President notifies the Commission before the close of the 60-day period that he approves the Commission’s action, such action shall become final the day after the close of the 60-day period or the day the President notifies the Commission of his approval, as the case may be.

(9) The notice, petition for reconsideration.

(10) Finality of affirmative Commission action. If the President does not disapprove the Commission’s action, it shall become final the day after the close of the 60-day period or the day the President notifies the Commission of his approval, as the case may be.

§210.50 Commission action, public interest, and bonding.

(a) During the course of each investigation under this part, the Commission shall—(1) Consider what action (general or limited exclusion of articles from entry or a cease and desist order, or exclusion of articles from entry under bond or a temporary cease and desist order), if any, it should take, and, when appropriate, take such action;

(b) When investigating and information from the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other departments and agencies as it considers appropriate, concerning the subject matter of the complaint and the effect its actions (general or limited exclusion of articles from entry or a cease and desist order, or exclusion of articles from entry under bond or a temporary cease and desist order) under section 337 of the Tariff Act of 1930 shall have upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers;

(3) Determine the amount of the bond to be posted by a respondent pursuant to section 337(j) of the Tariff Act of 1930 following the issuance of temporary or permanent relief under section 337(d), (e), (f), or (g), of the Tariff Act taking into account, among other things, the amount that would offset any competitive advantage to the respondent resulting from its alleged unfair methods of competition and unfair acts in the importation or sale of the articles in question.

(4) Receive submissions from the parties, interested persons, and other Government agencies and departments with respect to the subject matter of paragraphs (a)(1), (a)(2), and (e)(3), of this section.

When the matter under consideration pursuant to paragraph (a)(1) of this section is whether to grant some form of permanent relief, the submissions
competitive articles in the United States, and U.S. consumers.

§ 210.51 Period for concluding an investigation.
(a) Permanent relief. The permanent relief phase of each investigation instituted under this part shall be concluded and a final order issued no later than 12 months after the date of publication in the Federal Register of the notice instituting the investigation, unless the investigation has been designated "more complicated" pursuant to § 210.22(b) of this part. If that designation has been made, the deadline for concluding the investigation is 18 months after the publication of the notice of investigation.
(b) Temporary relief. The temporary relief phase of an investigation shall be concluded and a final order issued no later than 90 days after publication of the notice of investigation in the Federal Register, unless the investigation has been designated "more complicated" by the Commission or the presiding administrative law judge pursuant to § 210.22(c) or 210.60. If that designation has been made, the temporary relief phase of the investigation shall be concluded and a final order issued no later than 180 days after publication of the notice of investigation in the Federal Register.
(c) Computation of time. In computing the deadlines imposed in paragraphs (a) and (b) of this section, there shall be excluded any period during which the investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.

Subpart H—Temporary Relief
§ 210.52 Motion for temporary relief.
Requests for temporary relief under section 337(e) or (f) of the Tariff Act of 1930 shall be made through a motion filed in accordance with the following provisions.
(a) A complaint requesting temporary relief shall be accompanied by a motion setting forth the complainant's request for such relief. In determining whether to grant temporary relief, the Commission will apply the standards of the U.S. Court of Appeals for the Federal Circuit uses in determining whether to affirm lower court decisions granting preliminary injunctions. The motion for temporary relief accordingly must contain a detailed statement of specific facts bearing on the factors the Federal Circuit would consider.
(b) The motion must also contain a detailed statement of facts bearing on:
(1) Whether the complainant should be required to post a bond as a prerequisite to the issuance of temporary relief; and
(2) The appropriate amount of the bond, if the Commission determines that a bond will be required.
(c) The factors the Commission will consider in determining whether to require a bond as a prerequisite to the issuance of temporary relief include the following:
(1) The strength of the complainant's case;
(2) Whether posting a bond would impose an undue hardship on the complainant;
(3) Whether the respondent has responded to the motion for temporary relief (in the time and manner specified in § 210.59 of this part or by order of the Commission or the administrative law judge);
(4) Whether the respondent will be harmed by issuance of the temporary relief sought by the complainant;
(5) Any other legal, equitable, or public interest consideration that is relevant to whether the complainant should be required to post a bond as a condition precedent to obtaining temporary relief, including whether the complainant is likely to use the temporary relief proceedings or the temporary relief order to harass the respondents or form some other improper purpose.
No single factor will be determinative. The Commission's general policy is to favor the posting of a bond in every case. Therefore, a complainant who believes that a bond should not be required has the burden of persuading the Commission.
(d) The following documents and information also shall be filed along with the motion for temporary relief:
(1) A memorandum of points and authorities in support of the motion;
(2) Affidavits executed by persons with knowledge of the facts asserted in the motion; and
(3) All documents, information, and other evidence in complainant's possession that complainant intends to submit in support of the motion.
(e) The complainant must also provide information and documents that will assist the presiding administrative law judge and the Commission in computing the amount of the bond, if a bond is to be required. (A complainant also may file, if it chooses, a draft of the bond it expects to submit if a bond is to be required.) In cases where a domestic industry exists and domestic sales of the product in question have commenced
and have not been de minimus, the amount of the bond is likely to be the amount indicated on the following schedule based on the sales revenues from the domestic product at issue—and, if applicable, licensing royalties from the intellectual property right at issue—as reflected in the complainant's audited annual financial statements for the most recent fiscal year:

<table>
<thead>
<tr>
<th>Complainant's sales and licensing revenues</th>
<th>Bond amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $1 million</td>
<td>$10,000</td>
</tr>
<tr>
<td>Greater than $1 million but not more than $10 million</td>
<td>$100,000</td>
</tr>
<tr>
<td>Greater than $10 million but not more than $50 million</td>
<td>$250,000</td>
</tr>
<tr>
<td>Greater than $50 million but not more than $100 million</td>
<td>$500,000</td>
</tr>
<tr>
<td>Greater than $100 million</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

In cases in which the above schedule applies, the complainant must provide the following documents:

1. The audited financial statements (or the equivalent thereof, if audited statements do not exist) for the most recently completed fiscal year;
2. The back-up income statements, work sheets, or other documents showing revenues for the domestic product at issue in the investigation, which are tied to the aggregate revenue listed on the financial statements; and
3. A certification under oath by the complainant's chief financial officer indicating that the detail provided in the work sheets or other documents tied to the audited financial statements is correct.

The Commission retains the option to require bonds in higher or lower amounts than prescribed under the aforesaid schedule in exceptional cases. In cases in which the aforesaid schedule would not be appropriate, the amount of the bond will be determined on a case-by-case basis. In such cases, the motion for temporary relief should state why the prescribed schedule is not appropriate (with supporting documentation where appropriate). The motion should also state the theory the complainant believes is appropriate for computing the amount of the bond (if the Commission determines to require a bond) and should provide supporting financial and economic data with certification under oath executed by the complainant's chief financial officer attesting to the veracity of the data provided. All complainants who are seeking temporary relief (including complainants who have provided the audited financial statements and back up data listed above in paragraphs (e) (1) and (2) of this section) must be prepared to provide upon short notice any additional financial or economic data requested by the presiding administrative law judge in connection with the issue of bonding and the certification under oath by the complainant's chief financial officer that the information submitted is correct.

(f) If the complaint, the motion for temporary relief, and the supporting documentation contain confidential business information as defined in §201.6(e) of this chapter, the complainant must follow the procedure outlined in §§210.5(a), 201.6(a) and (c), and 210.55.

§210.53 Motions filed after complaint.
(a) A motion for temporary relief may be filed after the complaint, but must be filed prior to the Commission determination under §210.10 on whether to institute an investigation. A motion filed after the complaint shall contain the information, documents, and evidence described in §210.52 of this part and must also make a showing that extraordinary circumstances exist that warrant temporary relief and that the moving party was not aware, and with due diligence could not have been aware, of those circumstances at the time the complaint was filed. When a motion for temporary relief is filed after the complaint but before the Commission has determined whether to institute an investigation based on the complaint, the 35-day period allotted for review of the complaint and informal investigatory activity pursuant to §210.56 of this part will begin to run anew from the date on which the motion was filed.

(b) A motion for temporary relief may not be filed after an investigation has been instituted.

§210.54 Service of the motion by complainant.
Notwithstanding the provisions of §210.11 regarding service of the complaint and motion for temporary relief by the Commission upon proposed respondents and on the U.S. embassy in Washington, D.C., the complainant shall provide a nonconfidential summary of what each attachment contains. Despite the redaction of confidential material from the complaint and motion for temporary relief, the nonconfidential service copies must contain enough factual information about each element of the violation alleged in the complaint and the motion to enable each proposed respondent to comprehend the allegations against it.

(b) If the Commission determines that the complaint, motion for temporary relief, or any exhibits or attachments thereto contain excessive designations of confidentiality that are not warranted under §§210.5(a) and 201.6(a) of this chapter, the Commission may require the complainant to file and serve new nonconfidential versions of the aforesaid submissions and may determine that the 35-day period under §210.56 of this part for deciding whether to institute an investigation and to provisionally accept the motion for temporary relief for further processing shall begin to run anew from the date the new nonconfidential versions are filed with the Commission and served on the proposed respondents.

§210.55 Content of the service copies.
(a) Any purported confidential business information that is deleted from the nonconfidential service copies of the complaint and motion for temporary relief must satisfy the requirements of §201.6(e) (which defines confidential information for purposes of Commission proceedings). For attachments to the complaint or motion that are confidential in their entirety, the complainant must provide a nonconfidential summary of what each attachment contains.
accompanied by a notice containing the following text:

Notice is hereby given that the attached complaint and motion for temporary relief will be filed with the U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202-205-3356. Such inquiries will be referred to the Commission investigative attorney assigned to the complaint. (See also the Commission's Rules of Practice and Procedure set forth in 19 CFR part 210.)

To learn the date that the Commission will vote on whether to institute an investigation and the publication date of the notice of investigation (if the Commission decides to institute an investigation), contact the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, room 112, Washington, DC 20436, telephone 202-205-3356. This notice is being provided pursuant to 19 CFR 210.58.

(b) In the event that the complaint and motion for temporary relief are filed after the date specified in the above notice, the complaint may, subject to supplemental notice to all proposed respondents and embassies stating the correct filing date, be referred to the Commission investigative activity pursuant to 19 CFR 210.9 to identify sources of relevant information and to assure itself of the availability thereof. The motion for temporary relief will be examined for sufficiency and compliance with 19 CFR 201.8, 210.4, 210.5, and 210.9.

The Office of Unfair Import Investigations will conduct informal investigatory activity pursuant to 19 CFR 210.9 to identify sources of relevant information and to assure itself of the availability thereof. The motion for temporary relief will be examined for sufficiency and compliance with 19 CFR 201.8, 210.5, 210.52, 210.53(a) (if applicable), 210.54, 210.55, and 210.56, and will be subject to the same type of preliminary investigative activity as the complaint. The Commission will examine the complaint for sufficiency and compliance with 19 CFR 201.8, 210.4, 210.5, 210.52, 210.53(a) (if applicable), 210.54, 210.55, and 210.56, and will be subject to the same type of preliminary investigative activity as the complaint.

The Commission generally will determine whether to institute an investigation on the basis of the complaint and to provisionally accept the motion for temporary relief within 35 days after the complaint and motion are filed or, if the motion is filed after the complaint, within 35 days after the motion is filed—unless the 35-day deadline is extended pursuant to 19 CFR 210.54, 210.55(b), 210.57, or 210.58. If the Commission determines to institute an investigation and provisionally accept the motion, the motion will be assigned to a Commission administrative law judge for issuance of an initial determination in accordance with 19 CFR 210.56 and 210.58. See 19 CFR 210.10, 210.52, and 210.58.

If the Commission determines to conduct an investigation of the complaint and the motion for temporary relief, the investigation will be formally instituted on the date the Commission publishes a notice of investigation in the Federal Register pursuant to 19 CFR 210.10. If an investigation is instituted, copies of the complaint, the notice of investigation, the motion for temporary relief, and the Commission's Rules of Practice and Procedure (19 CFR part 210) will be served on each respondent by the Commission pursuant to 19 CFR 210.13(a).

Responses to the complaint, the notice of investigation, and the motion for temporary relief must be filed within 10 days after Commission service thereof in accordance with 19 CFR 210.4, 210.13, and 210.59. See also 19 CFR 210.14 and 210.6 regarding computation of the 10-day response period. If, after reviewing the complaint and motion for temporary relief, the Commission determines not to institute an investigation, the complaint and motion will be dismissed and the Commission will provide written notice of its decision and the reasons therefor to the complainant and all proposed respondents pursuant to 19 CFR 210.10.

For information concerning the filing and processing of the complaint and its treatment, and to ask general questions concerning section 337 practice and procedure, contact the Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401, Washington, DC 20436, telephone 202-205-3356. Such inquiries will be referred to the Commission investigative attorney assigned to the complaint. (See also the Commission's Rules of Practice and Procedure set forth in 19 CFR part 210.)

§ 210.57 Amendment of the motion.

(a) Any party may file a response to a motion for temporary relief. Unless otherwise ordered by the administrative law judge, a response to a motion for temporary relief in an ordinary investigation must be filed not later than 10 days after service of the motion by the Commission. If the response is received after the date specified in the above notice, the complaint may, subject to supplemental notice to all proposed respondents and embassies stating the correct filing date, be referred to the Commission investigative activity pursuant to 19 CFR 210.9 to identify sources of relevant information and to assure itself of the availability thereof. The motion for temporary relief will be examined for sufficiency and compliance with 19 CFR 201.8, 210.4, 210.5, and 210.59. The Commission will examine the complaint for sufficiency and compliance with 19 CFR 201.8, 210.4, 210.5, and 210.59, and will be subject to the same type of preliminary investigative activity as the complaint.

(b) The response must comply with the requirements of § 210.8 of this chapter, as well as §§ 210.4 and 210.5 of this part, and shall contain the following information:

(1) A statement that sets forth with particularity any objection to the motion for temporary relief;

(2) A statement of specific facts concerning the factors the U.S. Court of Appeals for the Federal Circuit would consider in determining whether to affirm lower court decisions granting or denying preliminary injunctions;

(3) A memorandum of points and authorities in support of the respondent's to the motion;

(4) Affidavits, where possible, executed by persons with knowledge of the facts specified in the response. Each response to the motion must address, to the extent possible, the complainant's assertions regarding whether a bond should be required and the appropriate amount of the bond. Responses to the
motion for temporary relief also may contain counter-proposals concerning the amount of the bond or the manner in which the bond amount should be calculated.

(c) Each response to the motion for temporary relief must also be accompanied by a response to the complaint and notice of investigation. Responses to the complaint and notice of investigation must comply with § 201.8 of this chapter and §§ 210.4, 210.5, and any protective order issued by the administrative law judge under § 210.34.

§ 210.60 Designating an investigation "more complicated" for the purpose of adjudicating a motion for temporary relief.

At the time the Commission determines to institute an investigation and provisionally accepts a motion for temporary relief pursuant to § 210.58 of this part, the Commission may designate the investigation "more complicated" pursuant to § 210.22(c) for the purpose of obtaining up to 60 additional days to adjudicate the motion for temporary relief. In the alternative, after the motion for temporary relief is referred to the administrative law judge for an initial determination under §§ 210.56 and 210.66 of this part, the administrative law judge may issue an order, sua sponte or on motion, designating the investigation "more complicated" for the purpose of obtaining additional time to adjudicate the motion for temporary relief. Such order shall constitute a final determination of the Commission, and notice of the order shall be published in the Federal Register. The "more complicated" designation may be conferred by the Commission or the presiding administrative law judge pursuant to this paragraph on the basis of the complexity of the issues raised in the motion for temporary relief or the responses thereto, or for other good cause shown.

§ 210.61 Discovery and compulsory process.

The presiding administrative law judge shall set all discovery deadlines. The administrative law judge's authority to compel discovery includes discovery relating to the following issues:

(a) Any matter relevant to the motion for temporary relief and the responses thereto, including the issues of bonding by the complainant; and

(b) The issues the Commission considers pursuant to sections 337(e)(1), (f)(1), and (j)(3) of the Tariff Act of 1930, viz:

(1) The appropriate form of relief (notwithstanding the form requested in the motion for temporary relief),

(2) Whether the public interest precludes that form of relief, and

(3) The amount of the bond to be posted by the respondents to secure importations or sales of the subject imported merchandise while the temporary relief order is in effect. The administrative law judge may, but is not required to, make findings on the issues specified in sections 337(e)(1), (f)(1), or (j)(3) of the Tariff Act of 1930. Evidence and information obtained through discovery on those issues will be used by the parties and considered by the Commission in the context of the parties' written submissions on remedy, the public interest, and bonding by respondents, which are filed with the Commission pursuant to § 210.67 of this part.

§ 210.62 Evidentiary hearing.

An opportunity for a hearing in accordance with the Administrative Procedure Act and § 210.36 of this part will be provided in connection with every motion for temporary relief. If a hearing is conducted, the presiding administrative law judge may, but is not required to, take evidence concerning the issues of remedy, the public interest, and bonding by respondents under section 337(e)(1), (f)(1), and (j)(3) of the Tariff Act of 1930.

§ 210.63 Proposed findings and conclusions and briefs.

The administrative law judge shall determine whether and, if so, to what extent the parties shall be permitted to file proposed findings of fact, proposed conclusions of law, or briefs under § 210.40 concerning the issues involved in adjudication of the motion for temporary relief.

§ 210.64 Interlocutory appeals.

There will be no interlocutory appeals to the Commission (under § 210.24 of this part) on any matter connected with a motion for temporary relief that is decided by an administrative law judge prior to the issuance of the initial determination on the motion for temporary relief.

§ 210.65 Certification of the record.

When the administrative law judge issues an initial determination concerning temporary relief pursuant to § 210.66, he shall also certify to the Commission the record upon which the initial determination is based.

§ 210.66 Initial determination concerning temporary relief and Commission action thereon.

(a) On or before the 70th day after publication of the notice of investigation in an ordinary investigation, or on or before the 120th day after such publication in a "more complicated" investigation, the administrative law judge will issue an initial determination concerning the issues listed in §§ 210.52 and 210.59 of this part. If the 70th day or the 120th day is a Saturday, Sunday, or Federal holiday, the initial determination must be received in the Office of the Secretary no later than 12:00 noon on the first business day after the 70th or 120th day deadline.

The initial determination may, but is not required to, address the issues of remedy, the public interest, and bonding by the respondents pursuant under sections 337(e)(2), (f)(2), and (j)(3) of the Tariff Act of 1930 and § 210.50(a)(1) through (3) of this part.

(b) If the initial determination on temporary relief is issued on the 70th or 120th day deadline imposed in paragraph (a) of this section, the initial determination will become the Commission's determination 20 calendar days after issuance thereof in an ordinary case, and 30 calendar days after issuance in a "more complicated" investigation, unless the Commission modifies, reverses, or sets aside the initial determination in whole or part within that period. But if the initial determination on temporary relief is issued before the 70th or 120th day deadline imposed in paragraph (a) of this section, the Commission will add the extra time to the 20-day or 30-day deadline to which it would otherwise have been held. In computing the deadlines imposed by this paragraph, intermediary Saturdays, Sundays, and Federal holidays shall be included. If the last day of the period is a Saturday, Sunday, or Federal holiday as defined in § 201.14(a) of this chapter, the effective date of the initial determination shall be extended to the next business day.

(c) The Commission will not modify, reverse, or set aside an initial determination concerning temporary relief unless the Commission finds that a finding of material fact is clearly erroneous, that the initial determination contains an error of law, or that there is a policy matter warranting discussion by the Commission. All parties may file written comments concerning any clear error of material fact, error of law, or policy matter warranting such action by the Commission. Such comments must be limited to 35 pages in an ordinary investigation and 45 pages in a "more complicated" investigation. The comments must be filed no later than seven calendar days after issuance of the initial determination in an ordinary case and 10 calendar days after issuance of the initial determination in a
more complicated" investigation. In computing the aforesaid 7-day and 10- day deadlines, intermediary Saturdays, Sundays, and Federal holidays shall be included. If the initial determination is issued on a Friday, however, the filing deadline for comments shall be extended from the first business day after issuance. If the last day of the filing period is a Saturday, Sunday, or Federal holiday as defined in §201.14(a) of this chapter, the filing deadline shall be extended to the next business day. The parties shall serve their comments on other parties by messenger, courier, express mail, or equivalent means.

(d) Nonconfidential copies of the initial determination also will be served on other agencies listed in §210.50(a)(2) of this part. Those agencies will be given 10 calendar days to file comments on the initial determination.

(e)(1) Each party may file a response to each set of comments filed by another party. All such reply comments must be filed within 10 calendar days after issuance of the initial determination in an ordinary case and with in 14 calendar days after issuance of the initial determination in an ordinary case and within 14 calendar days after issuance of an initial determination in a "more complicated" investigation. The deadlines for filing reply comments shall be computed in the manner described in paragraph (c) of this section, except that in no case shall a party have less than two calendar days to file reply comments.

(2) Each set of reply comments will be limited to 20 pages in an ordinary investigation and 30 pages in a "more complicated" case.

(f) If the Commission determines to modify, reverse, or set aside the initial determination, the Commission will issue a notice and a determination in accordance with §210.66. If the Commission determines that a bond should be posted, or the Commission determines that the parties' merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission.

The Commission may issue a supplemental notice setting forth conditions for the bond if any (in addition to those outlined in the initial determination) and the deadline for filing the bond with the Commission.

§210.67 Remedy, the public interest, and bonding by respondents.

The procedure for arriving at the Commission's determination of the issues of the appropriate form of temporary relief, whether the public interest factors enumerated in the statute preclude such relief, and the amount of the bond under which respondents' merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission, is as follows:

(a) While the motion for temporary relief is before the administrative law judge, he may compel discovery on matters relating to remedy, the public interest, and bonding by respondents (as provided in §210.61 of this part). The administrative law judge also is authorized to make findings pertaining to the public interest, as provided in §210.06 of this part. Such findings may be superseded, however, by Commission findings on that issue as provided in paragraph (c) of this section.

(b) On the 60th day after institution in an ordinary case or on the 110th day after institution in a "more complicated" investigation, all parties shall file written submissions with the Commission addressing those issues. The submissions shall refer to information and evidence already on the record, but additional information and evidence germane to the issues of appropriate relief, the statutory public interest factors, and bonding by respondents may also be filed along with the parties' submissions. Pursuant to §210.50(a)(4) of this part, interested persons may also file written comments, on the aforesaid dates, concerning the issues of remedy, the public interest, and bonding by the respondents.

(c) On or before the 90-day or 150-day statutory deadline for determining whether to order temporary relief under section 337(b) of the Tariff Act of 1930, the Commission will determine what relief is appropriate in light of any violation that appears to exist, whether the public interest factors enumerated in the statute preclude the issuance of such relief, and the amount of the bond under which the respondents' merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission.

In the event that the Commission's findings on the public interest pursuant to this paragraph are inconsistent with findings made by the administrative law judge in the initial determination pursuant to §210.68 of this part, the Commission's findings are controlling.

§210.68 Complainant's temporary relief bond.

(a) In every investigation under this part involving a motion for temporary relief, the question of whether the complainant shall be required to post a bond as a prerequisite to the issuance of such relief shall be addressed by the presiding administrative law judge and the Commission in the manner described in §210.52, 210.59, 210.61, 210.62, and 210.66. If the Commission determines that a bond should be required, the bond may consist of one or more of the following:

(1) The surety bond of a surety or guarantee corporation that is licensed to do business with the United States in accordance with 31 U.S.C. 9304-9306 and 31 CFR parts 223 and 224.

(2) The surety bond of an individual, a trust, an estate, or a partnership, or a corporation pursuant to 31 U.S.C. 9301 and 9303(c), whose advance and financial responsibility will be investigated and verified by the Commission.

(3) A certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation within the meaning of 31 U.S.C. 9301 and 31 CFR part 225, which are owned by the complainant and tendered in lieu of a surety bond pursuant to 31 U.S.C. 9301(c) and 31 CFR part 225.

The same restrictions and requirements applicable to individual and corporate sureties on Customs bonds, which are set forth in 19 CFR part 123, shall apply with respect to sureties on bonds filed with the Commission by complainants as a prerequisite to a temporary relief order issued under section 337 of the Tariff Act of 1930. If the surety is an individual, the individual must file an affidavit of the type shown in Appendix A to §210.68. Unless otherwise ordered by the Commission, while the bond of the individual surety is in effect, an updated affidavit must be filed every four months (computed from the date on which the bond was approved by the Secretary or the Commission).

(b) The bond and accompanying documentation must be submitted to the Commission within the time specified in the Commission notice, order, determination or opinion requiring the posting of a bond, or within such other time as the Commission may order. If
the bond is not submitted within the specified period (and an extension of time has not been granted), temporary relief will not be issued.

(c) The corporate or individual surety on a bond or the person posting a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation in lieu of a surety bond must provide the following information on the face of the bond or in the instrument authorizing the Government to collect or sell the bond, certified check, bank draft, post office money order, cash, United States bond, Treasury note, or other Government obligation in response to a Commission order requiring forfeiture of the bond pursuant to paragraph (c) of this section:

(1) The investigation caption and docket number;

(2) The names, addresses, and seals (if applicable) of the principal, the surety, the obligee, as well as the “attorney in fact” and the registered process agent (if applicable) (see Customs Service regulations 19 CFR part 113 and Treasury Department regulations in 31 CFR parts 223, 224, and 225);

(3) The terms and conditions of the bond obligation, including the reason the bond is being posted, the amount of the bond, the effective date and duration of the bond (as prescribed by the Commission order, notice, determination, or opinion requiring the complainant to post a bond); and

(4) A section at the bottom of the bond or other instrument for the date and authorized signature of the Secretary to reflect Commission approval of the bond.

(d) Complainants who wish to post a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation in lieu of a surety bond must notify the Commission in writing immediately upon receipt of the Commission document requiring the posting of a bond, and must contact the Secretary to make arrangements for Commission receipt, handling, management, and deposit of the certified check, bank draft, post office money order, or cash in accordance with 31 U.S.C. 9303, 31 CFR parts 202, 206, 225, and 240 and other governing Treasury regulations and circular(s). If required by the governing Treasury regulations and circular, a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other government obligation tendered in lieu of a surety bond may have to be collateralized. See, e.g., 31 CFR 202.8 and the appropriate Treasury Circular.

Appendix A to § 210.68 Affidavit by Individual Surety

United States International Trade Commission Affidavit by Individual Surety 19 CFR 210.68

State of ____________________________

County ____________________________

SS: ______________________________________

1. The undersigned, being duly sworn, do deprecate and say that I am a citizen of the United States, and of full age and legally competent; that I am not a partner in any business of the principal on the bond or bonds on which I appear as surety; that the information herein below furnished is true and complete to the best of my knowledge.

2. The affidavit is made to induce the United States International Trade Commission to accept me as surety on the bond(s) filed or to be filed with the United States International Trade Commission pursuant to 19 CFR 210.58. I agree to notify the Commission of any transfer or change in any of the assets herein enumerated.

1. NAME (First, Middle, Last)

2. Home Address

3. Type and Duration of Occupation

4. Name of Employer (If Self-Employed, So State)

5. Business Address

6. Telephone No.

7. Following is a true representation of the assets, liabilities, and net worth and does not include any financial interest I have in the assets of the principal on the bond(s) on which I appear as surety.

a. Fair value of solely owned real estate*

b. All mortgages or other encumbrances on the real estate included in Line a

c. Real estate equity (subtract Line b from Line a)

d. Fair value of all solely owned property other than real estate

e. Total of the amounts on lines c and d

f. All other liabilities owing or incurred but not included in Line b

g. Net worth (subtract Line b from Line e)

*Do not include property exempt from execution and sale for any reason. Surety’s interest in community property may be included if not so exempt.

8. Location and Description of Real Estate of Which I am Sole Owner, the Value of Which Is Included in Line (a), Item 7 Above

9. Description of Property Included in Line (d), Item 7 Above (List the value of each category of property separately)

10. All Other Bonds on Which I am Surety (State character and amount of each bond; if none, so state)

11. Signature

12. Bond and Commission Investigation to Which This Affidavit Relates

Subscribed and Sworn to Before me as

Date Oath Administered

City State (Or Other Jurisdiction)

Name & Title of Official Administering Oath

Signature

My Commission Expires

Instructions

1. Here describe the property by giving the number of the lot and square or block, and addition or subdivision, if in a city, and, if in the country after showing state, county, and township, locate the property by metes and bounds, or by part of section, township, and range, so that it may be identified.

2. Here describe the property by name so that it can be identified—for example “Fifteen shares of the stock of the National Metropolitan Bank, New York City,” or “Am. T. & T. s. f. 5’s 60”.

3. Here state what other bonds the affiant has already signed as surety, giving the name and address of the principal, the date, and the amount and character of the bond.

§ 210.69 Approval of complainant’s temporary relief bond.

(a) In accordance with 31 U.S.C. 9304(b), all bonds posted by complainants must be approved by the Commission before the temporary relief sought by the complainant will be issued. See 31 U.S.C. 9303(a) and 9304(b) and 31 CFR 225.1 and 225.20. The Commission’s “bond approval officer” within the meaning of 31 CFR 225.1 and 225.20 shall be the Secretary.
§ 210.7 Information gathering.

(a) Power to require information.

(1) The Commission may require any person or agency to supply any information that the Commission determines in response to the request that the information is relevant to an investigation or legal proceeding and necessary to determine whether and to what extent the Commission should take any action.

(b) The Commission may require any person or agency to supply any information that the Commission determines in response to the request that the information is relevant to an investigation or legal proceeding and necessary to determine whether and to what extent the Commission should take any action.

(c) The Commission may require any person or agency to supply any information that the Commission determines in response to the request that the information is relevant to an investigation or legal proceeding and necessary to determine whether and to what extent the Commission should take any action.

(d) A person or agency that fails to comply with a request for information may be held in contempt of court.

§ 210.8 Enforcement.

(a) The Commission may bring an action in accordance with the governing statute, or (b) if the action is brought by the Secretary, at the request of the Commission, the Secretary may bring an action in accordance with the governing statute.

(b) The Secretary may bring an action in accordance with the governing statute, or (c) if the action is brought by the Secretary, at the request of the Commission, the Secretary may bring an action in accordance with the governing statute.

(c) The Secretary may bring an action in accordance with the governing statute, or (d) if the action is brought by the Secretary, at the request of the Commission, the Secretary may bring an action in accordance with the governing statute.

(d) The Secretary may bring an action in accordance with the governing statute, or (e) if the action is brought by the Secretary, at the request of the Commission, the Secretary may bring an action in accordance with the governing statute.

§ 210.9 Remedial actions.

(a) The Commission may, in its discretion, institute a remedial action to restrain or prevent a violation of the Act.

(b) The Commission may, in its discretion, institute a remedial action to restrain or prevent a violation of the Act.

(c) The Commission may, in its discretion, institute a remedial action to restrain or prevent a violation of the Act.

(d) The Commission may, in its discretion, institute a remedial action to restrain or prevent a violation of the Act.

(e) The Commission may, in its discretion, institute a remedial action to restrain or prevent a violation of the Act.
to be in writing, under oath, and in such detail and in such form as the Commission prescribes.

(c) Power to enforce informational requirements. Terms and conditions of exclusion orders, cease and desist orders, and consent orders for reporting and information gathering shall be enforceable by the Commission by a civil action under 49 U.S.C. 1339, or, at the Commission’s discretion, in the same manner as any other provision of the exclusion order, cease and desist order, or consent order is enforced.

(d) Term of reporting requirement. An exclusion order, cease and desist order, or consent order may provide for the frequency of reporting or information gathering and the date on which these activities are to terminate. If no date for termination is provided, reporting and information gathering shall terminate when the exclusion order, cease and desist order, or consent order is terminated.

§ 210.72 Confidentiality of information.
Confidential information (as defined in § 201.6 of this chapter) that is provided to the Commission pursuant to an exclusion order, cease and desist order, or consent order will be received by the Commission in confidence. Requests for confidential treatment shall comply with § 201.6 of this chapter. The restrictions on disclosure and the procedures for handling such information (which are set out in §§ 210.5 and 210.39 of this chapter) shall apply and, in a proceeding under §§ 210.75 or 210.76, the Commission or the presiding administrative law judge may, upon motion or sua sponte, issue or continue appropriate protective orders.

§ 210.73 Review of reports.
(a) Review to insure compliance. The Commission, through the Office of Unfair Import Investigations, will review reports submitted pursuant to any exclusion order, cease and desist order, or consent order and conduct such further investigation as it deems necessary to insure compliance with its orders.

(b) Extension of time. The Director of the Office of Unfair Import Investigations may, for good cause shown, extend the time in which reports required by exclusion orders, cease and desist orders, and consent orders may be filed. An extension of time within which a report may be filed, or the filing of a report that does not evidence full compliance with the order, does not in any circumstances suspend or relieve a respondent from its obligation under the law with respect to compliance with such order.

§ 210.74 Modification of reporting requirements.
(a) Exclusion and cease and desist orders. The Commission may modify reporting requirements of exclusion and cease and desist orders as necessary:
(1) To assure compliance with an outstanding exclusion order or cease and desist order;
(2) To take account of changed circumstances; or
(3) To minimize the burden of reporting or informational access.
An order to modify reporting requirements shall identify the reports involved and state the reason or reasons for modification. No reporting requirement will be suspended during the pendency of such a modification unless the Commission so orders. The Commission may, if the public interest warrants, announce that a modification of reporting is under consideration and ask for comment, but it may also modify any reporting requirement at any time without notice, consistent with the standards of this section.

(b) Consent orders. Consistent with the standards set forth in paragraph (a) of this section, the Commission may modify reporting requirements of consent orders. The Commission shall publish a notice of any proposed change in the Federal Register, together with the reporting requirements to be modified and the reasons therefor, and serve notice on each party subject to the consent order. Such parties shall be given the opportunity to submit briefs to the Commission, and the Commission may hold a hearing on the matter.

§ 210.75 Proceedings to enforce exclusion orders, cease and desist orders, consent orders, and other Commission orders.
(a) Informal enforcement proceedings. Informal enforcement proceedings may be conducted by the Commission, through the Office of Unfair Import Investigations, with respect to any act or omission by any person in possible violation of any provision of an exclusion order, cease and desist order, or consent order. Such matters may be handled by the Commission through correspondence or conference or in any other way that the Commission deems appropriate. The Commission may issue such orders as it deems appropriate to implement and insure compliance with the terms of an exclusion order, cease and desist order, or consent order, or any part thereof. Any matter not disposed of informally may be made the subject of a formal proceeding pursuant to this subpart.

(b) Formal enforcement proceedings. (1) The Commission may institute an enforcement proceeding at the Commission level upon the filing by the complainant in the original investigation or his successor in interest, by the Office of Unfair Import Investigations, or by the Commission of a complaint setting forth alleged violations of any exclusion order, cease and desist order, or consent order. If a proceeding is instituted, the complaint shall be served upon the alleged violator and a notice of institution published in the Federal Register. Within 15 days after the date of service of such a complaint, the named respondent shall file a response to it. Responses shall fully advise the Commission as to the nature of any defense and shall admit or deny each allegation of the complaint specifically and in detail unless the respondent is without knowledge, in which case its answer shall state the facts as to which it has knowledge. Allegations of fact not denied or controverted may be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered.

(2) Upon the failure of a respondent to file and serve a response within the time and in the manner prescribed herein the Commission, in its discretion, may find the facts alleged in the complaint to be true and take such action as may be appropriate without notice or hearing.

(3) The Commission, in the course of a formal enforcement proceeding under paragraph (b) of this section may hold a public hearing and afford the parties to the enforcement proceeding the opportunity to appear and be heard. The hearing provided for under paragraph (b) of this section is not subject to sections 554, 555, 556, 557, and 702 of title 5 of the United States Code. The Commission may delegate any hearing under paragraph (b) of this section to the chief administrative law judge for designation of a presiding administrative law judge, who shall certify an initial determination to the Commission. That initial determination shall become the determination of the Commission 90 days after the date of service of the initial determination, unless the Commission, within 90 days after the date of such service shall have ordered review of the initial determination on certain issues therein, or by order shall have changed the
effective date of the initial determination.

(4) Upon conclusion of an enforcement proceeding under paragraph (b) of this section, the Commission may:

(1) Modify a cease and desist order, consent order, and/or exclusion order in any manner necessary to prevent the unfair practices that were originally the basis for issuing such order;

(2) Bring civil actions in a United States district court pursuant to paragraph (c) of this section (and section 337(f) of the Tariff Act of 1930) requesting the imposition of a civil penalty or the issuance of injunctions incorporating the relief sought by the Commission;

(3) Revoke the cease and desist order or consent order and direct that the articles concerned be excluded from entry into the United States.

(5) Prior to effecting any modification, revocation, or rescission of an exclusion order under paragraph (b) of this section, the Commission shall consider the effect of such action upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

(b) Prior to taking any action under this section, the Commission shall consider the effect of such action upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers. The Commission shall, if it has not already done so, institute a formal enforcement proceeding under §210.75(b) at the time of taking action under this section or as soon as possible thereafter, in order to give the alleged violator and other interested parties a full opportunity to present information and views regarding the continuation, modification, or revocation of Commission action taken under this section.

§210.78 Notice of enforcement action to Government agencies.

(a) Consultation. The Commission may consult with or seek information from any Government agency when taking any action under this subpart.

(b) Notification of Treasury. The Commission shall notify the Secretary of the Treasury of any action taken under this subpart that results in a permanent or temporary exclusion of articles from entry, or the revocation of an order to such effect, or the issuance of an order compelling seizure and forfeiture of imported articles.

§210.79 Advisory opinions.

(a) Advisory opinions. Upon request of any person, the Commission may, upon such investigation as it deems necessary, issue an advisory opinion as to whether the person's proposed course of action or conduct would violate a Commission exclusion order, cease and desist order, or consent order.
Commission will consider whether the issuance of such an advisory opinion would facilitate the enforcement of section 337 of the Tariff Act of 1930, would be in the public interest, and would benefit consumers and competitive conditions in the United States, and whether the person has a compelling business need for the advice and has framed his request as fully and accurately as possible. Advisory opinion proceedings are not subject to sections 554, 555, 556, 557, and 702 of title 5 of the United States Code.

(b) Revocation. The Commission may at any time reconsider any advice given under this section and, where the public interest requires, revoke its prior advice. In such event the person will be given notice of the Commission's intent to revoke as well as an opportunity to submit its views to the Commission. The Commission will not proceed against a person for violation of an exclusion order, cease and desist order, or consent order with respect to any action that was taken in good faith reliance upon the Commission's advice under this section, if all relevant facts were accurately presented to the Commission and such action was promptly discontinued upon notification of revocation of the Commission's advice.

PART 211—[REMOVED]

By Order of the Commission.
Paul R. Bardos,
Acting Secretary.
[FR Doc. 92-26604 Filed 11-4-92; 8:45 am]
Part III

Office of Management and Budget

Proposed Revision to OMB Circular No. A-129; Notice
Eliminating duplication and overlap. In "Tax Receivables," with Incorporation guaranteed loan program. The Circular guaranteed loan programs. The percent reduction compared to the three programs and non-tax receivables by planning and managing Federal credit documents streamlines guidance for the broader scope of the Reform Act of 1990, and OMB Bulletin No. A-70, "Policies and Management of Guaranteed Loan Programs," dated August 24, 1984, and OMB Bulletin No. A-70 and OMB Circular No. A-70 and OMB Bulletin No. A-70, "Policies and Guidelines for Federal Credit Programs," dated August 24, 1984, and OMB Bulletin No. A-70, "Guidance for the Management of Guaranteed Loan Programs," dated November 26, 1990. The proposed revised Circular also reflects the requirements of the Credit Reform Act of 1990 and the Chief Financial Officers Act of 1990. The proposed revised Circular has been renamed "Policies for Federal Credit Programs and Non-Tax Receivables" to reflect the broader scope of the document. This consolidation of policy documents streamlines guidance for planning and managing Federal credit programs and non-tax receivables by eliminating duplication and overlap. In addition, detailed credit management instructions which have been published in the credit supplement to the "Treasury Financial Manual" have been removed from the Circular. The length of the proposed Circular represents a 71 percent reduction compared to the three separate documents. Also published here is a proposed Standard Lender Agreement for housing guaranteed loan programs. The agreement is a "contract" between a Federal agency and a private lender, setting forth the responsibilities of the two parties and the terms and conditions of lender participation in the guaranteed loan program. The Circular requires all agencies with guaranteed loan programs to have such agreements with participating lenders, and to use standard agreements developed by inter-agency work groups. Other agreements are being developed for agencies participating in business, agricultural, and guaranteed student loans. These agreements will be published at a later date. Agencies will formally adopt lender agreements through their rulemaking processes. Interested parties are invited to comment on the revision of Circular No. A-129 and on the proposed Standard Lender Agreement to the Office of Management and Budget, Credit and Cash Management Branch, at the address indicated in this publication. Comments on Circular No. A-129 should be received within 30 days of the date of this publication. Comments on the proposed Standard Lender Agreement should be received within 60 days of the date of this publication. Changes to the Circular and the Agreement will be made if comments indicate a need to do so. Frank Hodsoll, Deputy Director for Management.

Attachments

OMB Circular No. A-129
Policies for Federal Credit Programs and Non-Tax Receivables

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Revised
To the Heads of Executive Departments and Establishments
Subject: Policies for Federal Credit Programs and Non-Tax Receivables
Federal credit programs are created to accomplish a variety of social and economic goals. Agencies must implement budget policies and management practices that ensure that the goals of credit programs are met while properly identifying and controlling costs. In addition, Federal receivables, whether from credit programs or other non-tax sources, must be serviced and collected in an efficient and effective manner to protect the value of the Federal Government's assets.

General Information
1. Purpose
This Circular prescribes policies and procedures for justifying, designing, and managing Federal credit programs and for collecting non-tax receivables. It sets principles for designing credit programs, including the preparation and review of legislation and regulations; budgeting for the costs of credit programs and minimizing unintended costs to the Government; and improving the efficiency and effectiveness of Federal credit programs. It also sets policies and standards for extending credit, managing lenders participating in the Government's guaranteed loan programs, servicing receivables, and collecting delinquent debt.

2. Authority
This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; section 2653 of Public Law 98-360; the Federal Credit Reform Act of 1990; the Federal Debt Collection Procedures Act of 1990; the Chief Financial Officers Act of 1990; Executive Order 8248; the Cash Management Improvement Act Amendments of 1992; and pre-existing common law authority to charge interest on debts and to offset debts administratively.

3. Coverage
a. Applicability
The provisions of this Circular apply to all credit programs of the Federal Government:
(1) Direct loan programs;
(2) Guaranteed loan programs and loan insurance programs in which the Federal Government bears a legal liability to pay for all or part of the principal or interest in the event of a borrower default; and
(3) Loans or other financial assets acquired by a Federal agency (or a receiver or conservator acting for a Federal agency) as a result of a claim payment on a defaulted guaranteed or insured loan or in fulfillment of a Federal deposit insurance commitment.

Sections IV and V of appendix A (Managing the Federal Government’s Receivables and Delinquent Debt Collection) also apply to receivables due to the Government from the sale of goods and services; fines, fees, duties, leases, rents, royalties, and penalties; overpayments to beneficiaries, grantees, contractors, and Federal employees; and similar debts.

b. Exclusions Under the Debt Collection Act
Certain debt collection techniques authorized by the Debt Collection Act of 1962, as amended, may not be applied to debts arising under the Internal Revenue Code, the Social Security Act, or the tariff laws of the United States, or to debts owed to the United States Government by State or local governments.

c. Other Statutory Exclusions
The policies, standards, and requirements of this Circular do not apply when statutorily prohibited or inconsistent with statutory requirements.

4. Rescissions

The Circular supplements, and does not supersede, the requirements applicable to budget submissions under Circular No. A-11 and to proposed legislation and testimony under Circular No. A-19.

5. Effective Date
This Circular is effective immediately.

6. Inquiries
Further information on estimating credit subsidies may be found in Appendix D to OMB Circular No. A-11. Further information on the implementation of credit management and debt collection policies may be found in the credit supplement to the "Treasury Financial Manual" (TFM) and in OMB's government-wide 5-year plan for financial management submitted annually to Congress.

For inquiries concerning budget and legislative policy for credit programs (Appendix A, section II), contact the Office of Management and Budget, Budget Analysis Branch, Room 6025, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503, 202/395-3930. For inquiries concerning credit management and debt collection policies (Appendix A, sections III-V), contact the Office of Management and Budget, Credit and Cash Management Branch, Room 10236, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503, 202/395-3966.
7. Definitions

Key terms used in this Circular are defined in OMB Circulars No. A-11 and A-34.

Richard Darman,
Director.

Appendices (3)
Appendix A to Circular No. A–129

I. Responsibilities of Departments and Agencies

1. Office of Management and Budget

The Office of Management and Budget (OMB) is responsible for reviewing legislation to establish new credit programs or to expand or modify existing credit programs; reviewing and clearing testimony pertaining to credit programs and debt collection; reviewing agency budget submissions for credit programs and debt collection activities; formulating and reviewing credit management and debt collection policy; and approving agency credit management and debt collection plans.

2. Department of the Treasury

The Department of the Treasury, through its Financial Management Service (FMS), is responsible for monitoring and facilitating implementation of credit management and debt collection policy. FMS develops and disseminates as a supplement to the “Treasury Financial Manual” operational guidelines for agency compliance with government-wide credit management and debt collection policy. FMS assists agencies in improving credit management activities and evaluates innovative credit management practices.

3. Federal Credit Policy Working Group

The Federal Credit Policy Working Group is an inter-agency forum which provides advice and assistance to OMB and Treasury in the formulation and implementation of credit policy. Membership consists of representatives from the Executive Office of the President, the Council of Economic Advisers, the Office of Management and Budget, and the Department of the Treasury. The major credit and debt collection agencies represented include the Departments of Agriculture, Commerce, Education, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, and Veterans Affairs, the Agency for International Development, the Export-Import Bank, the Resolution Trust Corporation, and the Small Business Administration. Other departments and agencies may be invited to participate on the Working Group at the request of the Chairperson. The Director of OMB designates the Chairperson of the Group.

4. Departments and Agencies

Departments and agencies shall manage credit programs and all non-tax receivables in accordance with their statutory authorities and the provisions of this Circular, to protect the Government’s assets, and to minimize losses in relation to social benefits provided.

a. Agencies shall ensure that:
(1) Federal credit program legislation, regulations, and policies are designed and administered in compliance with the principles of this Circular;
(2) The costs of credit programs covered by the Federal Credit Reform Act of 1990 are budgeted for and controlled in accordance with the principles of the Act (the Act exempts deposit insurance agencies, Tennessee Valley Authority, Pension Benefit Guaranty Corporation, and certain other activities from credit reform requirements);
(3) Every effort is made to prevent future delinquencies by following appropriate screening standards and procedures for determination of credit worthiness;
(4) Lenders participating in guaranteed loan programs meet all applicable financial and programmatic requirements;
(5) Informed and cost-effective decisions are made concerning portfolio management, including full consideration of contract collection for servicing or selling the portfolio and transferring servicing to the private sector;
(6) The full range of available techniques are used, as appropriate, to collect delinquent debts, including administrative offset, salary offset, tax refund offset, private collection agencies, and litigation;
(7) Delinquent debts are written off as soon as they are determined to be uncollectible; and
(8) Timely and accurate financial management and performance data are submitted to OMB and the Department of the Treasury so that the Government’s credit management and debt collection programs and policies can be evaluated.

b. In achieving these objectives, agencies shall:
(1) Establish, as appropriate, boards to coordinate credit management and debt collection activities and to ensure full consideration of credit issues by all interested and affected organizations. Representation should include, but not be limited to, the Chief Financial Officer and the senior official(s) for program offices with credit activities or non-tax receivables. The Board may seek from the agency’s Inspector General input based on findings and conclusions from past audits and investigations;
(2) Ensure that the standards set forth in this Circular and supplementary guidance set forth in the “Treasury Financial Manual” are incorporated into agency regulations and procedures for credit programs and debt collection activities;
(3) Propose new or revised legislation, regulations, and forms as necessary to ensure consistency with the provisions of this Circular;
(4) Submit legislation and testimony affecting credit programs for review under the OMB Circular No. A–19 legislative clearance process, and budget proposals for review under the Circular No. A–11 budget justification process;
(5) Periodically evaluate Federal credit programs to assess their effectiveness in achieving program goals;
(6) Assign to the agency CFO, in accordance with the Chief Financial Officers Act of 1990, responsibility for directing, managing, and providing policy guidance and oversight of agency financial management personnel, activities, and operations, including the implementation of asset management systems for credit management and debt collection;
(7) Prepare, as part of the agency CFO Financial Management 5-Year Plan, a Credit Management and Debt Collection Plan for effectively managing credit extension, account servicing and portfolio management, and delinquent debt collection. The plan must ensure agency compliance with the standards in this Circular;
(8) Ensure that data in loan applications and documents for individuals are managed in accordance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1986 (the Privacy Act does not apply to loans and debts of commercial organizations); and the Right to Financial Privacy Act; and
(9) Include in personnel evaluation criteria for senior policy officials with major credit management and debt collection responsibilities performance standards in support of this Circular.

II. Budget and Legislative Policy for Credit Programs

Federal credit assistance should be provided only when necessary to achieve clearly specified Federal objectives and only when credit
assistance is the best means to achieve those objectives. Use of private credit markets should be encouraged, and any impairment of such markets or misallocation of the Nation’s resources through the operation of Federal credit programs should be minimized.

1. Program Justification

New programs and proposals for reauthorizing, expanding, or significantly increasing funding for credit programs should be accompanied by analysis which:

- Clearly defines the Federal objectives to be achieved and demonstrates why they cannot be achieved with private credit assistance, including:
  - A description of existing and potential private sources of credit by type of institution and with respect to availability and cost of credit to borrowers; and
  - An explanation as to whether, and why, these private sources of financing and their terms and conditions must be supplemented and subsidized;
- Specifies whether the credit program is intended to:
  - Correct a capital market imperfection, which should be defined; and/or
  - Subsidize borrowers or other beneficiaries, who should be identified, or encourage certain activities, which should be specified;
- Explains why a credit subsidy is the most efficient way of providing assistance, including how it provides assistance in overcoming market imperfections, and/or would redress the specific inadequate financing cited;
- Estimates or, when the program exists, measures the benefits expected from the program, including the amount by which the distribution of credit is expected to be altered and the favored activity is expected to increase. Further information on conducting cost-benefit analysis can be found in the forthcoming revision of OMB Circular No. A-94;
- Estimates the extent to which the program substitutes directly or indirectly for private lending, and analyzes any elements of program design that encourage and supplement private lending activity, with the objective that private lending is displaced to the smallest degree possible by agency programs; and
- Provides an explicit estimate of the subsidy, as required by the Federal Credit Reform Act of 1990, and an estimate of the expected annual administrative costs (including servicing) of the credit program. If loan assets are to be sold or are to be included in a prepayment program for programmatic or other reasons, the sale/prepayment is classified as a modification under the Federal Credit Reform Act. The cost of this modification requires budget authority, which must be appropriated or otherwise made available. Loan asset sales/prepayment programs must be conducted in accordance with policies in this Circular and procedures in the credit supplement to the “Treasury Financial Manual,” including the prohibitions against the financing of prepayments by tax-exempt borrowing and sales with recourse except where specifically authorized by statute. The cost of any guarantee placed on the asset sold requires budget authority.

2. Form of Assistance

When Federal credit assistance is necessary to meet a Federal objective, loan guarantees should be favored over direct loans, unless attaining the Federal objective requires a subsidy, as defined by the Federal Credit Reform Act of 1990, deeper than can be provided by a loan guarantee.

- Loan guarantees, by removing part or all of the credit risk of a transaction, change the allocation of economic resources. Loan guarantees may make credit available when private financial sources would not otherwise do so, or they may allocate credit to borrowers under more favorable terms than would otherwise be granted. This reallocation of credit may impose a cost on the Government and/or the economy.
- Direct loans usually offer borrowers lower interest rates and longer loan maturities than are available from private financial sources, even with a guarantee. The use of direct loans, however, may displace private financial sources and increase the possibility that the terms and conditions on which Federal credit assistance is offered will not reflect changes in financial market conditions. The costs on the Government and the economy are therefore likely to be greater.
- Direct or indirect guarantees of tax-exempt obligations are expressly prohibited under section 149(b) of the Internal Revenue Code. This prohibition is justified because guarantees of tax-exempt obligations are an inefficient way of allocating Federal credit. Assistance to the borrower, through the tax exemption and the guarantee, provides interest savings to the borrower that are smaller than the tax revenue loss to the Government. Thus, the cost to the taxpayer is greater than the benefit to the borrower.
- To preclude the possibility that Federal agencies will guarantee tax-exempt obligations, either directly or indirectly, agencies will: (1) Not guarantee federally tax-exempt obligations; (2) not subordinate direct loans to tax-exempt obligations; (3) provide that effective subordination of a guaranteed loan to tax-exempt obligations will render the guarantee void; (4) prohibit use of a Federal guarantee as collateral to secure a tax-exempt obligation; (5) prohibit Federal guarantees of loans funded by tax-exempt obligations; and (6) prohibit the linkage of Federal guarantees with tax-exempt obligations.
- Where a large degree of subsidy is justified, comparable to that which would be provided by guaranteed tax-exempt obligations, agencies should consider the use of direct loans.

3. Financial Standards

In accordance with the Federal Credit Reform Act of 1990, agencies must analyze and control the risk and cost of their programs. Toward this end, they must maintain adequate loan records, and develop statistical models predictive of defaults and other deviations from loan contracts. Agencies are required to estimate subsidy costs and to obtain budget authority to cover such costs before obligating direct loans and committing loan guarantees. Specific instructions for budget justification under the Act are provided in OMB Circular No. A-11. and instructions for budget execution are provided in OMB Circular No. A-34.

Agencies shall follow sound financial practices in the design and administration of their credit programs. Where program objectives cannot be achieved while following sound financial practices, the cost of these deviations shall be justified in agency budget submissions in comparison with expected benefits. Unless such a waiver is justified, agencies should follow the practices discussed below.

- Lenders and borrowers who participate in Federal credit programs should have a substantial stake in full repayment in accordance with the loan contract.

(1) Private lenders who extend credit that is guaranteed by the Government should bear at least 20 percent of the loss from any default. Loan guarantees that cover 100 percent of credit risk encourage private lenders to exercise less caution than they otherwise would in evaluating loan requests from guaranteed borrowers. The level of guarantee should be no more than necessary to achieve program purposes. Borrowers who are deemed to pose less of a risk should receive a lower
guarantee as a percentage of the total loan amount.

(2) Borrowers should have an equity interest in any asset being financed with the credit assistance, and business borrowers should have substantial capital or equity at risk in their business (see section III.A.3.b for additional discussion).

b. Interest and fees on direct loans and fees on loan guarantees should be set by reference to the cost to the Government of making the direct loan or loan guarantee and should be reviewed at least annually.

(1) These charges shall be at levels sufficiently high to cover the Government's total cost of making the loan or guarantee, including extension, servicing, collection, and default costs.

(2) When charging interest and/or fees at such levels is statutorily prohibited or impractical, the Government considers it inconsistent with program objectives, the difference should be justified in relation to benefits, and the agency must request a subsidy appropriation for the amount of costs not covered in accordance with the Federal Credit Reform Act of 1990.

(3) Riskier borrowers should be charged more than those who pose less risk in order to encourage such borrowers to take actions to reduce the risk they pose to the Government.

c. Contractual agreements should include all covenants and restrictions (e.g., liability insurance) necessary to protect the Federal Government's interest.

(1) Maturities on loans should be shorter than the estimated useful economic life of any assets financed.

(2) The Government's claims on assets should not be subordinated to the claims of other lenders in the case of a borrower's default on either a direct loan or a guaranteed loan.

Subordination increases the risk of loss to the Government, since other creditors have first claim on the borrower's assets.

d. In order to minimize inadvertent changes in the amount of subsidy, interest rates to be charged on direct loans and any interest supplements for guaranteed loans should be specified by reference to a benchmark market rate on Treasury securities rather than as an absolute level. A specific level of interest rate should not be cited in legislation or in regulation because such a rate could soon become outdated, unintentionally changing the extent of the subsidy.

(1) The benchmark financial market instrument should be a marketable Treasury security with a similar maturity to the direct loans being made or the non-Federal loans being guaranteed. When the rate on the Government loan is intended to be different than the benchmark rate, it should be stated as a percentage of that rate. The benchmark Treasury security must be cited specifically in agency budget justifications.

(2) Interest rates on new loans should be reviewed at least quarterly and adjusted to reflect changes in the benchmark interest rate. Interest rates may be either fixed or floating.

e. Maximum amounts of direct loan obligations and loan guarantee commitments must be specifically authorized in advance in annual appropriations acts.

f. Financing for Federal credit programs should be provided by Treasury in accordance with the Federal Credit Reform Act of 1990. Guarantees of the timely payment of 100 percent of the loan principal and interest against all risk create a debt obligation that is the credit risk equivalent of a Treasury security. Accordingly, a Federal agency other than the Department of the Treasury may not be held by a person or entity other than the Federal Financing Bank (FFB) or another Federal agency. The Secretary of the Treasury may waive this requirement with respect to obligations that the Secretary determines: (1) Are not suitable for investments for the FFB because of the risks entailed in such obligations; or (2) are or will be financed in a manner that is least disruptive of private financial markets and institutions. The benefits of using the FFB must not expand the degree of subsidy.

g. Loan contracts should be standardized where practicable. Private sector documents should be used whenever possible, especially for loan guarantees.

5. Implementation

The provisions of this section will be implemented through the OMB Circular A-19 legislative review process and the OMB Circular No. A-11 budget justification and submission process.

a. Legislation on credit programs which is proposed by agencies, their reviews of credit proposals made by others, and their testimony on credit submitted under the OMB Circular A-19 legislative review process should conform to the provisions of this Circular.

Whenever agencies propose provisions or language not in conformity with the policies of this Circular, they will be required to request in writing that the Office of Management and Budget modify or waive the requirement. Such requests will identify the modification(s) or waiver(s) requested, and also will state the reasons for the request and the time period for which the exception is required. Exceptions, when allowed, will ordinarily be granted only for a limited time, in order to allow for review by OMB.

b. In those cases where existing legislation, regulations, or program policies not in conformity with the policies of this Circular, agencies will, every four years or more often at the request of the OMB examiner with primary responsibility for the account, include in their annual budget submission and justification to OMB proposed changes to correct the inconsistency.

When an agency does not deem a change in existing legislation, regulations, or policies to be desirable, it will provide a separate justification for retaining the existing non-conforming legislation or policies in its budget submission and justification to OMB upon the request of the budget examiner with primary responsibility for the account.

c. The Office of Management and Budget will, upon written request, provide technical advice on proposed credit program provisions that would be exceptions or additions to the standards prescribed in this Circular. This will avoid delays and help to ensure consistency with Federal credit policies.

A checklist for use in review of legislative and budgetary proposals is included as appendix B to this Circular. Specific model bill language that agencies may use in developing and reviewing legislation is provided in appendix C.

d. Every four years, or more often at the request of the OMB examiner with primary responsibility for the account, the agency's annual budget submission (required by OMB Circular No. A-11, Section 15.2) should review the changes in financial markets and the status of borrowers and beneficiaries to ensure that Federal objectives require continuation of the credit program, to update its justification, and to recommend changes in its design and operations to improve efficiency and effectiveness.

e. Every four years, or more often at the request of the OMB examiner with primary responsibility for the account, the agency's annual budget submission
processing of applications should be suspended when applicants are delinquent on Federal tax or non-tax debts, including judgment liens against property for a debt to the Federal Government. This provision does not apply to entitlement awards. Processing may continue only when the debtor satisfactorily resolves the debt (e.g., pays in full or negotiates a new repayment plan).

(b) Loan-to-value ratios. The loan-to-value (LTV) ratio at origination is a critical factor in reducing defaults and Government losses. Federal agencies should explicitly define and limit the LTV ratio in both direct and guaranteed loan programs. Agencies should ensure that borrowers assume an equity interest in an asset being financed by not offering terms (including the financing of closing costs) that result in a loan to value ratio equal to or greater than 100 percent. Further, the loan maturity should be shorter than the estimated useful economic life of the collateral.

c. Liquidation of guaranteed loans with collateral. Lenders of Federally guaranteed loans with collateral shall be required to liquidate, through litigation if necessary, collateral for delinquent debts before filing a default claim for any “deficiency balance” with the guarantor.

d. Asset management standards and systems. Agencies should establish asset management standards and systems for property acquired as a result of direct or guaranteed loan defaults. Agencies should establish policies and procedures for the acquisition, management, and disposal of such property. Inventory management systems should also generate management reports, provide controls and monitoring capabilities, and summarize information for the Office and Management and Budget and the Department of the Treasury.

B. Management of Guaranteed Loan Lenders and Servicers

1. Certification for Participation

(a) Criteria for participation. Agencies should establish and publish in the Federal Register specific eligibility criteria for lender participation in Federal guaranteed loan programs. These criteria should include:

(1) Requirements that the lender is not debarred/suspended from participation in a Government contract or delinquent on a Government debt;

(2) Qualification requirements for principal officers and staff of the lender;

(3) Where appropriate for new or non-regulated lenders or lenders with questionable performance under Federal guarantee programs, fidelity/surety bonding and/or errors and omissions
insurance with the Federal Government as a loss payee; and

(4) For lenders not regulated by a Federal financial institutions regulatory agency, financial and capital requirements, including minimum net worth requirements based on business volume.

b. Certification fees. When authorized to do so, agencies should assess non-refundable fees to defray the costs of lender certifications and certification reviews.

c. Review of certifications. Agencies shall review and document a lender's eligibility for continued participation in a guaranteed loan program at least every two years. Ideally, these reviews should be conducted in conjunction with on-site reviews of lender operations (see B.3.). Lenders not meeting standards for continued participation should be decertified. In addition to the certification requirements above, agencies should consider lender performance as a critical factor in determining continued eligibility for participation.

d. Decertification. Agencies should adopt specific procedures to decertify lenders any time there is:

(1) Significant and/or continuing non-compliance with agency standards; and/or

(2) Failure to meet financial and capital requirements or other eligibility criteria.

Agency procedures should define the process and establish timetables by which decertified lenders can apply for reinstatement of certification.

e. Loan servicers. Lenders transferring and/or assigning the right to service guaranteed loans to a loan servicer should use only servicers meeting applicable performance standards set by the agency. Where applicable, agencies may adopt servicing standards established by a Government Sponsored Enterprice (GSE) or a similar organization (e.g., Government National Mortgage Association for single family mortgages) and/or may authorize lenders to use those servicers approved by an appropriate GSE or similar organization.

2. Standard Lender Agreements

Agencies should develop agreements with lenders that incorporate general participation requirements, performance standards, and other applicable requirements. Agencies should adopt standard lender agreements prepared by the Federal Credit Policy Working Group. Agencies are encouraged, where not prohibited by authorizing legislation, to set a fixed duration for the lender agreement to ensure a formal review of the lender's eligibility for continued participation in the program.

a. General participation requirements. Lender agreements should include:

(1) Requirements for lender participation, including certification, certification reviews, and decertification (see section 1., above);

(2) Agency and lender responsibilities for sharing the risk of loan defaults (see section II.3.(a)(1)); and, where feasible,

(3) Maximum delinquency, default, and claim rates for lenders, taking into account individual program characteristics.

b. Performance standards. Agencies should include due diligence requirements for originating, servicing, and collecting loans in their lender agreements. This may be accomplished by referencing agency regulations or guidelines. Examples of due diligence standards include collection procedures for past due amounts, delinquent debtor counseling procedures, and litigation to enforce loan contracts. Agencies should ensure, through the claims review process, that lenders have met these standards prior to making a claims payment. Agencies should reduce claim amounts or reject claims for lender non-performance.

c. Reporting requirements. Credit agencies require certain data to monitor the health of their guaranteed loan portfolios, track and evaluate lender performance, and satisfy OMB, Treasury, and other reporting requirements. Examples of these data include:

(1) Activity Indicators—number and amount of outstanding guaranteed loans at the beginning and end of the reporting period and the agency share of the risk; number and amount of guaranteed loans made during the reporting period; and number and amount of guaranteed loans terminated during the period.

(2) Status Indicators—an aging schedule showing the number and amount of past due loans by 31-60 days, 61-90 days, 91-180 days, and more than 181 days; and the number and amount of loans in foreclosure or liquidation (when the lender is responsible for such activities).

Agencies may have several sources for such data, but some or all of the information may best be obtained from lenders and servicers. Lender agreements should identify needed information to be provided on a quarterly basis (or other reporting period based on the level of lending and payment activity).

d. Loan servicers. Lender agreements must specify that loan servicers must meet applicable participation requirements and performance standards. The agreement should also specify that servicers acquiring loans must provide any information necessary for the lender to comply with reporting requirements to the agency. Servicers may not resell the loans except to qualified servicers.

3. Lender and Servicer Reviews

To evaluate and enforce lender and servicer performance, agencies should conduct on-site reviews. Agencies should summarize review findings in written reports with recommended corrective actions and submit them to agency review boards (see section I.4.).

Reviews should be conducted biennially where possible; however, agencies should conduct annual on-site reviews for all lenders and servicers with substantial loan volume or whose:

a. Financial performance measures indicate a deterioration in their guaranteed loan portfolios;

b. Portfolio has a high level of defaults for guaranteed loans less than one year old;

c. Reporting systems. Agencies shall establish accounting and financial reporting systems to meet the standards provided in this Circular, OMB Circular No. A-127, "Financial Management Systems," and other government-wide requirements. These systems shall be capable of accounting for obligations and outlays and should meet the reporting requirements of OMB and Treasury, including those associated with the Federal Credit Reform Act of 1990.

b. Agency reports. Comprehensive reports on the status of loan portfolios and receivables shall be used to evaluate management effectiveness. Agencies shall prepare, in accordance with the CFOs Act and OMB guidance, annual financial statements which include loan programs and other receivables. The Office of Inspector General, or an independent external auditor should audit agency financial statements annually.

Agency reports and financial statements shall be consistent or reconcilable with amounts reported in the agency's budget submission to OMB and in Treasury SF 220-9, "Report on Guaranteed Loans," and SF 220-9, "Report on Accounts and Loans Receivable Due from the Public." Agencies shall submit a year-end certification statement signed by the head of the department or agency or an appropriate designee that the SF 220-9 submission is accurate and consistent with the agency accounting agencies should establish penalties for more
serious and frequent offenses. Penalties may include loss of guarantees, reprimands, probation, suspension, and decertification.

IV. Managing the Federal Government's Receivables

The Government must service and collect debts, including defaulted guaranteed loans acquired by the Government, in a manner that best protects the value of the Government's assets. Mechanisms must be in place to collect and record payments and provide sufficient accounting and management information for effective stewardship. These servicing activities can be carried out by the agency, or obtained through a cross-servicing arrangement with another agency or a contract with a private sector firm. Under certain conditions, it may be advantageous to sell loans or other debts and transfer servicing and collection responsibilities to the private sector.

1. Accounting and Financial Reporting

a. Accounting and Financial Reporting Systems

Agencies shall establish accounting and financial reporting systems to meet the standards provided in this Circular, OMB Circular No. A-127, "Financial Management Systems," and other government-wide requirements. These systems shall be capable of accounting for obligations and outlays and should meet the reporting requirements of OMB and Treasury, including those associated with the Federal Credit Reform Act of 1990.

b. Agency Reports

Comprehensive reports on the status of loan portfolios and receivables shall be used to evaluate management effectiveness. Agencies shall prepare, in accordance with the CFOs Act and OMB guidance, annual financial statements which include loan programs and other receivables. The Office of Inspector General, an independent external auditor, and/or the General Accounting Office shall audit agency financial statements annually.

Agencies shall report and financial statements shall be consistent or reconcilable with amounts reported in the agency's budget submission to OMB and in Treasury SF 220-8, "Report on Guaranteed Loans," and SF 220-9, "Report on Accounts and Loans Receivable Due from the Public." Agencies shall submit a year-end certification statement signed by the head of the department or agency or an appropriate designee that the SF 220-9 submission is accurate and consistent with the agency accounting systems.

2. Loan Servicing Requirements

Agency servicing requirements, whether performed in-house or obtained from another agency or private sector firm, must meet the standards described below.

a. Documentation

Approved loan files (or other systems of records) shall contain adequate and up-to-date information reflecting payment history, including occurrences of delinquencies and defaults, and any subsequent loan actions which result in payment deferrals, refinancing, or rescheduling.

b. Billing and Collections

Agencies shall ensure that there is routine invoicing of payments. Borrowers should be encouraged to use pre-authorized debits when making payments. Agencies shall ensure that efficient mechanisms are in place to collect and record payments. Agencies shall develop and implement plans to automate the servicing of portfolios.

c. Escrow Accounts

Agency servicing systems must process tax and insurance deposits and payments for housing and other long-term real estate loans through an escrow account. These systems must also be capable of analyzing escrow balances to adjust required deposit amounts and prevent deficiencies.

d. Referring Account Information to Credit Reporting Agencies

Agencies must have adequate accounting systems to identify and refer debts to a credit bureau in accordance with the Debt Collection Act of 1992, as amended. Agencies shall refer to credit bureaus:

(1) All non-tariff and non-tax consumer accounts with delinquent payments in excess of $100; and

(2) All commercial accounts (current and delinquent) in excess of $100.

3. Loan Asset Sales and Prepayment Programs

a. Loan Asset Sales Programs

Loan asset sales may be undertaken for a prepayment program or loan asset sale. Based on the financial advisor's report, the agency shall develop a program and schedule which must include an analysis of the pricing option offered. The proposed price must be carefully set to avoid undue cost to the Government or additional subsidy to the borrower. Any additional subsidy will require budget authority, which must be appropriated or otherwise made available. Prior to any offering, agencies shall submit their plans and proposed pricing to OMB and Treasury for review and approval.

d. Loan Asset Sales Guidelines

Guidelines for loan asset sales and prepayment programs have been established to ensure that agencies meet the policy requirements of this Circular (see the credit supplement to the "Treasury Financial Manual"). The agency shall consult with OMB and Treasury throughout the sales/ prepayment process to ensure consistency with policy and guidelines.

V. Delinquent Debt Collection

Agencies shall have a fair but aggressive program to recover delinquent debt, including defaulted guaranteed loans acquired by the Federal Government. Each agency will establish a collection strategy consistent with its statutory program authority that seeks to return the debtor to a current payment status or, failing that, maximize the collections that can be realized.

1. Standards for Defining Delinquent and Defaulted Debt

a. Direct Loans

Agencies shall consider a direct loan account to be delinquent when an agreed-upon payment is past due 30 days or more, or is not paid in accordance with an existing payment agreement.
b. Guaranteed Loans

Loans guaranteed or insured by the Federal Government are in default when the borrower breaches the loan agreement with the private sector lender. It becomes a default to the Federal Government when the guaranteeing Federal agency repurchases the loan or pays reinsurance on the loan. The repurchased default becomes a receivable and is subject to the debt collection provisions of this Circular.

c. Other Debt

Overpayments to contractors, grantees, employees, and beneficiaries: fines; penalties; and other debts are delinquent when the debtor does not pay or resolve the debt within 30 days of the due date or 30 days after the notification of the debt is mailed to the debtor, and has elected not to exercise any available appeals or has exhausted all agency appeal processes.

2. Collection Strategy for Delinquent Debt

Agencies shall establish an accurate and timely reporting system to notify collection staff when a receivable becomes delinquent. Each agency shall develop a systematic process for the collection of identified delinquent accounts. Collection strategies should take advantage of the full range of available techniques while recognizing program needs and statutory authority.

3. Collection Techniques

a. Counseling Delinquent Debtors

Agencies should contact in person or by telephone a debtor (including co-borrowers and personal guarantors) as soon as the account becomes delinquent. This initial contact should be used to determine the nature of the delinquency, and the follow-up necessary to return the account to a current status or to protect the interests of the Government, especially collateral securing the loan.

b. Dunning Procedures

If a debt is not brought current after the initial contact with the debtor (or personal/telephone contact is not feasible), demand letters should be sent. The number and frequency of demand letters will vary by size, type, and age of debt. Demand notices shall incorporate, as appropriate, due process notices for referring delinquent accounts to credit reporting agencies, initiating Federal salary offset, referring accounts to the Internal Revenue Service for tax refund offset, and referring debt to legal counsel for litigation.

c. Rescheduling Loans

Rescheduling changes the original terms of the debt to provide a repayment plan that reflects the borrower’s current financial position. Agencies shall permit rescheduling of payments only when it is in the best interest of the Government and the agency has determined that recovery of all or a portion of the amount owed is reasonably assured. Loan modifications with additional cost to the Government not included in the original subsidy estimate will require additional budget authority.

d. Administrative Offset

Agencies may collect delinquent debt by offsetting payments due to the debtor under other Federal loans, grants, contracts, or payments. Offsets can be applied by the agency owed the delinquent debt, or by other agencies upon request of the agency to which the delinquent debt is owed.

1. Agencies shall implement administrative offset in accordance with the Federal Claims Collection Standards, 4 CFR 102.3-4., FAR subpart 32.6, and implementing agency regulations. Administrative offset against State and local governments is permitted under common law.

2. Agencies may not attempt to offset a contract if the contract is being adjudicated under the Contract Disputes Act (CDA) or Federal Acquisition Regulations, subpart 32.6. Once such a contract has been adjudicated under the CDA, then offsets under the Debt Collection Act may be initiated for any balance of funds still owed the contractor. This does not preclude an agency from offsetting non-disputed contracts of a contractor involved in a CDA adjudication.

3. Grants, cooperative agreements, or contracts which are paid in advance (e.g., payment is made in advance of performance or before costs are incurred) shall not be subject to offset because:

   a. Such payments do not constitute a “Government debt”; and
   b. Offsets could have the effect of defeating or interfering with the purposes of the payment.

4. Offsets may be attempted where funds are paid out to the recipient on a reimbursement basis and the recipient has already satisfied the program requirements. Reimbursable payments due may be offset because they clearly represent a Government debt, at least to the extent of the particular reimbursement. Agencies may consider converting a problem recipient with a history of poor performance to reimbursable payments in anticipation of a future need to effect an offset.

e. Collection Agencies

1. Agencies may use collection agencies at any time after the account becomes delinquent (including defaulted guaranteed loans purchased by the Federal Government). However, all accounts that are six months or more past due must be turned over to a collection contractor unless the accounts have been referred to an internal workout group or for tax refund offset, are eligible for the Federal salary or administrative offset programs, or are in litigation.

2. Agencies shall add the estimated cost of collection contractor contingency fees to the amount of the debt before referral to the contractor. Actual fees paid will be based on the amount collected, if any.

f. Federal Employee Salary Offset

The salaries of Federal employees who are delinquent on debts to the Government (including individuals who are personally liable for the debts of partnerships and corporations, and who can be identified by SSN) may be offset to recover the amount owed. Agencies shall make arrangements for annual matching of their delinquent debtor files against the employment rosters maintained by the Office of Personnel Management, the Department of Defense, and other Federal employers, such as the legislative and judicial branches. Employees who do not repay in full, enter into repayment agreements, or otherwise resolve delinquent debts after notification, will have their salaries offset.

1. Under the Debt Collection Act of 1982, as amended, up to 15 percent of an employee’s disposable pay may be offset each pay period.

2. Agencies have the option of referring delinquent Federal employee accounts to the Department of Justice to effect offset on a judgment determined in accordance with section 124 of Public Law 97-276. This provision allows collection of 25 percent of salary after a judgment is obtained.

g. Tax Refund Offset

Tax refund offset authority requires agencies to recover delinquent debt by offsetting tax refunds due the delinquent debtor (either individuals or corporations). Delinquent debtors will be notified of the planned referral of their accounts to the IRS and be given the opportunity to dispute or resolve the debt. All delinquent accounts not resolved must be referred annually to
Administrative Costs

4. Interest, Penalties, and Treasury.

h. Referral for Litigation

Agencies shall refer delinquent accounts to the Department of Justice, or use other litigation authority that may be available, as soon as there is sufficient reason to conclude that full or partial recovery of the debt can best be achieved through litigation. If the debtor does not come forward with a voluntary payment, a suit shall promptly be initiated.

(1) In consultation with the Department of Justice, agencies shall establish a system to account for: (a) Claims referred to Justice; and (b) Claims closed by Justice and returned to agencies.

(2) Agencies shall participate in the Department of Justice private counsel program by identifying and accelerating claim referrals to those districts where the Department contracts with private law firms.

4. Interest, Penalties, and Administrative Costs

a. Policy

Except where applicable statutes, regulations, loan agreements, or contracts prohibit or explicitly set such charges (and certain other exemptions under 4 CFR 102), agencies shall: (1) Assess interest, penalties, and administrative costs on outstanding delinquent debt in accordance with 4 CFR 102, including a notification procedure to inform debtors of impending charges; and (2) Calculate interest and penalty charges against the total liability to the Federal Government incurred through the delinquency. Agencies may apply interest to unpaid interest, penalties, and administrative charges, if any, when these costs have been added to the loan principal under a rescheduling agreement.

b. Interest

(1) Interest shall accrue from the date on which notice of the debt and interest charges is mailed or delivered to the debtor. The minimum annual rate of interest that agencies shall charge is the current cost of funds to the U.S. Treasury.

(2) Agencies must adjust the interest rate on delinquent debt to conform with the rate established by a U.S. Court when a judgment has been obtained.

c. Penalties

Agencies shall assess a penalty charge, not to exceed six percent a year, on any portion of a debt that is delinquent.

d. Administrative Costs

(1) Administrative costs include both the direct and indirect costs incurred in collecting debts from the time they become delinquent until the time collections are made or agency collection efforts cease. There is no statutory authority to recover costs incurred prior to an account becoming delinquent. Calculation of administrative costs should be based on actual costs incurred or upon an analysis establishing an average of additional costs incurred by the agency.

(2) For those accounts that are successfully litigated, costs to litigate the case by the Department of Justice will be determined by the courts at the time of judgment and added to the judgment amount.

5. Write-Off and Close-Out Procedures

Effective write-off and close-out procedures ensure proper accounting for the costs of credit programs, and allow management to focus its efforts on delinquent accounts with the greatest potential for collection. Agencies shall develop a two-step process that: (1) Identifies and removes uncollectible accounts from the active portfolio through write-off, although collection efforts may continue; and (2) Establishes close-out procedures that result in the termination of all collection activity and elimination of the accounts from all further servicing. Agencies shall report amounts closed out over $600 to the IRS as taxable income (Form 1099-G). Amounts less than $600 may be reported at an agency’s discretion.

Appendix B to Circular No. A-129 Checklist for Credit Program Legislation, Testimony, and Budget Submissions

The following checklist provides guidelines to be followed in reviewing credit program legislation, testimony, and budget submissions.

The checklist is to be used by agencies and OMB in proposing legislation, reviewing credit proposals, and preparing testimony on credit. If the proposed provisions or language are not in conformity with the policies of this Circular as listed in these checklists, agencies will be required to request in writing that the Office of Management and Budget modify or waive the requirement. Such requests will identify the modification(s) or waiver(s) requested, and also will state the reasons for the request and the time period for which the exception is required. Exceptions, when allowed, will ordinarily be granted only for a limited time, in order to allow for continuing review by OMB.

Agencies are to use the checklist in the budget submission process for the evaluation of existing legislation, regulations, or program policies. The OMB budget examiner with primary responsibility for the credit account will determine the use of this checklist. Use of the list includes review of changes in financial markets and the status of borrowers and beneficiaries to ensure that Federal objectives require continuation of the credit program. If these policies are found to be not in conformity with the policies of this Circular, agencies will propose changes to correct the inconsistency in their annual budget submission and justification to OMB and the Congress. When an agency does not deem a change in existing legislation, regulations, or policies to be desirable, it will provide a separate justification for retaining the existing non-conforming legislation or policies in its budget submission and justification to OMB at the request of the budget examiner.

Checklist—Federal credit program justification should include the following elements:

1. Program title:

2. Form of Assistance (direct or guarantee):

3. Reason this form of assistance was chosen:

4. Federal objectives of this program:

5. Reasons why Federal credit assistance is the best means to achieve these objectives:

6. Any draft bill establishing a credit program should contain the following:
   • Authorization to extend direct loans or make loan guarantees subject to the requirements of the Federal Credit Reform Act of 1990.
   • Authorization and requirement for a subsidy appropriation.
   • Cap on volume of obligations or commitments.
   • Terms and conditions defined sufficiently and precisely enough to estimate subsidy rate. (State estimated subsidy of this program [rate and dollar amount].)
   • Authorization of administrative expenses.

7. Describe briefly the existing and potential private sources of credit (and type of institution):

8. Explain reasons why private sources of financing and their terms and conditions must be supplemented and subsidized, including:
guarantees are at a level sufficient to cover the total administrative and servicing costs of the loan. Can the value of these benefits (or some of these benefits) be estimated in dollar terms? If so, state the estimate of their value. Further information on conducting cost-benefit analysis can be found in the forthcoming revision of OMB Circular No. A-64.

11. Describe the methods used to evaluate the program and the results of evaluations that have been made.

12. Describe any elements of program design which encourage and supplement private lending activity, such that private lending is displaced to the smallest degree possible by agency programs.

13. Estimate the expected administrative (including servicing) costs of the credit program (dollar amounts over next 5 fiscal years).

14. Prohibitions:
   • Agencies will not guarantee federally tax-exempt obligations directly or indirectly.
   • Agencies will not subordinate direct loans to tax-exempt obligations.

15. Financial standards:
   Risk sharing:
   • Lenders and borrowers share a substantial stake in full repayment according to the loan contract.
   • Private lenders who extend Government guaranteed credit bear at least 20 percent of the loss from any default.
   • Borrowers deemed to pose less of a risk receive a lower guarantee as a percentage of the total loan amount.
   • Borrowers have an equity interest in any asset being financed by the credit assistance.

Fees and interest rates:
   • Interest and fees cover, or at least are proportional to, default and other costs.
   • Interest rates charged to borrowers (or interest supplements) not set at an absolute level, but instead set by reference to the rate (yield) on marketable Treasury securities with a similar maturity to the direct loans being made or the non-Federal loans being guaranteed.
   • Fees charged at levels sufficiently high to cover the total administrative and servicing costs of the loan guarantee program and all of the estimated costs to the Government of the expected default claims and other obligations. (If not, justify difference in relation to benefits.)

Protecting the Government’s interest:
   • Contractual agreements include all covenants and restrictions (e.g., liability insurance) necessary to protect the Federal Government’s interest.
   • Maturities on loans shorter than the estimated useful economic life of any assets financed.
   • The Government’s claims on assets not subordinated to the claim of other lenders in the case of a borrower’s default.
   • Loan contracts to be standardized and private sector documents used to extent the possible.

Appendix C to Circular No. A—129
Model Bill Language for Credit Programs
A Bill

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That, this Act may be cited as " ".

AUTHORIZATION

Sec. 2. (1) The Administrator is authorized to make or guarantee loans to * * * (Define eligible applicants).
   (2) There are authorized to be appropriated $ ______ for the cost of direct loan obligations or loan guarantee commitments authorized in subsection (1) for each of the fiscal years * * * (List fiscal years for which authorization applies).

TERMS AND CONDITIONS

Sec. 3. Loans made or guaranteed under this Act will be on such terms and conditions as the Administrator may prescribe, except that:

(1) The Administrator will allow credit to any prospective borrower only when it is necessary to alleviate a credit market imperfection, or when it is necessary to achieve specified Federal objectives by providing a credit subsidy and a credit subsidy is the most efficient way to meet those objectives on a borrower-by-borrower basis.

(2) Loans made or guaranteed will provide for complete amortization within a period not to exceed _____ years. The minimum interest rate of these loans will be at (at) ( ______ percent above) no more than ______ percent below) the interest rate of the benchmark financial instrument.

(3) No loan made or guaranteed to any borrower will exceed _____ percent of the cost of the activity to be financed, or $ ______, whichever is less, as determined by the Administrator.

(4) No loan guaranteed to any one borrower will exceed 60% of the outstanding principal on the loan. Borrowers who are deemed to pose less of a risk will receive a lower guarantee as a percentage of the loan amount.

(5) No loan made or guaranteed will be subordinated to another debt contract by the borrower or to any other claims against the borrower.

(6) No loan will be guaranteed unless the Administrator determines that the lender is responsible and that adequate provision is made for servicing the loan on reasonable terms and protecting the financial interest of the United States.

(7) No loan will be guaranteed if the income from such loan is excluded from gross income for the purposes of Chapter 1 of the Internal Revenue Code of 1986, as amended, or if the guarantee provides significant collateral or security, as determined by the Administrator, for other obligations the income from which is so excluded.

(8) Direct loans and interest supplements on guaranteed loans will be at an interest rate set by reference to a benchmark interest rate (yield) on marketable Treasury securities with similar maturity to the direct loans being made or the non-Federal loans being guaranteed. The minimum interest rate of these loans will be (at) ( ______ percent above) no more than ______ percent below) the interest rate of the benchmark financial instrument.

(9) The minimum interest rates of new loans will be adjusted every month(s) to ensure changes in the interest rate of the benchmark financial instrument.

(10) Any securities of a type that is ordinarily financed in investment securities markets, as determined by the Secretary of the Treasury, and that are 100 percent guaranteed by the program shall be financed through the Department of the Treasury as direct loans, attributable to the agency.

(11) Fees or premiums for loan guarantee or insurance coverage will be assessed by reference to the cost to the Government of such coverage. The minimum guarantee fee or insurance premium will be (at) (no more than ______ percent below) the level sufficient to cover the agency’s costs for administering loan guarantees (including servicing) and paying all of the expected costs to the Government of the expected default claims and other obligations. Loan guarantee fees will be reviewed every month(s) to ensure that the fees assessed on new loan guarantees are at a level sufficient to cover the referenced percentage of the
agency’s most recent estimates of its costs.

(12) Any guarantee will be conclusive evidence that said guarantee has been properly obtained and that the underlying loan qualifies for such guarantee; and that, but for fraud or material misrepresentation by the holder, such guarantee will be presumed to be valid, legal, and enforceable.

(13) The Administrator will prescribe explicit standards for use in periodically assessing the credit risk of new and existing direct loans or guaranteed loans. The Administrator must find that there is a reasonable assurance of repayment before extending credit assistance.

(14) New direct loans may not be obligated and new loan guarantees may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required in section 504 of the Federal Credit Reform Act of 1990.

(15) Within the resources and authority available, gross obligations for the principal amount of direct loans offered by the Administrator will not exceed $____, or the amount specified in appropriations acts in each of fiscal years * * * (List fiscal years for which authorization applies). Commitments to guarantee loans may be made by the Administrator only to the extent that the total loan principal, any part of which is guaranteed, will not exceed $____, or the amount specified in appropriations acts in each of fiscal years * * * (List fiscal years for which authorization applies).

Payment of Losses

Sec. 4(a). If, as a result of a default by a borrower under a guaranteed loan, the holder thereof has made such further collection efforts and instituted such enforcement proceedings as the Administrator may require, the Administrator determines that the holder has suffered a loss, the Administrator will pay such holder percent of such loss, as specified in the guarantee contract. Upon making any such payment, the Administrator will be subrogated to all the rights of the recipient of the payment. The Administrator will be entitled to recover from the borrower the amount of any payments made pursuant to any guarantee entered into under this Act.

(b) The Attorney General will take such action as may be appropriate to enforce any right accruing to the United States as a result of the issuance of any guarantee under this Act.

(c) Nothing in this section will be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the guaranteed loan and approved by the Administrator, provided that budget authority for any resulting subsidy costs as defined under the Federal Credit Reform Act of 1990 is available.

(d) Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Administrator will have the right in his discretion to complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell any property acquired by him pursuant to the provisions of this Act.

Agreement for Participation in Single Family Housing Guaranteed/Insured Loan Programs of the United States Government

Introduction

The purpose of this Agreement is to establish the Lender as an approved originator, servicer, or holder of single family housing loans for the Agency, and to provide general terms and conditions for originating and servicing such loans.

Part I—General Requirements

This part sets forth the requirements for participation in single family housing guaranteed/insured loan programs of the Federal Government. Notwithstanding any other provisions of this Agreement, should there be a conflict between this Agreement and any statute or Agency rule or regulation, the latter shall prevail.

A. Duties and Responsibilities of the Agency

1. Payment on Claims

The Agency agrees to make payment on its claims in accordance with the terms of the guarantee/insurance and consistent with Agency regulations.

2. Information on Regulations and Guidelines

The Agency shall provide the Lender with a list of all regulations and guidelines that the Lender is required to follow to be in compliance with the Agency’s guaranteed/insured loan program. Where the Lender has the authority and responsibility to perform acts without Agency review or approval (“non-supervised acts”), the Agency shall notify the Lender of any significant changes in regulations and/or guidelines affecting those acts.

3. Personnel Available for Consultation

The Agency shall make personnel available for consultation on interpretations of Agency regulations and guidelines. The Lender may consult with Agency personnel regarding unusual underwriting, loan closing, loan servicing, and loan liquidation questions.

4. Agency Review of Lender Actions

In conducting reviews of specific actions taken by the Lender, the Agency shall determine the propriety of any decision made by the Lender based on the facts available at the time the specified action was taken. It is understood by the Agency and intended by this Agreement that the Lender has the authority to exercise reasonable judgment in performing any non-supervised act within its authority. However, the Agency reserves the right to question any act performed or conclusion drawn by the Lender which is clearly inconsistent with this Agreement or Agency regulations or guidelines.

5. Lender Right to Appeal

The Agency shall provide the Lender an opportunity to appeal, in accordance with program regulations which appear at [CFR citation], adverse actions taken by the Agency. Audits performed by the Agency, conclusions of the Agency that non-conformance has occurred, or interpretations by the Agency regarding its regulations or guidelines are not, in and of themselves, adverse actions subject to appeal.

B. General Requirements for the Lender

1. Eligibility to Participate

The Lender, to be an approved participant with the Agency in its guaranteed/insured loan program, must be a corporation or other acceptable legal entity, as defined by Agency regulations, with legal authority to participate in the program.
2. Knowledge of Program Requirements

The Lender is required to obtain and keep itself informed of all program regulations and guidelines, including all amendments and revisions of program requirements and policies.

3. Notification

The Lender shall immediately notify the Agency in writing if the Lender:

- Ceases to possess the minimum net capital and/or an acceptable level of liquidity/working capital, as required under this Agreement;
- Becomes insolvent;
- Has filed for any type of bankruptcy protection, has been forced into involuntary bankruptcy, or has requested an assignment for the benefit of creditors;
- Has taken any action to cease operations, or to discontinue servicing or liquidating any or all of its portfolio guaranteed/insured by the Agency;
- Has changed its name, location, address, tax identification number, or corporate structure;
- Is no longer maintaining the fidelity bond and/or errors and omissions policy required by the Agency;
- Has become delinquent on any Federal debt, or has been debarred, suspended, or sanctioned in connection with its participation in any Federal guaranteed/insured loan program; or
- Has been debarred, suspended, or sanctioned in accordance with any applicable state licensing or certification requirement or regulation.

4. Financial Responsibilities

The Lender and its principals shall demonstrate financial responsibility and sound business practices.

- The Lender shall satisfy, at all times, any requirement for minimum net capital and/or acceptable level of liquidity/working capital specified in Agency regulations.
- In accordance with Agency regulations, the Lender shall maintain, at all times, a fidelity bond and/or a mortgage servicing errors and omissions policy, at its own expense, to cover losses incurred as a result of dishonest, fraudulent or negligent acts of employees or other parties acting in behalf of the Lender. The amount of coverage shall be defined by Agency regulations. The Agency shall be listed as a “loss payee” on the policy.

5. Employees

The Lender shall maintain a staff that is well trained and experienced in origination and/or loan servicing functions, as necessary, to assure the capability of performing all of the supervised and non-supervised acts within its authority.

6. Facilities

The Lender shall operate its facilities and branch offices in a prudent and businesslike manner.

7. Policies

The Lender is required to establish and maintain adequate written policies for loan origination and servicing, including plans for quality control monitoring of production and servicing activities. Plans will be subject to review upon the request of the Agency to ensure the plans meet the Agency’s requirements.

8. Escrow Accounts

The Lender must establish separate mortgage escrow accounts, as required by the guaranteed/insured loan program and by applicable Federal and State laws and regulations. All escrow accounts must be fully insured by the FDIC.

9. Reporting Requirements

The Lender recognizes that the Agency, as guarantor/insurer, has a vital interest in ensuring that all acts performed by the Lender regarding the subject loans are performed in compliance with this Agreement and Agency regulations and guidelines. Information on the status of guaranteed/insured loans is necessary for this purpose, as well as to satisfy budget and accounting reporting required by the Department of the Treasury and the Office of Management and Budget.

- The Lender agrees to provide the Agency with all data required under Agency regulations and any additional information necessary for the Agency to monitor the health of its guaranteed loan portfolio, and to satisfy external reporting requirements. Examples of data which may be required are:
  - The number and amount of guaranteed/insured loans outstanding, the number and dollar amount of collections on loans outstanding during the reporting period, and the number and amount of guaranteed/insured loans made for the reporting period;
  - An aging schedule showing the number and amount of past due loans in each of the following categories: (1) 31–60 days, (2) 61–90 days, (3) 91–180 days, and (4) over 180 days; or
  - The number and amount of the past due loans rescheduled during the reporting period.

- The Lender also agrees to provide to the Agency, as requested or as required by regulation:
  - Copies of audited financial statements, reports on internal controls, and management letters of the Lender, which should be completed at least on an annual basis;
  - Copies of compliance audits or agreed-upon procedures letters conducted of any underwriting and/or servicing function performed by the Lender; and
  - Such other information as may be required for the Agency to properly monitor the Lender’s performance.

C. Underwriting Requirements

1. Responsibility

The Lender is responsible for following the requirements for originating, servicing and collecting all loans under the Agency’s guaranteed/insured loan program. The Agency shall specify which actions performed by the Lender are non-supervised acts and which acts require the Agency’s review and approval. Both supervised and non-supervised actions must be performed in accordance with the Agency’s regulations or guidelines.

2. Origination/Underwriting Process

The Lender shall, in accordance with Agency regulations and guidelines:

- Determine if loan applicants meet the general eligibility requirements of the Agency’s guaranteed/insured loan program;
- Determine whether or not the applicant is delinquent on any Federal debt. The Lender shall use credit reports and any other credit history data available from a Federal database to ascertain whether the applicant has a delinquent Federal debt outstanding.
- If the applicant has a Federal debt delinquency, the Lender must suspend processing of the application and investigate the delinquency. The investigation requires evaluating the cause of the delinquency and the status of the debt (e.g., workout or judicial decree pending). In accordance with Agency guidelines, the Lender may resume processing of the application if the delinquency is resolved and the investigation reveals no other adverse action. The Lender’s underwriting
1. Responsibilities

Servicing to be performed by the Lender on Agency guaranteed/insured loans must be at least equal in quality to that servicing provided by a prudent institutional lender for its own portfolio of similar loans which are not guaranteed/insured by the Government. The Lender, or its authorized agent, must take prudent steps to collect and apply loan payments, protect and preserve the loan collateral, and liquidate the loan if repayment cannot be reasonably assured through the use of collection tools or loan adjustments permissible under Agency regulations or guidelines. The Lender shall maintain all records required to document or properly service a mortgage.

2. Payments

Payments from the borrower shall be processed upon receipt under Agency regulations or guidelines, and include sufficient escrow premiums for hazard insurance and real estate taxes.

3. Insurance

The Lender is responsible for maintaining hazard insurance if the borrower fails to do so to the extent required by Agency regulation. The Lender shall take all necessary steps, as required by Agency regulation, to maintain the collateral when the borrower fails to do so.

4. Special Requests

The Lender shall consider any requests for loan subordination, release of collateral, or reduction or temporary suspension of loan payments, in accordance with Agency requirements.

5. Delinquent Accounts

The Lender shall contact and collect payments from borrowers who fail to make payments as agreed; assure that collateral is maintained and protected; and work with borrowers to arrange forbearance, if appropriate, as required by Agency regulations.

6. Serious Default/Foreclosure

When a mortgage is in serious default, (i.e., over 90 days delinquent), the Lender must take prompt and diligent action. Actions to obtain property title through foreclosure or voluntary conveyance, as well as all incident actions, must be consistent with applicable laws and Agency regulations. The Lender is expected to preserve and protect the property and title in accordance with pertinent laws, and Agency regulations and guidelines.

7. Loan Servicers

The Lender shall transfer and/or assign the right to service single family housing guaranteed/insured loans only to servicers meeting applicable participation requirements and performance standards. Such servicers must agree to provide, either directly to the Agency or through the Lender, information necessary for the Lender to comply with the reporting requirements of this Agreement, as well as permit reviews of their operations under Paragraph E of this Part. Servicers may resell the loans only to qualified servicers.

E. Agency Reviews of Lender’s Operations

The Agency shall have a right to conduct reviews, including on-site reviews of the Lender’s operations and the operations of any agent of the Lender, for the purpose of verifying compliance with this Agreement and Agency regulations and guidelines. These reviews may include, but are not limited to: Audits of case files; interviews with owners, managers and staff; audits of collateral; and inspections of the Lender’s and/or its agent’s underwriting, servicing and/or liquidation guidelines. The Lender and/or its agents shall provide access to all pertinent information to allow the Agency, or any party authorized by the Agency, to conduct such reviews.

F. Conformance to Standards

1. Standards

The Lender shall conform to the originating, servicing, reporting, and operational standards imposed by the Agency in the execution of its guaranteed/insured loan program. If the Lender fails to meet the performance standards in this Agreement or outlined in the Agency’s regulations or guidelines regarding supervised or non-supervised acts, or engaged in supervised acts without the appropriate review and approval by the Agency, the Agency shall determine if these actions represent isolated incidents or a pattern of improper performance.

2. Determination of Non-Conformance

The Agency shall carefully consider the circumstances and available facts in determining whether the Lender has acted in non-conformance with applicable standards. The Agency’s determination will be based on, but not limited to, a review of the Lender’s:

- Conformance in meeting financial criteria of the Agency:
• Adequacy in meeting the standards of the Agency, including those for origination, servicing, collection of fees and loan payments, and protection of collateral;
• Satisfaction of the reporting requirements of the Agency;
• Success in operating in a sound and prudent businesslike manner;
• Performance ratios for his portfolio compared to industry performance ratios for delinquency and default; and
• Performance as determined by Agency on-site reviews of the underwriting and/or servicing performed by the Lender.

3. Agency Action

If the Lender is determined to be in non-conformance with any Federal law, State law, Agency regulation or guideline, or term of this Agreement, the Agency reserves the right to take action in accordance with its laws and regulations.

Part II—List of Agency Regulations and Guidelines, and Designation of Lender Authority to Perform Certain Acts

A. List of Agency Regulations and Guidelines

The following is a list of current Agency regulations and guidelines which contain the information necessary for the Lender to be in compliance with Agency requirements.

1. 
2. 
3. 
4. 

B. Authority to Perform Non-Supervised Acts

In accordance with Part I, Paragraph C.1. of this Agreement, the Agency does hereby authorize the Lender to conduct the following acts in a non-supervised manner. All other acts not specified in this paragraph shall be deemed supervised acts.

1. 
2. 
3. 
4. 

Part III—Duration and Modification

A. Duration, Termination and Extension of Agreement

1. Termination by the Agency
   This Agreement shall be valid unless terminated by the Agency, in accordance with Agency requirements.

2. Termination by the Lender
   This Agreement may be terminated by the Lender at any time, in accordance with program requirements.
   • The Lender shall remain obligated to service and liquidate the guaranteed/insured loans remaining in the portfolio. Unless and until the Agency or the Lender transfers the guaranteed/insured loans to a servicer acceptable to the Agency, all requirements concerning loan management of the Lender and rights of the Agency under this Agreement shall remain in full force and effect.
   • The Lender shall notify the Agency of its intent to terminate the Agreement in accordance with Agency regulations.

3. Effect of Termination on Responsibilities and Liabilities

   Responsibilities or liabilities of the Lender that existed before the termination of the Agreement will continue to exist after termination, unless the Agency expressly releases the Lender from any of its responsibilities or liabilities in writing. This is true whether the Agreement was terminated by the Lender or by the Agency.

B. Entire Agreement

This Agreement, Parts I through IV inclusive, and any regulations or guidelines incorporated by reference, shall constitute the entire Agreement. There are no other agreements, written or oral, regarding the terms contained in this Agreement which are or shall be binding on the parties.

Part IV—Endorsement

The undersigned Lender and Agency do hereby agree to the participation requirements and other provisions of this Agreement.

[FR Doc. 92-28733 Filed 11-4-92; 8:45 am]
Environmental Protection Agency

Part IV

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85, 86 and 600
[AMS-FRL-45281]


AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes low- and high-altitude emission standards and test procedures for the certification of natural gas-fueled and liquefied petroleum gas-fueled light-duty vehicles, light-duty trucks, heavy-duty engines and vehicles, and motorcycles. The standards are proposed to be effective beginning with the 1994 model year, although vehicles may be certified to the standards in earlier years if the manufacturer desires. This action also proposes fuel economy test procedures and calculations for natural gas-fueled light-duty vehicles and light-duty trucks to be effective beginning with the 1993 model year. These procedures and calculations will allow natural gas-fueled vehicles to be included in the Corporate Average Fuel Economy (CAFE) program.

These standards are being proposed in order to remove the possibility that the absence of such standards could hinder the development of natural gas and liquefied petroleum gas as transportation fuels. These proposed standards are intended to provide a comparable degree of environmental protection to that afforded by the standards applicable to gasoline, diesel and methanol vehicles.

In addition to emission standards for gaseous-fueled vehicles, this action proposes requirements for the certification of aftermarket conversion equipment intended to allow a vehicle or engine to operate completely or in part on a fuel other than the fuel for which it is originally designed and manufactured. These proposed requirements are not specific to gaseous fuels, but are proposed to apply to all conversions regardless of fuel type.

DATES: The public comment period will remain open for 30 days following the public hearing. EPA will conduct a public hearing on this Notice of Proposed Rulemaking on December 3, 1992. Further information about the hearing can be found in the Public Participation section of this action.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A-92-14, at Air Docket Section, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The public hearing discussed in the DATES section, above, will be held at the Sheraton University Inn, 5200 Boardwalk, Ann Arbor, Michigan 48108. The hearing will begin at 9:30 a.m. on October 30, 1992. Materials relevant to this proposal have been placed in Docket No. A-92-14 by EPA. The docket is located at the above address in Room M-1500, Waterside Mall (ground floor), and may be inspected between 8:30 a.m. and noon, and between 1:30 and 3:30 p.m. on weekdays. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. John Mueller, Regulation Development and Support Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105; phone (313) 668-4275. Persons who wish to receive a copy of the regulatory text for this proposed rule should call the above mentioned contact person. The proposed regulatory text is also available in the public docket referenced above.

SUPPLEMENTARY INFORMATION:

I. Background

Recently there has been increasing interest in non-petroleum alternative fuels for transportation use for a variety of reasons, including the environmental benefits offered by these fuels. Methanol, ethanol, natural gas and liquefied petroleum gas are the most prominent of these alternative fuels, and generally considered the most likely candidates for early implementation on a widespread basis. EPA promulgated emission regulations for methanol-fueled vehicles on April 11, 1989 (54 FR 14426). However, there are currently no emission standards for gaseous-fueled vehicles (i.e., those fueled with natural gas or liquefied petroleum gas). This is generally seen as a potential barrier to the entry of these vehicles into the commercial market due to the uncertainty of what current emission requirements are or what future requirements will be. Thus, in order to remove this potential barrier EPA proposes in today's notice emission standards for all classes of vehicles and engines fueled with natural gas or liquefied petroleum gas. In addition, today's notice contains proposed fuel economy test procedures and calculations to allow natural gas-fueled vehicles to be included in the CAFE program. Tables 1 through 4 summarize the proposed emission standards for the various classes of motor vehicles and engines. It should be noted that "Tier 0" standards for light-duty trucks are shown in both Table 2 and Table 3 for purposes of comparison with the "Tier 1" standards, which utilize a different weight classification scheme. In addition to the standards shown in the Tables, gaseous-fueled motorcycles and mopeds are proposed to meet the standards currently in place for other motorcycles (i.e., 5.0 g/km total hydrocarbons and 12 g/km CO).

Table 1.—Proposed Emission Standards for 1994 and Later Model Year Gaseous-Fueled Light-Duty Vehicles (g/mi) 1

<table>
<thead>
<tr>
<th>Fuel</th>
<th>Standards 2</th>
<th>THC</th>
<th>NMHC</th>
<th>CO</th>
<th>NOx</th>
<th>PM</th>
<th>Evaporative hydrocarbons (g/test)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Natural Gas</td>
<td>Tier 0</td>
<td>0.34</td>
<td>3.4</td>
<td>1.0</td>
<td>0.20</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>Natural Gas</td>
<td>Tier 1</td>
<td>0.25</td>
<td>3.4</td>
<td>0.4</td>
<td>0.08</td>
<td>2.0</td>
<td>2.0</td>
</tr>
</tbody>
</table>

1 The Agency uses the phrase "Tier 1" to denote the 1994 and later model year standards in part because they are nearly identical to the Tier 1 standards prescribed by section 202(g) of the Clean Air Act for petroleum-fueled vehicles. Use of this phrase is not meant to suggest that gaseous-fueled vehicles are subject to the section 202(g) Tier 1 standards.
### Table 1.—Proposed Emission Standards for 1994 and Later Model Year Gaseous-Fueled Light-Duty Vehicles (g/mi) 1.—Continued

<table>
<thead>
<tr>
<th>Fuel</th>
<th>Standards 2</th>
<th>THC</th>
<th>NMHC</th>
<th>CO</th>
<th>NOx</th>
<th>PM 3</th>
<th>Evaporative hydrocarbons (g/test)</th>
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<tbody>
<tr>
<td>LPG Tier 0</td>
<td>0.41</td>
<td>3.4</td>
<td>1.0</td>
<td>0.20</td>
<td>2.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LPG Tier 1</td>
<td>0.41</td>
<td>0.25</td>
<td>3.4</td>
<td>0.4</td>
<td>0.08</td>
<td>2.0</td>
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</tbody>
</table>

**Full Useful Life Standards 5**

<table>
<thead>
<tr>
<th>Fuel</th>
<th>Standards 2</th>
<th>THC</th>
<th>NMHC</th>
<th>CO</th>
<th>NOx</th>
<th>PM 3</th>
<th>Evaporative hydrocarbons (g/test)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Natural Gas</td>
<td>Tier 1</td>
<td>0.31</td>
<td>4.2</td>
<td>0.6</td>
<td>0.10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LPG Tier 1</td>
<td>0.31</td>
<td>4.2</td>
<td>0.6</td>
<td>0.10</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1 Crankcase emissions are prohibited. Standards apply at all altitudes. For Tier 1 standards, vehicles are required to meet both the intermediate and full useful life standards.

2 The Tier 1 standards apply to 40 percent of a manufacturer’s 1994 model year vehicles, 80 percent of 1995 vehicles, and 100 percent of 1996 and later vehicles. The Tier 0 standards are optional before the 1994 model year and required for the 1994 and 1995 model year vehicle not covered by the Tier standards.

3 Tier 0 particulate standards apply to diesel-cycle vehicles only. Tier 1 particulate standards apply to all vehicles.

4 Five years or 50,000 miles, whichever occurs first.

5 Ten years or 100,000 miles, whichever occurs first. No useful life Tier 0 standards.

### Table 2.—Proposed Emission Standards for 1994 and Later Model Year Gaseous-Fueled Light-Duty Trucks (g/mi) 1

<table>
<thead>
<tr>
<th>Fuel</th>
<th>LVW (lb) 3</th>
<th>Standards 2</th>
<th>THC</th>
<th>NMHC</th>
<th>CO</th>
<th>NOx</th>
<th>PM 4</th>
<th>Idle CO (% conc.)</th>
<th>Evaporative hydrocarbons (g/test)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Natural Gas</td>
<td>0-3750</td>
<td>Tier 1</td>
<td>0.25</td>
<td>3.4</td>
<td>0.4</td>
<td>0.08</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Natural Gas</td>
<td>3751-5750</td>
<td>Tier 1</td>
<td>0.32</td>
<td>4.4</td>
<td>0.7</td>
<td>0.08</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LPG</td>
<td>0-3750</td>
<td>Tier 1</td>
<td>0.25</td>
<td>3.4</td>
<td>0.4</td>
<td>0.08</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LPG</td>
<td>3751-5750</td>
<td>Tier 1</td>
<td>0.32</td>
<td>4.4</td>
<td>0.7</td>
<td>0.08</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Intermediate Useful Life Standards 5**

<table>
<thead>
<tr>
<th>Fuel</th>
<th>Standards 2</th>
<th>THC</th>
<th>NMHC</th>
<th>CO</th>
<th>NOx</th>
<th>PM 4</th>
<th>Idle CO (% conc.)</th>
<th>Evaporative hydrocarbons (g/test)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Natural Gas</td>
<td>0-3750</td>
<td>Tier 0</td>
<td>0.67 (0.83)</td>
<td>10 (14)</td>
<td>1.2</td>
<td>0.26</td>
<td>0.50</td>
<td>2.0 (2.6)</td>
</tr>
<tr>
<td>Natural Gas</td>
<td>3751-5750</td>
<td>Tier 0</td>
<td>0.67 (0.83)</td>
<td>10 (14)</td>
<td>1.7</td>
<td>0.13</td>
<td>0.50</td>
<td>2.0 (2.6)</td>
</tr>
<tr>
<td>Natural Gas</td>
<td>3751-5750</td>
<td>Tier 1</td>
<td>0.40</td>
<td>5.5</td>
<td>0.97</td>
<td>0.10</td>
<td>0.50</td>
<td>2.0 (2.6)</td>
</tr>
<tr>
<td>LPG</td>
<td>0-3750</td>
<td>Tier 0</td>
<td>0.80 (1.0)</td>
<td>10 (14)</td>
<td>1.2</td>
<td>0.26</td>
<td>0.50</td>
<td>2.0 (2.6)</td>
</tr>
<tr>
<td>LPG</td>
<td>3751-5750</td>
<td>Tier 0</td>
<td>0.80 (1.0)</td>
<td>10 (14)</td>
<td>1.7</td>
<td>0.13</td>
<td>0.50</td>
<td>2.0 (2.6)</td>
</tr>
<tr>
<td>LPG</td>
<td>3751-5750</td>
<td>Tier 1</td>
<td>0.90</td>
<td>5.5</td>
<td>0.97</td>
<td>0.10</td>
<td>0.50</td>
<td>2.0 (2.6)</td>
</tr>
</tbody>
</table>

**Full Useful Life Standards 6**

<table>
<thead>
<tr>
<th>Fuel</th>
<th>Standards 2</th>
<th>THC</th>
<th>NMHC</th>
<th>CO</th>
<th>NOx</th>
<th>PM 4</th>
<th>Idle CO (% conc.)</th>
<th>Evaporative hydrocarbons (g/test)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Natural Gas</td>
<td>0-3750</td>
<td>Tier 0</td>
<td>0.67 (0.83)</td>
<td>10 (14)</td>
<td>1.2</td>
<td>0.26</td>
<td>0.50</td>
<td>2.0 (2.6)</td>
</tr>
<tr>
<td>Natural Gas</td>
<td>3751-5750</td>
<td>Tier 0</td>
<td>0.67 (0.83)</td>
<td>10 (14)</td>
<td>1.7</td>
<td>0.13</td>
<td>0.50</td>
<td>2.0 (2.6)</td>
</tr>
<tr>
<td>Natural Gas</td>
<td>3751-5750</td>
<td>Tier 1</td>
<td>0.40</td>
<td>5.5</td>
<td>0.97</td>
<td>0.10</td>
<td>0.50</td>
<td>2.0 (2.6)</td>
</tr>
<tr>
<td>LPG</td>
<td>0-3750</td>
<td>Tier 0</td>
<td>0.80 (1.0)</td>
<td>10 (14)</td>
<td>1.2</td>
<td>0.26</td>
<td>0.50</td>
<td>2.0 (2.6)</td>
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<td>LPG</td>
<td>3751-5750</td>
<td>Tier 0</td>
<td>0.80 (1.0)</td>
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<td>LPG</td>
<td>3751-5750</td>
<td>Tier 1</td>
<td>0.90</td>
<td>5.5</td>
<td>0.97</td>
<td>0.10</td>
<td>0.50</td>
<td>2.0 (2.6)</td>
</tr>
</tbody>
</table>

1 Crankcase emissions are prohibited. Standards in parenthesis apply to vehicles sold in specified high-altitude counties. For the Tier 1 standards, vehicles are required to meet both the intermediate and full useful life standards.

2 Loaded vehicle weight (i.e., curb weight plus 300 lb.).

3 Tier 0 standards apply to diesel-cycle vehicles only. Tier 1 particulate standards apply to all vehicles, but are phased in one year later than the Tier 0 standards.

4 Five years or 50,000 miles, whichever occurs first.

5 Ten years or 100,000 miles, whichever occurs first. No useful life Tier 0 standards.

### Table 3.—Proposed Emission Standards for 1994 and Later Model Year Gaseous-Fueled Heavy Light-Duty Trucks (g/mi) 1

<table>
<thead>
<tr>
<th>Fuel</th>
<th>Weight 2</th>
<th>Standards 3</th>
<th>THC</th>
<th>NMHC</th>
<th>CO</th>
<th>NOx</th>
<th>PM 3</th>
<th>Idle CO (% conc.)</th>
<th>Evaporative hydrocarbons (g/test)</th>
</tr>
</thead>
</table>
| Intermediate Useful Life Standards 6  
Natural Gas    | 3751-5750| Tier 1      | 0.32| 4.4  | 0.7  |
| Natural Gas   | 3751-5750| Tier 1      | 0.32| 4.4  | 0.7  |

**Full Useful Life Standards 6**

<table>
<thead>
<tr>
<th>Fuel</th>
<th>Standards 3</th>
<th>THC</th>
<th>NMHC</th>
<th>CO</th>
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<tr>
<td>LPG</td>
<td>3751-5750</td>
<td>Tier 0</td>
<td>0.80 (1.0)</td>
<td>10 (14)</td>
<td>1.7</td>
<td>0.13</td>
<td>0.50</td>
<td>2.0 (2.6)</td>
</tr>
<tr>
<td>LPG</td>
<td>3751-5750</td>
<td>Tier 1</td>
<td>0.90</td>
<td>5.5</td>
<td>0.97</td>
<td>0.10</td>
<td>0.50</td>
<td>2.0 (2.6)</td>
</tr>
</tbody>
</table>

II. Development of Proposed Standards

In general, EPA proposes that emission standards for gaseous-fueled vehicles be equivalent to those for other vehicles. Thus, for light-duty vehicles and light-duty trucks, the Agency proposes to apply standards for the most part identical to the Tier 1 standards mandated in the Clean Air Act Amendments of 1990 (hereinafter referred to as "the Amendments") for petroleum and methanol-fueled light-duty vehicles and light-duty trucks. As in the Tier 1 standards, these standards would be phased-in beginning with the 1994 model year, and standards equivalent to those currently in place for petroleum and methanol-fueled vehicles, referred to as Tier 0 standards, would be applied to those 1994 through 1996 model year vehicles not included in the Tier 1 standards. The FRM for the Tier 1 standards (56 FR 25724, June 5, 1991) discussed Tier 1 issues common to all vehicles regardless of fuel type, such as phase-in schedules, useful life, and in-use standards, which will not be covered in detail here.

EPA also proposes that the standards currently in place for petroleum and methanol-fueled heavy-duty vehicles, engines and motorcycles generally be applied to gaseous-fueled vehicles in those classes. Finally, for gaseous-fueled vehicles prior to the 1994 model year, manufacturers have the option to certify to the "Tier 0" standards for light-duty vehicles and light-duty trucks, and the current standards for heavy-duty engines.

As will be discussed in more detail later, compared to current petroleum-fueled vehicles, vehicles operating on natural gas have fairly high total HC emissions which consist primarily of methane, but have non-methane HC levels comparable to or below those of gasoline-fueled vehicles. Due to the current infeasibility of these vehicles meeting the current THC standards, EPA is proposing only NMHC standards for those vehicles, and deferring any action on THC standards for natural gas-fueled vehicles to a later date. For NMHC, EPA proposes standards for gaseous-fueled vehicles that are the same as the Tier 1 standards for other vehicles. For NMHC standards applicable to those vehicles which do not have a "Tier 1" counterpart (i.e., vehicles not covered by the Tier 1 phase-in vehicles optionally certified before 1994, and heavy-duty engines), standards which yield equivalent NMHC control to current gasoline-fueled vehicles are proposed.

In addition to the standards shown in Tables 1 through 4, this proposal also contains separate in-use standards for light-duty vehicles and light-duty trucks in line with the approach taken in the 1990 Amendments. In general, interim "Tier 1" in-use standards (at intermediate useful life) are phased in along with the "Tier 1" certification standards, with the final "Tier 1" in-use standards (which include both intermediate and full useful life levels) being phased in two years later. Beginning with the 1994 model year all light-duty vehicles and light-duty trucks not covered under the interim or final "Tier 1" in-use standards are required to meet the "Tier 0" standards in-use for the applicable intermediate useful life.

The actual levels of the in-use standards are, in some cases, numerically equal to the certification levels. Where the certification standards in this proposal differ from those for other fuels (i.e., natural gas HC standards) the in-use...
standards have been changed accordingly. For a more complete discussion of the in-use standards and phase-in schedules the interested reader is urged to consult the previously mentioned FRM on the Tier 1 standards.

Gaseous-fueled vehicles could, in many cases, meet standards which are lower than the ones proposed here. However, it is not the intent of this rule to require the greatest achievable emission reductions from gaseous-fueled vehicles, but to provide opportunity for such vehicles to enter the market on an equal footing with other currently regulated vehicle classes, as was done with methanol (54 FR 14426, April 11, 1989).

As was previously mentioned, EPA here proposes to classify gaseous-fueled vehicles as either Otto-cycle or diesel to determine which standards apply. The Otto-cycle and diesel standards correspond to the original standards for gasoline-, and diesel-fueled vehicles, respectively. The Otto-cycle and diesel classification scheme was promulgated with the methanol standards to group engines regardless of fuel type in a manner that would provide equivalent control. It seems reasonable to extend this classification scheme to gaseous-fueled vehicles with some modifications as described below.

Although there are other factors to consider, in general an Otto-cycle engine is considered to be one that is throttled during normal operation whereas a diesel is not. The Agency recognizes, however, that in some cases this criterion may not be adequate or appropriate to determine a vehicle’s classification. For example, a gaseous-fueled engine which is derived from a particular Otto-cycle or diesel base engine, and is expected to be used in similar applications as the base engine, would most appropriately be classified the same as the base engine from which it was derived. In such cases the Administrator will take into account other relevant factors, such as compression ratio, combustion and thermodynamic characteristics, or intended in-use duty cycle when classifying the vehicle.

A. Timing of the Proposed Standards

As will be discussed in greater detail later, current technology gaseous-fueled vehicles have largely demonstrated the ability to comply with the standards proposed in today’s notice. Additionally, the technology which will be used on gaseous-fueled vehicles to comply with the “Tier 1” standards proposed here is expected to be similar to that used on other vehicles meeting the Tier 1 standards. Therefore, it is not expected that significant leadtime for developing emission control technology will be required to comply with the proposed standards. Rather, it is expected that non-emissions related work specific to producing and certifying gaseous-fueled vehicles will be the primary area where leadtime will be necessary. Given that gaseous-fueled vehicles have been produced as aftermarket conversions on a small scale for many years and many of the issues concerning gaseous-fueled vehicle production have been confronted, implementation of the standards is proposed for the 1994 model year, as with the Tier 1 standards for vehicles operated on other fuels. As an option, however, manufacturers will be allowed to certify to the proposed standards for model years before 1994. For example, manufacturers of heavy-duty engines and vehicles may elect to certify engines and vehicles produced prior to the 1994 model year in order to include them in the emissions trading and banking program, as described in a later section. Manufacturers of LDVs and LDIs may also wish to certify to the standards at an earlier date to include their vehicles in the Corporate Average Fuel Economy (CAFE) program, also described later.

B. Standards for HC

In general, EPA seeks to control vehicles operated on alternative fuels so that their emissions are no greater than the emissions from petroleum-fueled vehicles. Specifically, EPA proposes to promulgate standards for gaseous-fueled vehicles which are numerically equivalent to those standards for other fuels, where appropriate, when considering such factors as feasibility and leadtime. Emission standards for tailpipe, evaporative HC, and refueling emissions as they are proposed for gaseous-fueled vehicles are discussed in the following paragraphs. It should be noted that the term “evaporative emissions” as it is used here for gaseous-fueled vehicles does not have the same meaning as for petroleum-, and methanol-fueled vehicles. This is especially true of natural gas-fueled vehicles whose fuel is generally stored in a gaseous state and, thus, cannot “evaporate”. When the term “evaporative emissions” is used here it is meant to refer to emissions of fuel from points prior to its introduction into the combustion chamber (i.e., non-tailpipe emissions).

1. Exhaust Standards

As was previously discussed, it is the Agency’s intent to apply standards to gaseous-fueled vehicles which are numerically equivalent to those applicable to other fuels, where appropriate.

For vehicles operating on liquefied petroleum gas this approach can be readily applied, based on the similarity of their emission characteristics to those of petroleum-fueled vehicles. Thus, the Agency proposes, as shown in Tables 1 through 4, that all THC and NMHC standards currently applicable to petroleum-fueled vehicles be directly applied to liquefied petroleum gaseous-fueled vehicles.

In the case of current technology natural gas-fueled vehicles and trucks, total exhaust HC emissions tend to be significantly higher than the level of the current total HC standards. These emissions are largely methane (typically around 90 percent). The methane fraction has a low photochemical reactivity and, in comparison to the non-methane fraction, is not a major contributor to urban ozone formation.

The high methane emissions would make it infeasible for current technology natural gas-fueled vehicles to comply with the THC standards currently in place for other fuels. The main reason for this is that current exhaust catalyst technology is largely ineffective at oxidizing methane. While there is work underway to develop catalyst technology which would allow natural gas-fueled vehicles to meet the THC standards, this technology is fairly early on in its development. At present the Agency does not believe that the THC standards are feasible in the near term for natural gas-fueled vehicles. The amount of leadtime required for technology development cannot be readily determined, primarily because a durable methane catalyst formulation has not yet been identified. Also, the development of such technology is to some extent dependent upon the availability of research and development resources which is in turn dependent upon the development of the natural gas vehicle market in the near-term.

EPA believes that setting THC standards in the near term would likely have the effect of precluding these vehicles from the market, which is contrary to the intent of this proposal. While the Agency is generally applying gasoline vehicle standards to gaseous-fueled vehicles on an equal basis, the Agency has discretion in setting standards under section 202(a) for gaseous-fueled vehicles. The passage of such legislation as the Alternative Motor Fuels Act of 1988, as well as the opportunities for gaseous-fueled vehicles contained in the clean-fuel vehicle programs of the Clean Air Act...
Amendments of 1990, reflect Congress' view that natural gas is a promising future transportation fuel in light of both environment and national energy security. For these reasons the Agency does not believe that natural gas-fueled vehicles should be excluded from the market while the catalytic technology is being developed. Thus, only NMHC standards are being proposed for these vehicles in today's notice, as shown in Tables 1 through 4. However, the Agency will continue to monitor the progress of natural gas-fueled vehicle catalyst technology and may consider THC standards for these vehicles at some future time.

In the case of NMHC standards for natural gas-fueled vehicles, it would be appropriate to apply the same NMHC standards to these vehicles as are currently in place for other vehicles. However, there are currently some classes of vehicles which have only THC standards and do not have NMHC standards. These include LDVs and LDTs certified before 1994, 1994 and 1995 model year LDVs and LDTs not included in the "Tier 1" phase-in, and all heavy-duty engines. For natural gas fueled vehicles in these classes, today's notice proposes NMHC standards which are equivalent to the NMHC levels resulting from the existing THC standards. The purpose of these NMHC standards would be to limit the NMHC emissions from these vehicles to the levels being achieved by current technology (e.g., pre-1994) vehicles.

To determine the non-methane fraction of current vehicles' emissions the Agency performed an analysis of the HC emission characteristics of recent gasoline-fueled vehicles and trucks. First, all of the LDV and LDT certification tests for the 1988, 1989 and 1990 model years which contained both total and non-methane HC measurements (California and 50-state tests) were analyzed for percent NMHC. These 641 tests represented 35 percent of all certification tests for these years. For these data the NMHC fraction ranged from 82 to 87 percent, varying with the model year, specific control technology and whether the vehicles were LDVs or LDTs. It was also found by looking at durability vehicle data that the NMHC percentage remained relatively constant as mileage increased, with variations remaining within the range mentioned above for the certification tests and not significantly dependent on mileage. To the extent that there may be a marginal difference, though, it seems most appropriate to use a high-mileage value to set the standards, since the standards represent levels to be met under deteriorated end-of-life conditions. An NMHC fraction of 83.5 percent, derived from the average of 319 1988-1990 model year durability light-duty vehicles with 40,000 or more miles, was thus applied to the current total HC standards for LDVs and LDTs to arrive at the "Tier 0" NMHC standards as shown in Table 1 through 4. Lack of data on the NMHC fractions for heavy-duty engines, the same fraction was used to determine appropriate heavy-duty NMHC standards, as shown in Table 4. This was done because those heavy-duty engines most likely to be converted to natural gas use or replaced by natural gas-fueled engines are predominantly lighter weight gasoline-fueled engines, using similar control systems to those found on light-duty vehicles and trucks. The Agency requests comments on the appropriateness of extending the methodology for arriving at light-duty NMHC standards to heavy-duty engines.

2. Evaporative Standards

The purpose of the current evaporative emission standards is to control the emissions of evaporated fuel from the vehicle fuel storage and metering system. Generally, gasoline fuel systems have needed to "breathe," and such operation has led to the release of fuel vapors. These vapors are routed to a canister containing activated carbon for storage and then purged into the engine to be burned during vehicle operation. Currently, the evaporative test consists of two parts: A diurnal heat build to simulate the normal temperature change in the fuel tank on a hot sunny day, and a hot soak test following the driving portion of the test sequence to measure any emissions coming from the engine and fuel system. Since gaseous fuels are stored under pressure on the vehicle, their fuel systems must be sealed for safety reasons and in order to prevent fuel loss. Thus, the evaporative emissions from gaseous-fueled vehicles are expected to be near-zero. However, the Agency believes it is appropriate to retain some evaporative emission requirement in order to insure that fuel system leakage is prevented.

In a separate action, the Agency is currently revising the evaporative requirements for gasoline and methanol-fueled vehicles to include a "running loss" measurement as well as to modify the diurnal and hot soak portions of the test to better simulate in-use conditions. One of the changes being considered in that action is a modification to the diurnal test whereby the ambient air would be heated. Under the current program direct heat is applied to the fuel tank, which would make it difficult to modify for application to gaseous-fueled vehicles. An NPRM was published on the revised test procedures in January of 1990 (55 FR 1914, January 19, 1990) and subsequent modifications to that proposal were discussed at a December, 1990 workshop (55 FR 49914, December 3, 1990). The Agency intends to incorporate the final version of those standards and test procedures into the final rule for gaseous-fueled vehicle standards. The Agency believes that, with the changes being made to the evaporative test procedure, the new procedure can be directly applied to gaseous-fueled vehicles, with the possible deletion of some steps which may be unnecessary, as discussed further in the test procedures section of today's notice. Thus, the reader should consider that this proposal includes the application to gaseous-fueled vehicles of the proposed evaporative requirements published in the above cited notices. Accordingly, EPA is requesting comments on the appropriateness of those requirements as well as any modifications needed to use the procedures for gaseous-fueled vehicles. If the above mentioned evaporative rule is finalized in significantly different form than EPA currently anticipates and cannot be directly applied to gaseous-fueled vehicles the Agency will re-open the comment period for this proposal to allow further comment on the application of evaporative emissions requirements to gaseous-fueled vehicles.

Unfortunately, the revised standards and test procedures will not be applicable until at least the 1994 model year, giving rise to the issue of interim evaporative requirements for those manufacturers wishing to certify optionally before the 1994 model year. However, given the expectation of near-zero evaporative emissions from gaseous-fueled vehicles and the greater difficulty of modifying the current test procedures for gaseous-fueled vehicles, the Agency is proposing that no evaporative standard be applied to those vehicles optionally certified prior to the 1994 model year. The Agency requests comment on whether evaporative requirements should be applied to these vehicles prior to the 1994 model year and what appropriate modifications would be needed to the current test procedure. Since the evaporative requirements proposed here are aimed at checking for fuel system leaks, and since these systems are expected to have near-zero evaporative emissions, the Agency is also requesting comment on whether it is appropriate to...
apply evaporative requirements to gaseous-fueled vehicles in general.  

3. Refueling Standards  
   Included in the Clean Air Act Amendments of 1990 are provisions for the control of refueling emissions from motor vehicles. While the refueling emissions requirements of the Act do not specifically apply to gaseous-fueled vehicles, it is worth considering whether it would be appropriate to apply some form of refueling emissions controls to these vehicles. For liquid-fueled vehicles the control of refueling emissions can be accomplished through vehicle hardware (i.e., "onboard" controls) or hardware at the refueling station (i.e., "Stage II" controls). Due to fundamental differences in approaches to storing and handling gaseous as opposed to liquid petroleum fuels, the refueling emissions issue is somewhat different for gaseous fuels. The prevention of excessive refueling emissions from these vehicles (and stations) is important, and the Agency believes these refueling emissions should be controlled where feasible and cost-effective. The Agency is therefore proposing to control refueling emissions under section 202(c) and 211(e)(1)(4) of the Act.  

As was previously mentioned, the Act does not specifically require EPA to control refueling emissions from gaseous-fueled vehicles and refueling stations. However, the Agency believes that, in light of the Act's refueling emission control requirements for liquid fuels, it is appropriate to consider such controls for gaseous fuels where the cost of such controls is minimal. In the case of refueling emissions from natural gas-fueled vehicles the emissions would be primarily methane. The Agency recognizes that the proposed exhaust emission standards for natural gas-fueled vehicles contain only NMHC standards, and no THC standards. However, as was discussed earlier, the lack of proposed exhaust THC standards in today's notice is a function of current infeasibility, and the Agency believes that control of methane is appropriate where it is feasible and inexpensive. The Agency also believes that refueling emission controls applied to natural gas refueling stations will be inexpensive both in the hardware required and in the fact that the bulk of refueling stations expected to be in operation several years from now will be constructed after those requirements take effect. This will allow the hardware requirements to be built into the station, rather than being retrofitted.  

Since gaseous fuels are transferred in a sealed system there is little concern about refueling emissions at the vehicle/pump interface during fuel transfer. Rather, the concern arises when the refueling line is connected and disconnected from the vehicle. At those times there is potential for fuel to escape under pressure as the values on the refueling line and the vehicle close. In many cases, low-loss, no-bleed type hose connectors are currently in use to limit refueling emissions. However, connectors which bleed off a substantial amount of fuel vapors are also being used.  

A second concern with respect to refueling emissions, which is specific to liquefied petroleum gas refueling, is the use of so-called outage valves on the fuel tank to signal the proper fuel level. In order to allow for fuel expansion and evaporation, LPG tanks are normally only filled to about the 80 percent level. In the past a small orifice, known as the outage value, was placed at the 80 percent level on the tank. This value was opened at the beginning of the refueling process and would vent vapors until the 80 percent level was reached, at which time liquid fuel would be discharged; signalling that it was time to end the refueling operation. Although LPG tanks are generally made with 80 percent automatic fill shutoff devices (to comply with National Fire Protection Association Standard 58), outage valves are still used to verify the auto-shutoff and to relieve tank pressure. Obviously, the emissions from such operations are a concern. Fortunately, an alternative exists. For many years, some liquefied petroleum gas fuel tanks have been built with no outage valve, but rather an outage tank inside of the fuel tank to allow for vapor compression during refueling and vapor expansions.  

In order to prevent excessive refueling emissions for gaseous-fueled vehicles, simple performance specifications for the vehicle and refueling station hardware appear to be the only reasonable approach, and are proposed here. First, refueling equipment shall be designed and operated so as to prevent the escape of fuel. The industry is currently moving toward such hardware both through hardware development and the establishment of standard equipment specifications. The Agency would view the proper use of such items as low-loss couplings and no-bleed inserts as meeting these requirements.  

Second, in the case of natural gas, no refueling hose which requires vent-down prior to disconnect shall be allowed to vent to the atmosphere. Again, systems are currently being developed and installed which route vent-down gas back to the compressor inlet, and such systems would meet these requirements. Finally, no valves or pressure relief vents shall be used on the vehicle except as emergency safety devices, and they shall not operate at normal flows and pressures.  

C. Standards for CO, NOₓ, Particulate and Crankcase Emissions  
   As was previously mentioned, EPA desires that the emission standards for gaseous-fueled vehicles generally be numerically equivalent to those standards for other fuels, where appropriate. In the case of CO, NOₓ, particulate and crankcase emissions the standards proposed here are the same as those currently in place or those contained in the Clean Air Act Amendments. These standards are not technology-forcing and are readily achievable for current technology gaseous-fueled vehicles. A particulate standard is included in the Amendments for Otto-cycle light-duty vehicles and light-duty trucks as well as for diesels. That approach is followed in today's proposal. Also, smoke opacity standards are proposed here for heavy-duty diesel engines, matching current smog standards. Finally, as contained in the Amendments, the NOₓ standard for heavy-duty engines would be reduced to 4.0 g/BHP-hr beginning with the 1998 model year. This change is being implemented for petroleum and methanol-fueled vehicles in a separate Agency rulemaking on emission standards for buses (56 FR 48390, September 24, 1991). Although no regulatory language is included here for the 1998 4.0 g/BHP-hr NOₓ standard, the reader should be aware that the final rule would contain such language which would be based on that adopted for the other fuels. The Agency believes that the feasibility issues for this standard are the same for gaseous-fueled vehicles as they are for petroleum and methanol-fueled vehicles, and as a result the language adopted in the above mentioned rule can be directly applied to gaseous-fueled vehicles. If this should turn out to not be the case the Agency would re-open the comment period on this proposal in order to accept further comment on the 1998 NOₓ standard.  

Prior to the promulgation of methanol-fueled vehicle standards, idle CO standards were only applicable to gasoline-fueled light-duty trucks and heavy-duty engines. Diesel engines were excluded from these requirements since they operate extremely lean during idle and thus generate very low levels of idle CO. As was noted in the methanol final rule (54 FR 14426, April 11, 1989), some prototype methanol-fueled diesel engines were throttled during idle,
giving rise to concerns that these vehicles may emit higher levels of idle CO than their unthrottled, petroleum-fueled counterparts. Thus, the idle CO standard was applied to all all-methanol-fueled light-duty trucks and heavy-duty engines. Similarly, the Agency is aware of at least one gaseous-fueled engine under development which, while unthrottled during normal operation, is throttled during idle. Therefore, it is proposed here that the idle CO standards apply to both Otto-cycle and diesel gaseous-fueled light-duty trucks and heavy-duty engines, as is the case with the current methane standards. This requirement is not expected to be technology-forcing.

In a separate rulemaking action under section 202(j), the Agency is currently proposing cold temperature CO standards for petroleum-fueled light-duty vehicles and light-duty trucks as mandated in the Clean Air Act Amendments. As explained above, since EPA is regulating alternative fuel vehicles under section 202(a)(1), the application of such standards to gaseous-fueled vehicles is discretionary, EPA does not expect cold temperature CO emissions to be a problem for gaseous-fueled vehicles since they do not generally utilize fuel enrichment strategies to aid during cold starts, as is the case with other vehicles due to the difficulty of vaporizing liquid fuels at cold temperatures. Thus, EPA is not proposing cold CO standards in today's notice. However, there is little data available on gaseous-fueled vehicle cold start emissions. Thus, the Agency will continue to monitor the situation and may take action on cold CO standards for gaseous-fueled vehicles in the future if it proves necessary. The Agency recognizes that cold CO standards will apply to gaseous-fueled clean-fueled vehicles certified for the clean fleets program, but such regulations are the subject of a separate Agency rulemaking.

Finally, the Agency proposes that the prohibition against crankcase emissions which currently applies to other vehicles also be applied to all classes of gaseous-fueled vehicles, including non-naturally aspirated heavy-duty diesel engines. Crankcase emissions from non-naturally aspirated petroleum-fueled heavy-duty diesel engines are not currently subject to crankcase controls due to concerns that the crankcase gases from these engines contain oil mist and may cause turbocharger fouling. However, as is the case with methanol engines, the crankcase gases from gaseous-fueled diesel engines are expected to be significantly cleaner and more similar to those from gasoline-fueled engines, which have been routinely routed through turbochargers for years. Thus, crankcase emission controls are proposed to apply equally to non-naturally aspirated and naturally aspirated gaseous-fueled vehicles of all classes.

There is reason to believe that, in the case of some of the above mentioned pollutants and vehicle classes, the levels of emissions will normally be substantially below the levels of the proposed standards. However, in the absence of large amounts of emissions data, and owing to the general infancy of gaseous-fueled engine technology, the Agency believes it prudent to propose the standards to apply broadly as discussed above.

However, the proposed regulations include provisions for a waiver of testing requirements as is currently done for the CO standard for petroleum-fueled heavy-duty diesel engines, where the emissions of a regulated pollutant are expected to characteristically remain well below the level of the applicable standard, based on data from current gaseous-fueled vehicles. The Agency proposes that such waivers be available for all gaseous-fueled evaporative standards as well as the gaseous-fueled heavy-duty diesel CO standard and particulate standards for Otto-cycle light-duty vehicles and light-duty trucks. The Agency has also considered providing a testing waiver for the gaseous-fueled diesel particulate and smoke standards. However, although gaseous fuels burn relatively soot-free and would be expected to have very low particulate emissions in and of themselves, if the engine has poor oil control then the particulate or smoke standards could be exceeded due to non-fuel-related causes. Thus, no particulate or smoke testing waiver provisions are included here for diesel engines. However, EPA requests comment on whether such waivers would be appropriate and should be provided.

In applying for these testing waivers the manufacturer must show that, by virtue of the vehicle's design, the applicable standard should not be exceeded during the vehicle's useful life. Also, the manufacturer should be aware that a testing waiver in no way relieves the manufacturer of the responsibility of complying with the standard during certification testing, during Selective Enforcement Audits, or in-use testing. Also, the receipt of a testing waiver does not restrict EPA from requiring such testing for Selective Enforcement Audits or in-use testing to determine compliance with the standard for which the testing waiver was granted.

III. Emissions Averaging, Trading and Banking

EPA proposes that gaseous-fueled vehicles be allowed to demonstrate compliance with emission standards through averaging, trading and banking in the same manner as vehicles operated on other fuels are permitted under current regulations (56 FR 30564). The Agency proposes that the various constraints on averaging, trading and banking under the current regulation be extended to include gaseous-fueled vehicles. The Agency believes there are no new issues raised by the inclusion of gaseous-fueled vehicles into these programs. Thus, the Agency is proposing that they be treated similarly to methanol-fueled vehicles as currently handled in the regulations. For a more detailed discussion of how gaseous-fueled vehicles are proposed to fit into these programs please consult the public docket for this rulemaking.

IV. Fuel Economy

The Alternative Motor Fuels Act (AMFA) of 1988 (Public Law 100-494, October 14, 1988) provides CAFE credits and fuel economy labeling requirements for alcohol-fueled and natural gas-fueled light-duty automobiles and trucks beginning with the 1993 model year. EPA is undertaking a separate rulemaking to implement the provisions of the AMFA and the interested reader is referred to that NPRM (56 FR 8856, March 1, 1991) for more information on the inclusion of natural gas-fueled vehicles in the CAFE program. During the development of that NPRM, however, EPA determined that, since emission standards and test procedures were not already in place for gaseous-fueled vehicles, it would be most appropriate to develop the test and calculation procedures to determine a gaseous-fueled vehicle's fuel economy value concurrently with the development of emissions standards and test procedures contained in this proposed rule.

While the AMFA provides for the inclusion of natural gas-fueled light-duty vehicles and trucks in the CAFE program, it does not address liquified petroleum gas. The Energy Policy and Conservation Act (U.S.C. 2001[5]) authorizes the Secretary of Transportation to include, by rule, any liquid or gaseous fuel into the Corporate Average Fuel Economy (CAFE) program if the Secretary determines that such inclusion is consistent with the need of the Nation to conserve energy. Given that such a determination has not yet
be applied to gaseous-fueled vehicles for these pollutants. However, some changes to the test procedures for hydrocarbon measurement (both tailpipe and evaporative) are required, as well as changes to the certification fuel specifications. Each of these areas is discussed separately below. Also, a discussion of control system parameter adjustment as it relates to gaseous-fueled vehicle certification is included at the end of this section.

A. Hydrocarbon Emission Measurement

There are three main areas in the hydrocarbon test procedures which must be modified in conjunction with the promulgation of emission regulations for gaseous-fueled vehicles. First, an appropriate test method must be developed to accurately measure the NMHC emissions of natural gas-fueled vehicles and engines. Second, the evaporative emission test procedures must be modified to account for the differences in fuel storage hardware between gaseous-fueled and liquid-fueled vehicles. Finally, some modifications to the instrument calibration gases and emission calculation fuel property constants should be made to account for the different properties of gaseous fuels as compared to currently regulated fuels. Each of these three areas will be discussed separately below.

1. Non-Methane HC Test Procedure

When considering how best to measure NMHC emissions, both the accuracy as well as the cost and complexity of the procedure must be taken into account. Currently, EPA has a procedure for measuring the NMHC emissions of gasoline-fueled vehicles for purposes of California vehicle certification. This procedure utilizes a flame ionization detector (FID) to measure THC and a fractionating column, similar to that used in a gas chromatograph (GC), to separate the methane portion. This methane is then measured with a FID and is subtracted from the THC to get NMHC. This is a relatively simple procedure that works well for emissions of gasoline-fueled vehicles which do not contain a large methane fraction. In fact, this is the procedure which was adopted for NMHC measurement in the separate Tier 1 rulemaking, and it could be modified for use on natural gas vehicle emissions by accounting for FID response to methane and using a hydrocarbon density (g/ft³/C atom) value in the calculations which is more appropriate for natural gas vehicle emissions.

As was previously mentioned, this procedure works well for gasoline-fueled vehicles where methane is a small fraction of THC. With natural gas-fueled vehicles, however, HC emissions tend to be primarily methane, and even with the appropriate calibration gas and HC density it is possible that small measurement errors may result in zero or negative values for NMHC. [1] Also, since the FID tends to respond more to methane than to the NMHC, the NMHC portion to the THC reading will be slightly underestimated. Thus, although this method may be the simplest, it may not be accurate enough to properly characterize the NMHC emissions from natural gas-fueled vehicles.

A second option would be to run a complete GC analysis in the HC emission sample and calculate the mass of non-methane by HC summing the masses of every component measured except the methane. While this method would be the most accurate of the options considered, it would also be the most resource-intensive to implement. The GC analysis alone would take several hours to run and a separate mass calculation must be performed for each of dozens of exhaust hydrocarbons. Clearly, it would not be desirable to require such a time-consuming procedure to be performed on a routine basis if it were not necessary.

A third option which may provide a good middle ground between the first two options in terms of cost and accuracy is to use a fractionating column to separate the methane portion of the THC. The NMHC would then be backflushed into a FID and measured. The fractionating column would be heated during this process so the NMHC would come out in a defined area. Using a hydrocarbon density derived from the non-methane characteristics of the natural gas fuel, the NMHC mass would then be calculated. EPA is currently developing this backflush procedure and its ultimate feasibility has not been determined. In addition, many details, such as column temperature and backflow rate, have not yet been finalized. EPA encourages interested commenters to conduct their own evaluations of this approach and provide detailed recommendations in their comments. Such input, plus information EPA is gathering as part of its development effort, would be used in developing final specifications, should this approach prove successful.

A fourth option EPA is investigating is a cryogenic trap method. Like the third option, this option may provide a good middle ground between the first two
options. With this method the exhaust sample is passed through a small tube which is filled with glass beads and immersed in a liquid argon or hydrogen bath. As the sample passes through the tube the NMHC portion is condensed out and the methane passes through to be measured by a FID. The tube is then removed from the bath and heated quickly, evaporating the NMHC and allowing it to be measured directly as a fairly well-defined peak.

EPA is currently evaluating all four of these methods for accuracy and sees advantages and disadvantages in each option, as described above. In the long run the Agency feels that the backflush and cryogenic trap methods offer the most potential to be both accurate and practical to use on a routine basis. However, at this point these techniques are not far enough along in their development for the Agency to consider proposing one or both of them as the HC test method in today's notice. The need for an accurate technique which has already been proven leads the Agency to propose the full GC analysis as the primary HC test procedure for natural gas-fueled vehicles.

The Agency recognizes that the proposed GC analysis is both a complex and resource intensive procedure to be used on a routine basis. Therefore, EPA is proposing that for the first two years of these standards (1994–1996) the first option discussed, the modification of the current procedure, be allowed as an optional procedure. This will allow manufacturers additional leadtime to prepare for full GC testing, if necessary, and will also allow additional leadtime to develop suitable alternatives to full GC testing.

The option for the use of a somewhat less accurate procedure for this interim period should not be a problem for two reasons. First, it is expected that natural gas-fueled vehicles will have no problem meeting the NMHC standards proposed in today's notice. Second, the Agency does not expect a large number of natural gas-fueled vehicles to be certified and sold during this period.

The Agency will continue to develop the backflush and cryogenic trap methods, and the Administrator has the authority to approve them or any other suitable procedures as alternatives to the GC at such time as their accuracy and repeatability have been demonstrated (40 CFR 86.106–84(a)). As the production of natural gas-fueled vehicles increases and the demand for improved instrumentation rises, lower cost alternatives to the full GC analysis should become available. Thus, it is likely that the GC analysis may never be the only option available for natural gas-fueled vehicle certification.

It should be noted that in the case of heavy-duty engine testing the HC sample for all of the above proposed methods must be taken from the bag samples, rather than being continuously integrated over the test cycle, as is currently the case with heavy-duty diesel THC measurements. Although an NMHC test procedure for heavy-duty engines is not included in the regulations accompanying today's notice, the reader should be aware that EPA proposes that the approach adopted for light-duty be paralleled for heavy-duty engines.

2. Evaporative Test Procedures

As was mentioned in the previous section on hydrocarbon standards, EPA is proposing new evaporative test procedures currently being developed in a separate rulemaking (55 FR 1914, January 19, 1990 and 55 FR 49914, December 3, 1990) to be applied to gaseous-fueled vehicles. However, due to the fundamental differences between fuel systems for liquid fuels, which remain close to atmospheric pressure, and those for gaseous fuels, which are pressurized and sealed systems, it may be desirable to modify the test procedures to account for these differences, as described earlier. Thus, EPA is requesting comments on how the procedures should be adapted for gaseous fuels, and whether portions of the test may be needed at all. For example, the Agency would propose to delete the canister loading and purging steps for vehicles which do not have canisters. Another possibility would be to delete the diurnal portion of the test on the assumption that any fuel system leakage during the diurnal test would also occur during the hot soak test. Under this scenario the level of the standard could also be modified, to 1.0 g/test for example, to account for the fact that only part of the testing was being performed. The Agency requests comments as to what an appropriate standard level may be given such test procedure modifications. Comments are also requested pertaining to the fill level of the fuel tanks during testing, placement of thermocouples for tank temperature, and other relevant technical details.

3. FID Calibration and Hydrocarbon Calculation Values

In order to accurately measure hydrocarbons using a FID, the FID should be calibrated with known concentrations of a pure hydrocarbon which is most similar to the hydrocarbon being measured. Currently, propane is used to calibrate the FID for gasoline and diesel testing, as well as for the non-oxygenated and non-aldehyde portion of methanol emissions. Given that the primary constituent of liquefied petroleum gas is propane it is reasonable to retain propane as the FID calibration gas for LPG vehicle exhaust and evaporative testing. For natural gas vehicles, however, the primary fuel constituent is methane. Thus, for evaporative testing of natural gas vehicles it is proposed that the FID be calibrated with methane. For the non-methane HC measurement of natural gas vehicle and engine tailpipe emissions the calibration gas depends on which of the procedures previously discussed will be used. In the case of the first method where the total HC and the methane fraction are both measured with a FID, FID calibration is proposed to be done with methane. In the case of the second method, where a complete GC analysis is performed, FID calibration is proposed to be done with propane, since it is the non-methane components which are of primary interest. In the case of the third method where a molecular sieve is used to separate out methane, and the non-methane fraction is backflushed to a FID, EPA would propose that the FID be calibrated with propane. In the case of the fourth method, where a cryogenic trap is used, EPA would also propose that the FID be calibrated with propane. In all cases where the Agency is proposing that the FID be calibrated on methane, comments are requested as to whether EPA should consider the use of some factor to account for the FID response difference between the methane and the NMHC portions of the sample.

When HC is measured with a FID, the FID is actually measuring carbon atoms. Thus, in order to calculate the actual mass of emissions, the relation between carbon and hydrogen content must be used. For tailpipe emissions this relationship is in the form of HC density (g/ft 3/C atom), and for evaporative testing it is in the form of the hydrogen to carbon ratio (H/C). It is proposed here that these values for gaseous fuels be derived from the fuel used for testing. In all cases except natural gas-fueled vehicle and engine tailpipe emissions, these values should be based on a composite of all hydrocarbons.
components in the fuel. For natural gas-fueled vehicle and engine tailpipe emissions, these values should be based on a composite of all hydrocarbon components in the fuel, excluding methane, when calculating non-methane hydrocarbon components in the fuel when calculating total HC for fuel economy purposes.

B. Test Fuel Specifications

The Agency's overall goal with respect to its emissions testing is that the results be representative of what occurs in real world driving. Thus, test fuels for gaseous-fueled vehicles should be representative of those which will be available commercially for vehicle use. Currently, the natural gas vehicles operating in the United States utilize pipeline quality natural gas which is publicly available through the local distribution pipeline network. Although this natural gas is primarily methane in most cases, the methane content can be quite low at times, especially during periods of peak demand (i.e., injection of propane/air mixtures during times of peak demand). [3] It is reasonable to assume that natural gas composition, especially methane content, varies seasonally and regionally. EPA has seen much variability in natural gas composition, and sufficient data is not available to assess what a "typical" composition might be. Thus, a narrowly defined set of specifications should not be able to represent all of the different fuels that a natural gas vehicle may use during its useful life. Additionally, if EPA were to set a specification for test fuel based on an average composition of natural gas commercially available in the U.S., that average value may change with time and the test fuel would then no longer be representative of the fuel the vehicle will use in use. Thus, the Agency is compelled to set a certification fuel specification which encompasses a range of values for each important fuel parameter. This approach to establishing test fuels represents the same basic philosophy as used for its petroleum diesel fuel specifications which encompass the variability found in commercially available fuel properties (40 CFR 86.113-91). The fuel specifications proposed here are based on a study of natural gas composition variability done by the Gas Research Institute.[3] The specifications encompass the range of variability seen in major urban areas over a one year period, excluding episodes of peakshaving. In m colder, the proposed ranges are: 74 to 98.5 percent methane, 1.5 to 15 percent ethane, 0.2 to 2.4 percent propane, 0.2 to 2.2 percent C5 and higher hydrocarbons, and 0.1 to 10 percent inerts. Also, parameters for heating value and wobbe number are proposed to be 975 to 1130 Btu/SCF, and 1200 to 1402, respectively.

EPA recognizes that this approach imposes some uncertainty on vehicle and engine manufacturers and that there is some burden associated with testing on a broadly defined fuel. As such, the Agency does not view the specifications proposed here as a good long-term solution to the issue of test fuels. It is the Agency's intent to initiate dialogue with the vehicle manufacturers and the natural gas industry in order to arrive at a solution which will address the needs of all affected parties. Possible solutions could take a variety of forms, including possible controls on in-use fuel composition and a corresponding change to test fuel specifications, or the development of vehicle technology capable of compensating for fuel variability.

Like natural gas, liquefied petroleum gas composition varies seasonally and annually, although the variability tends to be significantly less than that of natural gas due to import tariff requirements and common pipeline agreements. Thus, the certification fuel for LPG vehicles will be commercially available fuel. If it can be shown that most or all liquefied petroleum gas-fueled vehicles are operating on a particular specification of LPG, such as Propane HD-5 of the Gas Processors Association (ASTM D 1835 Special-Duty Propane), the Agency would consider adopting that specification for certification fuel.

C. Parameter Adjustment

For the purposes of vehicle and engine certification, the Agency currently specifies a list of parameters subject to adjustment during the certification process (40 CFR 86.090-22). By specifying that a particular parameter be subject to adjustment during certification the Agency is requiring that the vehicle be able to meet all applicable emission standards throughout the parameter's adjustable range. The Agency reserves the right to set an adjustable parameter to anywhere within it's adjustable range during emissions certification testing in order to demonstrate this capability. In response to this requirement, manufacturers have generally either reduced or eliminated the adjustability of affected parameters. The parameter adjustment provisions assure that a vehicle cannot be adjusted in the field to a calibration which would cause it to no longer meet the emission standards to which it was certified. As a consequence of today's proposal to extend emission standards coverage to gaseous-fueled vehicles, the parameter adjustment provisions currently applicable to other vehicles are proposed to be extended to gaseous-fueled vehicles as well.

One of the primary determinants of a vehicle's emissions performance is the engine air/fuel ratio, especially for vehicles operating at the stoichiometric air/fuel ratio and utilizing a 3-way catalyst. Although it is expected that in the future most gaseous-fueled vehicles will have electronically controlled fuel metering to control air/fuel ratios, the bulk of current technology gaseous fuel metering systems are mechanical in nature. Such systems generally have an operator-adjustable air/fuel ratio control allowing the operator to adjust the ratio to achieve desired engine performance. Such adjustments, however, can have a sizable impact on vehicle emissions. Thus, in addition to extending the current requirements to gaseous-fueled vehicles, today's notice proposes that additional language be added to the parameter adjustment regulations such that any gaseous-fueled vehicle parameter which may affect the engine air/fuel ratio, as determined by the Administrator, also be the subject of parameter adjustment requirements during emissions testing.

VI. Testing Dual-Fuel and Bi-Fuel Vehicles

Current gaseous-fueled vehicle technology includes both designs which use gaseous fuel exclusively (i.e., dedicated) and designs which allow the use of both gaseous fuel and a conventional liquid fuel such as gasoline or diesel fuel in the same vehicle (i.e., dual-fuel or bi-fuel). These vehicles can be further broken into two distinct types. The first type, dual-fuel, generally associated with gasoline vehicle conversions. A dual-fuel vehicle is designed such that only one fuel may be used at a time, with the choice of whether to use gaseous or liquid fuel being made by the vehicle operator. The second type, bi-fuel, associated with diesel engine conversions, utilizes gaseous fuel and diesel fuel simultaneously. With this approach the gaseous fuel is mixed with the intake air and this mixture is ignited with a pilot injection of diesel fuel. The engine generally has the ability to operate on diesel fuel exclusively but cannot operate exclusively on gaseous fuel.

If the vehicle is of the first type described and operates on either one fuel or the other but never both simultaneously, the Agency proposes...
that the vehicle be required to
demonstrate compliance with the
applicable standards when tested on
either fuel. In the case of the second
type of vehicle where both fuels are
used simultaneously, EPA proposes that
these vehicles be required to
demonstrate compliance with the
standards applicable to gaseous-fueled
diesel vehicles when operating in the
dual-fuel mode, because their emissions
and evaporative emissions closely resemble
those of a dedicated natural gas-fueled
vehicle, and diesel-fueled vehicle
standards and test procedures when
operating on diesel fuel exclusively.
When the vehicle is tested in the bi-fuel
mode the Agency proposes that the
manufacturer be required to use the fuel
properties of both the diesel fuel and the
gaseous fuel, weighted in proportion to
their relative use, to arrive at the HC
density values to be used in the
emission calculations.
In addition to exhaust emission
testing of dual-fuel vehicles, the
evaporative emissions testing of
switchable gasoline/gaseous-fueled
vehicles must be addressed. One option
is to require evaporative testing on each
fuel used. However, given that
evaporative emissions from gaseous fuel
systems are expected to be near zero
and that gasoline fuel systems
characteristically have significant
evaporative emissions, it is proposed that
the vehicles only undergo
evaporative testing during the liquid fuel
test sequence, but with the gaseous fuel
system full and at maximum operating
pressure. If the vehicle is shown to
comply with the liquid fuel evaporative
standard under these conditions, then
evaporative testing during the gaseous
fuel test is clearly unnecessary.

VII. Aftermarket Conversions

Almost all of the gaseous-fueled
vehicles currently in use in the United
States are vehicles which were not
originally designed and produced to
operate on gaseous fuels, but rather are
gasoline or petroleum diesel vehicles
which were converted to gaseous-fueled
operation. The Agency expects that such
aftermarket conversions will continue to
account for a sizeable portion of the
gaseous-fueled vehicle market in the
foreseeable future. However, there are
currently no certification requirements in
place for these aftermarket
conversions. Indeed, since conversions
involve making changes to vehicles that
have previously been certified as
meeting applicable emission standards,
conversion may be considered
tampering in violation of section
203(a)(3). For conversions not to be
considered tampering, the Agency has
historically required that these vehicles
continue to meet the emissions
standards when operated on both fuels
that they were originally certified as
meeting.

With the expected increase in vehicle
conversions in the future, EPA believes its
ad hoc approach to enforcing the
tampering provisions against
conversions is no longer adequate.
Absence certification requirements for
conversions, the Agency has no
assurance that converted vehicles will
be able to meet emissions standards
either when first converted or over their
useful life. Past experience with these
conversions has shown that they may
not be sufficiently durable, and may not
hold their calibrations well over time.[1]
Thus, to ensure that such conversions
result in environmentally sound
vehicles, it is necessary to have some
form of emissions testing and
certification program for aftermarket
conversions. The alternative to issuing
such regulations would be to continue the
ad hoc approach to exempting
conversions from the tampering
prohibitions, which the Agency believes
would be unacceptable, for the reasons
given earlier. EPA believes it would also
benefit reputable converters to have
regulations defining more clearly when
conversions would not be considered
tampering.

Thus, in today's action, the Agency
proposes that any vehicle conversion
performed after December 31, 1993 (in
order to allow adequate leadtime) be
considered tampering unless the vehicle
has been converted to a configuration
which has been certified by EPA as
meeting applicable standards. EPA
believes that only those conversion
configurations which have been certified
should be allowed an exemption from
the tampering prohibitions because only
those configurations will have
demonstrated the ability to comply with
the applicable emission standards and
will have demonstrated adequate
durability. Further, a certified
configuration must also be properly
installed for the conversion not to be
considered tampering. Even a certified
configuration, if improperly installed,
could produce excess emissions. Finally,
in order to be considered exempt from
the tampering prohibitions, the
conversion kit manufacturers and
installers must accept in-use liability for
warranty and recall as outlined in
section 207 of the Act and its
implementing regulations. In-use
liability is appropriate for the same
reasons that vehicle manufacturers are
held liable: To ensure that vehicles
comply with applicable emission
standards throughout their useful lives,
and to give EPA a way of correcting the
problem if not. In addition, using the
same rationale, the Agency believes kit
manufacturers and installers must
accept warranty liability as well.

For aftermarket conversions to be
considered other than tampering, EPA
believes that installers and kit
manufacturers must be liable for in-use
performance and warranty. Liability
could be deemed to attach at the time
the conversion occurs, since, as
discussed elsewhere, for a conversion
not to be considered tampering, not only
must the converted vehicle meet the
standards applicable to new vehicles
that operate on the fuel to which the
vehicle has been converted, but the
converters must carry the same liability
as new vehicle manufacturers. Without
such liability attaching, converted
vehicles would not offer the same
assurances of in-use performance as
non-converting vehicles, and the purpose
of the tampering provision—to prevent
vehicles from being changed in a way
that undermines their emissions
control—would not be met. Under this
theory, to avoid tampering, the installer
and kit manufacturer would have to not
only be sure the vehicle is properly
converted, but must also stand behind
the emissions performance of the
converted vehicle in-use. Were the
installer to refuse to comply with a
rightful recall order or accept warranty
liability, for example, both his or her
original conversion and his or her
refusal to repair and warrant would be
considered tampering.

Another approach would be to require
installers and kit manufacturers to
accept liability as a condition for
exemption from liability for tampering.
The Agency could require that the kit
manufacturer and installer accept
liability for in-use performance by
means of signing a certificate to that
effect. The certificate would be supplied
with each kit by the kit manufacturer,
would be filed with the EPA, and would
provide that the kit manufacturer and
installer accept in-use and warranty
liability as a condition for exemption
from tampering liability. The certificate
could also provide that the kit
manufacturer and installer would be
subject to tampering liability if they fail
to accept in-use and warranty liability
at the time of the vehicle's in-use failure.
A certificate filed for each converted
vehicle could also reference the kit's
serial number, which would facilitate
identifying the manufacturer and
installer for the converted vehicle. This
approach would also have the
advantage of putting the manufacturer
and installer on notice in each case of the liabilities associated with its activities.

The Agency is not proposing specific regulations today regarding these procedures. EPA believes that this program is authorized under sections 203(a)(3) and 301(a) of the Act. Under section 203(a)(3), it is a prohibited act:

(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

(B) for any person to manufacture or sell, or offer to sell, or install, any part or component intended to use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use * * *

Section 301 authorizes the Administrator to “prescribe such regulations as are necessary to carry out his functions under this Act.”

The legislative history of these tampering provisions makes their purpose clear. The 1977 Amendments to the Act extended the tampering prohibition has been violated.

At the same time, prohibiting certain is tampering within the terms and the intent of the tampering provision. At the same time, prohibiting a conversion that results in a vehicle meeting emissions standards applicable to vehicles of the fuel type to which the vehicle has been converted as tampering seems incongruous. While the conversion may involve the replacement of equipment with devices that render the vehicle in compliance with standards applicable to vehicles of the fuel type to which the vehicle has been converted.

The language of the tampering provision emphasizes the compliance of the vehicle with title II emissions regulations. If the vehicle's original equipment is replaced such that the vehicle remains in compliance with title II emissions standards, and the vehicle's in-use emissions performance is still ensured, it makes little sense to argue that the tampering prohibition has been violated. Further, if the vehicle had been newly manufactured to run on natural gas, for example, it would have had to comply with the natural gas vehicle standards. No purpose is served in considering the conversion of a vehicle to a natural gas vehicle meeting natural gas standards and carrying in-use liability for meeting natural gas standards as tampering. EPA therefore believes that the tampering provision does not necessarily reach the converted vehicle. If a manufacturer or seller of a conversion that results in a vehicle meeting emissions standards applicable to vehicles of the fuel type to which the vehicle has been converted and those responsible for the conversion remain liable for in-use performance and warranty.

Even if such an aftermarket conversion can be considered tampering within the terms of section 203(a)(3), the clear purpose of that section is not compromised. To the extent that the conversion is accomplished by property installing a kit certified as meeting emission standards under section 202(a), the kit manufacturers and installer are liable for the in-use performance of...
the kit and warranty, asserting the tampering prohibition to bar such conversions would achieve an unanticipated result to the statute's underlying emissions control purpose. It would also make little sense that the Agency may establish emissions standards under section 202(a) for alternative fueled vehicles, but that the tampering provisions would bar conversion of conventional vehicles to meet those same standards.

Under these circumstances, even if all conversions are tampering within the terms of the statute, the Agency may nonetheless create a categorical de minimis exception to the tampering prohibition in carrying out its functions under section 301(a). This situation fits squarely within the doctrine announced in Alabama Power Co. v. Castle, 636 F.2d 323 (D.C. Cir. 1979). In that case, the court explained that the literal terms of the statute should not be applied to "yield a gain of trivial or no value," or "to mandate pointless expenditures of effort." Alabama Power, 636 F.2d at 390.

Congress recognized the validity of this approach in the 1990 Amendments in its treatment of clean fuel vehicles under Title II, part C. Under section 247(b), the Administrator is to promulgate regulations governing the conversion of conventional vehicles to clean-fuel vehicles, which ensure that the converted vehicles will comply with the standards applicable to clean-fuel vehicles under part C. Section 247(d) specifically provides that "[t]he conversion from a vehicle capable of operating on gasoline or diesel fuel only to a clean-fuel vehicle shall not be considered tampering within the meaning of section 203(a)(9) if such conversion complies with the regulations promulgated under subsection (b)." Moreover, in the 1990 Amendments Congress also added an exception to the tampering prohibitions in section 203(a)(5). That paragraph exempts from the tampering prohibitions conversions for use of a "clean alternative fuel (as defined in this title) and if such vehicle complies with the applicable standard under section 202 when operating on such fuel . . . ."

The rationale underlying these provisions applies directly here. Congress was evidently silent as to the appropriate treatment of aftermarket conversions generally under the tampering provisions. But the Agency believes that its proposed approach to the treatment of aftermarket conversions under the tampering provision is consistent with the statute and the Agency's authority.

The Agency requests comment on the legal authority discussed above for this proposed program, as well as the proposed liability scheme discussed earlier, and on the procedures suggested to establish such liability. EPA specifically requests comment on the need for installers and kit manufacturers to sign a certificate in order to accept in-use liability, or whether some other mechanism may be used for them to satisfy this condition and establish an exemption from tampering liability.

As was previously discussed, the Agency is proposing that, as a condition of exemption from tampering liability, the conversion kit manufacturers and installers must use a certified conversion configuration and accept in-use liability for their conversions. However, the Agency will likely propose that acceptance of these terms be automatic in any cases where the conversion is intended to generate credits for the purchaser (e.g., clean fuel fleets program, mobile/stationary source trading programs). Such provisions, though, will be dealt with in the rules for those specific programs. The Agency is also considering making this a requirement for all conversions, rather than an option, as proposed here, and requests comment on that approach.

Additionally, it should be noted that the Agency is specifically required by section 247 of the Act to establish regulations for the conversion of conventional vehicles to clean-fuel vehicles (i.e., those vehicles meeting clean-fuel vehicle standards and included in the clean-fuel vehicle program). While clean-fuel vehicles will have to meet more stringent emission standards than conventional vehicles, the regulation of the conversion process is expected to be similar. The conversion regulations proposed in today's notice, though, are not being promulgated to satisfy the section 247 requirements. The Agency will address the section 247 requirements in a separate rulemaking action. It is the Agency's current intent, though, to adopt the certification procedures proposed today as the basis for certification of converted vehicles for the clean-fuel vehicle programs described in Title II, Part C. However, if the Agency, in the process of developing the regulations for the clean-fuel vehicle program, determines that additional requirements are needed for vehicle conversions participating in that program, such amendments to these procedures would be proposed at that time.

Turning to what appropriate certification requirements would be for aftermarket conversions, both the applicable standards and the certification procedures for demonstrating compliance with those standards must be defined. Turning first to the applicable standards, the Agency generally proposes that a converted vehicle meet the emission standards applicable to newly manufactured vehicles that operate on the fuel to which the vehicle has been converted and of the same model year as the vehicle that has been converted. For example, if a 1996 model year gasoline-fueled light-duty vehicle were converted to operate exclusively on natural gas, the vehicle would be required to meet the emission standards applicable to a new 1996 natural gas-fueled vehicle, regardless of the year it is converted.

For pre-1994 model year vehicles the situation is not as straightforward, since there will be no mandatory emission standards new for pre-1994 gaseous-fueled vehicles which could be readily applied.

In general, the Agency is proposing emission standards for new gaseous-fueled vehicles which are numerically equivalent to those in place for conventional vehicles. The only real exception to this is for HC standards. In the case of HC standards, the Tier 0 and heavy-duty engine standards for 1994 model year conventional vehicles and engines have been in effect for many years. The Agency believes that it is extremely unlikely that someone will want to certify a conversion kit for a model year vehicle certified before the current HC standards took effect (1975 for LDVs, 1984 for LDTs and HDDEs, and 1987 for HDEGs). Thus, for conversions of pre-1994 model year vehicles and engines, the Agency is proposing that the applicable standards be the standards the vehicle was originally certified to in every case except HC. For HC the Agency proposes the applicable standards for pre-1994 model year vehicles and engines be the Tier 0 standards proposed here for 1994 model year gaseous-fueled LDVs and LDTs, and the 1994 model year HC standards proposed here for gaseous-fueled heavy-duty engines. There standards represent the natural gas.
vehicle counterpart to the HC standards currently in effect for other vehicles.

In order to evaluate what an appropriate certification procedure would be it is useful to begin by looking at the current certification requirements for new vehicles. This program has two main components to it. First, a vehicle must undergo a low mileage emissions test to determine the low mileage emissions levels. Second, a similar vehicle must undergo a durability demonstration out to its full useful life in order to determine its emissions deterioration characteristics. The deterioration factors obtained from the durability vehicle are applied to the low mileage emissions levels to arrive at end of life, or “certification”, emission levels which are used to determine compliance with the standards. This sequence is required of every engine family being certified.

The Agency believes that requiring full certification testing for every aftermarket conversion configuration may be overly burdensome for the usually small companies marketing aftermarket conversions, especially in terms of durability testing. A parallel to this situation exists with what are known as small volume manufacturers and is handled through the small volume manufacturers certification program.

EPA proposes in today's notice that the certification of aftermarket conversion configurations be handled under the small volume manufacturers certification program and that the companies and individuals certifying aftermarket conversion configurations be treated as small volume manufacturers for this purpose. The Agency notes that, although the maximum number of vehicles which can be certified by a given manufacturer under the small volume program is 10,000, no such limits are proposed here for aftermarket conversion certification vehicles. Comments are requested as to whether this approach is appropriate, or whether larger volume aftermarket conversion configurations should be required to undergo complete certification. If so, commenters should identify the appropriate volume limit for distinguishing small and large volume manufacturers.

The primary purpose of the small volume manufacturers certification program is to reduce the burden of durability testing for small volume manufacturers while still assuring that the durability of the certified vehicles is proven. This program was revised in February, 1990, and the interested reader is urged to consult the Federal Register notice (55 FR 7178, February 23, 1990) for a complete discussion of the program's requirements. If conversions are certified through the small volume program, each conversion configuration would be required to undergo the low mileage emissions test. However, durability testing would be substantially reduced. Initially, all technologies (fuel metering, emission control, etc.) would be classified as either “proven” or “unproven” technologies, depending on whether the durability of the particular technology has already been demonstrated. Only conversions utilizing unproven technology would be required to undergo complete durability testing or equivalent demonstration (bench or in-use testing), after which such technology would be considered proven. Once a technology is proven, the emissions deterioration information from the original durability test can be applied to other vehicles utilizing the same or similar technology, rather than requiring a separate durability test for each conversion configuration. In this way the burden of durability testing is reduced while the durability of all certified vehicle configurations is still demonstrated.

Where the conversion is intended to create a dual-fuel configuration, it must be demonstrated that the conversion does not affect the vehicle's ability to comply with the standards it was originally certified to, when operating on the original fuel. Thus, the original equipment manufacturers (OEMs) will remain responsible for any parts which retain their original purpose. The Agency recognizes that there may be cases where the conversion is responsible for the in-use noncompliance of the vehicle on the original fuel, even though the conversion did not directly affect the performance of any OEM components. For example, if the OEM vehicle were certified with a compliance margin which would have allowed for some increase in in-use emissions, and the extra weight of the conversion hardware and fuel tanks reduced that margin to the point where the vehicle was noncompliant on the original fuel began to occur, the liability would be with the kit maker and/or installer. It is possible, then, that the kit maker, installer, the OEM, or both, could be liable for a converted vehicle's in-use emissions performance, depending on the cause of any particular problem. As another example, if a dual-fuel vehicle is experiencing in-use emissions problems on the original fuel, the OEM would be held liable if it was determined that the problem was caused by a problem with OEM equipment, such as a catalyst failure. However, if it was determined that the catalyst failure was caused by the new fuel, the liability would be with the conversion installer and manufacturer. Again, in-use enforcement involving OEM versus installer liability will be handled on a case-by-case basis.

It is worth noting that the Air Resources Board of California recently adopted substantial changes to its aftermarket conversion certification program. The changes the Board adopted make the California program somewhat different from the one EPA is proposing today, primarily in the areas of applicable emission standards, test cycles, and durability requirements. Also, the Agency is not proposing any type of post-conversion inspection like that contained in the California program. The Agency requests comment on whether it has the legal authority to adopt a program like California's, and whether it should consider doing so.

VIII. Methanol Issues

In a separate area not directly related to gaseous fuels, concerns have been raised to the Agency about the potential for the misfueling of unleaded gasoline-fueled vehicles with methanol. Although nothing is proposed here, the Agency is requesting comment on the several issues and options in this area. Further information on this issue please consult the public docket, or the contact person listed above.

IX. Technical Feasibility

In general, the pollutants subject to control by today's proposed standards are the same as those regulated for current vehicles. As such, the same types of emission control technology employed on petroleum-fueled vehicles can generally be applied to gaseous-fueled vehicles with similar results. Testing of several dual-fuel natural gas/gasoline light-duty vehicles demonstrated the ability to achieve the "Tier 0" standards using gasoline vehicle emission control hardware and proper calibration for natural gas use. Similar results were shown for a dual-fuel liquefied petroleum gas/gasoline vehicle. It is important to note that all of these vehicles were aftermarket conversions to dual-fuel operation and were not optimized for gaseous fuels use. Given the rapid advances being made in gaseous-fueled vehicle fuel marketing technology, the "Tier 1" emission standards proposed in today's notice are also readily achievable.
Otto-cycle heavy-duty engine standards could be met, and prototype testing of the Cummins L-10 natural gas-fueled engine has demonstrated the ability to comply with the proposed diesel standards utilizing an oxidizing catalyst for hydrocarbon control. The proposed standards for evaporative hydrocarbon emissions should be readily achievable given the nature of the technology involved. Since gaseous fuel is stored on the vehicle under pressure the fuel system must be sealed for reasons of safety and to simply prevent all of the fuel from escaping. Thus, it is reasonable to assume that any gaseous-fueled vehicle which is reasonably designed and functional should have near-zero evaporative emissions and should easily achieve compliance with the proposed evaporative hydrocarbon emission standards.

X. Environmental Effects

As previously mentioned, the general goal of these standards is to provide a level playing field for gaseous-fueled vehicles and to remove a potential barrier to their commercial production. Thus, they are not intended to generate significant emission reductions beyond those achieved by standards for other fuel types. However, there will likely be some beneficial differences between the emissions from gaseous-fueled vehicles and conventional vehicles. Also, there may be some environmental benefit through an improvement in the quality of aftermarket conversions currently being used. This latter benefit is difficult to quantify and will only be discussed briefly.

It is fair to assume that, for the most part, any future sales of gaseous-fueled vehicles will displace petroleum-fueled vehicle sales. Thus, in discussing the environmental effects of today's proposed standards it is reasonable to compare the emissions of gaseous-fueled vehicles under these standards to the emissions of comparable petroleum-fueled vehicles. The limited amount of data available suggests that gaseous-fueled vehicles may provide emission benefits over current vehicles in several areas.

First, it is likely that emissions of reactive (non-methane) hydrocarbons (NMHC) will be somewhat lower for most or all classes of gaseous-fueled vehicles, especially heavy-duty natural gas vehicles which have demonstrated 67 to 93 percent lower NMHC levels. In addition to somewhat lower tailpipe emissions of NMHC for both Otto-cycle and diesel vehicles, the NMHC emissions attributable to current vehicles from evaporated gasoline (i.e., running loss, evaporative, and refueling emissions) will be virtually eliminated from dedicated gaseous-fueled vehicles due to their need for a closed fuel system. Obviously, this benefit would not be seen on dual-fuel vehicles which must retain their liquid fuel system.

The second area of potential emission benefits from gaseous-fueled vehicles is that of CO. Gaseous-fueled light-duty vehicles and trucks show moderate to significant reductions in CO compared to current vehicles, up to a 97 percent reduction from the level of the standard. However, an identifiable CO benefit from gaseous-fueled heavy-duty engines has not been demonstrated to date. Finally, given the simple molecular structure of gaseous fuels, their combustion in internal combustion engines tends to be relatively soot-free. Thus, reductions in particulate and smoke emissions may be expected in comparison to diesel engines.

The third area where potential emission benefits may exist for gaseous-fueled vehicles is air toxics. Analyses conducted by EPA to today indicate that air toxics associated with natural gas vehicles could be reduced 90 percent or more overall relative to gasoline vehicles. The percentage would be expected to vary depending on the toxics content of the natural gas. Although carcinogenic aromatics are not added to natural gas fuel, as is the case with conventional gasolines, some carcinogenic compounds are present in the fuel or are formed as a result of its combustion. For example, emissions data from current retrofitted natural gas-fueled vehicles indicate that formaldehyde emissions formed in the combustion process can be expected to be present in approximately the same amounts as for gasoline-fueled vehicles (formaldehyde also has associated acute and chronic non-cancer effects). Benzene and 1,3 butadiene emissions have been found to be lower than gasoline vehicles by a factor of 10.

In general, the conversions of vehicles to dual-fuel and dedicated gaseous fuel operation have demonstrated the ability to meet the standards proposed in today's notice. However, it has also been shown that the quality of the hardware installation work and the state of calibration can have a dramatic effect on the emission characteristics of conversions. CO emissions are especially sensitive to such factors, and have been shown to increase several orders of magnitude when the vehicle is out of calibration or the conversion work was not done well. It is expected that the emissions from such conversions will improve as a result of these standards as conversion quality increases and the durability of hardware and control systems improve to hold the calibration better.

Fourth, natural gas is less likely than gasoline to pose a threat to ecological systems as a result of accidents or leaks associated with fuel transport and storage. Since natural gas is less dense than air it disperses rapidly upon accidental or fugitive release and thus should not pose a problem to soil or water pathways.

XI. Economic Impacts

The Agency expects the emission standards proposed in today's notice to be attainable using emission control technology which is similar to that used on current vehicles. Indeed, this has been the case thus far with the vehicles which have shown the ability to comply with the proposed standards. Thus, it is expected that the cost of emission controls for natural gas- and liquefied petroleum gas-fueled vehicles will be similar to that for current vehicles. There are two instances, however, where compliance with the proposed standards may be less costly for gaseous-fueled vehicles than for current vehicles. The first instance is for evaporative emissions. It is essential that, for purposes of fuel system integrity and vehicle safety, the fuel systems of gaseous-fueled vehicles be sealed and no fuel be allowed to escape into the atmosphere under normal operating conditions. Thus, no special emission control equipment is needed in order to control the release of fuel vapors from the fuel system, as is the case with current vehicles which utilize canisters filled with activated charcoal and vapor lines to route fuel vapors into storage and then into the engine to be burned.

The second instance where gaseous-fueled vehicles may present less costly emissions control requirements is in the area of heavy-duty diesel engine exhaust aftertreatment. In order to meet the 1994 particulate standard of 0.10 g/BHP-hr it is expected that most petroleum-fueled heavy-duty diesel engines will require some form of exhaust aftertreatment, such as a flow through oxidation catalyst or a trap-oxidizer, depending on the engine-out particulate level and particulate composition. It is also expected that heavy-duty gaseous-fueled engines will require oxidation catalysts for HC control, although it is quite possible that, especially in the case of liquefied petroleum gas, no aftertreatment will be needed. The cost of oxidizing catalysts for petroleum-fueled and gaseous-fueled heavy-duty diesel vehicles
engines will likely be similar. However, the cost of a trap-oxidizer is expected to be significantly higher than that of an oxidizing catalyst, and it is likely that at least some petroleum-fueled diesels will require trap-oxidizers, representing potentially lower compliance costs for gaseous-fueled vehicles.

It is not expected that these regulations will have a significant impact on the cost of conversions from conventional-fueled vehicles to dual-fuel or dedicated gaseous-fueled vehicles. The chief area of change in response to these regulations will be in the area of durability improvements. This may involve some increase in cost, but overall the impacts should be small.

Since the purpose of today's proposed standards is to remove the regulatory uncertainty associated with gaseous-fueled vehicles and to place them on an equal footing with other vehicles, and not necessarily to achieve emission reductions, the Agency does not feel it is appropriate to perform a cost-effectiveness analysis for these standards. Although the Agency does expect some emission reductions to result from these standards, that is not the stated purpose of these regulations. Thus, the benefits cannot be readily quantified in terms of pollutant inventory reductions, nor is it appropriate to do this. For these reasons no cost effectiveness analysis was performed.

There is one final area worth mentioning with respect to the economic impacts of today's proposal. That is the cost of the refueling hardware to meet the proposed requirements. As was previously mentioned, the gas industries are currently moving toward the use of equipment which would meet today's proposed requirements and have been moving in this direction for some time. This shift is being driven by a combination of safety concerns and the need for standardized refueling hardware geometries. As such, the Agency feels that such equipment would go into widespread use in both currently operating and new stations regardless of the requirements in today's notice. For example, the Agency expects that regular wear and tear on station nozzles would result in the replacement of old nozzles with low-loss types in the course of regular station maintenance. Thus, EPA feels it is inappropriate to quantify the cost of such hardware and attribute it to today's proposed requirements.

XII. Public Participation

A. Comments and the Public Docket

As in past rulemaking actions, EPA desires full public participation in arriving at final rulemaking decisions. EPA solicits comments on all aspects of today’s proposal from all interested parties. Wherever applicable, full supporting data and detailed analyses should also 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 proposal that they believe need to be modified or improved. All comments should be directed to the EPA Air Docket Section, Docket No. A-82-14 (see ADDRESSES).

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest extent possible and 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 insure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to base the final rule in part on a submission labeled as confidential business information, then a nonconfidential version of the document which summarizes the key data or information should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenters.

B. Public Hearing

Any person desiring to present testimony regarding this proposal at the public hearing (see DATES) should, if possible, notify the contact person listed above of such intent at least seven days prior to the day of the hearing. The contact person should also be provided an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling the order of the testimony.

It is suggested that sufficient copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, it will be helpful for EPA to receive an advance copy of any statement or material to be presented at the hearing prior to the scheduled hearing date, in order for EPA staff to give such material full consideration. Such advance copies should be submitted to the contact person listed above.

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 Section, Docket No. A-82-14 (see ADDRESSES).

Mr. Richard D. Wilson, Director of the Office of Mobile Sources, is hereby designated Presiding Officer of the hearing. The hearing will begin at 9:30 a.m. (EST) and will be conducted informally, and technical rules of evidence will not apply. Written transcripts of the hearing will be made. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

XIII. Statutory Authority

Authority for the actions proposed in this notice is granted to EPA by sections 202(a), 211(c) and 301(a) of the Clean Air Act (42 U.S.C. 7521(a), 7545(c) and 7601(a)).

XIV. Administrative Designation

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is being developed primarily to remove any emissions-related regulatory uncertainties that may act as a barrier to the introduction of natural gas- and liquefied petroleum gas-powered vehicles. It will not impose costs on these vehicles that are significantly different from those imposed on vehicles which are already in production, and will not adversely affect competition, productivity, investment, employment or innovation. This regulation, therefore, is not major and does not require a Regulatory Impact Analysis.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive order 12291. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

XV. Regulatory Flexibility Act

The Agency does not believe that today’s action will have a significant effect on a substantial number of small businesses.
XVI. Paperwork Reduction Act

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. 2000-0104) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M Street SW. (PM-223Y); Washington, DC 20460 or by calling (202) 382-2740.

Public reporting burden for this collection of information is estimated to vary from 2 to 2000 hours per response with an average of 115 hours per response, 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 Street SW. (PM-223Y); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, 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

40 CFR Part 85
Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86
Administrative practice and procedure, Air pollution control, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 600
Administrative practice and procedure, Fuel economy, Motor vehicles, Reporting and recordkeeping requirements.

Dated: October 18, 1992.

William K. Reilly,
Administrator.

References


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Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174 and 176
Marine Pollutants; Final Rule
DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174 and 176


RIN 2137–AC16

Marine Pollutants

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations by listing and regulating, in all modes of transportation, those materials identified as marine pollutants by the International Maritime Organization. These changes are necessary to implement the provisions of Annex III of the 1973 International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 (MARPOL 73/78), and to address the risks posed by environmentally hazardous materials when transported in commerce. The intended effect of this final rule is to increase the level of safety associated with the transportation of environmentally hazardous materials by way of improved communication of their presence during transportation and establishing appropriate requirements for their packaging.

DATES: The effective date of these amendments is January 1, 1993; however, immediate compliance is authorized.


SUPPLEMENTARY INFORMATION:

I. Background

On January 31, 1992, RSPA published in the Federal Register a notice of proposed rulemaking (NPRM) (Docket No. HM–211; Notice No. 92–2; 57 FR 3854) which proposed to amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) by regulating, in all modes of transportation, those materials that meet the definition of a marine pollutant. This proposal was published in order to comply with MARPOL 73/78 and to address environmentally hazardous materials in domestic commerce. MARPOL 73/78 is the international agreement to prevent and control accidental and operational discharges of pollution from ships. It includes the 1973 International Convention for the Prevention of Pollution from Ships and the 1978 Protocol which modified and incorporated the 1973 Convention. It includes a framework agreement setting forth general obligations, and five annexes that relate to particular sources of marine pollution.

On June 10, 1991, the United States ratified optional Annex III. This ratification was transmitted to the International Maritime Organization (IMO) on July 1, 1991, and on July 1, 1992, Annex III became mandatory. Annex III, which is entitled "Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form or in Freight Containers, Portable Tanks, or Road and Rail Tank Wagons," sets forth general regulations for the transport of harmful packaged substances. Marine pollutants, these substances, such as pesticides and herbicides, are known to kill or retard the growth of marine life and to bioaccumulate in marine organisms, causing potential danger to the food chain, including health risks to humans as well as to birds and other wildlife that eat fish or shellfish. Regulation 1.3 of Annex III states, in part, that the Government of each Party to the Convention shall issue detailed requirements on the packaging, marking, labeling, documentation, stowage, quantity limitations and exceptions for preventing or minimizing pollution of the marine environment. Annex III provides that the packaging of harmful substances must be adequate to minimize the hazard to the marine environment posed by their specific contents. Packages must be marked to indicate that the contents are harmful to the environment and must be stowed so as to minimize the risk to the marine environment. In addition, a shipping paper or manifest setting forth the harmful substances on board must be carried. Finally, parties are permitted to prohibit or impose quantity limitations on the carriage of certain very hazardous substances. As with all other MARPOL 73/78 annexes, parties to Annex III are required to apply their regulations to ships of nonparty countries using their ports or off-shore terminals.

II. Discussion of Comments Received

In response to the President's January 28, 1992 announcement of a federal regulatory review, DOT published a notice on February 7, 1992 (Docket No. RR–1; 57 FR 4744) soliciting comments on the Department's regulatory programs. RSPA received several comments to Docket RR–1 concerning the proposed marine pollutant rule. Because the comment period for the NPRM coincided with the Docket RR–1 comment period, the comments were very similar in content. The commenters addressed issues such as the general concept of regulating marine pollutants, including metem sodium, in all modes of transportation, and identifying marine pollutants on shipping papers. All of the comments have been considered in developing this final rule. Based on the merit of comments to the NPRM and those received during the regulatory review, RSPA is modifying several proposed requirements, as indicated below.

900 consolidated edition of the International Maritime Dangerous Goods (IMDG) Code. Marine pollutants are identified in the individual schedules and the General Index of the IMDG Code by the letters "P" or "PP." The letters "PP" identify those materials that are regulated as severe marine pollutants when in concentrations of 1% or more. The letter "P" identifies those commodities that are marine pollutants when in concentrations of 10% or more. In addition to proposing regulations for marine pollutants transported by vessel, as required by Annex III, RSPA also proposed to regulate the transportation of marine pollutants transported by air, rail and highway. Because marine pollutants are transported over or near bodies of water in the air, rail and highway modes of transport, such transportation has the potential to result in releases that could cause substantial damage to the aquatic environment. In developing the NPRM, RSPA determined that there are certain commodities that present an environmental hazard that are not currently regulated as hazardous materials under the HMR.

The need to regulate marine pollutants in modes of transportation in addition to water was demonstrated when on July 14, 1991, a railroad tank car containing 19,000 gallons of metem sodium, a pesticide included on the list of marine pollutants, fell into the Sacramento River in California. The resulting damage to the environment and economic costs from this accident were substantial.

III. Summary of Changes

Because the intent of RSPA is to increase safety associated with the transportation of environmentally hazardous materials, the final rule expands the scope of hazardous materials requiring regulations. This expanded scope is achieved by including, in the regulations, those materials that are identified as marine pollutants by Annex III. Because the intent of RSPA is also to impose limits on the presence of hazardous materials when transported by air, rail and highway, the final rule includes such modes of transportation.

IV. Final Rule

In the preamble to this proposed rule, RSPA indicated that it would establish appropriate requirements for the packaging, marking, labeling, documentation, stowage, quantity limitations and exceptions for preventing or minimizing pollution of the marine environment. In developing the final rule, RSPA decided that it would include requirements for the transportation of marine pollutants in all modes of transportation, including air, rail and highway. RSPA is amending the Hazardous Materials Regulations by establishing appropriate requirements for the packaging, marking, labeling, documentation, stowage, quantity limitations and exceptions for preventing or minimizing pollution of the marine environment.
In the NPRM, RSPA proposed to regulate marine pollutants in all modes of transportation, in both bulk and non-bulk packages. Many commenters, however, urged RSPA to reevaluate this proposal. Several commenters recommended that the regulation of marine pollutants should be limited to vessel shipments only. A few commenters added that RSPA should not get involved in regulating marine pollutants at all; that RSPA should leave it to the IMO to regulate marine pollutants on vessels. Some commenters stated that a marine pollutant that is reclassified as ORM-D (consumer commodity) should not be subject to any additional regulations, even when transported by vessel, because of its lesser degree of environmental impact. Other commenters stated that since the environmental disaster that took place in July 1991 contaminating the Sacramento River involved bulk packages, the regulations for marine pollutants should be limited to bulk packages. For example, the Conference on the Safe Transportation of Hazardous Articles, Inc. (COSTHA) stated, “In view of the relative risks posed by non-bulk versus bulk shipments of marine pollutants, COSTHA favors placing the regulatory emphasis on bulk shipments.”

By regulating as hazardous materials the marine pollutants identified by the IMDG Code, materials known to present an environmental hazard will be adequately regulated. However, based upon the comments and RSPA’s analysis, RSPA has concluded that non-bulk packages of marine pollutants pose a limited threat of damage to the marine environment during non-vessel transportation. Therefore, non-bulk packagings of marine pollutants, transported in modes other than water, are not subject to the requirements set forth in this final rule. However, RSPA is not excepting from the provisions of this final rule marine pollutants that are reclassified as ORM-D in vessel transportation. RSPA is unable to provide this exception because of the commitment of the United States of America to comply with the provisions of Annex III which provides no equivalent exception.

In the NPRM, RSPA proposed to incorporate the list of marine pollutants into a separate appendix (appendix B) to the § 172.101 Hazardous Materials Table (HMT). Numerous commenters were concerned that the listing of marine pollutants in Appendix B would unnecessarily complicate the determination of proper shipping names and markings on packages because of the need to refer to multiple sources to assure compliance with the HMR. Several commenters encouraged RSPA to incorporate the IMO list of marine pollutants into the existing § 172.101 Appendix (list of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)) and use “E”, “P” and “PP” to distinguish the CERCLA hazardous substances, marine pollutants, and severe marine pollutants, respectively. In addition, commenters requested that tentative reportable quantities (RQ) be assigned to marine pollutants until the Environmental Protection Agency (EPA), through scientific evaluation, establishes substantiated RQ’s. Other commenters requested that the marine pollutant list be incorporated into the HMT. Still other commenters supported the proposal to incorporate the list of marine pollutants as appendix B to § 172.101.

Determining a material’s proper shipping name and whether it is a hazardous substance or a marine pollutant are separate and distinct functions. The HMT is not a list of chemicals; rather, it is a list of proper shipping names. The offeror must determine the appropriate proper shipping name for a material by using a set of guidelines, one of which is knowledge of the material’s hazard class or classes. The lists of hazardous substances and marine pollutants are lists of specific chemicals designed to help shippers determine if a material meets the definition of a hazardous substance or a marine pollutant. Any benefit that would result from having a single list would be outweighed by the confusion, and possible non-compliance, of shippers trying to distinguish a marine pollutant from a hazardous substance. Therefore, as proposed, RSPA is adding the list of marine pollutants as appendix B to § 172.101.

Many commenters opposed to the adoption of the list of marine pollutants urged RSPA to establish criteria for the determination of marine pollutants. Some commenters stated that there may be materials that, due to lack of information or unpublished data, are not included in the list. The majority of these commenters believed the criteria should be based on existing criteria from the EPA and the Joint Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP). One commenter advised RSPA to use the EPA’s hazardous substance guidelines as a starting point. Another commenter asserted that if technical data are presented, a manufacturer of a material should be allowed to add to and delete products from Appendix B. The commenter added that any changes made to the list of marine pollutants by GESAMP should be incorporated into Appendix B to § 172.101 in a timely manner.

Although RSPA believes shippers should be able to use a criteria-based system rather than a list-based system for the identification of environmentally hazardous materials, the system developed by the IMO for identifying marine pollutants does not allow the shipper to use the environmental criteria developed by GESAMP. Therefore, at this time, RSPA is adopting the list of marine pollutants identified in the IMDG Code, and may consider, for future rulemaking, the use of a criteria-based system. Any data that contradict the listing or non-listing of chemicals as marine pollutants should be presented to GESAMP for their consideration and the U.S. Coast Guard, Office of Marine Safety, Security and Environmental Protection (G-MTH-1). In addition, any changes to the IMDG Code list of marine pollutants will be incorporated into the HMR by RSPA as expeditiously as possible.

In the NPRM, RSPA specifically requested comments relative to the impact and benefit of also requiring the MARINE POLLUTANT mark on packages and transport vehicles that must be labeled or placarded. In response to this request, several commenters stated that the marking requirement might be the beginning of a proliferation of markings or placards for soil, air, and other pollutants. In addition, many commenters did not agree with the proposal to mark bulk packages due to the confusion of placards and markings already mandated by the HMR, and the costs of marking and remarking bulk packages, freight containers, and transport vehicles.

In this final rule, RSPA is harmonizing the HMR, in most respects, with the requirements of the IMDG Code for marine pollutants transported by vessel. This includes mandating marine pollutant markings for both bulk and non-bulk packages transported by vessel. However, to avoid excessive and duplicative hazard communication requirements, RSPA is not requiring the MARINE POLLUTANT mark on bulk packages in non-vessel transportation that contain materials that also meet the definition of a hazard class other than Class 9. RSPA believes that any marine pollutant that meets the definition of another hazard class, or a hazardous...
Several commenters stated that the compliance date of this final rule should be consistent with the transition dates in §171.14 provided under Docket HM-181. The commenters believed that this would greatly ease the regulated community's efforts to comply with these requirements in the areas of training, hazard classification, maintenance of product data bases, package marking, and shipping paper descriptions. RSPA agrees. Therefore, in §171.14(d) of this rule, transitional provisions are added to make requirements specific to marine pollutants effective October 1, 1993, except that packagings may conform to the transitional provisions in §171.14(b)(5). However, it should be noted that for purposes of international vessel transportation, compliance with the provisions in the IMDG Code are likely to be enforced by other countries as in the case for the transport of hazardous materials in general.

In the NPRM, RSPA proposed to require immediate notification of the National Response Center (NRC) of any release of a marine pollutant. Many commenters stated, however, that it would be unreasonable to expect immediate reporting of “any” spill of a marine pollutant. Other commenters suggested that a spill of almost any size into (or immediately adjacent to) a body of water should be reported immediately, and that a non-water spill of 100 pounds or more should be immediately reported also. One commenter suggested that the term “body of water” be defined based on the definition of “navigable waters” in 49 CFR 117.1.

RSPA believes that it is necessary that certain releases of marine pollutants be immediately reported to the NRC. These reports are necessary so that appropriate authorities are notified of any potential threats to the environment. However, RSPA concurs with those commenters who stated that it is unreasonable to immediately report “any” release of a marine pollutant. Therefore, RSPA is adopting a requirement for immediate reporting to the NRC of a release of a marine pollutant in a quantity that equals or exceeds: (1) Ten percent by total concentration of the materials listed in appendix B to §171.8 (e.g., hazardous substances), (2) one percent by weight of the package or (3) one percent by weight of the total amount in the package.

As for the specific materials on the list of marine pollutants, one commenter believed that it is inappropriate that chlorine was listed while another commenter questioned why the marine pollutant list covered terpentine, alpha-pinene, and alcohol ethoxylates, when similar pollutants, such as kerosene, diesel and jet fuels are not listed. The list of chemicals on the marine pollutant list is not a complete list of all chemicals that can cause environmental damage. However, RSPA believes that the standards developed by GESAMP and used by IMO for listing marine pollutants provide sufficient justification for regulating those chemicals that appear on the list of marine pollutants.

releases exceeding 400 kilograms or 450 liters must be reported immediately to the NRC irrespective of the size of the packaging.

III. Review by Section

Section 171.1

This section is amended to expand the scope of the HMR to regulate the transportation of marine pollutants in intrastate, as well as interstate, transportation.

Section 171.4

This section is added to note that the regulations in the HMR related to the transportation of marine pollutants are based on Annex III. In addition, a general exception from the requirements of the HMR specific to marine pollutants is provided for non-bulk packages when transported by motor vehicle, railcar, or aircraft. In order for the U.S. to be in conformance with the provisions of Annex III, this exception does not apply to the transportation of marine pollutants by vessel in either international or domestic commerce.

Section 171.8

The definition of “Hazardous material” is editorially revised to note that those materials that are designated as hazardous materials are defined in §171.8 (e.g., hazardous substances), are specified in §§172.101 and 172.102 and are those materials that meet the defining criteria for hazard classes and divisions in Part 120. A definition of “Marine pollutant” is added. A mixture or solution containing one or more materials listed in appendix B to §172.101 is a marine pollutant if it the total concentration of the material(s) listed in appendix B to §172.101 in one package equals or exceeds: (1) Ten percent by weight of the total amount in the package or (2) one percent by weight of the total amount in the package for materials that are identified as severe marine pollutants.

Section 171.11

This section is revised to note that shipments made in accordance with the ICAO Technical Instructions must conform to certain shipping paper and marking requirements in the HMR related to marine pollutants.

Section 171.12a

This section is revised to note that shipments from Canada must conform to certain shipping paper and marking requirements in the HMR related to marine pollutants.
Appendix to § 172.101

The proper shipping name and hazard class for a material that meet the definition of a marine pollutant, and does not meet the definition of another hazard class, is "Environmentally hazardous substances, liquid, n.o.s., Class 9," for a liquid, or "Environmentally hazardous substances, solid, n.o.s., Class 9," for a solid. These descriptions are the same as those for CERCLA hazardous substances that meet no other hazard class in the HMR. Non-bulk packagings are selected from §§ 173.203 or 173.213, and must withstand the testing criteria for Packing Group III. Bulk packagings are selected from either §§ 173.240 or 173.241, as appropriate. A special provision, "N50", is added to these two shipping descriptions that excepts marine pollutants, that do not meet the definition of a hazardous substance, hazardous waste, or the definition in § 171.140(a), from the labeling requirements of part 172. In addition, in order to easily identify the proper shipping name for a marine pollutant that is properly classified as a Class 9 material, the entry "Marine pollutants, liquid or solid, n.o.s. see Environmentally hazardous substances, liquid or solid, n.o.s." is added to the § 172.101 Hazardous Materials Table.

Appendix to § 172.101

The appendix to § 172.101, which identifies CERCLA hazardous substances, is renamed "Appendix A to § 172.101." RSPA is adding an appendix B to § 172.101, entitled "List of Marine Pollutants," to identify those substances designated as marine pollutants. The first column of the list, entitled "S.M.P.," identifies those materials which are marine pollutants by the letters "PP." One difference between the list of marine pollutants in appendix B to § 172.101 and those substances identified as marine pollutants in the IMDG Code, is that RSPA is not listing generic shipping names as marine pollutants as is done in the IMDG Code. These commodities are still subject to the requirements for marine pollutants, however, if the material described under the generic entry meets the definition of marine pollutant in § 171.8.

On January 29, 1992, the IMO Subcommittee on the Carriage of Dangerous Goods revised the list of marine pollutants by adding and deleting numerous entries. This final rule incorporates the deletions that were approved by the IMO for incorporation into the next revision of the IMDG Code. Chemicals that were added by the IMO to the list of marine pollutants will be added to appendix B of § 172.101 at a later date.

Section 172.203

Paragraph (l) is added to this section to require the technical name of the material to be added in parentheses when the name of the marine pollutant is not identified in the proper shipping name. In addition, this section requires the words "Marine pollutant" to appear in association with the basic description.

The Hazardous Materials Advisory Council (HMAC) requested, for consistency with the IMDG Code, that the following sentence be added to proposed § 172.203(l)(1): "For pesticide or pesticide preparations, the marine pollutant component indicated in the parentheses may be supplemented by the percent of the active ingredient." Though RSPA agrees with this commenter, RSPA believes that the inclusion of the percentage of a technical name should not be limited to marine pollutants. Therefore, RSPA is revising § 172.203(d) to allow the inclusion of the percentage of the technical constituent for all hazardous materials descriptions.

Section 172.322

This section is added to delineate package and vehicle marking requirements for the transportation of marine pollutants. There are distinctly different marking requirements for vessel versus non-vessel modes of marine pollutant transportation. The marking requirements for marine pollutants transported by vessel harmonize with the IMDG Code. For non-bulk packages, RSPA is requiring the placement of the MARINE POLLUTANT mark and the specific technical name of the marine pollutant to be marked on the package in parentheses in association with the marked proper shipping name if the proper shipping name does not identify the components that make the material a marine pollutant. Except for certain combination packages of marine pollutants transported by vessel, non-bulk packages must bear the MARINE POLLUTANT mark. In vessel transportation, any bulk packaging, transport vehicle, or freight container must be marked on all four sides with the MARINE POLLUTANT mark. For transportation by air, rail or highway, bulk packagings must be marked on all four sides unless they are placarded in accordance with the HMR. The MARINE POLLUTANT mark may be displayed in a standard square-on-point placard holder with the upper half displaying the mark, black on white, and the lower half being blank. Labels and stickers of the mark are allowed in contrasting colors to the packaging.

Section 173.12

This section is amended to require label packs containing marine pollutants to comply with the requirements of §§ 172.203(l) and 172.322.

Section 173.140

This section is amended to add marine pollutants to the definition of Class 9. If a marine pollutant meets the definition of another hazard class, however, the class of the material is determined in accordance with § 173.2a. Marine pollutants that meet no other hazard class are classified as a Class 9 material and are shipped under the proper shipping name of "Environmentally hazardous substances, liquid or solid, n.o.s."

Section 173.150

This section is amended to provide that combustible liquids in non-bulk packagings that meet the definition of a marine pollutant are subject to the requirements of the HMR.

Section 173.154

This section is amended to provide that materials corrosive to aluminum and steel that meet the definition of a marine pollutant are subject to the HMR.

Section 173.425

This section is amended to require, for vessel transportation, the MARINE POLLUTANT mark on packages of low specific activity radioactive material that contain a marine pollutant and that are shipped under exclusive use.

Section 174.25

This section is amended to require that the words "Marine Pollutant" appear on switching orders, receipts and tickets in association with shipping descriptions for marine pollutants.

Section 176.70

This section is added to prescribe minimum stowage requirements for marine pollutants in vessel transportation.

The following sections have been amended to require marine pollutants that are reclassified as ORM-D to be subject to the shipping paper requirements of the HMR: §§ 173.150, 173.151, 173.152, 173.153, 173.154 and 173.155. In addition, the following sections have been amended in accordance with the foregoing preamble.
IV. Federal Preemption Under the HMTA

Section 105(a)(4) of the Hazardous Materials Transportation Act (HMTA), as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), preempts any non-Federal (i.e., State, political subdivision, or Indian tribe) law or regulation concerning certain "covered subjects" unless the non-Federal requirement is "substantially the same" as the Federal law or regulation on that subject. The "covered subjects" are:

(i) The designation, description, and classification of hazardous materials;
(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;
(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or
(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a February 28, 1991 final rule (56 FR 8616), RSPA added a new preemption standard to § 107.202 to mirror the requirements of the HMTA. To the extent that the requirements of this final rule involved covered subjects, States, political subdivisions, or Indian tribes are only allowed to establish, maintain, and enforce laws, regulations, or other requirements concerning such subjects if they are substantively the same as the requirements in Docket HM–211. In a May 13, 1992 final rule (57 FR 20924) RSPA defined the phrase "substantively the same", Section 105(a)(5) of the HMTA, as amended by HMTUSA, provides that if DOT issues a regulation concerning any of the covered subjects after the date of enactment of the HMTUSA (November 16, 1990), DOT must determine and publish in the Federal Register the effective date of the Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be October 1, 1993.

V. Regulatory Analyses and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

This rule does not meet the criteria specified in section 1b(h) of Executive Order 12291, and is, therefore, not a major rule, but it is considered a significant rule under the regulatory procedures of the Department of Transportation (44 FR 11004) because of the significant public and congressional interest. This final rule does not require a Regulatory Impact Analysis, or an environmental assessment or impact statement under the National Environmental Policy Act (42 FR 4321 et seq.). A regulatory evaluation is available for review in the Docket.

B. Executive Order 12612

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612. This final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The Hazardous Materials Transportation Act contains an express preemption provision (49 App. U.S.C. 1804(a)(4)) that preempts State and local requirements on certain covered subjects (including the designation, description, and classification of hazardous materials) unless the State or local requirement is substantively the same as the Federal requirement on that subject. Thus, RSPA lacks discretion in this area.

C. Regulatory Flexibility Act

This regulation has minimal impact on shippers and carriers of marine pollutants, some of whom may be small business entities. Based on limited information received from commenters concerning the size and nature of entities likely affected by this final rule, I certify this regulation will not have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

D. Paperwork Reduction Act

The information collection requirements contained in § 172.203(l) have been approved by the Office of Management and Budget (OMB) under control number 2137–0034 (expiration date September 30, 1994) which was issued by OMB under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).
of Pollution from Ships, as modified by the Protocol of 1978 [MARPOL 73/78].

(c) Exceptions. Except when transported aboard vessel, the requirements of this subchapter specific to marine pollutants do not apply to non-bulk packagings transported by motor vehicles, rail cars or aircraft.

(d) Transitional provisions. The requirements of this subchapter specific to marine pollutants are effective October 1, 1993, except that packagings may conform to the transitional provisions of §171.14(b)(5) of this part.

§ 171.11 Use of ICAO Technical Instructions.

The following changes are made:

(13) Transportation of marine pollutants, as defined in §171.8 of this subchapter, in bulk packagings must conform to the requirements of §§172.203(1) and 172.322 of this subchapter.

6. In §171.12a, paragraph (b)(15) is added as read to add as follows:

§ 171.12a Canadian shipments and packagings.

(b) * * * * *

(15) Transportation of marine pollutants, as defined in §171.8 of this subchapter, in bulk packagings must conform to the requirements of §§172.203(1) and 172.322 of this subchapter.

7. The authority citation for part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, and 1908; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended] 8. In the §172.101 Table, the following changes are made: a. The entry “Marine pollutants, liquid or solid, n.o.s., see Environmentally hazardous substances, liquid or solid n.o.s.” is added to Column 2 in appropriate alphabetical order; and b. For the entries “Environmentally hazardous substances, liquid, n.o.s.” and “Environmentally hazardous substances, solid, n.o.s.”, special provision “N50” is added to column 7.

Appendix A to §172.101—List of Marine Pollutants

1. This appendix lists potential marine pollutants as defined in §171.8 of this subchapter.

2. If a marine pollutant meets the definition of any hazard class or division as defined in this subchapter, other than Class 9, the class of the material must be determined in accordance with §173.2a of this subchapter.

3. This appendix contains two columns. The first column, entitled “S.M.P.” (for severe marine pollutants), identifies whether a material is a severe marine pollutant. If the letters “PP” appear in this column for a material, the material is a severe marine pollutant, otherwise it is not. The second column, entitled “Marine Pollutant”, lists the marine pollutants.

Appendix B to §172.101 List of Marine Pollutants

<table>
<thead>
<tr>
<th>S.M.P.</th>
<th>Marine Pollutant</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Acetone cyanohydrin, stabilized</td>
</tr>
<tr>
<td>(2)</td>
<td>Acetylene dibromide</td>
</tr>
<tr>
<td>(3)</td>
<td>AcetYLEne tetrabromide</td>
</tr>
<tr>
<td>(4)</td>
<td>Acetylene tetrachloride</td>
</tr>
<tr>
<td>(5)</td>
<td>Acrolein, inhibited</td>
</tr>
<tr>
<td>(6)</td>
<td>Acrolein, inhibited</td>
</tr>
<tr>
<td>(7)</td>
<td>Alcohol C-12 - C-15 poly(1-3) ethoxylate</td>
</tr>
<tr>
<td>(8)</td>
<td>Alcohol C-13 - C-15 poly(1-6) ethoxylate</td>
</tr>
<tr>
<td>(9)</td>
<td>Alcohol C-6 - C-17 (secondary)poly(3-6) ethoxylate</td>
</tr>
</tbody>
</table>

PP Aldrin

S.M.P. Marine Pollutant

Alkylphenols, liquid, n.o.s. (including C8-C10 homologues)

Alkylphenols, solid, n.o.s. (including C8-C10 homologues)

Alyl bromide

ortho-Aminoanisole

Ammocarb

Ammonium nitrate-

Ammonium nitro-o-cresolate

Amyl mercaptan

ortho-Arisanines

Arsenates, liquid, n.o.s.

Arsenates, solid, n.o.s.

Arsenic bromide

Arsenic chloride

Arsenical pesticidex liquid, toxic, flammable, n.o.s.

PP Azepheos-ethyl

Azepheos-ethyl

Benzoic acid

Benzoic acid

Benzoic acid

Benzoic acid

Benzoic acid

Benzoic acid

Benzoic acid
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<tr>
<td>PP</td>
<td>Bromophos-ethyl</td>
<td>PP</td>
<td>Cyanide mixtures</td>
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<td>Diphenylchloroarsine, solid or liquid</td>
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<td>3-Bromopropene</td>
<td>PP</td>
<td>Cyanide solutions</td>
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<td>Disulfoton</td>
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<td>Bromoxynil</td>
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<td>DNOC</td>
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<td>Cyanogen bromide</td>
<td>PP</td>
<td>DNOC (piscicide)</td>
</tr>
<tr>
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<td>Butyl benzenes</td>
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<td>Cyanogen chloride, inhibited</td>
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<td>Diquat</td>
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<td>Butyl benzyl phthalate</td>
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<td>Cyanophos</td>
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<td>Drazoxolon</td>
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<td>Diklat</td>
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<td>Ethoprophos</td>
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<td>Dim-n-Butyl phthalate</td>
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**Note:** The text appears to be a list of chemical substances, possibly from a regulatory document or a chemical reference. The list includes various compounds with their associated properties and possibly their uses or classifications in regulatory contexts.
<table>
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<tr>
<th>S.M.P.</th>
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</table>

The table lists various chemicals and their properties, such as their uses and physical characteristics.
11. In §172.102, paragraph (c)(5), special provision "N50" is added in appropriate alpha-numerical order:

§172.102 Special provisions.

(c) * * *

(5) * * *

N50 A Class 9 material that meets the definition of a marine pollutant, but does not meet the definition of a hazardous substance or a hazardous waste or the definition in §173.140(a) of this subchapter, is excepted from the labeling requirements of this part.

* * * * *

§172.200 [Amended]

12. In §172.200, in the introductory text of paragraph (b), the phrase "hazardous waste or a hazardous substance," is removed and replaced with the phrase "hazardous substance, hazardous waste or marine pollutant."

§172.202 [Amended]

13. In §172.202, paragraph (d) is amended by removing the phrase "may be used." and replacing it with the phrase "and/or the percentage of the technical constituent may also be used."

§172.203 [Amended]

14. In §172.203, paragraph (c)(1) is amended by removing the words "the appendix" and replacing them with the phrase "Appendix A".

15. In §172.203, paragraph (l) is added to read as follows:

§172.203 Additional description requirements.

(1) Marine pollutants. (1) If the proper shipping name for a material which is a marine pollutant does not identify by name the component which makes the material a marine pollutant, the name of that component must be marked on the package in parentheses in association with the marked proper shipping name. (2) The words "Marine Pollutant" shall be entered in association with the basic description for a material which is a marine pollutant.

* * * * *

16. Section 172.322 is added to read as follows:

§172.322 Marine pollutants.

(a) For vessel transportation of each non-bulk packaging that contains a marine pollutant—

(1) If the proper shipping name for a material which is a marine pollutant does not identify by name the component which makes the material a marine pollutant, the name of that component must be marked on the package in parentheses in association with the marked proper shipping name. Where two or more components which make a material a marine pollutant are present, the names of at least two of the components most predominantly contributing to the marine pollutant designation must appear in parentheses in association with the marked proper shipping name.

(2) The MARINE POLLUTANT mark shall be placed in association with the hazard warning labels required by Subpart E of this Part or, in the absence of any labels, in association with the marked proper shipping name.

(b) A bulk packaging that contains a marine pollutant must be marked on each end and each side with the MARINE POLLUTANT mark and must be visible from the direction it faces. This mark may be displayed in black lettering on a white square-on-point configuration having the same outside dimensions as a placard.

(c) A transport vehicle or freight container that contains a package subject to the marking requirements of paragraph (a) or (b) of this section must be marked with the MARINE POLLUTANT mark. The mark must appear on each side and each end of the transport vehicle or freight container, and must be visible from the direction it faces. This requirement may be met by the marking displayed on a freight container or portable tank loaded on a motor vehicle or rail car. This mark may be displayed in black lettering on a white square-on-point configuration having the same outside dimensions as a placard.

(d) The MARINE POLLUTANT mark is the proper shipping name—

(1) On a combination package containing a severe marine pollutant (see appendix B to §172.101), in inner packagings each of which contains:...
(i) 0.5 liters (17 ounces) or less net capacity for liquids; or
(ii) 500 grams (17.6 ounces) or less net capacity for solids.
(2) On a combination packaging containing a marine pollutant, other than a severe marine pollutant, in inner packagings each of which contains:
(i) 5 liters (1 gallon) or less net capacity for liquids; or
(ii) 5 kilograms (11 pounds) or less net capacity for solids.
(3) Except for transportation by vessel, on a bulk packaging, freight container or transport vehicle that bears a label or placard specified in Subparts E or F of this part.
(e) **MARINE POLLUTANT** mark. The **MARINE POLLUTANT** mark must conform to the following:
(1) Except for size, the **MARINE POLLUTANT** mark must appear as follows:

---

**MARINE POLLUTANT**

---

(2) The symbol, letters and border must be black and the background white, or the symbol, letters, border and background must be of contrasting color to the surface to which the mark is being affixed. For non-bulk packagings of marine pollutants, each side of the mark must be at least 100 mm (3.9 inches), except in the case of packagings which, because of their size, can only bear smaller marks. For bulk packagings, each side of the mark must be at least 250 mm (9.8 inches).

§ 172.324 [Amended]
17. In § 172.324, paragraph (a)(1) is amended by removing the words "the appendix" and replacing them with the phrase "Appendix A".

PART 173—SHIPPERs—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS
18. The authority citation for part 173 continues to read as follows:
19. In § 173.12, the word "and" is removed from the end of paragraph (d)(1), in paragraph (d)(2) the "." is removed and replaced with a "; and", and paragraph (d)(3) is added to read as follows:
§ 173.12 Exceptions for shipments of waste materials.

(d) . . .

(3) Packagings containing marine pollutants must be described as required in § 172.203(1) of this subchapter and marked as required in § 172.322 of this subchapter.

§ 173.29 [Amended]
20. In § 173.29, paragraph (b)(3) is amended by removing the phrase "either a hazardous substance or a hazardous waste." and replacing it with the phrase "a hazardous substance, a hazardous waste, or a marine pollutant."

21. In § 173.140, paragraph (b) is revised to read as follows:
§ 173.140 Class 9—Definitions.

(b) Any material which meets the definition in § 171.8 of this subchapter for an elevated temperature material, a hazardous substance, a hazardous waste, or a marine pollutant.

§ 173.150 [Amended]
22. In § 173.150, paragraph (c) is amended by removing the phrase
“hazardous substance or hazardous waste” and replacing it with the phrase “hazardous substance, a hazardous waste, or a marine pollutant”, and paragraphs (f)(2), (f)(3) and (f)(4) are amended by removing the phrase “hazardous substance or a hazardous waste” and replacing it with the phrase “hazardous substance, a hazardous waste, or a marine pollutant”.

§ 173.151 [Amended]
23. In § 173.151, paragraph (c) is amended by removing the phrase “hazardous substance or hazardous waste” and replacing it with the phrase “hazardous substance, a hazardous waste, or a marine pollutant”.

§ 173.152 [Amended]
24. In § 173.152, paragraph (c) is amended by removing the phrase “hazardous substance or hazardous waste” and replacing it with the phrase “hazardous substance, a hazardous waste, or a marine pollutant”.

§ 173.153 [Amended]
25. In § 173.153, paragraph (c)(3) is amended by removing the phrase “hazardous substance or hazardous waste” and replacing it with the phrase “hazardous substance, a hazardous waste, or a marine pollutant”.

§ 173.154 [Amended]
26. In § 173.154, paragraph (c) is amended by removing the phrase “hazardous substance or hazardous waste” and replacing it with the phrase “hazardous substance, a hazardous waste, or a marine pollutant” and paragraph (d) is amended by removing the phrase “hazardous substance or a hazardous waste,” and replacing it with the phrase “hazardous substance, a hazardous waste, or a marine pollutant”.

§ 173.155 [Amended]
27. In § 173.155, paragraph (c) is amended by removing the phrase “hazardous substance or hazardous waste” and replacing it with the phrase “hazardous substance, a hazardous waste, or a marine pollutant”.

§ 173.421-2 [Amended]
28. In § 173.421-2, paragraphs (b)(1)(i) and (b)(2)(i) are amended by removing the phrase “hazardous waste or hazardous substance” and replacing it with the phrase “hazardous substance, a hazardous waste, or a marine pollutant”.

29. In § 173.425, paragraph (b)(8) is amended by adding the following sentence to the end of the existing regulatory text:

§ 173.425 Transport requirements for low specific activity (LSA) radioactive materials.

(b) * * * * * 
(8) * * * For vessel transportation, packages that contain a marine pollutant must be marked in accordance with § 172.322 of this subchapter.

* * * * *

PART 174—CARRIAGE BY RAIL

30. The authority citation for part 174 continues to read as follows:


31. In § 174.25, paragraph (b)(5) is added to read as follows:

§ 174.25 Additional information on way bills, switching orders and other billings.

(b) * * * * * 
(5) For any entry for a material that is a marine pollutant, the words “Marine Pollutant” must be entered in association with the basic description.

* * * * *

PART 176—CARRIAGE BY VESSEL

32. The authority citation for part 176 continues to read as follows:


33. Section 176.70 is added to read as follows:

§ 176.70 Stowage requirements for marine pollutants.

(a) Marine pollutants must be properly stowed and secured to minimize the hazards to the marine environment without impairing the safety of the ship and the persons on board.

(b) Where stowage is permitted “on deck or under deck”, under deck stowage is preferred except when a weather deck provides equivalent protection.

(c) Where stowage “on deck only” is required, preference should be given to stowage on well-protected decks or to stowage inboard in sheltered areas of exposed decks.

Issued in Washington, DC on October 27, 1992 under authority delegated in 49 CFR part 1.

Douglas B. Ham,
Acting Administrator, Research and Special Programs Administration.

[FR Doc. 92-26414 Filed 11-2-92; 3:49 pm]

BILLING CODE 4910-60-M
Thursday
November 5, 1992

Part VI

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 420
State Energy Conservation Program; Final Rule
DEPARTMENT OF ENERGY
Office of Conservation and Renewable Energy

10 CFR Part 420
[Docket No. CE-RM-91-120]
State Energy Conservation Program

AGENCY: Department of Energy.
ACTION: Final rule.

SUMMARY: The Department of Energy (DOE or Department) is today issuing final amendments to the regulations of the State Energy Conservation Program (SECP) to incorporate modifications to its enabling legislation occasioned by the passage of the State Energy Efficiency Programs Improvement Act of 1990 (SEEPIA), Public Law 101-440, which amended title III, part D of the Energy Policy and Conservation Act (the Act) (42 U.S.C. 6231 et seq.). The changes include: Updating State energy efficiency goals; providing for a State energy emergency plan; broadening the range of permissible elements of State Energy Conservation Plans; eliminating the Supplemental State Energy Conservation Plan; and establishing an Energy Technology Commercialization Services Program.

EFFECTIVE DATE: November 5, 1992.


Neal J. Strauss or Vivian S. Lewis, Office of General Counsel, Conservation and Regulations, Mail Stop CC-41, 63B-256. Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20565, (202) 586-9507.

SUPPLEMENTARY INFORMATION:
I. Introduction.
II. Amendments to the State Energy Conservation Program.
III. Issues Outside the Scope of this Rulemaking.
IV. Other Matters.

I. Introduction

The enactment of the State Energy Efficiency Programs Improvement Act of 1990 (SEEPIA or statute), Public Law 101-440, on October 18, 1990, requires changes to the regulations of the State Energy Conservation Program (SECP), which are codified at 10 CFR part 420. On December 31, 1991, the Department issued a notice of proposed rulemaking (NPR) and notice of public hearings on the State Energy Conservation Program (56 FR 67710). The NPR proposed a number of amendments to the program regulations, reflecting the program changes required by the enactment of SEEPIA. The principal provisions of the proposal included: Updating State energy efficiency goals; providing for a State energy emergency plan; broadening the range of permissible elements of State Energy Plans; eliminating the Supplemental State Energy Conservation Plan; and establishing an Energy Technology Commercialization Services Program.

In response to this proposal, the Department received nine letters of comment and heard testimony from one organization at a public hearing held February 4, 1992, in Washington, DC. A public hearing also was held January 29, 1992, in Dallas, Texas, but no testimony was presented. As a result of the comments received, a number of changes have been made to the amendments proposed, and these changes are reflected herein.

It should be noted that this rule becomes effective upon publication in the Federal Register. The rule, which implements statutory changes enacted two years ago, has the effect of relieving States of previous regulatory restrictions and the States are anxious to begin implementation. Further, actual notice of today’s changes in 10 CFR part 420 and of their effective date is being given to the State grantee agencies by the Department’s regional Support Offices.

II. Amendments to the State Energy Conservation Program

Section 420.1 Purpose and Scope

A number of commenters expressed concern about the State requirement for a goal of at least a 10 percent increase in energy efficiency from calendar year 1990 to calendar year 2000. One commenter complained that the new goal unfairly penalizes States who have made significant energy efficiency gains in previous years; expended the majority of their oil overcharge funds prior to the allowability of expanded program measures; whose utilities have been unable or unwilling to pursue aggressive demand side management strategies; who are experiencing a "credit crunch" because their banks have been hard hit by the recession; and whose modest budgets make additional appropriations for energy conservation measures unlikely. In fact, a number of comments expressed concern about the adequacy of current appropriation levels in achieving such an ambitious energy efficiency goal.

In response, it must be noted that the States establish a goal of increasing energy efficiency by 10 percent by the year 2000. DOE fully supports the new goal but would point out to States that it is a goal to strive for rather than a standard against which to measure compliance. Moreover, the provision has not been interpreted to necessitate a change in either the allocation formula or the way in which energy savings data are collected from the States.

With respect to the level of funding available for the achievement of the 10 percent goal, it should be noted that the President’s fiscal year 1993 budget request asks for a substantial increase in SECP funding ($20 million, up from $11.4 million).

Section 420.2 Definitions

All references to "supplemental plans" are deleted in conformance with SEEPIA’s repeal of section 367 of the Act. The terms "energy conservation measures" and "energy measure" are deleted because they are used only in reference to "supplemental plans." The definitions of "ASHRAE/IES 90.1-1989" and "CABO MEC-89" are added. The definitions set forth in the NPR for "institution of higher education," "small business," "start-up business," "State economic product," and "commercially available" received no comments and are retained as proposed. All former references to "Operations Office Manager" are replaced with "Support Office Director," to reflect a recent DOE functional realignment.

Section 420.3 Financial Assistance

As noted above, all references to supplemental plans, which no longer exist, are deleted as is that portion of the allocation formula (paragraph c) which applies only to supplemental plans.

Section 420.4 Annual State Applications

As mandated by SEEPIA, the regulation now requires that States give assurance that Federal financial assistance under SECP will be used to supplement and not supplant State and local funds devoted to program activities.

Several comments were received regarding the requirement that effective October 1, 1981, a State shall submit to DOE, as part of its annual State plan, an energy emergency plan as a contingency against an energy supply disruption. One commenter stated that it seemed "unnecessary" to require the submission of an energy emergency plan "for information purposes only" and
suggested that the requirement be changed to a recommendation instead. However, the provision exactly tracks the statutory language, which does not give DOE the latitude to make a change of this nature. Another commenter suggested that, after the first plan is submitted, only revised or new plans be submitted in subsequent years. DOE concurs in this recommendation and will accept a notation in the State plan that the energy emergency plan remains the same as previously submitted. One commenter was under the impression that developing an energy emergency plan was an expense to be borne by the State without assistance from DOE. He did not realize that development of such a plan is a legitimate SECP program expense.

Section 420.6 Minimum Criteria for Required Program Measures for Plans

In the NOPR, DOE proposed to revise references in § 420.6 to “ASHRAE 90-75” to reflect the updating of that standard by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Incorporated (ASHRAE), and to reference the Council of American Building Officials (CABO) model code that provides design requirements for energy improvements in new residential buildings. The majority of comments received were directed at these proposed provisions. Numerous objections and obstacles to implementing these provisions were enumerated by the States. Chief among them are: The American National Standards Institute’s (ANSI) refusal to certify ASHRAE 90.1 as a consensus standard; perceived inconsistency of the standard with respect to lighting; difficulty in enforcing the lighting standard because it is not well understood by its practitioners or building code officials; and the opinion that in some cases the ASHRAE standard may not be as effective as some State standards.

Objections to the CABO standard centered around its failure to take into account the need for different standards for resistance heated residences and fossil fuel or heat pump heated residences. In areas with very high electricity costs, more stringent standards and have no way of making changes in the near term.

The National Energy Strategy commits the Department to helping State and local governments strengthen building energy-efficiency standards. Many States have already adopted, in whole or in part, ASHRAE/IES 90.1-1989 for commercial and high-rise residential buildings. The adoption of these standards is projected to result in significant energy conservation and environmental benefits. For these reasons, DOE supports the adoption of the referenced standards. However, out of respect for the views of States which have some reservations about immediate or verbatim adoption of ASHRAE/IES 90.1-1989, DOE has modified the proposed rule with respect to the minimum criteria for required program measures found in § 420.6, to prescribe that State plans adhere, at a minimum, to the lighting and thermal efficiency provisions of ASHRAE 90-75, and that States work toward upgrading their required standards so that they are no less stringent than ASHRAE/IES 90.1 and CABO MEC-99.

Section 420.7 Optional Elements of State Energy Conservation Plans

The commenters were nearly unanimous in their approval of the expanded list of optional program measures. Only one measure, the Energy Technology Commercialization Service Program, evoked adverse comment. While commenters applauded the idea of such a program, they felt it was too strictly defined to permit the State flexibility necessary to craft a viable program suited to their particular needs. With respect to specific issues, one commenter noted that it might not always be practical to work through university faculty and students. However, the provision referenced in the comment affects only one aspect of the program and is not a general requirement. Further, the regulatory language for this program strictly tracks the statute, and eliminating the provision is not within DOE’s discretion.

Section 420.12 Prohibited Expenditures

Several technical errors were contained in this section of the proposal and have been corrected here. Section 420.12(a)(5) was incorrectly revised to permit the conduct of research, development, and demonstration of non-commercially available conservation techniques and technologies. Further, § 420.12(c) was inadvertently revised to exempt demonstration projects from the requirement of § 420.12(a)(5). These errors have been corrected.

In addition, one State asked for the removal of the requirement in § 420.12(e)(6) that loan documents ensure repayment and not include provisions for loan forgiveness. DOE has chosen not to remove this requirement, because to do so would in effect provide a loan guarantee, which is specifically prohibited in § 420.12(e)(6). A second State requested removal of the 10-year payback requirement for loans also found in § 420.12(e)(6) to allow for a longer payback period. DOE decided not to finalize the 10-year limitation in order to study further whether an absolute limitation by rule is appropriate. Instead, the final rule provides for determinations of maximum repayment time to vary as a function of the facts and circumstances of each case.

III. Issues Outside the Scope of this Rulemaking

One issue raised in the comments falls outside the scope of the proposed rule. One State wrote to encourage DOE to revise the energy savings portion of the SECP allocation formula because the estimates are “old and no longer accurate” and to incorporate into the formula the population data reported in the 1990 decennial census. DOE did not propose changes to the allocation formula and cannot accede to the request to revise that formula without proposing for public comment. With respect to the population data used in calculating the annual formula shares, the program’s enabling legislation requires the use of the most recent population data and no changes to the regulations are necessary.

IV. Other Matters

A. Review Under Executive Order 12291

Today’s regulatory amendments were reviewed under Executive Order 12291. DOE has concluded that the rule is not a “major rule” because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or organizations; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete in domestic and foreign export markets. In accordance with the requirements of the Executive Order, this rule has been reviewed by the Office of Management and Budget.

B. Review Under Executive Order 12612

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, or on the distribution of power among various levels of Government. If there are sufficient substantial direct effects, the Executive Order requires preparation of
a federalism assessment to be used in decisions by senior policy-makers in promulgating or implementing the regulation.

Today's regulatory amendments will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Preparation of a federalism assessment is therefore unnecessary.

C. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulation to minimize litigation, providing clear and certain legal standards (whether they be engineering or performance standards), and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's regulatory amendment meets the requirements of §§ 2 (a) and (b) of Executive Order 12778.

D. Review Under the Regulatory Flexibility Act

These regulations were reviewed under the Regulatory Flexibility Act, Public Law 96-354, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses, small government jurisdictions. DOE has concluded that the rule will affect most of the State and local governments operating State energy conservation programs. The impact of the amendments in this rule will be to provide even greater flexibility to State and local governments to develop and operate their respective programs. Therefore, DOE certifies that there will not be a significant economic impact on a substantial number of small entities, and that preparation of a regulatory flexibility analysis is not warranted.

E. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed on the public by today's rule. However, OMB approval on Energy Savings Report, CE-462, has expired, and the form has been resubmitted for clearance under the Paperwork Reduction Act, 44 U.S.C. et seq., or implementing regulations at 5 CFR part 1320. No comments on the information collection requirements contained in this rule were received.

F. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these rules would not represent a major Federal action having a significant impact on the human environment under the National Environmental Policy Act (42 U.S.C. 4321, et seq.), Council of Environmental Quality guidelines (40 CFR parts 1500-1508) and DOE environmental guidelines (10 CFR part 1021). Therefore, no environmental impact statement has been prepared.

G. Other Federal Agencies

DOE provided a copy of the NOPR to the Administrator of the Environmental Protection Agency, pursuant to section 7 of the Federal Energy Administration Act, as amended, 15 U.S.C. 766. The Administrator had no comment.

H. The Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the State Energy Conservation Program is 81.041.

I. List of Subjects in 10 CFR Part 420

Energy conservation, Grant programs—energy, Reporting and recordkeeping requirements, Technical assistance.

For the reasons set forth in the preamble, DOE hereby amends Chapter II of title 10, Code of Federal Regulations, as set forth below:

Issued in Washington, DC October 30, 1992.

J. Michael Davis,
Assistant Secretary, Conservation and Renewable Energy.

In 10 CFR, chapter II, part 420 is amended as follows:

PART 420—STATE ENERGY CONSERVATION PROGRAM

1. The authority citation for part 420 is revised to read as follows:


2. Section 420.1 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 420.1 Purpose and scope.

(a) This part prescribes requirements for program measures included in plans and guidelines for the development, modification, and funding of plans. It is the purpose of this part to promote the conservation of energy and to reduce the rate of growth of energy demand through the development and implementation of a comprehensive State energy conservation program and the provision of Federal financial and technical assistance to States in support of such program.

(c) Each State energy conservation plan with respect to which assistance is made available under this part on or after October 1, 1991, shall contain a goal, consisting of an improvement of 10 percent or more in the efficiency of use of energy in the State concerned in the calendar year 2000, as compared to the calendar year 1990, and may contain interim goals.

4. Section 420.2 is amended by:

(a) removing the definitions for "Energy conservation measure," "Energy measure," "Operations Office Manager," and "Supplemental plan"; and

(b) adding, in alphabetical order, the definitions for "ASHRAE/IES 90.1-1989," "CABO MEC-89," "Commercially available," "Institution of higher education," "Small business," "Start-up business," "State economic product," and "Support Office Director" to read as follows:

§ 420.2 Definitions.

Institution of higher education has the same meaning as such term is defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

Small business means a private firm that does not exceed the numerical size standard promulgated by the Small Business Administration under section 3(a) of the Small Business Act (15 U.S.C. 632) for the Standard Industrial Classification (SIC) codes designated by the Secretary of Energy.

Start-up business means a small business which has been in existence for 5 years or less.

State economic product means State gross national product (GNP).

Support Office Director means the director of a DOE support office with responsibility for grant administration or any official to whom that function may be redelegated.

§ 420.3, 420.4, 420.5, 420.8, 420.9, and 421.11 [Amended]

5. In §§ 420.3, 420.4, 420.5, 420.8, 420.9, and 421.11 the words "Operations Office Manager" are changed to read "Support Office Director" in the following places: § 420.3(a); § 420.4 (a), and (c) (2 times); § 420.5 (a) (3 times), and (b) introductory text ( 2 times); § 420.8 (1) and (b) (2 times), (d) and (f); and § 420.11 (introductory paragraph).

6. 10 CFR 420.3 is amended by removing paragraph (c), redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e), and revising paragraph (g), and newly redesignated paragraphs (c), and (e) to read as follows:

§ 420.3 Financial assistance.

(a) The Support Office Director shall provide financial assistance to each State having an approved annual application from funds available for any fiscal year to develop, modify, or implement a plan.

(b) The budget period covered by the financial assistance provided to a State according to § 420.3(b) will be set by the State within parameters established by DOE.

(c) Subawards which are included in a State's approved SECP plan are authorized under this part.

7. Section 420.4 is amended by revising the introductory text to paragraph (b), paragraphs (b)(3)(iv) and (b)(3), and by adding paragraph (b)(5), (b)(6), and (b)(7) to read as follows:

§ 420.4 Annual State applications.

(b) With respect to a plan, an application shall include, or incorporate by reference to a previously submitted plan:

(2) * *

(iv) An explanation of how the minimum criteria for required program measures prescribed in § 420.6 shall be satisfied.

(3) A detailed description or the increase of decrease in environmental residuals expected from implementation of a plan defined insofar as possible through the use of information to be provided by DOE and an indication of how these environmental factors were considered in the selection of program measures.

(5) Each State receiving Federal financial assistance pursuant to this section shall provide reasonable assurance to DOE that it has established policies and procedures designed to assure that Federal financial assistance under this part and part G of this title will be used to supplement, and not to supplant, State and local funds, and to the extent practicable, to increase the amount of such funds that otherwise would be available, in the absence of such Federal financial assistance, for those programs set forth in the State energy conservation plan approved pursuant to this part.

(6) Effective October 1, 1981, to be eligible for Federal financial assistance pursuant to this section, a State shall submit to DOE, as a supplement to its energy conservation plan, an energy emergency plan for an energy supply disruption, as designed by the State consistent with applicable Federal and State law. The contingency plan provided for by the plan shall include an implementation strategy or strategies (including regional coordination) for dealing with energy emergencies. The submission of such plan shall be for informational purposes only and without any requirement of approval by DOE.

(7) Federal financial assistance made available under this part to a State may be used to develop an energy emergency plan for dealing with energy emergencies referred to in paragraph (b)(6) of this section.

§ 420.6 Minimum criteria for required program measures for plans.

(a) * *

(3) For new public buildings, be no less stringent than the provisions of section 9 of ASHRAE 90-75, and should be updated by enactment of, or support for the enactment into local codes of standards, which, at a minimum, are comparable to provisions of ASHRAE/IES 90.1-1989; and

(d) * *

(3) For all new commercial and multifamily high-rise buildings, be no less stringent than provisions of sections 4–9 of ASHRAE 90–75, and should be updated by enactment of, or support for the enactment into local codes of standards, which, at a minimum, are comparable to provisions of ASHRAE/IES 90.1–1989; and

§ 420.7 Optional elements of State energy conservation plans.

(a) Other appropriate measures or programs to conserve and to promote efficiency in the use of energy may be included in the State plan. These measures or programs may include, but are not limited to, the following:

(1) Programs of public education to promote energy conservation;

(2) Programs to increase transportation energy efficiency, including programs to accelerate the use of alternative transportation fuels for State government vehicles, fleet vehicles, taxis, mass transit, and privately owned vehicles;

(3) Programs for financing energy efficiency and renewable energy capital investments, projects, and programs—

(i) Which may include loan programs and performance contracting programs
for leveraging of additional public and private sector funds and programs which allow rebates, grants, or other incentives for the purchase and installation of eligible energy efficiency and renewable energy measure; or
(ii) In addition to or in lieu of programs described in paragraph (a)(3)(i) of this section, which may be used in connection with public or nonprofit buildings owned and operated by a State, a political subdivision of a State or an agency or instrumentality of a State, or an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(4) Programs for encouraging and for carrying out energy audits with respect to buildings and industrial facilities (including industrial processes) within the State;

(5) Programs to promote the adoption of integrated energy plans which provide for:

(i) Periodic evaluation of a State's energy needs, available energy resources (including greater energy efficiency), and energy costs; and

(ii) Utilization of adequate and reliable energy supplies, including greater energy efficiency, that meet applicable safety, environmental, and policy requirements at the lowest cost;

(6) Programs to promote energy efficiency in residential housing, such as:

(i) Programs for development and promotion of energy efficiency rating systems for newly constructed housing and existing housing so that consumers can compare the energy efficiency of different housing; and

(ii) Programs for the adoption of incentives for builders, utilities, and mortgage lenders to build, service, or finance energy efficient housing;

(7) Programs to identify unfair or deceptive acts or practices which relate to the implementation of energy efficiency measures and renewable resource energy measures and to educate consumers concerning such acts or practices;

(8) Programs to modify patterns of energy consumption so as to reduce peak demands for energy and improve the efficiency of energy supply systems, including electricity supply systems;

(9) Programs to promote energy efficiency as an integral component of economic development planning conducted by State, local, or other governmental entities or by energy utilities; and

(10) In accordance with paragraph (b) of this section, programs to implement the Energy Technology Commercialization Services Program.

(b) This section prescribes requirements for establishing State-level Energy Technology Commercialization Services Programs as an optional element of State plans.

(1) The programs to implement the functions of the Energy Technology Commercialization Services Program shall:

(i) Aid small and start-up businesses in discovering useful and practical information relating to manufacturing and commercial production techniques and costs associated with new energy technologies;

(ii) Encourage the application of such information in order to solve energy technology product development and manufacturing problems;

(iii) Establish an Energy Technology Commercialization Services Program affiliated with an existing entity in each State;

(iv) Coordinate engineers and manufacturers to aid small and start-up businesses in solving specific technical problems and improving the cost effectiveness of methods for manufacturing new energy technologies;

(v) Assist small and start-up businesses in preparing the technical portions of proposals seeking financial assistance for new energy technology commercialization; and

(vi) Facilitate contract research between university faculty and students and small start-up businesses, in order to improve energy technology product development and independent quality control testing.

(2) Each State Energy Technology Commercialization Services Program shall develop and maintain a data base of engineering and scientific experts in energy technologies and product commercialization interested in participating in the service. Such data base shall, at a minimum, include faculty of institutions of higher education, retired manufacturing experts, and National Laboratory personnel.

(3) The services provided by the Energy Technology Commercialization Services Program established under this part shall be available to any small or start-up business. Such service programs shall charge fees which are affordable to a party eligible for assistance, which shall be determined by examining factors, including the following: the costs of the services received; the need of the recipient for the services; and the ability of the recipient to pay for the services.

10. Section 420.11 is amended by revising paragraph (a) to read as follows:

§ 420.11 Reports.

(a) A quarterly program performance report and a quarterly financial status report. The reports shall contain such information as the Secretary may prescribe in order to monitor effectively the implementation of a plan. The reports shall be submitted within 30 days following the end of each calendar year quarter.

11. Section 420.12 is amended by revising paragraphs (a)(4), (a)(5), (c)(e)(1), (e)(2), (e)(4), (e)(5), and (e)(7), removing paragraph (e)(6)(iii), and redesignating paragraphs (e)(6)(iv) and (v), as (e)(6) (iii) and (iv) to read as follows:

§ 420.12 Prohibited expenditures.

(a) * * *

(4) To subsidize utility rate demonstrations or State tax credits for energy conservation or load management.

(5) To conduct, or purchase equipment to conduct, research, development or demonstration of conservation techniques and technologies not commercially available.

(c) Demonstrations of commercially available conservation techniques and technologies are permitted, and are not subject to the prohibitions of § 420.12(a)(1), or to the limitation on equipment purchases of § 420.12(b).

(e) * * *

(1) Such use must be included in the State's approved plan and, if funded by petroleum violation escrow funds, must be consistent with any judicial or administrative terms and conditions imposed upon State use of such funds.

(2) A State may use for these purposes no more than 35 percent of all funds allocated by the State to SECP in a given year, regardless of source, except that this limitation shall not include regular and revolving loan programs funded with petroleum violation escrow funds. Loan documents shall ensure repayment of principal and interest within a reasonable period of time, and shall not include provisions of loan forgiveness.

(4) Funds must be used to supplement and no funds may be used to supplant energy conservation building retrofits or weatherization activities under the Weatherization Assistance Program for Low-Income Persons, 42 U.S.C. 6881 et seq., or the Institutional Conservation Program, 42 U.S.C. 8731 et seq., nor to fund operation and maintenance.
activities in any building which is eligible for assistance under the Institutional Conservation Program:

(5) Subject to paragraph (e)(6) of this section, a State may use a variety of financial incentives to fund purchases and installation of materials and equipment under this paragraph including, but not limited to, regular loans, revolving loans, loan buy-downs, performance contracting, rebates, and grants.

(7) A State may use loan repayments, including any interest (or fees), only for activities which are included in the State's approved SECP plan.

[FR Doc. 92-29903 Filed 11-4-92; 8:45 am]
Part VII

Environmental Protection Agency

40 CFR Part 51
Inspection/Maintenance Program Requirements; Final Rule
ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL-4531-6]

Inspection/Maintenance Program Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action establishes performance standards and other requirements for basic and enhanced vehicle inspection and maintenance (I/M) programs. Section 182 of the Clean Air Act Amendments of 1990 requires EPA to review, revise, and republish such guidance, taking into consideration investigations and audits of I/M programs, as well as the requirements set out in the Act for such programs. This action will provide more effective control of in-use mobile source emissions in ozone and CO nonattainment areas.

EFFECTIVE DATES: This rule will take effect on November 5, 1992. (See section XII in the SUPPLEMENTARY INFORMATION for a discussion of the effective date.)

The information collection requirements in §§ 51.353, 51.365, 51.366 and 51.371 have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB approves them and a technical amendment to this effect is published in the Federal Register.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A-91-75. The docket is located on the first floor of the Office of Mobile Source Management (OMS), 2565 Plymouth Road, Ann Arbor, Michigan, 48105. (313) 668-4456. Environmental Protection Agency, The Air Docket, room M-1500 (LE-131), Waterside Mall, Attention: Docket No. A-91-75, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Eugene J. Tierney, Office of Mobile Sources, Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. (313) 668-4456.

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II. Summary of the Final Rule

Motor vehicle inspection and maintenance (I/M) programs are an integral part of the efforts to reduce mobile source air pollution. Despite being subject to the most rigorous vehicle pollution control program in the world, cars and trucks still create about half of the ozone air pollution and nearly all of the carbon monoxide air pollution in United States cities, as well as toxic contaminants. Of all highway vehicles, passenger cars and light trucks emit most of the vehicle-related carbon monoxide and ozone-forming hydrocarbons. They also emit substantial amounts of nitrogen oxides and air toxics. Although we have made tremendous progress in reducing emissions of these pollutants, total fleet emissions remain high. This is because the number of vehicle miles travelled on U.S. roads has doubled in the last 20 years to 2 trillion miles per year, offsetting much of the remarkable technological progress in vehicle emission control over the same two decades. Projections indicate that the steady growth in vehicle travel is continuing. Ongoing efforts to reduce emissions from individual vehicles will be necessary to achieve our air quality goals.

Under the Clean Air Act as amended in 1990 (the Act), the U.S. Environmental Protection Agency is pursuing a three-point strategy for achieving major emission reductions from transportation sources. The development and commercialization of cleaner vehicles and cleaner fuels represent the first two points. It will be many years however before these cleaner cars dominate our vehicle fleet and none of these efforts will be successful unless we ensure that cars in use are properly maintained. The focus of today’s action is the third point, in-use control, specifically I/M programs. The concept behind I/M is to ensure that cars are properly maintained in customer use. I/M produces emission reduction results soon after the program is put in place. I/M will also be critical if we are to fully realize the benefits of the new clean vehicles and clean fuels programs scheduled for phase-in over the next ten years.

To put I/M in perspective, it is important to understand that today’s cars are absolutely dependent on properly functioning emission controls to keep pollution levels low. Minor malfunctions in the emission control system can increase emissions significantly, and the average car on the road emits three to four times the new car standard. Major malfunctions in the emission control system can cause emissions to skyrocket. As a result, 10 to 30 percent of cars are causing the majority of the vehicle-related pollution problem.

Unfortunately, it is rarely obvious which cars fall into this category, as the emissions themselves may not be noticeable and emission control malfunctions do not necessarily affect vehicle driveability. Effective I/M programs, however, can identify these problem cars and assure their repair. We project that sophisticated I/M programs in the most polluted cities around the country would cut vehicle emissions by 28 percent, at a cost of about $12.50 per vehicle per year.
This represents a major step toward the Act's requirement that the most seriously polluted cities achieve a 24 percent overall emissions reduction by 2000.

The Act requires that most polluted cities adopt either "basic" or "enhanced" I/M programs, depending on the severity of the problem and the population of the area. In total, I/M programs will be required in 161 areas, 56 of which do not now have I/M. The moderate ozone nonattainment areas, plus marginal ozone areas with existing I/M programs, fall under the "basic" I/M requirements. Enhanced programs will be required in serious, severe, and extreme ozone nonattainment areas with urbanized populations of 200,000 or more; CO areas that exceed a 12.7 ppm design value with urbanized populations of 200,000 or more; and all metropolitan statistical areas with a population of 100,000 or more in the Northeast Ozone Transport Region.

Both "model" and I/M program testing have their own objectives: identifying vehicles that have high emissions as a result of one or more malfunctions, and requiring them to be repaired. An "enhanced" program covers more of the vehicles in operation, employs inspection methods which are better at finding high emitting vehicles, and has additional features to better assure that all vehicles are tested properly and effectively repaired.

The Act directs EPA to establish a minimum performance standard for enhanced I/M programs. The standard must be based on the performance achievable by annual inspections in a centralized testing operation. However, neither the Act's language nor EPA's performance standard requires states to implement annual, centralized testing. States have flexibility to design their own programs if they can show that their program is as effective as the "model" program used in the performance standard.

Of course, the more effective the program, the more credit a state will get towards the 24 percent emission reduction requirement discussed above. Furthermore, effective programs help to offset growth in vehicle use and allow for new industrial growth.

EPA and the states have learned a great deal about what makes an I/M program effective since the Clean Air Act, as amended in 1977, first required I/M programs for polluted cities. There are three major keys to an effective program:

- The ability to accurately fail a vehicle and pass clean cars. Procedures of a known vehicle operation and repair stations require a certified and effective test equipment and repair programs, given the advanced state of current vehicle design.
- Control and aggressive enforcement are essential to assure that testing is done properly. Skillful diagnostics and capable mechanics are important to assure that failed cars are fixed properly.
- Properly and effectively repaired. An "enhanced" program "model" program used in the performances standard.

EPA has developed two new tests to establish, as part of the enhanced I/M program, a high-tech emissions test for today's high-tech cars. The test simulates actual driving and allows accurate measurement of tailpipe emissions and evaporative system leaks. It can also accurately measure NOx emissions. This is especially useful in states where NOx control is important to address the ozone problem. The test relies on a computerized, high-tech system to address the ozone problem. The test relies on a computerized, high-tech system to address the ozone problem. The test relies on a computerized, high-tech system to address the ozone problem. The test relies on a computerized, high-tech system to address the ozone problem.

The high-tech test is so effective that biennial test programs yield almost the same emission reduction benefits as annual programs. In EPA's research, doing the test right has proved much more important than doing it often.

The equipment required for high-tech testing costs about $140,000 per lane (although that estimate may be high), versus $15,000 to $40,000 for today's idle test equipment. The total test time (i.e., the time it takes from when you enter the lane until you leave) is also longer, 10 to 15 minutes versus about five minutes for today's test. But this does not have to translate to higher costs for drivers.

EPA estimates that a high-tech test in a high-volume system will cost about $17 per car, including oversight and administration costs. On a biennial basis though, the cost drops to about $9 per year. That is in line with the average cost of today's programs and is cheaper than many today's average costs are about $16 for decentralized programs and about $30 for centralized programs.

As with today's programs, there is a cost to repair failed vehicles. But good diagnostics will make repairs efficient, and fuel economy savings of 7 to 13 percent that result from the repairs will largely offset these costs. In addition, manufacturer-provided warranties will cover the cost of repair for some vehicle owners.

Centralized tests are run by state or by the vehicle manufacturer in an area, while decentralized tests are run by small businesses in the city. High tech I/M testing can be done by independent...
small businesses. Of course, since the testing equipment is more expensive, we would expect fewer, higher volume, test-only stations. Some such independent, high volume, test-only stations are now operating in several states (e.g., Texas and California). Regardless of whether the testing is decentralized or centralized, good quality control and enforcement are critical for a fair, effective program.

High-tech I/M is at least three times more effective than even the better-designed and well-run of today's I/M programs and remains much better even if evaporative system pressure checks are added to these existing, better programs. This high-tech program is so effective that it can be performed biennially, cutting testing costs and consumer time in half, while losing only about 3 percentage points of emission reductions.

As mentioned earlier, states with the most polluted cities are facing a Clean Air Act mandate to reduce overall emissions 24 percent by 2000. Effective high-tech I/M programs can make an enormous contribution toward this goal.

Not only is high-tech I/M one of the most effective air pollution control programs we know of, it's also the most cost effective. At $500 per ton on a biennial basis (excluding convenience costs), high-tech I/M is seven times more cost effective than more stringent new car tailpipe standards and at least 10 times more cost effective than additional controls beyond reasonably available control technology (RACT) on small and large industrial sources. It is cost effective even if no value is given to the CO and NOx reductions obtained. Biennial testing will effectively cut inconvenience costs in half from what they are in I/M programs today. If one assumes an inconvenience cost of $15 per motorist (based on 45 minutes of total time to drive to the station, get a test and drive back, and a value of $20 per hour) high-tech I/M is still very cost effective, at $1,600 per ton.

To summarize, high-tech I/M provides many benefits:

- 28 percent reduction in vehicle VOC emissions plus 30 percent reduction in vehicle CO emissions, and 9 percent reduction in vehicle NOx emissions.
- Cost of $500 per ton, ten times less than most other options (excluding convenience costs).
- Biennial testing with less hassle and lower testing costs for car owners (resulting in an annual cost similar to or lower than today's norm).
- Fuel savings to help offset repair costs.
- A big step toward the minimum 24% overall VOC reduction required for the most polluted cities by 2000 and more room for industrial and vehicle miles travelled growth.

EPA's conclusions about the effectiveness and cost effectiveness of various I/M options are based on nearly 15 years of experience with I/M, along with ongoing research on a wide variety of mobile source emission control programs and technologies.

EPA is taking final action today to establish performance standards (benchmark or model programs) for basic and enhanced I/M programs and to establish other requirements related to the design and implementation of I/M programs. The performance standard for basic I/M programs remains the same as it has been since initial I/M policy was established in 1978, pursuant to the 1977 amendments to the Clean Air Act. The performance standard for enhanced I/M programs is based on high-tech tests for new technology vehicles (i.e., those with closed-loop control and, especially, fuel-injected engines), including a transient loaded exhaust short test incorporating hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NOx) cutoffs, an evaporative system integrity (pressure) test and an evaporative system performance (purge) test. Today's action also details various requirements for design and implementation of all I/M programs. These include improved enforcement, quality assurance, quality control, test procedures, on-road testing, and other aspects of the program. Some of these requirements apply to both basic and enhanced programs, and some to only enhanced programs. Today's action repeals Appendix N, Part 51, Chapter I, Title 40 of the Code of Federal Regulations, which contained obsolete provisions that have not been applied by EPA since the 1970s.

The final rule has a variety of minor changes from the proposal based on comments received regarding specific details of the regulatory text. Several major changes have also been made in response to public comment. First, EPA decided to drop from the rule "provisional equivalency" for test-and-repair programs in enhanced I/M areas. Public comment was strongly against this option and state governments made it clear that they saw no way to achieve the performance standard with a test-and-repair system. Second, the final rule allows six additional months for initial implementation of basic and enhanced I/M programs, since the proposed deadlines would have left insufficient time after final action for states to develop and implement complying programs. The reader is referred to the section on Public Participation for a further discussion of these issues and other major issues raised during the public comment period.

III. Authority

Authority for the actions taken in this notice is granted to EPA by sections 182(a), 182(b), 182(c), 184(b), 187(a) and 118 of the Clean Air Act as amended (42 U.S.C. 7401 et seq.).

IV. Background of Final Rule

A. Clean Air Act Amendments of 1990

The Environmental Protection Agency (EPA) has had oversight and policy development responsibility for I/M programs since the passage of the Clean Air Act in 1970, which included I/M as an option for improving air quality. With the passage of the Clean Air Act Amendments of 1977, I/M was mandated for areas with long term air quality problems. EPA first established policy for I/M programs in 1978; this policy addressed the elements to be included in State Implementation Plan (SIP) revisions, minimum emission reduction requirements, administrative requirements, and schedules for implementation. Existing policy falls short of today's I/M program needs, however, due to the increasing sophistication of the vehicle fleet, advances in vehicle testing technology, and failure of established policy to keep pace with growing knowledge about actual program design and implementation.

Congress recognized this gap when developing the Clean Air Act Amendments of 1990, which gives EPA and the States some specific directives with regard to I/M programs. EPA must develop different performance standards for "basic" and "enhanced" I/M programs; enhanced I/M is required by the Act in areas with long-term air quality problems and in the Northeast Ozone Transport Region. The performance standard is the minimum amount of emission reductions, based on a model or benchmark program design, which a program must achieve. In addition to the performance standard, the Act directs EPA to address requirements for specific design elements and program implementation in both basic and enhanced programs.

Section 182(a)(2)(B) states that, within one year of enactment, the Administrator shall review, revise, update, and republish in the Federal Register the guidance for the States for motor vehicle inspection and maintenance programs required by this Act, taking into consideration the Administrator's investigations and
audits of such programs. The guidance shall, at a minimum, cover the frequency of inspections, the types of vehicles to be inspected (which shall include leased vehicles that are registered in the nonattainment area), vehicle maintenance by owners and operators, audits by the State, the test method and procedures, quality of inspection components covered, assurance that vehicles subject to a recall notice from a manufacturer have complied with that notice, and effective implementation and enforcement, including ensuring that any retesting of a vehicle after a failure shall include proof of corrective action and providing for denial of vehicle registration in the case of tampering or misfueling. The guidance which shall be incorporated in the applicable State implementation plans by the States shall provide the States with continued reasonable flexibility to fashion effective, reasonable, and fair programs for the affected consumer.

Section 182(c)(3) requires guidance for enhanced I/M which includes a performance standard achievable by a model or benchmark program combining emission testing, including on-road testing, with inspection to detect tampering with emission control devices and misfueling for all light-duty vehicles and all light-duty trucks subject to standards under section 202; and program administration features necessary to reasonably assure that adequate management resources, tools, and practices are in place to attain and maintain the performance standard.

The concept of a performance standard provides state flexibility, as long as the numerical goal for emission reductions is attained. A State may choose to vary any of the design elements (except those required by the Act) of the model program provided the overall effectiveness is at least as great as the performance standard.

The Act further specifies that each enhanced I/M program shall include, at minimum, computerized emission analyzers, on-road testing devices, denial of waivers for warranted vehicles or repairs related to tampering, a $450 expenditure to qualify for waivers for emissions-related repairs not covered by warranty, enforcement through registration denial unless an existing program with a different mechanism can be demonstrated to have greater effectiveness, annual inspection unless a State can demonstrate that less frequent testing is equally effective, centralized testing unless the State can demonstrate that decentralized testing is equally effective, and inspection of the emission control diagnostic system. These are required design elements of each enhanced I/M program, not merely of the model or benchmark program. In addition, each enhanced I/M State must biennially submit to EPA a comprehensive evaluation of program effectiveness including an assessment of emission reductions achieved by the program. Enhanced I/M must achieve minimum reductions in HC (or volatile organic compound (VOC)) emissions and in NO, emissions from vehicles in the affected ozone nonattainment areas, and reduction in CO emissions in the affected CO nonattainment areas; the programs must be "in effect" two years from enactment and must comply in all respects with this rule.

B. Guidance Versus Regulation

In its relations with States under Title I of the Act, EPA conventionally uses the term "guidance" to mean informational or interpretive policy adopted apart from notice and comment rulemaking, and lacking a fully binding legal effect. Section 182(c)(2)(B)(ii) requires EPA to issue "guidance" for I/M programs. Section 182(c)(3)(B) requires, however, that state enhanced I/M programs "comply in all respects" with EPA's guidance. Further, "such guidance shall include..." a performance standard." EPA interprets this language as requiring EPA, under section 182(c) and the Administrative Procedures Act, to establish a binding performance standard with which States must comply when designing and implementing I/M programs. This type of binding standard can only be imposed through notice and comment rulemaking. See PPC Industries v. Costle, 655 F.2d 1239 (D.C. Cir. 1981), holding that EPA violated the Administrative Procedures Act by requiring continuous sulphur dioxide compliance monitoring through guidance without first providing public notice and opportunity for comment. Consequently, EPA is promulgating regulations defining the performance standard for enhanced I/M programs, and all of the characteristics of an approveable state enhanced I/M program to meet that performance standard.

As discussed earlier, section 182(c)(3)(B) similarly requires EPA to publish "guidance" addressing numerous aspects of basic I/M programs, and also requires states to incorporate the guidance into their SIPs. One interpretation of this requirement would be that EPA could merely publish nonbinding guidance on basic I/M programs. States could then incorporate the guidance into I/M programs by simply addressing the various aspects of the program described in EPA's guidance. Under this approach, states would not be bound to address such aspects in any specific manner. Alternatively, EPA could adopt binding regulations for basic I/M programs as well. Although this is not required by section 182, EPA has the authority under that section and section 301 of the Act to promulgate regulations as necessary to implement the statute. The experience over the last 15 years has shown that the lack of federal minimum requirements has led to less than fully effective I/M programs. This problem is discussed in great detail later in this preamble. EPA's Inspector General and the General Accounting Office have both cited the lack of regulations as a primary cause for the operating problems in existing I/M programs. These problems include ineffective testing, poor quality control, inadequate quality assurance, and weak enforcement. While EPA has been diligent about alerting the states to these problems when they are found during audits of operating I/M programs, the response on the part of these agencies has been constrained by resources and legal authority, and has been inadequate to solve the problems, especially in test-and-repair networks. EPA believes the only way to insure that states will implement effective and cost-effective programs is to promulgate binding regulations.

V. Discussion of Major Issues

A. Development of New I/M Tests

Studies conducted by EPA's Office of Mobile Sources, at the National Vehicle and Fuels Emission Laboratory and elsewhere, have shown that idle and 2500 rpm idler short tests used in current I/M programs are not highly effective at identifying and reducing in-use emissions from small vehicles which now do and in the future will comprise the vehicle fleet. For pre-1981 model year passenger cars, for which the I/M tests currently in use were developed and proven, idle testing worked well. Typical problems involved rich air-fuel mixtures that affected idle as well as on-the-road emissions. Today's high-tech cars with sensors and computers that continuously adjust engine operations are most effectively tested with procedures that include cycles of acceleration and deceleration under loaded conditions.

EPA has developed a transient short test, also called the IM240 exhaust test, which more closely reflects how vehicles perform under actual driving conditions than do current idle, 2500
rpm/idle, or loaded steady-state emission tests. The transient test more accurately identifies high emitting vehicles, and provides greater assurance of effective repair. The transient test involves a brief driving cycle which is based upon the Federal Test Procedure (FTP), the driving cycle by which new vehicles are certified. This test is similar to the loaded, steady-state tests used in some I/M programs today, but differs in that emissions are measured during acceleration and deceleration of the vehicle. While no I/M program is currently running this test on a production basis, EPA believes there is no significant practical or technical impediment to wide-scale application of the test. The transient test also allows accurate emission testing for NOx (see detailed discussion in the next section).

By its nature, the transient test precludes test-defeating strategies that have been observed in I/M programs (e.g., holding down the accelerator pedal slightly during an idle test or disconnecting or crimping vacuum hoses to effect a passing result at idle or other steady-state condition). Such strategies may work with a steady-state test but would generally increase emissions of at least one pollutant on the transient test.

As described in detail below, the enhanced I/M performance standard being established today assumes use of the transient test.

The performance standard being established today also includes tests of the vehicle's evaporative emission control system, an important source of pollutants which is not currently being effectively tested, though some current programs include a visual inspection for canister and gas cap presence. In fact, evaporative emissions rates today are often higher than excess tailpipe emissions. This is not a problem that has arisen on only newer vehicles, but rather its magnitude has only recently been realized through EPA testing. Two new functional tests are included in the enhanced I/M performance standard to address this problem. The Evaporative System Integrity Test (hereafter referred to as the pressure test) checks whether the system has any leaks, and the Evaporative Performance Test (hereafter referred to as the purge test) checks whether captured fuel vapor is correctly removed from the canister and delivered to the engine during vehicle operation.

Significantly greater emission reductions can be gained through the transient, purge and pressure tests, due to higher identification rates of polluting vehicles and greater assurance of effective repair. Transient, purge and pressure testing may be performed in either centralized or decentralized inspection networks, although the cost per test will vary according to the throughput of vehicles in a station.

The transient test and the evaporative system checks being established in today's action represent EPA's best technical judgment on obtaining emission reductions from in-use vehicles. Nevertheless, some have suggested that alternative test procedures could conceivably achieve similar emission reductions, possibly at a lower cost. EPA is open to such alternatives and states may seek approval of alternative tests, contingent upon the state demonstrating to EPA that such alternatives are as effective as EPA's recommended tests and thus will achieve the performance standards. In addition to being effective at identifying vehicles for repair and assuring their repair, alternative tests cannot be accepted unless they maintain a low false failure rate similar to EPA's recommended tests and are similarly resistant to test-defeating strategies. It is of critical importance to consumers, motor vehicle manufacturers, EPA, and the States that any tests employed in an I/M program be accurate, reliable, fair and effective.

One alternative test procedure, a loaded, steady-state purge test; has been of particular interest to several states. EPA staff developed a transient purge test instead of a steady-state test because our best engineering judgment suggests that steady-state purge testing would result in lower emission reduction benefits as well as higher false failure rate and unnecessary consumer costs. This stems from the fact that purge strategies on high-tech vehicles vary considerably.

A loaded steady-state test has also been suggested as an alternative to the transient exhaust emission test. EPA's mobile source emission factor model includes emission reduction credits for this test for VOC and CO emission reductions. As mentioned above and discussed in detail in the next section, the Clean Air Act requires that enhanced I/M programs in ozone nonattainment areas achieve reductions in NOx emissions as well. EPA has found that NOx emission testing (as opposed to visual inspection of emission control devices) is essential for significant NOx emission reductions. Steady-state loaded testing may identify some high NOx emitters, and EPA will approve alternative test procedures submitted by states if well supported by data that show they accomplish the objectives stated above and meet the requirements for I/M tests in section 207(b) of the Clean Air Act.

B. Basic I/M Performance Standard

In today's action, EPA is taking final action to establish a model program for basic I/M areas that is generally unchanged from that required pursuant to the Clean Air Act as amended in 1977, and the policy that was in effect prior to enactment of the 1990 Amendments. This performance standard is based on the original I/M program that was operating in New Jersey in the earlier 1970s (see Section C for an explanation of the performance standard concept). The New Jersey program tested only light-duty passenger cars using a simple idle test. Since that time, light-duty trucks have become a significant part of the fleet and are included in nearly all I/M programs, and more sophisticated steady-state tests have been developed and used in I/M programs to improve the emission reduction performance. The basic I/M performance standard requires about a 5% reduction in highway mobile source VOC emissions. The most stringent I/M program can achieve an emission reduction of over 30%. In response to comments discussed in detail below, today's action also requires that basic I/M programs in ozone nonattainment areas not result in NOx increases unless a demonstration can be made that such a NOx increase would not prevent or delay attainment of the air quality standards. Emission reductions from basic I/M programs that exceed those required can be used as offsets for other pollution control efforts.

C. Enhanced I/M Performance Standard

1. Discussion of Standard

In today's action, EPA is establishing a "model" program for enhanced I/M areas, defined below as a specific set of program elements. It is estimated that a typical urban area adopting the model program described below will experience a 28% reduction in emissions of VOCs, a 31% reduction in CO emissions, and a 9% reduction in NOx emissions from highway mobile sources by 2000 when compared to what the area would experience without an I/M program. This estimate is based on EPA's mobile source emission factor model (MOBILE4.1) and is for illustrative purposes only. As described below, a state will have to use the most current version of EPA's mobile source emission factor model available at the time of SIP submission to demonstrate its program will achieve VOC, NOx, and/or CO emissions levels that are equal to or lower than those that would be achieved by the "model" program. In
other words, the performance standard relates to emissions remaining in the fleet in a given year after application of the I/M program (and other strategies) to reductions from a hypothetical non-I/M baseline. The pollutants for which a performance standard will apply depends upon the air quality classifications of the area, i.e., whether it is nonattainment for ozone, CO, or both. Since the Act requires a NOx performance standard, inspection standards for NOx emissions must be established in enhanced I/M ozone nonattainment areas and in ozone transport regions. If the Administrator finds, under section 182(b)(1)(A)(i) of the Act pertaining to reasonable further progress demonstrations or section 182(f)(1) of the Act pertaining to provisions for major stationary sources, that NOx emission reductions are not beneficial in a given ozone nonattainment area, then EPA will allow a waiver of the NOx performance standard requirement for enhanced I/M; however, programs in such ozone areas shall be designed such that NOx increases (relative to having no inspection program at all) do not occur. EPA believes that a waiver would be appropriate in such areas because it would be unreasonable to require NOx reductions where they would not be beneficial. Although section 182(c)(3) does not explicitly provide for such a waiver, EPA believes that Congress would not have intended to require NOx reductions where it would serve no purpose or be counterproductive.

Section 182(b)(1)(A)(i) of the Act requires moderate ozone nonattainment areas to demonstrate further progress in achieving emission reductions (later sections of the Act require serious and worse areas to do the same). A 15% reduction in VOC emissions is required by November 15, 1996, the date by which these areas are required to attain the standard. In addition to this requirement, serious or worse ozone nonattainment areas are required under section 182(c)(2) of the Act to provide for an additional 3% reduction each year after 1996 (averaged over each 3 year period after that year). That section also sets milestones of every three years after 1996 for states to demonstrate these reductions are actually occurring. Thus, serious ozone areas must achieve a total of a 24% reduction by November 15, 1999, and severe and extreme areas must continue to obtain a 3% per year reduction after 1999 until the relevant attainment date. Moderate CO areas are required to meet the ambient standards by December 31, 1995 and serious CO areas are required to attain by December 31, 2000. EPA in today’s action is setting these attainment and progress requirement dates as milestones for states to meet in designing and implementing the I/M programs. In other words, a state’s preferred I/M program must match the emission levels of the “model” program on each of these milestone dates, except as provided below.

In designing an I/M program to meet the emission targets for all of the milestones that apply, each affected area must determine the local emission levels predicted for the model program on these milestone dates. This is accomplished by selecting in the emission factor model all non-I/M inputs, (i.e., fleet size, fleet composition, ambient temperature, traffic speeds, fuel volatility, fuel reformulation, etc.) to reflect actual, local conditions and evaluating the resulting emission levels, on each milestone date, assuming that the model I/M program is implemented. This process is then repeated with the local I/M program design and the resulting emission levels are compared to the model program scenario. The emission factor model accounts for other mobile source strategies, such as Tier 1 vehicles, reformulated gasoline, and oxygenated fuels. To the extent that these strategies will reduce emission factors, the model program/performance standard approach automatically accounts for these changes and for updated versions of the model. Once derived, the locally specific emission levels then become the emission targets which the enhanced I/M program areas must achieve or surpass for SIP approval.

Moderate ozone nonattainment areas must meet an emission reduction target for the basic I/M program by November 15, 1996. Serious or worse ozone areas that have to implement enhanced I/M are not required to meet an emission target by November 15, 1996, but they are required to meet various program phase-in schedules (see Implementation Deadlines). These areas must meet the target on November 15, 1999. Severe and extreme ozone areas will also have to demonstrate that emission targets are being met both by November 15, 1999 and every three years after November 15, 1999 until the attainment date. In CO nonattainment areas, moderate enhanced areas must also meet the same phase-in requirements as enhanced ozone areas and serious CO areas must meet the emission reduction target by December 31, 2000.

The benefit of the model enhanced program has been expressed as a certain quantity of total mobile source VOC emissions, because it better reflects the impact that an effective I/M program can have across the full range of vehicle types and emissions sources. It also relates more closely to the reduction goals that nonattainment areas will be pursuing to meet attainment and reasonable further progress milestones.

This way of expressing the performance standard deserves some explanation. However, because the minimum benefit from a basic I/M program has often been expressed in the past as a 25% reduction in 1987 exhaust emissions from light-duty vehicles. The similarity between the previous 25% VOC reduction target for existing I/M programs and the new illustrative reduction of 28% for enhanced programs may cause some confusion. The previous 25% reduction figure is relative to a no-I/M baseline that only includes exhaust emissions from light-duty vehicles (passenger cars); the baseline does not include exhaust emissions from light-duty trucks or evaporative emissions from any vehicle category. Expressing the exhaust and evaporative emission reductions from enhanced I/M in terms of reductions in light-duty vehicle exhaust emissions yields a benefit of 140% for VOCs, 62% for CO, and 32% for NOx (note that the VOC reduction is greater than 100% because exhaust and evaporative emission reductions from light-duty vehicles and light-duty trucks are being compared to light-duty vehicle exhaust-only emission levels).

In establishing the performance standard for enhanced programs, EPA considered a variety of options for specifying the “model” program which turn establishes the minimum emission reduction requirement. In public meetings, EPA has included low, medium, and high options in the discussion of performance standards. In today’s action, a high option program is being established for the enhanced I/M performance standard. The high option includes a transient, mass-based, short test incorporating HC, CO, and NOx cutpoints, and both purge and pressure testing of the evaporative control system. The high option yields a 28% reduction in VOCs, a 31% reduction in CO, and a 9% reduction in NOx relative to a non-I/M baseline.

2. Status of Alternative Tests

In 1988, the State of California, Southwest Research Institute, and Sierra Research, Inc. did developmental work on a series of loaded steady-state test modes known as Acceleration Simulation Modes or ASMs. EPA was...
involved in reviewing the results of the testing that California had undertaken at that time. The testing, based on 18 vehicles, found that two ASM modes—ASM5015 and ASM2525 (the first two digits refer to the load factor while the second two refer to the speed of steady-state operation)—had some potential for identifying vehicles with NOx problems related to exhaust gas recirculation valve malfunctions (that were induced in the vehicles tested). A Society of Automotive Engineers (SAE) paper (#891120) was issued and the authors found, however, that the tests did poorly on the identification of hydrocarbon and carbon monoxide failures. The SAE paper concluded that retention of the idle and two-speed tests would be necessary and that the primary benefit of the ASMs was for NOx testing.

In early 1992, five [5] low mileage 1992 model year vehicles with induced failures were tested by ARCO using the ASM5015 and the ASM2535, and ARCO reported that the ASM5015 test may identify excess NOx emissions and may effectively test for evaporative system purge. ARCO suggested an equipment package consisting of a single power absorption curve dynamometer with no inertia simulation capability, a raw exhaust, concentration-type emission analyzer, and a mass flow measuring device. ARCO did not specify a specific flow measuring device and suggested that its testing indicates that mass flow measurement may not be essential since an approximation can be made on the basis of engine size and dynamometer power absorption setting. This equipment may be substantially less expensive than the transient test equipment, which could in turn lead to a more cost-effective program, if the emission reduction benefits of the test were found to be comparable. However, ARCO suggested a more complete test program would be necessary to assess the effectiveness of the procedure and the equipment arrangement ARCO suggests.

The California Air Resources Board has also been testing the ASM5015 and the ASM2525 in a laboratory setting and EPA, at the time of the proposal of this rule, expected that this data, along with the federal test procedure (FTP), as well as other steady-state tests California was conducting in its program would provide better insight into the effectiveness of the ASM tests. Unfortunately, the data developed by California turned out to be defective in that it was produced using incorrect dynamometer settings and the State has withdrawn the data from the docket as a result.

Environment Canada conducted lab ASM and FTP testing on 40 Canadian vehicles and forwarded the test results to EPA. Only 20 of the 40 vehicles are representative of the U.S. fleet (since 1961) because Canada has had less stringent standards in effect and recruited vehicles from the older part of the fleet.

Vancouver, British Colombia began pilot testing of the ASM5015 and the ASM2525 along with idle and 2500 rpm modes in its regular I/M lanes early this summer—the first time this has been attempted. Unfortunately, Vancouver's FTP lab was not in operation in time to do tests on any of the vehicles that were run through the trial program but the program has forwarded important information that contributes to the discussion over the ASM procedures. British Columbia officials found serious problems with the ASM5015 and the Province decided to drop the mode from its official test procedure. The report raises serious questions about the application of the ASM5015 for actual I/M lane use.

Nevertheless, EPA plans to pursue the development of emission reduction credits for the ASM tests and has expanded its test contract in the Arizona I/M to include evaluation of a four-mode steady-state test. This test procedure was discussed and agreed to by representatives of ARCO, the Society of Automotive Vehicle Emission Reductions, Inc. (SAVER—represented by Allen Testproducts, Inc.), Sierra Research, and the California BAR. The procedure includes the ASM5015, the ASM2525, a 50-mph steady-state mode, and an idle test. In light of the experience in Vancouver, EPA believes it is likely that a preconditioning mode or immediate opportunity for a second chance test will be necessary to avoid false failures on this test. EPA's testing program is designed to address this possibility. Thus testing will also help assess whether the ASM5015 is a practical test mode for an I/M program lane. The test program in Arizona is similar to that used for evaluating the IM240, where vehicles coming to the station for a regular I/M test will also be given this new test sequence and an IM240. Vehicles will be recruited for FTP testing at a contractor lab. EPA also plans to evaluate the performance of the test in ensuring adequate repairs. At this point, sufficient data are not available to determine the emission reduction benefits for the four-mode test.

If EPA concludes that the four-mode procedure described above is as effective as the IM240, the final rule allows its use as a substitute. Moreover, if this procedure is nearly as effective in obtaining emission reductions as the IM240, then EPA believes that states will be able to use this test by expanding the coverage of its program in other ways. EPA plans to evaluate the full range of I/M procedures, including the IM240, in a test-only format in actual I/M program settings, and will periodically make changes to the emission factor model to accurately reflect the benefit of I/M on the current fleet. EPA wishes to emphasize that these updates will be based on emission reductions actually achieved by the IM240 and whatever alternative approaches states ultimately implement, in order that all programs are granted appropriate emission reduction credits based on actual performance.

For example, EPA is continuing its evaluation of the IM240 to improve estimates of such key elements as repair effectiveness.

3. Other Performance Standard Issues

Section 182(c)(3)(B) requires EPA to establish a performance standard for enhanced I/M programs, but does not specify the level of that performance standard. Both section 182(c)(3)(B) and section 182(c)(3)(C) provide statutory requirements that enhanced I/M programs must meet, thus establishing a minimum baseline for any performance standard EPA may promulgate. However, beyond that minimum, EPA believes that the statute gives EPA the discretion to establish whatever performance standard it concludes is reasonable and appropriate to produce cost-effective emission reductions while providing for state flexibility in program design and implementation.

The model program for enhanced I/M which EPA is establishing today's action includes annual, centralized testing of 1968 and later model year light-duty vehicles and light-duty trucks rated up to 8500 pounds gross vehicle weight. It includes the transient IM240 exhaust emission test and the transient purge test on 1986 and later model year vehicles, pressure testing on 1983 and later model year vehicles, two-speed exhaust testing of 1981–1985 model year vehicles, and idle exhaust testing of pre-1981 model year vehicles.

The inspection cutoffs in the model program have been selected to fail vehicles emitting well above (at least twice) their design standards, without failing vehicles that are properly operating.

The Act requires EPA to establish a performance standard based on an annual test program; it should be noted,
however, that EPA strongly recommends that states implement biennial test programs that meet the required demonstration, described below. Biennial testing dramatically reduces both the test costs and consumer inconvenience of the I/M program. The Act allows for states to perform a biennial program if a demonstration can be made that such a program (alone or in combination with other features) would be equally effective. This demonstration shall be made using EPA's mobile source emission model which includes biennial and annual program credits. For example, using the current version of the emission factor model and assuming the same average characteristics stated earlier for the annual model program, a biennial program meeting the Act's requirements at a significantly lower cost to the consumers and state government. In addition, initial testing of new vehicles could be delayed until such vehicles are two or three years old, as the percentage of high emitting vehicles among newer cars is relatively small, thus avoiding the cost of testing such vehicles. It should be noted, however, that such a delay would result in less opportunity to make use of comprehensive performance warranty coverage provided by the Clean Air Act for 2 years and 24,000 miles, although major specified emission control components would still be covered until 8 years and 80,000 miles.

The annual model program also includes a visual inspection of the catalyst and fuel inlet restrictor on 1984 and later vehicles; it should be noted, however, that the transient short test is capable of identifying vehicles that have important emission control components that are missing, disconnected, or inoperative, making a visual check unnecessary. Thus, a program can be easily designed to meet the performance standard without employing visual checks, provided sufficient model years are covered by the transient test requirement. States may opt to conduct a visual check on vehicles that fail the tailpipe test for diagnosis or waiver purposes.

The waiver rate for the model program is set at 1% of failed vehicles because enhanced I/M programs may issue cost waivers only after a minimum expenditure of $450, adjusted for inflation, and only with careful administration of the waiver issuance process. Only a small percentage of vehicles failing the inspection are expected to be unrepairable within the $450 waiver cost expenditure requirement. The model program also assumes a high compliance rate of 98% because enhanced programs must adopt registration denial enforcement systems (unless a currently operating alternative system can be shown to be equally effective), and because the rule includes quality control and quality assurance requirements to maintain high compliance rates. It is EPA's belief that the states' pre-existing and vested interest in assuring comprehensive and current registration of on-road motor vehicles will support a registration denial enforcement system which can assure a high rate of compliance with inspection requirements.

EPA is requiring in today's action, both in terms of design as well as performance, that enhanced I/M programs include on-road testing of at least 0.5% of the subject vehicle population, in addition to the normal I/M test, to supplement the periodic inspection requirement. EPA believes this is a feasible first effort for I/M programs and may revise the on-road testing requirement as more experience and knowledge are gained regarding the potential of this approach. This effort could be accomplished through the use of remote sensing devices or through a pullover program that includes emission measurement. Remote sensing devices are emission detection instruments that can be used to estimate emissions from vehicles during operation on city streets. EPA and other organizations have performed evaluation studies that indicate that remote sensing technology is capable of accurately measuring instantaneous CO emissions.

Emission reduction credits have not yet been established in EPA's emission factor model for either OBD or on-road testing. EPA's emission factor model will be revised when sufficient data are available with which to establish credits and, in particular, when experience is gained in on-road testing. EPA does not believe that the OBD system will support a registration denial enforcement system which can assure a high rate of compliance with inspection requirements. However, this is a feasible first effort for I/M programs and may revise the on-road testing requirement as more experience and knowledge are gained regarding the potential of this approach.

EPA is currently conducting a multi-unit remote sensing evaluation program in Phoenix, Arizona which captures data on vehicles that participated in the IM240 test lane demonstration. This data will shed light on the advancements made in the remote sensing technology since it has been taken over by private development companies. A more detailed discussion of this technology is included in the technical support document.

Like on-road testing, onboard diagnostic (OBD) checks (which are discussed further in section IX of this preamble) must be made part of the "model" program and I/M programs must include testing of the vehicle's OBD system once vehicles equipped to meet federal OBD standards are old enough to be scheduled for inspection. EPA will promulgate rules specifying when OBD testing must begin and what OBD codes are grounds for failure and how codes are to be obtained from the OBD system.

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Development work continues, however, on improving the HC analyzer and on the technology and methods for measuring NOx emissions (as yet unavailable). EPA believes that remote sensing shows promise as a roadside screening and surveillance tool for use in supplementing periodic inspections, but does not intend that it replace these inspections. At this point, EPA believes that more work is needed to actually deploy on-road testing instruments, require high-emitters to be repaired, and assess the emission reduction benefits derived given various levels of effort. Once this study is completed, EPA believes it will have enough information to establish a general credit model for on-road testing. In the interim, EPA would welcome specific on-road testing plans from states that include an analysis of the potential credit to be derived from the proposed program. EPA is ready to work with states to establish credit where appropriate. EPA plans to continue to pursue research on remote sensing and will continue to issue technical reports, guidance to states on the use of such equipment, and other information to support the use of this technology. EPA is currently conducting a multi-unit remote sensing evaluation program in Phoenix, Arizona which captures data on vehicles that participated in the IM240 test lane demonstration. This data will shed light on the advancements made in the remote sensing technology since it has been taken over by private development companies. A more detailed discussion of this technology is included in the technical support document.

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areas that are subject to EPA ordered or voluntary emissions recalls be required to have recalls completed as part of either the inspection process or the registration process, whichever approach the state chooses. Manufacturers will be required to provide EPA with a list of vehicles that are included in the recalls, as well as updated lists of vehicles that have had the recalls completed. These manufacturer-related requirements will be the subject of a separate rulemaking.

Today's rulemaking establishes for the first time an I/M performance standard for reducing NOx emissions from in-use motor vehicles in the more serious ozone nonattainment areas. Historically, I/M programs have been designed to reduce only emissions of VOCs and CO (and exhaust opacity in some areas). The Agency has not previously addressed in a formal way the test procedures and standards which would be necessary to identify high NOx emitting vehicles or the repairs which would be necessary to return them to lower NOx emission levels. Today's action addresses NOx reductions because they are required under section 182(2)(3)(A) of the Act for enhanced I/M areas, and because the testing technology has evolved to the point where the Agency feels that a NOx test on in-use vehicles can effectively be implemented in the field. NOx testing is also included because it is viewed as increasingly important for ozone attainment. Mobile sources contribute between 30% and 56% of the NOx emissions in the typical U.S. city.

In-use vehicle emission levels of NOx have not exceeded new car standards to the degree they have for HC and CO. High NOx emitters do exist, but not in as great a number nor with as high a magnitude as HC and CO emitters. Of course, this refers to vehicles built to a federal NOx standard of 1.0 gram per mile for light-duty vehicles. It may be that in-use compliance figures will be worse for cars which are designed to the new NOx standard of 0.4 grams per mile. In-use data from California would indicate that this is likely.

Measurement of NOx exhaust emissions requires that a vehicle be driven under load, a procedure which requires a dynamometer. Steady-state loaded testing may identify some of the high emitting vehicles, but EPA has found that the transient test for HC and CO measurements is also very effective in identifying vehicles that need NOx-related repairs.

The California I/M program currently requires a functional inspection of the exhaust gas recirculation (EGR) valve for proper connection. While such inspections should conceivably reduce EGR tampering and identify vehicles with NOx problems, the EGR inspection in California is performed incorrectly more often than the inspection of other emission control components. Statistics from covert audits show that inspectors miss disconnected EGR valves very frequently, and EPA's tampering surveys currently report the difference in the rate of EGR tampering between areas which require EGR inspections and those which do not. In enhanced I/M areas, the tailpipe emission test for NOx, will provide for and exceed the reductions the functional check was intended to achieve.

Due to the practical problems with visual or functional EGR inspections, and the lack of historical data which show a benefit, EPA does not include emission reduction credits for EGR inspections in its mobile source emission factor model. A small amount of NOx reduction is assumed where a program is successful in deterring tampering with three-way catalysts, or finding and fixing existing three-way catalyst tampering. The emission factor model in the past has not addressed the fact that repairs which are aimed at getting vehicles to pass an idle mode retest for HC and/or CO can often cause an increase in a vehicle's NOx emissions. This "increase" is really a return to the design NOx emission level, which typically is depressed somewhat by many malfunctions which cause high HC or CO. Repairs to correct HC or CO failures would not generally cause NOx emissions to increase beyond certification levels.

EPA has included in its study of transient testing for I/M some analysis of potential NOx cutpoints and of the costs and effectiveness of identifying and repairing high NOx emitters (as well as assuring that the vehicles which initially fail for HC or CO do not get only repairs which further sacrifice NOx levels). The test results are included in the technical support document. The current version of the mobile source emission factor model will be modified to properly account for the effect of HC and CO repairs on NOx emissions in idle mode programs and the impact of including a NOx component in the transient exhaust test. As noted earlier, the emission reduction from performing a transient test for NOx, accounting for the increase associated with HC and CO repairs, is about 8% of total highway mobile source NOx emissions. The cost of NOx testing is discussed below in the section on Economic Impact. Thus, the statute's requirement for NOx emission reductions is feasible and today's action reflects that finding.

Finally, it should be emphasized that today's action sets a minimum performance target for I/M programs which states are free to exceed. States may adopt alternative approaches that meet this performance standard. States may do so through program design changes that affect normal I/M input parameters to the mobile source emission factor model, or through program changes (such as the accelerated retirement of high emitting vehicles) that reduce in-use mobile source emissions. Further, states are free to exceed the performance standard. These additional emission reduction benefits (over those required) may also be used for trading. EPA plans to issue guidance in the near future on trading of emission credits between mobile sources and stationary sources.

D. Inspection Network Types

Two basic types of inspection networks have existed since the inception of I/M programs. A "centralized" network consists of inspection and retest a high-volume, multi-lane, usually highly automated, test-only stations, run by either a government agency or a single contractor within a defined area. A "decentralized" network consists of inspection and retest at privately owned, licensed facilities, such as gas stations and other shops which may also do repair work. I/M program design is usually determined by elected state or local officials who establish the necessary authorizing legislation. Program management is the responsibility of a State or local motor vehicle department or environmental agency. Many program features, including the system to assure that motorists comply with the testing requirement, the system for issuing waivers, quality assurance and quality control measures, vehicle coverage, emission standards, test procedures, and public information, are influenced by network type.

Recently, other network types have been suggested as alternatives to the traditional centralized and decentralized systems. Two examples of this include medium-to-high volume, test-only stations in decentralized, multi-participant systems, and the multiple contractor system with defined territories recently implemented in the State of Florida. In the decentralized multi-participant format, the high-volume, test-only stations are involved in no other automotive-related businesses or services beyond I/M testing, and are operated as privately owned "franchises" (franchised by the
implementing agency) within a decentralized program area. The stations may be individually owned or one owner may own a chain of stations. Individual stations would compete for inspection business based on price, hours, location, and the like. The State of Texas has drafted a concept paper and is now working with a consultant to develop a request for proposal to implement a decentralized, test-only system. In the Florida case, the State established six regions (one or two counties per region) in the three metropolitan areas involved in the program and eventually awarded contracts to three separate contractors (each with a different fixed fee reflecting the differing cost of inspection in each region). These “hybrid” systems provide a convenient opportunity to address many of the quality problems historically found in traditional decentralized inspection programs, which will be discussed in the following sections, yet can provide a means for small, local business participation in an effective I/M network.

The Act addresses the choice of network type for enhanced I/M programs. Section 182(c)(3)(C) states that enhanced programs must include, at a minimum, “operation of the program on a centralized basis, unless the State demonstrates to the satisfaction of the Administrator that a decentralized program will be equally effective.” EPA must establish the criteria for such a demonstration, though the Act mentions “an electronically connected testing system, [and] a licensing system *** as minimal elements of an approvable program. It is clear that States may meet the performance standard with private or government-run centralized systems. EPA believes that the standard can also be met with test-only, high-volume decentralized multi-participant systems or with Florida-style, test-only, multi-contractor systems. The difficult question EPA has had to address in preparing this rule is whether the Agency can approve a traditional, test-and-repair decentralized network, and if so, under what conditions.

EPA's emission factor model for I/M programs contains a set of default assumptions reflecting the fact that decentralized test-and-repair programs have in the past been significantly less effective than centralized programs with similar design features in finding and fixing emission problems. EPA believes it could not accept any of the currently operating decentralized programs as equally effective to centralized. With these effectiveness losses, it is not possible for a decentralized test-and-repair program to meet the performance standard for enhanced I/M, regardless of the test type or vehicle class coverage.

Based on past performance, EPA believes that a decentralized test-and-repair program will not achieve emission reductions equal to that of a similarly designed, enhanced, centralized program. The fundamental problems with the test-and-repair approach, especially those related to conflict of interest, have not been successfully controlled in a test-and-repair program, to date. EPA has looked for strategies that would be sufficient to equalize test-and-repair program performance. Some have suggested that better emission analyzers would solve the problem, but it is clear from the experience in programs that have already adopted such equipment that this is not an adequate solution. Similarly, a few states have also implemented rigorous quality assurance programs, but still suffer from significant levels of improper testing. Clearly, performance can be substantially improved in the extremely poorly run test-and-repair programs. Better surveillance, more rigorous enforcement, and the like will reduce the egregious levels of improper testing found in these programs. Today’s action establishes requirements to help bring about these improvements. Nevertheless, EPA is not convinced that they will be sufficient to adequately address the problem. On the other hand, section 182(c) of the Clean Air Act allows a state to make a demonstration that a decentralized (i.e., test-and-repair) program is equally effective for the purposes of meeting the enhanced I/M requirement. Therefore, EPA will consider SIP submissions designed to demonstrate that decentralized, test-and-repair programs are equally effective to a centralized program in meeting the performance standard using the criteria established for case-by-case equivalency.

Basic I/M areas are not required to be test-only, and the performance standard is such that a reasonably comprehensive, conventional test-and-repair system can meet the target. Most basic areas must achieve the ambient air quality standards either by 1993 (marginal areas) or by 1996 (moderate areas). For the purposes of submitting a SIP that meets the performance standard, today's action allows an area to claim additional credit beyond the default level assigned to test-and-repair programs, if past performance can be shown to exceed default performance levels.

E. Convenience Issues

One issue consistently raised in EPA's pre-proposal discussions of I/M policy with interested parties is that of motorist convenience. I/M programs need to be accepted and supported by the public to be successful; therefore, public inconvenience associated with I/M programs needs to be minimized. Several features of an I/M program may affect convenience. As mentioned above, test frequency is the single most significant factor influencing I/M convenience. If motorists only have to get tested every other year instead of annually, inconvenience is cut in half. Apart from test frequency, other influential features include: cost, driving distance, certainty of service, hours of operation, wait times, and necessity for multiple trips. Each of these factors can be influenced to some degree by network type, i.e., whether the program is decentralized or centralized.

Decentralized networks usually have large numbers of gas stations, car dealerships, repair shops, and similar automotive service-related businesses which are licensed by the State to perform emissions testing. Typically, there are hundreds or thousands of stations, depending on the number of vehicles subject to the I/M requirement and the size of the program. The station-to-vehicle ratio in service station based networks is typically on the order of 1 to 1,000, e.g., in the New York City metropolitan area, 4,300 stations test approximately 4,600,000 vehicles annually. Typically, less than half of licensed test stations have the repair technician expertise to repair the vehicle emission and emission controls if the vehicle fails the test. At the stations that do have an engine/emission repair capability, the vehicle may be able to complete the test-repair-retest process in one trip.

In existing centralized networks, performing steady-state emission tests and tampering checks, the ratio of test lanes to annual vehicles tested is about 1 to 35,000. Typically, these test facilities are strategically situated, fully automated, and designed to handle the high volumes of vehicles seeking inspection during peak times of the test cycle without long queues. Vehicle repairs or other business besides testing is not performed or permitted. Centralized systems are operated by government agencies or, more frequently, by a contractor who wins exclusive rights to provide testing services for an entire metropolitan area or state, in a bidding process that factors in convenience, as well as price and technical competence.
Because the program inspected only excessive amounts of time for a test waits for vehicle owners. Extensive sited far apart to serve wider areas, population each year, stations were change-of-ownership program in the of any other government-run systems EPA does not recommend the creation being refused testing, and having to excessive waits also occur in poorly designed centralized programs), having to result in longer trip times and long inconvenience was the centralized station if a repair shop is chosen that also is licensed to test. This approach increases the administrative burden and cost of the program, as well as the potential for losing emission reductions if repairs are not performed properly. There are potential problems that arise with convenience in both centralized and decentralized test systems. There are some centralized systems that are not convenient to the motorist. In nearly all cases, this has been in government-run centralized systems. The problem occurs as the result of a combination of factors: inadequate numbers of stations or lanes to handle peak volumes, poor station sitting, under staffing so that all lanes, cannot be opened when needed, insufficient resources, and inadequate equipment and technical expertise. For the most part, these safety inspection systems, to which emission testing were later added, were put into place decades ago and were not sufficiently upgraded over the years to handle more vehicles. EPA does not recommend the creation of any other government-run systems and has in the past encouraged existing systems to consider privatization. One other case of a centralized system which was reportedly perceived as inconvenient was the centralized change-of-ownership program in the South Coast Air Basin in California. Because the program inspected only about one-sixth of the vehicle population each year, stations were sited far apart to serve wider areas, resulting, in longer trip times and long waits for vehicle owners. Extensive experience in designing convenient systems has been gained since that time. In decentralized systems, convenience problems include having to wait excessive amounts of time for a test (excessive waits also occur in poorly designed centralized programs), having to leave the vehicle behind because testing on demand is not available, being refused testing, and having to return at another time or go to another station. Decentralized stations are rarely originally designed for the purposes of testing, but the nature of many of the operations that go on in the process can result in a much longer wait time than is generally supposed. Adequate numbers of licensed test stations have been a problem in some decentralized programs, but this is mainly a function of the limited fee that a station in these programs has been allowed to charge the motorist for doing a test. Often the test includes safety as well as emission-related inspections and, when performed correctly, these tests can take as much as 20-30 minutes. Given the rise in shop labor rates over time, doing inspections in such state programs became a money loser for good repair shops that could better spend their time on higher value services. Thus, insufficient numbers of stations signed up to do testing. In States where there is no test fee cap, such as California, there is a lower vehicle-to-station ratio, indicating that there are more suppliers willing to enter the market. In both centralized and decentralized systems, it is possible to design and run the systems such that a high level of convenience is maintained. While convenience is often a prospective concern of residents of an area about to implement a centralized program, once operating, most vehicle owners' actual experience is satisfactory to them. A majority of motorists in a recent survey reported that testing centers were conveniently located in both centralized and decentralized networks (Riter Research, “Attitudes and Opinions Regarding Vehicle Emission Testing,” conducted for the Coalition for Safer Cleaner Vehicles, September 1991). EPA encourages States and local governments to build into the program design features necessary to insure motorist convenience. EPA has traditionally left it to the States to address these issues. Today's preamble includes specific recommendations to address convenience issues, and because of its importance, the rule requires that states design test systems that insure convenient service for the motorist. For example, in high-volume test systems, EPA that believes contracts could include minimum design features for station sitting such that 80% of all motorists are within 5 miles of a test facility, and 95% are within 12 miles of a test facility. Contracts should also include operational features that assure service delivery, including a provision that when there are more than 4 vehicles in a queue waiting to be tested, spare lanes be opened and additional staff employed to reduce wait times. Another feature of high-volume systems should be hot lines that motorists can call and get information on station locations, hours of operation, current wait times and the like. Similar strategies can be employed for decentralized, test-only systems. The rule requires that states make a demonstration in the SIP that the network of stations to be provided for testing is sufficient to insure short wait times and short driving distances, and that regular testing hours are established and motorists are not arbitrarily refused a test. Another motorist convenience issue is the fact that in test-only networks motorists must go to spare facilities for tests and repairs. The next section discusses a variety of approaches to encourage repair facilities to provide customers with the most convenient service possible, including taking the vehicle for initial testing and, if it fails, back to the test center for the retest after repairs. Included in this discussion are ways to allow repair facilities to obtain free retests for their customers, to provide diagnostic assistance to repair facilities, and to give repair technicians priority access to test facilities, thereby allowing them to obtain a retest as quickly as possible. These ideas are discussed in more detail below, but they are intended to maximize convenience and ensure that motorists get effective repairs on their vehicles with a minimum of inconvenience. It has been suggested to EPA that siting test facilities in densely populated areas, especially in the northeast United States where most enhanced I/M programs are located and in the Los Angeles area, might be impossible or very expensive. Experience to date has not indicated a problem in this regard. In centralized, contractor-run programs, the contractor purchases or leases the land upon which stations are built. The cost of the I/M program is the carrying cost of the property; the contractor will eventually recoup the value of the land at resale after the contract expires. Thus, the per-vehicle test cost is indicative of carrying the cost of the land, as well as the other costs associated with the program. The average cost of a test in a centralized system in the U.S. is $6.50; that includes large cities such as Chicago, Miami, and Minneapolis. Probably the most recent example is the program in Vancouver, British Columbia. Vancouver is a densely populated, high land cost city, much like those in the northeast. A centralized, contractor-run program has been implemented there.
using a three-mode test (like the four-mode test described in the previous section but shorter) that will result in lower throughput and tests in typical I/M programs. The winning bid for the Vancouver program was for under $15 (U.S.) per test, indicating that even though some very expensive real estate is involved the impact on test fees does not result in prohibitively expensive testing.

F. Mitigating the Motorist Impact of I/M Enhancements

The high-tech testing system and administrative requirements in enhanced I/M areas need to be carefully designed and implemented to avoid or mitigate any adverse impacts that conceivably may occur from changing over an existing inspection network or starting a new one. The potential problems fall into two basic categories, one relating to the existing test industry, which will be dealt with in the next section, and the other relating to vehicle owners.

1. Ping-Pong Effect

In a high-tech test system, repair technicians will be faced with a more rigorous exhaust emission test procedure in the transient emission test. The procedure is more rigorous than the steady-state test, now used in I/M programs in three respects. First, the transient emissions test more accurately and selectively determines which vehicles need repair. The steady-state tests pass more gross emitters and fail more vehicles that are close to or below the standards for which the vehicles were originally designed, than the transient test. Second, the transient test cannot be "fooled" by strategies aimed merely at passing a test, such as doping the gasoline with additives or disconnecting vacuum hoses. Third, typical repairs in responding to steady-state tests may not always sufficiently reduce emissions to allow a vehicle to pass a transient test. For example, vehicles without a catalyst or with an empty shell of a catalyst can pass a steady-state test if they are operating in a lean condition during the particular test cycle. In actuality, however, such vehicles are gross emitters and could not pass the transient test. The real defects in the emission control system will have to be repaired in a transient test program.

Repairs to pass the transient test may require greater diagnostic proficiency on the part of technicians than what is generally needed in response to a steady-state test failure. Furthermore, some repair facilities may return a vehicle to its owner without verifying that it actually passes the transient exhaust test, due to lack of test equipment or unwillingness to get the vehicle retested at the State inspection station prior to owner pick-up. There is a risk that if the repair industry as a whole is unprepared or not able to respond adequately and in a timely manner to the challenge, motorists will be put in the awkward position of failing the retest at higher than necessary rates, requiring yet another trip to the repair facility and then to retest; this is often referred to as ping-ponging.

The other dimension to this problem is the cost to the motorist. The Clean Air Act requires that in enhanced I/M programs a minimum of $450 be spent on repairs which produce emission reductions before the I/M requirement may be waived. This is substantially higher than existing cost waivers in I/M programs, which are typically $50 to $75, although some range as high as $400. The potential exists for some motorists to be vulnerable for repair bills of $450 for repairs that were not actually needed. In rare cases, the repair that is needed to allow a vehicle to pass may be significantly more expensive than $450 and the owner would face the choice of paying for that repair or allowing or encouraging the technician to bill for $450 of repairs that were not helpful. (The cost waiver issue is discussed in more detail at the end of this section.)

A variety of strategies have been suggested as ways of dealing with ping-ponging. First and foremost is improving the capability of the repair industry. Today's rule includes a wide range of requirements and recommendations related to improving repair effectiveness. Most states do not have repair technician certification programs; formation of such programs is a fundamental step that would provide recognition and support for qualified repair technicians. The repair community supports this step and EPA recommends that I/M programs establish a certification program that includes testing and training of repair technicians in the kinds of repairs needed to correct I/M failures.

Another problem has been the lack of adequate training available to independent repair technicians in I/M areas. Some existing I/M programs have worked with community colleges to run classes but others have not, and the technical level of these classes has not always been sufficient to meet the needs of the technician. Today's rule requires I/M programs to insure the availability of adequate training for repair technicians. This does not mean that states have to get into the business of training repair technicians but it may mean taking action to either attract private training programs or to work with local colleges and vocational schools to upgrade existing programs. EPA is not establishing a requirement that repair technicians must get certain training but would encourage states to set up such programs. The public will be best served if an adequate number of technicians have the training and the tools needed to diagnose and repair high-tech cars. Unlike in the past, these skills are not easily acquired by fiddling around under the hood, or learning as you go. The systems are too complex and change too rapidly to allow this approach. EPA received overwhelming comment on this issue from every sector. It was unanimous that technician training needs to be part of the I/M program.

Some I/M programs have established a technical assistance program to provide repair technicians with help in diagnosing or repairing specific problems. These programs typically have involved hot line services, newsletters, and other outreach programs. Today's action includes a requirement to establish technician outreach programs that provide a rapid source of technical assistance (telephone hot line) as well as routine informational programs (newsletters, workshops, etc.). Today's action also includes a technician performance monitoring program that would track the effectiveness of repairs performed by repair technicians in an I/M area. The purpose of this program is to provide the public, as well as technicians themselves, with objective information on the performance of the various repair facilities. Louisville, Kentucky has used such a system with positive results.

Another effective feature of some existing I/M programs has been the establishment of a monitoring or "report card" system of repair technician performance as measured by the test results of vehicles they have repaired and a feedback mechanism to let them know how well they are doing and to provide the public with objective information on repair performance of technicians in the area. Today's action requires all enhanced I/M programs to operate such a monitoring system.

In some areas, motorists that fail the test are given a variety of information, including a list of certified technicians, warranty information, and other consumer information. Some programs also provide motorists that fail the test a description of the possible causes of the particular failures that occurred based...
on an interpretation of the test results. Today’s action includes requirements for providing this type of consumer information, especially the basic diagnostic information about what may be wrong with the vehicle. EPA recommends that I/M programs supply more detailed diagnostic information upon request based on additional examination of the vehicle. This might involve down loading and interpreting diagnostic information stored in onboard computers on vehicles not already subject to an onboard diagnostic check (pre-1994 vehicles). It could also include an analysis of various engine functions using a standard engine analysis system. The motorist could use this information in repairing the vehicle or could provide it to a technician chosen to repair the vehicle. These additional services could be provided at inspection stations for free or for a fee, or the state could license or approve independent diagnostic facilities in the private sector.

As discussed earlier, EPA is in the process of developing final regulations requiring vehicles to be equipped with OBD systems. As these systems provide repair technicians with additional valuable diagnostic capability, repair of OBD-equipped vehicles will be easier. Also, as part of these OBD regulations, manufacturers are being required to improve the distribution of repair information necessary to make effective emission-related repairs. Improved information in the hands of repair technicians should greatly enhance their ability to make the most effective repairs and at the least cost to the consumer.

EPA believes the elements discussed above and included in today’s action will go a long way towards improving repair effectiveness; but, the full impact of them may take time to be realized. EPA believes I/M programs should consider the following additional strategies to help ensure improved repair effectiveness.

The first approach would be for I/M programs to establish special diagnostic centers which would be available to repair technicians. These centers could be staffed by expert repair technicians that are aware of failure and repair trends in the I/M program and are fully up-to-date on the latest repair and diagnostic techniques and problems being found among vehicles that fail the I/M tests. These technicians could access databases accumulated by the program on the kinds of repairs previously performed on particular vehicles in the program. Such databases could also be made available via modem to any repair facility in the community. The centers would include a full range of diagnostic and I/M test equipment and a library of diagnostic and repair aids, including service manuals, recall information, and technical service bulletins from vehicle manufacturers. In the event that a technician is having difficulty repairing a vehicle and the hot line service is not adequate to solve the problem, the technician could take the car to the diagnostic center and get help from the expert staff. These facilities might be State-run and staffed or might be contractor operated. The focus of the service would be to help repair technicians achieve the most cost-effective repairs possible on vehicles. These facilities could also serve other purposes, including training centers for mechanics, and waiver processing facilities.

Given the expense and spatial requirements for conducting highly accurate, transient emission tests, it is unlikely that many repair facilities would find it cost-effective to establish an in-house capability that would absolutely confirm the effectiveness of repairs. There are many ways for a technician to tell whether the true problem has been found and fixed short of replicating the test, such as reading all electronic trouble codes, observing idle and 2500 rpm emissions, and performing normal engine diagnostic procedures. EPA is working with service equipment vendors to develop simplified transient test equipment which will be adequate for use by repair facilities; EPA estimates that the cost could be as little as $15,000–$20,000 and that facilities’ current exhaust analysis equipment could be incorporated into the new system.

The final assurance of course, comes from passing the transient test itself. Consumers would be better served in the repair process if the repair technician had access to the official test equipment to verify that repairs were effective. If free retests were available to repair technicians, then repair shops would be more likely to provide the additional service of taking the vehicle to the station for a retest to verify the repairs were effective and at the same time obtain a certificate of compliance for the vehicle owner. In addition to a free test, if repair technicians had priority access to test facilities, this might further encourage the retest service. This would help technicians refine repair strategies by giving them direct feedback on the success of the repairs performed. Free retesting for technicians might change the way testing cost are distributed in I/M programs, but the impact would likely be very low. The cost of the first retest is already included in the price of inspection in nearly all I/M programs, and the ongoing failure rate of a mature program with effective repairs should be quite low, about 9% per year. Since first attempts to repair the vehicles will be successful in the overwhelming majority of cases, the demand for extra retests should also be low. In decentralized, test-only networks, some mechanism might be needed to reimburse individual test facility owners that got more than a fair share of repair technicians requesting free retests.

Finally, the final rule allows a state to include, if it wishes, a mechanism in the program to address the possibility that some vehicles may still have high tailpipe emissions after being repaired by a certified technician, even after the technician has performed all emission-related repairs identified as needed at the official diagnostic center discussed above and the vehicles pass all physical and functional checks. The mechanism in this case would be simple: if the vehicle had high tailpipe emissions in the retest, passed the physical and function checks, and the official diagnostic center could not identify additional needed repairs, the owner would be given a certificate of compliance. Such vehicles would probably tend to be very close to the standards and even if repair had been possible, would yield little emission reduction benefit. In subsequent cycles, if the vehicle failed the initial test, it could go directly to the diagnostic center to see if updated techniques could identify effective repairs or if other problems had developed that need attention. EPA believes that this approach is consistent with the requirement to spend $450 prior to receiving a waiver for emission-related repairs, without regard to the cost of repairs in this case, because the program could not identify any additional emission-related repairs that could be performed. Thus, the vehicle owner would have to have all needed repairs performed and would therefore not need a waiver for emission-related repairs. The legislative history on waivers states clearly, "If repairs are needed, they should be made." (House Rept. 101–490, p. 241) The corollary seems to be that Congress did not intend for vehicle owners to spend money merely to meet a minimum expenditure level, if repairs are not needed. EPA believes that this provision will have no measurable effect.
This program will help auto-tech schools upgrade technician training, equipment, and instruction materials and supplies to meet the need for high-tech repair technicians.

EPA believes these efforts and others being undertaken as part of the Initiative will give I/M areas a head-start on addressing the repair issues so critical to a successful I/M program.

2. Repair Costs and Cost Waivers

Based on the testing programs it has conducted over the past five years, EPA estimates that the average cost of repairs for transient test failures will be $120, and the average cost for repairs to the evaporative control system will be $38 to $70 for pressure and purge failures respectively. These costs are not excessive in the context of current vehicle maintenance expenses and are offset significantly by the reduction in fuel consumption that is associated with repairs to air quality systems.

EPA believes, however, that it is important to consider the potential for adverse impact on two smaller segments of the vehicle population: those vehicles which are so old that the repair cost may exceed the blue book value, and those which cannot be repaired effectively within the waiver cost limits.

EPA encourages States to establish programs to purchase and scrap vehicles that may exceed the blue book value, and which cannot be repaired effectively within the waiver cost limits. There has been considerable interest around the country recently in scrag programs for older vehicles.

In 1991, UNOCAL ran a pilot program in Southern California which demonstrated the feasibility of such programs. To understand how such a program would work, consider a vehicle with a low market value that fails the test. If repairs to the vehicle to pass or to qualify for the waiver would cost more than the market value of the vehicle, the owner would normally have three options: (1) scrap the vehicle, (2) purchase repairs (at least to qualify for the waiver), or (3) sell the vehicle outside the I/M area.

Owners of such vehicles might see these options as presenting severe economic hardship. Since such vehicles are also likely to be very high-emitting vehicles, the air quality benefit of removing these vehicles from the fleet is great and all participants in the air pollution control program would benefit. To address the difficulty of equitably disposing of such vehicles, the I/M program could have a standing offer to purchase and scrap older, higher emitting vehicles, possibly at a set price of $400, for example. This buy-and-scrap program might be financed by a modest increase in the test fee or possibly through a market-based, privately-financed offset purchase program. Offsets especially from older vehicles could be attractive since such vehicles are typically emitting much more pollution than new vehicles. If such vehicles are assumed to otherwise receive waivers and continue to operate at high emission levels, offsets would appear appropriate. To avoid abuse, vehicles could be required to be driveable and to have been registered in the area for some minimum period (e.g., at least a couple of years) to qualify for the program. EPA will be issuing guidance on scrag programs in the near future.

While most vehicles which initially fail an I/M test can be repaired to meet emission standards with relatively inexpensive repairs, a small portion of the vehicle population might be faced with substantially higher cost repairs as discussed above. This might result from a variety of causes, including: The vehicle may need a variety of repairs that together amount to a substantial expense; the engine may need a major repair that is very costly, such as a valve job; or, the owner might have obtained ineffective repairs from an incompetent or unscrupulous repair provider. In the past, many programs have provided for waivers for these vehicles, which allow vehicles that fail the emission retest to comply with the I/M program requirement.

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Waivers, however, can be a significant source of emission reduction loss, as well as a potential escape route for any motorist wishing to circumvent the system. Many I/M programs have not controlled waivers sufficiently. The problems include low cost limits which do not allow for meaningful repairs, improperly issuing waivers, cost limits based on estimates for work not yet actually performed which leads to inflated estimates in some cases, and applying repairs unrelated to the emission failure to the cost limit. Repairs attempted by unqualified mechanics or vehicle owners may also qualify a vehicle for a cost waiver without contributing to emissions reductions. The regulations establish requirements for the issuance of waivers in order to address many of the problems identified: any available warranty coverage must be used to obtain repairs before expenditures can be counted towards the waiver; waivers must not be issued to vehicles with missing or disconnected emission control devices; and, repairs must be performed by recognized technicians (e.g., one employed by a going concern or in the yellow pages) and visually confirmed by the administering agency.
today’s action which are aimed at improving repair technician performance and consumer protection for motor vehicle owners.

The Act requires that in enhanced programs, motorists spend a minimum of $450 on repairs related to the emission test failure before being eligible to receive a waiver. This amount is to be adjusted annually based on the Consumer Price Index. EPA will annually notify states of the adjusted amount. The legislative history of the Act (Report of the Committee on Energy and Commerce on H.R. 3030, Report 101-490, pages 240-241) further supports this when it states “If waivers are otherwise allowed, the program must require a minimum expenditure of $450 for repairs, to be adjusted periodically for inflation.” The legislative history indicates that the decision was based at least in part on past experience with cost waiver limits that were “often inadequate to ensure that vehicles received the basic repairs needed to bring the vehicle into compliance.” The legislative history further clarifies Congress’ position, stating that “poorly maintained vehicles that pollute, no matter how old, should be required, at a minimum, to meet the standards applicable to them when they were manufactured. If repairs are needed, they should be made.” EPA believes that the very large majority of vehicles will be repairable for much less than $450. As the Act states the $450 minimum was set by Congress “in view of the air quality purpose of the program.” The challenge for EPA and the States is to determine how to best achieve significant air quality benefits in an equitable and cost-effective manner. The $450 minimum is not as significant an issue for those for which the cost of repairs is low enough. However, if the cost of required repairs is high, as with many older vehicles, this may pose a greater hardship on vehicle owners.

G. Mitigating the Impact of Enhanced I/M on Existing Stations

EPA also recognizes the need to mitigate impacts of implementing a high-tech test program on existing I/M programs in decentralized programs. The typical decentralized I/M test program is composed of a variety of facilities, including car dealerships, gasoline stations, and repair shops of different kinds. Dealerships are usually heavily involved in the general repair business and the inspection business represents a relatively small portion of total revenue. Gas stations and repair shops tend to vary widely in terms of the mix of revenue derived from inspection and repair. Some stations are not involved in engine repair and simply provide testing for the test revenue itself and have other business that provides significant income. Some repair shops, like dealerships, are heavily involved in sophisticated engine repair and offer testing mostly as a convenience to their customers. Then there are those in between that do some repairs but are generally not capable of performing the more sophisticated repairs. In some cases, stations exist whose only service is the inspection itself.

The transition to a high-tech, high-volume, test-only system would mean that many stations would have to give up testing. This would result in the loss of direct testing revenue, perhaps the loss of ancillary business, and perhaps investment in test equipment not yet fully depreciated.

In some States that are currently decentralized and will have to implement enhanced I/M analyzers have been in use for 8 years or more and generally have little or no residual value. In States that upgraded to BAR80 equipment (California and New York), the equipment was purchased since 1990, and has years of useful life left. One mechanism to address the impact of switching to the high-tech tests would be to set up some type of State-supported analyzer buy-back program for stations that were no longer going to participate in either the test or repair business, possibly using funds obtained.
from inspection fees. BAR90 analyzers would be needed in the repair business both for diagnostic and repair work as well as to check whether repairs on old technology vehicles were effective. BAR90 analyzers could also be used to test older technology vehicles in test-only stations. Where such equipment were applicable to the enhanced I/M role of the business, buy-backs would not be needed. However, this concept would allow stations that were planning to leave the I/M business to recover all or part of their capital investment for equipment that could not be used for diagnostics and repair. Such a buy-back program might allow a smoother transition to test-only status.

A related strategy would be for EPA, the states, and industry to support the development of new and improved uses for BAR90 analyzers so that current as well as future analyzer owners can use this technology more effectively in the repair process. In particular, it was California's intent in developing the BAR90 specification for the computer in the analyzer, which is an IBM-compatible 386 DOS-based system, to become a platform for vehicle diagnosis and repair databases and other technical assistance software. EPA, the states, and industry could potentially provide technical and financial support to speed the development of such software. They also could potentially subsidize the purchase of required peripherals, such as CD-ROM players and disks of service manuals and the like. This would not only make better use of the equipment in the field but would serve as an excellent mechanism for providing technical assistance and training to the repair community. Another expanded function for a BAR90 analyzer would be to serve as controller and analytical bench in a repair-shop level transient test system consisting of a simple dynamometer and exhaust collection device, adequate to judge the success of repairs in most cases. Such a system would not have to be as accurate as the actual test equipment required for the official test, only accurate and repeatable enough to be a good indicator of the effectiveness of repairs. EPA has undertaken developmental work in this area.

The second way to mitigate the impact is to design transitional features into the program. Today's action would permit a phase-out of the decentralized test-and-repair portion of the program such that all vehicles would be inspected in test-only stations starting with the next inspection after January 1, 1986. This would allow these decentralized, test-and-repair stations three years from today to continue to obtain revenue to recover the investment made in testing equipment and to plan other strategies to replace the income to be lost from testing.

A third strategy would be to provide targeted assistance to stations to assure they were able to provide high-tech repair services. This would require preprogram start-up training to bring repair technicians in these stations up to speed on the high-tech tests, vehicle diagnosis, and engine repair. It might mean tuition grants or other financial assistance to make training feasible. This approach might also include financial assistance to stations for the purchase of equipment to perform sophisticated diagnosis and repair on new technology vehicles or to upgrade tools and equipment for more sophisticated diagnosis and repair.

EPA encourages all affected areas to consider these approaches.

**H. Areas of Applicability**

I/M programs, either basic or enhanced, are required in both ozone and CO nonattainment areas, depending upon population and nonattainment classification and design value.

States or areas within an ozone transport region must implement enhanced I/M programs in any metropolitan statistical area (MSA), or portion of an MSA, with a population of 100,000 or more as defined by the Office of Management and Budget, regardless of the area's attainment classification. Any area in the nation designated as serious or worse ozone nonattainment, or as moderate or serious CO nonattainment with a design value greater than 12.7 ppm, and having a 1980 Census-defined urbanized area population of 200,000 or more, must implement enhanced I/M programs in the urbanized area. Serious or worse ozone nonattainment areas which have urbanized areas which were smaller than 200,000 population in 1980 must implement the basic I/M program required in moderate areas. EPA recommends that states expand geographic coverage of the program beyond urbanized area boundaries, to include areas that contribute in a significant way to the mobile source emission inventory in the nonattainment area.

All areas designated as marginal ozone nonattainment or moderate CO nonattainment with a design value less than 12.7 ppm must continue operating existing I/M programs (that is, those operating or part of an approved State Implementation Plan as of November 15, 1990) and must update those programs as necessary to meet the basic I/M program requirements of this regulation. In addition, such areas required by the Act as amended in 1977 to have an I/M program must implement a basic program. Finally, any moderate ozone nonattainment area outside of an ozone transport region must implement a basic I/M program meeting the requirements of this regulation.

The statutory requirements for I/M programs are comprehensive but not without the need for interpretation when determining the applicability to specific types of areas. The discussions which follow detail the reasons that EPA has chosen the interpretations in today's action.

1. Moderate Ozone Areas

Section 182(b)(4) calls for basic I/M in "all" moderate ozone areas, and the legislative history of the House Bill (Report of the Committee on Energy and Commerce on H.R. 3050, Report 101-490, page 237) uses the term "without exception" to indicate that even moderate ozone areas presently without programs must implement I/M. This differs from EPA's 1978 policy of requiring I/M as a condition of an attainment date extension to 1987 [old section 172(b)(11)(b)] and only in urbanized areas as defined by the Census Bureau with a population of 200,000 or more. It also differs from EPA's post-1982 policy of accepting SIPs lacking I/M from some non-extension areas that did not attain by 1982. Despite the use of the phrase "all Moderate Areas," however, EPA believes that Congress did not intend to include rural moderate ozone nonattainment counties which contain no urbanized areas of any size. Section 182(b)(4) requires all moderate ozone nonattainment areas to adopt an I/M program "as described in subsection [182(e)(2)(B)]." That section requires certain marginal ozone nonattainment areas to adopt an I/M program of at least the stringency of the program required by the 1977 amendments to the Clean Air Act, as interpreted in guidance issued by the Administrator prior to the 1990 amendments to the Act. EPA's pre-1990 I/M guidance had required I/M programs only in urbanized areas. Thus, EPA believes that by referring to EPA's pre-1990...
guidance, Congress ratified EPA's approach of requiring I/M programs only in urbanized areas. Further, enhanced I/M programs, which are based solely on statutory language rather than ratified agency guidance, are explicitly permitted to exclude surrounding rural portions of their nonattainment areas. EPA believes that it is consistent with Congressional intent to allow exclusion of rural moderate ozone nonattainment counties, and is, therefore, requiring that basic I/M programs be implemented in any 1990 Census-defined urbanized area in all moderate ozone nonattainment areas. This requirement is broader than previous basic I/M policy because it does not contain a population threshold. At the same time, EPA believes that the Act does not envision I/M programs in completely rural counties.

2. Census-Defined Urbanized Area Boundaries

In today's action, EPA requires that basic I/M programs be established in all Census-defined urbanized areas in the affected nonattainment areas, based on the 1990 Census. The Act is clear in requiring that outside an ozone transport region, enhanced programs are required in areas that were defined by the Bureau of Census as urbanized areas with a population of 200,000 or more in 1990. EPA believes this criterion must be used to determine which urbanize areas are affected, but not the actual program boundaries themselves within those areas. To determine program boundaries, the more current 1990 Census data, which better represent current urban land-use boundaries as affected by growth since 1990 and consequently the area making the greatest contribution to mobile source pollution, shall be used.

3. Ozone Transport Regions

Section 184(b)(1)(A) contains somewhat different language on I/M program coverage in ozone transport regions. It states that "each area" in a region "that is a metropolitan statistical area or part thereof with a population of 100,000 or more [must] comply with the provisions of section 182(c)(2)(A) [sic] (pertaining to enhanced vehicle inspection and maintenance programs)." * " [The incorrect reference should refer to section 182(c)(3)]. The legislative history uses slightly different wording in saying enhanced I/M is required "in metropolitan statistical areas" (emphasis added) and goes on to say "whether or not the areas are in nonattainment." In establishing the ozone transport region provisions, it seems that Congress intended to address emissions that could contribute to a violation of the standard anywhere in a region. Thus, it included attainment MSAs as well as nonattainment areas. Broad, sparsely settled rural areas with no MSAs or only MSAs under 100,000 population were not included, however, indicating an intent to balance the small emission reductions possible from these areas and the greater difficulty of implementing I/M programs in such areas.

Today's rule requires that in an ozone transport region, enhanced I/M programs are required in areas that were designated as MSAs with a population of 100,000 or more in 1990. In the case of MSAs that cross an ozone transport region boundary (and are not otherwise required to implement enhanced I/M by virtue of air quality classification and population), enhanced I/M is required if the population of the MSA within the ozone transport region was at least 100,000 in 1990. The statutory language does not explicitly state that the MSA boundary must be the I/M coverage boundaries for MSAs over 100,000 in population. Consequently, EPA has considered various interpretations to see how well they fit with the intent of the ozone transport region provisions. EPA considered the urbanized area boundary approach, established for areas outside an ozone transport region. It does not seem consistent with an ozone transport region concept to limit the I/M program to this degree. For example, in the Northeast Ozone Transport Region (the only one established by the Act), there are MSAs with populations well above 100,000 that contain no urbanized areas or contain only a small portion of an adjacent MSAs urbanized area. EPA also considered requiring enhanced I/M throughout the entire MSA if it had a 1990 population of 100,000 or more. This would, however, result in the inclusion of some large, sparsely-settled rural counties in some MSAs. EPA believes it would not be cost effective to require I/M in such rural territory and their inclusion would contribute very little emission reduction benefit. Past EPA policy on I/M has provided for the exclusion of such rural areas even within a nonattainment area, and by establishing the criterion of 100,000 people or more in an MSA, the Act excludes many large rural areas in an ozone transport region. Further, section 184(b)(1)(A) requires transport areas to have the I/M program described in section 182(c)(3), which is a program that applies only in urbanized areas. Therefore, EPA believes it is consistent with Congressional intent to require that the enhanced I/M program be implemented in all counties within the entire MSA, except largely rural counties with fewer than 200 persons per square mile. In the public comment process, however, EPA learned that this provision would allow the exclusion of a few entire MSAs. In that this is contrary to the letter of the law, the final rule requires that at least 50% of any given MSA be included in the enhanced I/M program. On the other hand, the requirement to implement enhanced I/M in the entire county would cause at least one and maybe other islands off the Northeast coast that are not connected by bridge, road or tunnel to the mainland to be included in the I/M program. Since such a requirement could create a significant hardship for vehicle owners residing on such isolated islands, the final rule allows for the exclusion of such islands from the enhanced I/M program.

4. Multi-State Areas

The Act does not address multi-state urbanized areas. Past de facto practice by EPA exempted portions of urbanized areas in bordering states if the urban population in that State were under 200,000. Multi-state moderate ozone nonattainment areas have portions that vary from under 50,000 to as much as 100,000 or more. In multi-state urbanized areas, the rule requires that the appropriate level I/M program (as determined by the classification and population of the urbanized area as a whole) be implemented in the urbanized area within each of the affected states provided that the urbanized area population within the state is 50,000 or more, as defined by the Bureau of Census in 1990. According to the Census' definition, 50,000 persons is the minimum to constitute an urbanized area. EPA believes this threshold is consistent with the criteria established for single-state areas and with the exclusion provisions for basic areas discussed below.

1. Geographic Coverage

EPA's I/M policy prior to enactment of the amended Act included a "geographic bubble" that allowed programs to claim emission reduction credits for expanding the testing requirement to include non-urban portions of the nonattainment area surrounding the urbanized area. The extra emission reduction credits could be applied toward the minimum performance standard the program had to meet. The bubble was calculated using human population data instead of
motor vehicle population because a reliable source of disaggregate data for the latter was not generally available. Thus, the bubble was defined as the number of people included in the actual I/M area divided by the number of people in the urbanized area. This calculation yielded a bubble factor that was multiplied by the emission reduction loss to account for the added benefit from testing non-urban vehicles. Due to the way urbanized areas and nonattainment areas are defined, the geographic bubble factors that are available are quite varied and frequently quite large, i.e., factors of 2 to 4. With such large bubbles, some I/M programs were designed to meet emission reduction requirements through broad geographic coverage, but had a very weak program design. Other areas had a strong design even though they were able to meet the minimum performance standard in operation despite serious operating problems. In essence, the geographic bubble effectively lowers the performance standard for areas which have large MSAs in relation to the urbanized area. EPA does not believe that such weakening of the performance standard is consistent with the Act's intent but was able to meet the minimum required area boundaries can only be applied toward the "reasonable further progress" requirement or can be used as an offset, provided that the covered vehicles are operated in the nonattainment area.

Similarly, EPA's policy prior to enactment of the Act included a "reasonable further progress" policy that allowed parts of an urban area to be excluded from the program as long as the emission reduction loss was made up in some other way. The purpose of this policy was to allow States to compensate for the extent possible that vehicles are tested accurately and repaired correctly, thus achieving the best emission reduction at the lowest possible cost. The General Accounting Office has audited the I/M program several times and has consistently concluded that these problems exist and that tougher requirements are needed to correct the problems. EPA's Inspector General has also audited the I/M program and has come to similar conclusions. Both have strongly recommended the establishment of regulations, as opposed to guidance, as a means to address these problems. Reports by these organizations are included in the docket.

The intent of this regulation is to address these problems, and insuring to the extent possible that vehicles are tested accurately and repaired correctly, thus achieving the best emission reduction from inspection of motor vehicles. This inequality became apparent to EPA in a variety of ways. For example, EPA tampering surveys have shown existing decentralized programs to be less effective than centralized at preventing tampering. Of I/M areas, decentralized program areas have had the highest overall tampering rates, and centralized program areas have had the lowest rates. Analysis of the data for 1975-1983 model year vehicles in the 1987, 1988 and 1989 tampering surveys showed decentralized areas with rates 20% to 50% higher than centralized areas on fuel switching, catalyst, inlet, evaporative canister, and air system tampering, even though many centralized programs do not check underhood components. This suggests that centralized programs are more effective than decentralized programs at deterring tampering.

Further, covert audits of decentralized programs, performed by States and by EPA, have shown that improper inspections occur routinely when vehicles are presented for inspection in decentralized programs and that these problems have not been fully resolved despite determined efforts by some states. In covert audits performed between January and April of 1991, in California and New York (programs which have BAR 90 type analyzers) inspectors passing failing vehicles 20% and 36% of the time, respectively. Even with advanced analyzer technology and the most intensive management of any decentralized program in the country, California has not been able to...
completely resolve its improper inspection problem. Preliminary data from the second round of self-evaluation required under California law show 30% of the vehicles being passed when they should fail at the first Smog Check station which is visited. Covert audits performed by decentralized programs with BAR84 test equipment typically show even higher numbers of inspectors passing failing vehicles, with rates between 34% and 82%. The limited number of covert visits EPA is able to make during program audits show similar results; between 8% and 75% of inspectors passed vehicles which should have failed in the six audits of decentralized programs performed in 1990. The number of inspectors performing some element of the test incorrectly, whether or not it resulted in a false pass, was much higher, between 25% and 100%.

In the audits and studies summarized here, the false passes most often involved incorrect visual or functional inspections of emission components, since defects in these are the easiest for enforcement agencies to introduce into audit vehicles. However, incorrect tailpipe testing is both technically possible and has been observed in audits as well. EPA believes it would be even more common in many decentralized programs than it is at present, except for the fact that a low cost waiver limit, loose control of compliance documents, and other laxities provide alternate means for owners to avoid repairs of cars that would fail a properly performed test or retest. As discussed previously, the Clean Air Act permits low cost waivers for enhanced I/M programs.

Centralized programs are not completely immune to these problems. Due to the automation in centralized systems, as well as on-site supervision, it is virtually impossible to improperly test a vehicle for tailpipe emissions. However, improper testing has been found on the visual emission control device checks in centralized programs. The important feature which sets centralized programs apart is the demonstrated ability to correct problems once found. When problems have been found in well-run centralized systems, the response by program management has led to virtual elimination of the problem in a relatively short period of time. The limited scope of the quality assurance problem, as compared to a decentralized system, makes this feasible. Of course, the durability of this improved performance must be ensured by continual monitoring. Suffice it to say that an effective on-going quality assurance program is equally essential in a centralized system and this action establishes minimum requirements to that end.

Covert audits with a vehicle set to fail the exhaust emissions test or the emission control device visual inspection show, to some degree, how actual initial testing takes place. They do not, however, provide realistic information on the objectivity and impartiality of retest. Based on covert audit findings and data analysis, EPA believes that improper testing in test-and-repair decentralized programs occurs more often on retest than on initial test. First, the option of an improper retest removes most of the incentive there might be for an improper initial test. Second, stations are aware that States use initial test failure rates to screen stations for additional surveillance; those with low initial failure rates are targeted for covert audits or other investigation. EPA believes that inspectors are often too ready to please a customer or unwilling to admit that the vehicle does not pass, even after repairs. In traditional centralized programs, the opportunity for a motorist to “shop around” for a false passing result or for an inspector to probe a clean vehicle or otherwise falsify the tailpipe emission test essentially does not exist. The tailpipe test is automated, inspectors are well supervised and have no stake in repairs, and the single contractor is assured of the test business regardless of test outcome. A multi-supplier test-only system should significantly reduce this problem as well.

To address these types of problems, the regulations set out specific requirements for both basic and enhanced areas for data collection and analysis. Enforcement against stations and inspectors, and quality assurance. Today’s action also requires that all test systems in fully implemented enhanced I/M programs be electronically connected to allow real-time data transfer between stations and a host computer. It also requires computerized (BAR-90 quality) analyzers in basic I/M programs.

2. Data Collection and Analysis

EPA audits have indicated that improper testing often appears in subsequent review of paperwork and records, in the count of stickers or certificates issued but not accounted for, and suspicious information in waiver and repair records.

For example, a station may claim to have charged the same amount for almost all repairs performed, or the same repair may be documented for most vehicles. Records also have shown very short times between tests and the same emission results on a series of tests, indicating that the same vehicle may have been tested repeatedly to provide passing results for a number of vehicles that need repair. Vehicle information (i.e., vehicle type or model year) may be changed between failing and passing tests on the same vehicle, indicating that the inspector changed the standards so the vehicle could pass. Again, the regulations set out requirements for data collection and analysis to better address these types of problems.

Inconsistent data collection has often hampered analysis of program operation; some programs are unable to calculate basic statistics such as the number of vehicles tested and failed because of incomplete data collection. Of those programs that do collect data, some have not used data analysis extensively, despite the fact that it is important in managing program operations. In some cases the quality of the data collected is inferior, as a result of errors on the part of the inspector in entering data into the computer. Typically, data collection problems are more serious in decentralized programs, due to numerous, widely dispersed stations, and varying levels of analyzer sophistication and maintenance.

Therefore, the regulation sets out specific data collection requirements; the test data must clearly link specific test results to specific vehicles, vehicle owners, test sites, inspectors, and test parameters. Further, specific data reports on testing, quality assurance, quality control, and enforcement are required to insure adequate monitoring and evaluation of program operation.

3. Quality Assurance Audits

Experience has shown that quality assurance is an essential element of program management, particularly in decentralized systems, which involve numerous stations and inspectors. With a large, dispersed source of inspections, close management is both time consuming and labor intensive, and close attention to detail on the part of the program staff is required. Typically, adequate funding has not been available.
to carry out the level of quality assurance necessary to oversee the program, particularly in large decentralized networks. In today's regulation, specific quality assurance objectives and requirements are set out, including regular overt and covert audits to determine whether procedures are being followed correctly, whether records are being maintained adequately, whether equipment is functioning properly, and whether other problems exist which hinder the effectiveness of the program.

4. Funding
Lack of adequate funding for management and oversight has hampered the effectiveness of many programs, and has been especially problematic in decentralized and government-run centralized programs. Underfunding tends to negatively impact all aspects of the program, and is one of the problems that is most difficult to address. Without adequate resources to hire personnel, purchase equipment, monitor stations, follow up on enforcement, conduct data analysis, and perform numerous other necessary functions, the efficiency of many programs has suffered. Therefore, the regulation requires a demonstration that sufficient resources necessary to meet the quality assurance objectives and requirements of the I/M regulation are available. One critical factor in funding is the amount spent on quality assurance activities. Centralized programs currently spend about $1 to $2 per vehicle on all oversight related costs. Decentralized programs spend anywhere from 50c to $6 per vehicle, but they all suffer from quality control problems. California recently increased the amount it is spending from $6 per vehicle to $/7 in an ongoing effort to address operating problems in the program.

5. Equipment Quality Control
The ability to insure good equipment quality control has also varied with network type, due to oversight capability, available resources, and equipment sophistication. EPA's audits have shown that analyzers frequently fail calibration and leak checks in decentralized networks, while these problems are rarely found in most centralized programs. The goal of the quality control requirements included in the regulation is to insure that test equipment is calibrated and maintained properly, and that inspection and calibration records are created, recorded, and maintained accurately. These requirements include preventive maintenance on equipment; frequent checks of the sampling system; analyzer calibration; dynamometer and constant volume sampler calibration, if applicable; and document security measures.

6. Enforcing Motorist Compliance
Both centralized and decentralized programs have experienced problems, to varying degrees, with all of the approaches traditionally used to insure that motorists participate in the I/M program. The extent of the problem, however, is often difficult to quantify. For many programs, it is difficult to estimate the number of vehicles requiring testing due to problems in obtaining registration data for a defined area from the agency that collects it and with the quality of that data. If can also be difficult to determine how many vehicles have complied. The number of vehicles which vehicles programs report were tested may be overstated due to multiple initial tests, in decentralized programs especially. Data loss can also result in reported test rates that are incorrect.

Registration denial enforcement systems have been viewed as effective for the most part, although potentially significant problems do exist. For example, programs that are not state-wide have reported problems with people registering vehicles with an address outside the subject area in order to avoid inspection. Similarly, in programs that do not test all vehicles, motorists may falsely register the vehicle with a weight rating, fuel type or model year that is not required to be tested. Test certificates are sometimes counterfeited, allowing people to escape program requirements. Most I/M programs do not have an effective means of auditing the registration denial process; this makes it difficult to monitor which clerks have been correctly rejecting applications not accompanied by the required test certificate. Registration denial enforcement has been found to be less in States in which a decentralized registration issuance system exists. As with emission testing, it is difficult to insure that registrations are properly denied when issued without unified control.

Sticker enforced programs have historically performed poorly, for a variety of reasons. Enforcement against motorists without stickers requires a substantial amount of effort and commitment from police departments, which have never placed I/M test stickers as a priority. Unless sticker accountability is very tight, motorists can obtain a sticker without having an inspection at all. Also, counterfeiting has been found in most sticker enforced programs. If a program is not state wide, it is often impossible to determine whether a vehicle without a sticker is in fact subject to the I/M test without a police officer calling in the registration. Similarly, vehicle types and model years which are not required to be in the program may be difficult to distinguish from subject vehicles. Finally, the penalty for driving without a valid sticker is often not sufficient to deter non-compliance or is waived after compliance, thereby eliminating deterrence effects.

Computer matching systems have been successfully implemented in several areas, but experience shows that this approach can suffer from problems as well, especially in decentralized systems because of faulty data transfer from inspection stations to the enforcement agency. An effective approach requires sophisticated computer hardware and software and a substantial commitment of resources to operate the system. Program managers must also be willing and able to follow through and take whatever enforcement actions are available to ensure motorist compliance, without political interference.

The sections of the regulation covering motorist compliance address the range of problems that programs may encounter in assuring that vehicles comply with the testing requirements. Section 182(c)(3)(C)(iv) of the Act requires that motorist compliance be ensured through the denial of motor vehicle registration in enhanced I/M programs; enhanced programs may use an existing alternative if it can demonstrate that the alternative is more effective in ensuring registration denial. For newly implementing enhanced areas, the Act does not provide any alternatives to registration denial enforcement. EPA policy has always required that alternative mechanisms be "as effective" as registration denial and that requirement is retained for basic I/M programs. The regulation specifies the measures necessary to make such determinations. All programs must develop a system which insures that subject vehicles are easily identified, must adopt a test schedule which clearly determines when a vehicle is required to be tested, and must systematically enforce the program. The program also must develop quality assurance and quality control measures to monitor the effectiveness of the enforcement system.

7. Inspector and Station Enforcement
Lack of adequate enforcement authority against stations and inspectors
has historically been a major stumbling block in attempts to implement effective programs, especially in decentralized systems. Even when programs have an effective effort to discover improper testing by stations and inspectors, there is rarely an adequate system in place to prevent the problem from continuing or recurring. Lack of authority, low fines or penalties, and lack of consistent and systematic penalty schedules have appeared as serious impediments to program enforcement in audits of decentralized programs across the country. Therefore, the regulation requires that all inspectors must receive formal training and be licensed or certified to perform inspections, and that such certification be a privilege rather than a right; in effect, programs must ensure that inspectors who do not follow program requirements will be penalized fairly and systematically, and will lose their license or certification to perform inspections if problems are not corrected satisfactorily.

In sum, EPA believes that significant changes are needed in the design and oversight of decentralized programs. One factor in improving the performance of decentralized I/M programs can be separation of the test and repair function; evidence suggests that tests were more likely to be performed correctly if the testing agent did not have any interest or involvement in the repair of vehicles. Another important consideration is oversight of the multitude of stations found in low volume decentralized programs. Extensive quality assurance efforts are necessary due to the greater number of stations and inspectors, limited oversight capability, greater incentive for improper testing, and lack of effective enforcement mechanisms in many programs. Even very tightly designed and run quality assurance schemes in decentralized systems have not insured that proper inspections take place, that forms are adequately controlled, or that the program actually achieves estimated emission reductions. While advanced analyzer technology, such as BAR 90 systems, may improve the effectiveness of centralized testing, the analyzer alone cannot eliminate the incentive for private station owners to perform tests improperly, or solve the quality assurance and oversight problems repeatedly identified in decentralized programs. Therefore, the additional measures listed above are needed to ensure that claimed levels of emission reductions are actually achieved. While the rule requires additional efforts in each of these areas, it generally allows States flexibility in the specific design of the I/M program.

8. Program Effectiveness Evaluations

To provide assurance that the in-use vehicle emission levels projected to be achieved by a given program are, in fact, being achieved, today’s action requires the implementation of a continuous, State-run effectiveness evaluation program for all enhanced I/M programs. The effectiveness evaluation would need to include, at a minimum, the special testing of a representative, random sample of the fleet, consisting of at least 0.1% of the subject vehicle population. That sample would be required to receive a State-administered or monitored IM240 transient exhaust test, purge test, and pressure test, or another test protocol approved by the Administrator as equivalent for the purposes of evaluation. This testing would take place at the time of these vehicles’ scheduled initial inspections, before any repair. EPA believes this could be accomplished in a program which routinely requires IM240 testing by State personnel randomly visiting stations, double checking quality control, performing or closely observing the testing of vehicles which arrive for an initial inspection during the day, and flagging those vehicles tested as “evaluation” cars. Vehicles required to pass only a steady-state test (i.e., older cars) would need to also receive a transient IM240 test, or other approved test protocol, to accurately characterize tailpipe emissions. Test data from these vehicles would document the true state of maintenance missions, and the performance of the in-use fleet. In a program in which not all stations are equipped for performing the required battery of evaluation tests a different approach would be needed. In this case, a random sample of vehicle owners would need to be notified in advance of their regularly scheduled inspection and required to report to a station which does have that capability and which will be state operated or monitored as previously described.

The evaluation program described above would also determine the amount of emission reductions the state can credit retrospectively toward the reasonable further progress requirements discussed previously. The I/M performance target is to achieve a specific fleet-wide emission level (in grams per mile) after I/M and other mobile source strategies are implemented.

To isolate the impact of the performance of I/M programs, as opposed to other strategies such as new car standards or reformulated gasoline, EPA will evaluate the performance of centralized, test-only systems (the standard established by the Act) to determine the actual effectiveness of the program. EPA will also do the same for any other approved I/M program. This evaluation will be used to update the emission factor model which states will use to conduct the evaluation of the test-and-repair system. Thus, if any given mobile source strategy is more or less effective than MOBILE5 predicts, EPA’s evaluation and model modifications will take that into consideration. For example, if reformulated gasoline is found to be more effective, the emission credits in the model will be adjusted accordingly. So, when an area using reformulated gas evaluates fleetwide emissions, using the revised model will properly account for the actual effect of the program.

K. State Implementation Plan (SIP) Submissions

In today’s action, EPA requires that in order to be considered complete and fully approvable, I/M SIP submittals must include an analysis of the program using the most current EPA mobile source emission model demonstrating that the program meets the applicable performance standard; a description of the geographic coverage of the program; a detailed discussion of each required program element; the legal authority related to the implementation and operation of the I/M program; and the text of all implementing regulations, interagency agreements and memoranda of understanding. The following two deadlines are relevant to the SIP submittal process: by November 15, 1992, States must submit a plan which includes a formal commitment by the Governor to the adoption and implementation of an I/M program meeting all the requirements of this action, including a schedule of program implementation milestones addressing the promulgation of draft and final regulations, the issuance of final specifications and procedures, the issuance of final Request for Proposals (where applicable), and all other relevant dates, including mandatory test dates. Note that these submittals do not have to specify program details such as the test procedures or model year coverage. EPA will conditionally approve all such submittals under section 110(k)(4). EPA believes that conditional approvals are appropriate in these circumstances because states cannot be expected to begin developing I/M programs meeting the requirements of these regulations until the regulations are finally adopted. EPA does, however,
believe that states can adopt and implement I/M programs within one year of making the commitment described above. Therefore, as a condition of EPA's approval, the regulations require that by November 15, 1993, a complete SIP revision must be submitted which contains all of the elements listed above, including authorizing legislation and implementing regulations. Since EPA is not required to consider the above SIP revisions but merely has the discretionary authority to do so, EPA believes that it has the authority to limit the use of conditional approvals to instances in which states commit to submit fully approvable SIPs containing all necessary legislation and regulations by November 15, 1993. EPA believes that in balancing the congressional desire for promptly adopted and implemented programs, these areas must submit commitments to adopt needed changes as soon as possible but no later than the above SIP submittal schedule. The Act also requires basic I/M areas to continue to operate programs at least as stringent as what was in the SIP at the time of passage of the amended Act or the minimum basic program requirement, whichever was greater. Today's action requires that areas meet this requirement but allows for changes in program design, as long as those changes result in a program that achieves at least as much or more reduction as the SIP-approved program at the time of passage of the amended Act or the minimum basic program requirement required by these regulations, whichever is greater.

I. Implementation Deadlines

Basic I/M programs must be implemented as expeditiously as practicable, with full implementation by January 1, 1994, for decentralized programs or by July 1, 1994, for centralized programs. Additional phase-in time (not to exceed the enhanced I/M program area schedule) may be taken if the area opts to do an enhanced I/M program instead. Today's action requires that enhanced I/M programs be fully implemented with respect to all administrative details, such as enforcement and waivers, by January 1, 1995. However, today's action allows states to phase in high-tech testing. The rule calls for high-tech testing to start in January 1995, and to cover at least 30% of the vehicle model years present in the fleet at the time which according to the program design will eventually be subject to the high-tech test in order to meet the November 1999 milestone. The rule also calls for all affected vehicles to be inspected using high-tech by January 1, 1998. Another phase-in option in today's action is to allow States to begin high-tech testing with looser cutpoints to allow the test system and repair industry to adjust to the new requirement. This is important to allow the repair industry to build the skills necessary to fix vehicles that will fail the high-tech procedure. Full cutpoint phase-in for these vehicles must be completed by January 1, 1998. EPA is also concerned about the time that may be needed for programs which have established test-and-repair networks to make a transition to a test-only format without causing some portion of the currently licensed inspection stations to lose their investment in new I/M analyzers. Today's action allows enhanced I/M areas to continue testing vehicles, which are not among the 30% phased in to test-only as described above, in a test-and-repair network until January 1, 1996, when the test-only system would be fully phased-in.

Section 182(c)(3)(B) of the Act requires that enhanced I/M programs "take effect" by November 15, 1992, in compliance with EPA's enhanced I/M guidance. Had the Agency been able to promulgate full guidance by even the statutory date of November 15, 1991, states and local jurisdictions would still have extremely hard pressed to enact legal authority, adopt rules, license or contract for the building of test-only facilities, and complete the myriad of tasks that are required to fully implement an effective program by November 15, 1992. It is clear that this date is now impossible to meet. On the other hand, the sense of urgency incorporated in the statutory date is well justified, and the Agency has attempted to craft a combination of required SIP submittal dates and testing phase-in schedules which will require enhanced I/M areas to make an immediate commitment to a fully effective program and to proceed expeditiously with its implementation. The subsequent submittal dates represent a significant challenge and will require priority focus on implementation of the enhanced I/M program. As stated above in the section on SIP submittal deadlines, EPA believes that states will need one year from initial SIP commitment submission to adopt all necessary statutory and regulatory authority. Once this is done, EPA concludes that the statutory requirement to have programs "take effect" will be satisfied. The implementation phase-in dates provide states the time needed to construct testing facilities and get the program fully operational.

VI. Public Participation

This section discusses the content of major submissions to the docket received during the comment period and EPA's response to those comments. Submissions were received from approximately 300 commenters, including private citizens, state and local governments, various industries, environmental organizations, and other organizations and individuals. Copies of the comments in their entirety can be obtained from the docket for this rule (see "ADDRESSES"). The docket also includes a complete Response to Comments document for this rule, which provides greater detail on the comments received and EPA's response. Given the sheer volume of the comments received, many of the less significant comments or minor details are addressed only in the Response to Comments document even where minor changes to the final rule were made in response to such comments. Seven major issues emerged from the public comments and will be addressed below. These include: Network type, alternatives to the IM240, implementation deadlines, improving repair effectiveness, on-road testing, the enhanced I/M performance standard, and the basic I/M performance standard.

A. Network Type

1. Summary of Proposal

The preamble to the proposed rule stated that EPA knew of no way to make test-and-repair decentralized programs as effective as test-only centralized programs, based on experience over the past 15 years showing problems with improper testing, oversight, and quality control. EPA believes that an inherent conflict of interest exists which increases the likelihood of improper testing in this type of network. However, several commenters in public sessions prior to issuance of the notice of proposed rulemaking (NPRM) had argued strongly that test-and-repair networks are or could be equivalent to centralized programs, and that EPA was unjustified in automatically discounting enhanced test-and-repair program effectiveness.

In the NPRM, EPA proposed that decentralized test-and-repair programs be granted provisional equivalency to
Centralized programs for purposes of initial SIP submission and approval, requiring program evaluation to assure that both centralized and decentralized programs were meeting the performance standard. EPA proposed to require any test-and-repair program granted provisional equivalency to submit a back-up plan including all necessary authority to switch to a test-only system if the program evaluation showed that the performance standard was not being met. EPA also proposed that test-only decentralized networks, such as the management contractor/franchise system being proposed in Texas, be granted presumptive equivalency to traditional single contractor, test-only programs. EPA asked for comment on the appropriate definition of "test-only" for purposes of granting presumptive equivalency. For areas that wished to retain decentralized programs but did not meet requirements for provisional or presumptive equivalency, EPA proposed that States could petition the Administrator for higher than the default level credit for their programs, based on past performance, on a case-by-case basis.

2. Summary of Comments

2. Comments on network type focused on several issues: the advantages and disadvantages of decentralized and centralized networks, the ability or inability of decentralized programs to achieve equivalent emission reductions to centralized programs, and the appropriateness and legality of granting presumptive or provisional equivalency to test-and-repair and test-only decentralized networks. Each of these issues is discussed below.

a. Advantages of Centralized and Decentralized Networks. The advantage offered for decentralized test-and-repair programs by station owners and The Society of Automotive Vehicle Emission Reductions, Inc. (SAVER) was that decentralized programs are more convenient for the public. The consumer can choose where to have a vehicle inspected and repaired. Because repair and test are not separated, it is easier for the mechanic to verify that repairs were performed effectively and redundant equipment costs are avoided. Centralized programs were disfavored because they allegedly would create long lines and necessitate multiple trips, i.e., failing motorists cannot purchase repairs at the inspection facility. Long driving distances and high prices for a centralized test were also cited as disadvantages of centralized programs in comparison to decentralized programs.

The advantages offered for centralized programs by centralized contractors and state agencies operating centralized programs were that test fees were lower, oversight and enforcement costs are lower, and the consumer gets an objective test. These parties find no overall convenience advantage in decentralized programs. They note that improper testing and improper failures also result in inconvenience.

b. Legality and Appropriateness of Provisional Equivalency. NESCAUM, the American Lung Association, the Natural Resource Defense Council, STAPPA/ALAPCO, the New York Department of Environmental Conservation, the New York Department of Motor Vehicles, the California EPA, the California I/M Review Committee, and many others commented that in light of evidence that decentralized test-and-repair programs cannot meet a centralized performance standard, it is inadequate and probably illegal for EPA to allow for provisional equivalency. They suggest no evidence has been provided that decentralized test-and-repair programs can work as well as centralized programs. These commenters argue that to grant provisional equivalency without some confidence in the prospects for success is to irresponsibly allow ineffective and costly programs to continue while air quality improvement suffers. Parties argue that either test-and-repair programs should not be allowed at all, or up-front equivalency demonstrations should be made.

Station owners and others commented that decentralized test-and-repair programs can be as effective as centralized programs. They believe that decentralized programs have improper testing too, and argue that separating repair and testing will not eliminate cheating. The main argument is that BAR90 technology has solved or can allow I/M programs to solve these problems. It was also argued that more attention to enforcement would solve the problem. Some believe that with the addition of enhanced BAR90 technology and the ASM test, stations would have more of an investment and therefore would be more motivated to perform proper tests.

Parties arguing that decentralized programs could not and will never be able to meet a centralized enhanced-performance standard cited past experience, especially with the BAR90 systems in California and New York. They also believe that the inherent conflict of interest, the large number of stations, and the institutional barriers they face make it impossible for a decentralized test-and-repair system to work equally effectively. In that presentation, however, its severe air quality problem and furthering the program, has spent $9-7 per car on oversight and still is experiencing high improper testing rates, it is not likely that any other state can do better.

Comments on the program evaluation requirements for equivalency demonstration were closely related to the proposal's intent of granting presumptive and provisional equivalency. Those who felt that decentralized programs should be granted provisional equivalency commented that a back-up program should not be required. Those who were against granting provisional or presumptive equivalency in the first place commented that at the very least a back-up program was necessary, while others argued that an up-front demonstration of equivalency was required by the Clean Air Act. Those parties did not feel that decentralized programs could meet such a requirement for equivalency up-front or in the future, and felt that allowing states to try was irresponsible of EPA. In light of experience showing that decentralized programs did not work, and especially looking at the California example, these parties argued that provisional equivalency would lead to the prolonging of programs doomed to inevitably fail. Meanwhile, time, money, and effort would be wasted on attempting to demonstrate equivalency, while air quality continued to worsen.

Parties who were network neutral commented in favor of the most effective, cost-effective, and convenient choices possible, and urged EPA to make network requirements clear, so that station owners could make reasonable decisions as to whether to invest in an enhanced program or not.

The National Automotive Service Association urges EPA to be clear in setting equivalency requirements so that small business owners are not misled. The organization is concerned that “changing the ground rules” will mean that owners do not have time to recover their investments.

c. Legality and Appropriateness of Presumptive Equivalency. The majority of comments on this section of the rule relate to the definition of “test-only.” Commenters were concerned that any other services, even if they were not repair related, may lead to a conflict of interest, in that the facility may sell easy passes to increase cut air quality, and that the motivation to perform proper testing to avoid loss of license may be diminished by revenue from other
services. Other services may also simply distract from the testing process and result in weaker quality control and quality assurance. In addition, commenters were concerned that a true separation of test-and-repair could not be achieved. The Natural Resources Defense Council, a centralized contractor, a local repair shop owner, an analyzer manufacturer, and the Automotive Service Association supported a definition of test-only that allowed for no other services.

ARCO commented that the definition of test-only should be less restrictive and allow for the sale of gasoline, tune-ups, brake jobs, tire replacement, oil changes, motor vehicle sales and leasing, and emission control repairs up to $30. Jiffy Lube commented that quick lube services do not affect emissions and should be allowed.

The Texas Air Control Board commented that the rule should more explicitly separate test and repair, for example by barring individuals from owning stock in companies providing motor vehicle sales or services. The TACB had been concerned with making easy passes simply to encourage repeat independent test-only stations might sell equivalency may be premature since the business of manufacturing or selling only contractors to not engage in the test and repair facilities. Mobil Oil supported a definition requiring test-only contractors to not engage in the business of manufacturing or selling motor vehicles in the state, and prohibiting them from offering to the general public for profit motor vehicle maintenance or repair service at the point of sale. TACB had been concerned with making easy passes simply to encourage repeat independent test-only stations might sell emissions.

Also, EPA conducted an audit of the St. Louis, Missouri BAR901/M program which auditors tried to get an inspection without an appointment. Also, 40% of the stations in St. Louis at which auditors tried to get an inspection without an appointment told the auditor that a test could not be done anytime soon and that they would have to return at another time.

The rule gives states the opportunity to reduce by virtually half the inconvenience associated with I/M, simply by switching to a biennial system. States can further enhance the convenience of test-only systems by issuing registrations in the inspection lane. By doing so, motorists avoid having to visit the Department of Motor Vehicles and wait for the registration processed. EPA would encourage states to continue in these efforts at maximizing public convenience.

b. Legality and Appropriateness of Provisional Equivalency. EPA was impressed by the fact that the state agencies that are charged with implementing enhanced I/M programs stated in no uncertain terms that they knew of no solution to the problem of test-and-repair ineffectiveness and virtually all urged EPA to eliminate provisional equivalency from the final rule. EPA was also surprised to hear that many representatives of the decentralized, test-and-repair industry were not in favor of the provisional equivalency approach taken in the rule. They considered it a non-option because of the uncertain situation it left them in and the political difficulty such an approach would face.
The argument by SAVER, and other test-and-repair industry representatives, that the enhanced BAR90 system can address the problems with test-and-repair programs is not supported by the results from BAR90 systems in California and New York, both of which submitted extensive comments and data on effectiveness, and the Missouri BAR90 program which EPA audited in August of 1992. EPA conducted 38 covert audits over three days in St. Louis and 84% of the stations falsely passed vehicles set to fail the test. The catalyst was removed from the covert vehicles, and despite the fact that the Missouri program includes a safety inspection that requires the vehicle to be raised on a lift for a brake check, 78% of the stations passed the covert vehicles for catalytic converter vehicles were also set to fail the tailpipe emission test, yet 34% of the stations found ways to pass these vehicles.

California is recognized by most observers as having the most effective and comprehensive decentralized, test-and-repair system in the world. The California I/M Review Committee's Draft Fourth Report to the Legislature, issued on September 8, 1992, reinforces the findings discussed in the proposed rule that test-and-repair I/M programs are achieving only 50% (at best) of the potential emission reductions. The report shows that the enhanced BAR90 system being used in California is achieving only 42% of the potential for hydrocarbons, 32% for carbon monoxide, and 34% for hydrocarbons. The Committee also writes that "Limited evidence available to the Review Committee suggest that improper Smog Checks may occur more frequently under circumstances where the vehicle owner has had a previous business relationship with the Smog Check station. Under these circumstances, there is an inherent conflict of interest between the desire of the Smog Check station to satisfy the customer and the need to perform a proper and thorough inspection that may cause the vehicle to fail." The Review Committee also concluded that given the enormous expenditures on enforcement in California, additional expenditures on enforcement to improve compliance would not be cost-effective.

The New York Department of Motor Vehicles presented extensive testimony on the pitfalls of implementing a test-and-repair program. New York is using the most advanced BAR90 arrangement with modem hook-ups to a centralized data processing system and automatic polling of stations. The Department testified that the 50% credit reduction estimated for test-and-repair programs by EPA is supported by the Department's findings. The DMV set out in designing its BAR90 system to "close every loophole" but they quickly found out that the system simply does not work. The testimony from New York demonstrates that despite having the most sophisticated analyzers, excellent data collection and analysis, and aggressive covert audits, other fundamental problems impeded effective performance. EPA views many of these problems as major stumbling blocks and would encourage the reader to review the docket for the full text of this testimony. Two examples will provide a flavor of this testimony. First, New York testified that data analysis alone is insufficient evidence in court, that in order to successfully prosecute, the state must catch the inspector doing the improper testing. Second, the state found, as has California and others, that catching inspectors actually doing improper testing is extremely difficult. NY DMV testified, "If you [the inspection station] don't do inspections for anybody but regular customers—bad inspections for anybody but regular customers, or [for] good, strong referrals—from either another station or some person you know and trust—then an undercover will not get you. (emphasis added)" This is a fundamental limitation in the test-and-repair system. EPA's experience with covert audits is that it is very hard to overcome the natural suspicion of inspectors at stations. They know the state is out doing covert audits and most take the necessary precautions to avoid being detected engaging in improper testing, many times EPA covert auditors are discovered by the station and confronted. Thus, a quality assurance system has two effects: it eliminates egregious improper testing and it makes inspectors cautious about for whom they improperly test. Essentially, improper testing becomes harder to detect because it is driven underground. California showed that with the expenditure of vast amounts of resources it could reduce the covert audit false improper test rate from about 80% to about 20-30%. But the I/M Review Committee's work shows that much of this change was a diminution in detection not wholly a reduction in actual improper testing or an improvement in program performance.

The due process system makes it virtually impossible to detect, stop, and prevent improper testing in test-and-repair systems. New York DMV finds that while the BAR90 system has improved its ability to detect improper testing through data analysis, the legal system essentially doesn't allow data to be introduced as evidence. Even when an inspector is caught doing an improper inspection during a covert audit, the plea before the judge is that an isolated mistake was made inadvertently—even when data indicates a larger problem. The inspector gets off with a reprimand, or a short suspension. Even when a revocation is obtained, the inspector can get a stay within 30 days and be back in business selling tests, or the business simply reincorporates with different principals (often in-laws) and business-as-usual resumes. Under these circumstances, the type of analyzer, the type of test, the amount of oversight, and the expenditures made are essentially irrelevant.

The House Committee Report on the Clean Air Act gives some insight into the Committee's thinking on this question when it states, "The intent of the Committee is that enhanced inspection and maintenance programs as required under this subsection are to either be centralized, or to include other program elements which taken together allow a decentralized system to be as effective as a centralized system in identifying noncomplying motor vehicles, and causing such vehicles to be repaired." (House Rept. 101-490, part 1, p. 240) The basic problem with the provisional equivalency approach is that neither EPA nor the states or other commenters know of any "other program elements taken together" that will achieve equal effectiveness, except the separation of test and repair. While some comments indicated concern over particular aspects of the definition of a decentralized test-only system, most concurred with EPA that such a system will be equally effective. However, the docket is conspicuously lacking in ways to make decentralized, test-and-repair equally effective that haven't already been tried and failed.

In light of the absence of known elements to make test-and-repair equally effective, EPA shares the concern that provisional equivalency for test-and-repair systems will simply delay the implementation of effective enhanced I/M programs, that it will create more confusion and hardship than a transition to a test-only network, and will be inordinately expensive to attempt. Therefore, EPA has dropped the provisional equivalency option for test-and-repair systems from the final rule. Nevertheless, besides implementing a decentralized, test-only system, states still have the option under the provisions of case-by-case equivalency to demonstrate that a decentralized.
test-and-repair program will be as effective as a centralized system. States will have to make this demonstration at the time of SIP submittal as contemplated by the statute.

C. Legality and Appropriateness of Presumptive Equivalency. EPA agrees with the majority of commenters on this issue that presumptive equivalency should be further limited with respect to the definition of test-only. It was EPA's intent in deriving the test-only concept, that it would be very much like centralized programs today, where only testing is performed at the station and there is no other business involved to compete with the testing business for management attention. EPA believes that test-only stations could be authorized to perform other state services, such as registration renewal, without creating a conflict of interest.

Thus, EPA has modified the definition of "test-only" for the purposes of presumptive equivalency, to clarify that the sole purpose of stations in such program shall be testing, with the exceptions discussed above.

Jiffy Lube and ARCO would have EPA further blur the line distinguishing testing and repair. EPA finds no rational basis for granting presumptive equivalency to a test-only system in which shops perform all sorts of motor vehicle services (such as lube jobs) and/or repairs. In the recent Missouri audit, lube shops, tire shops and other stations that would fall into a broadened definition of test-only performed improper testing more often than the overall average. There is no evidence to suggest that the conflicts of interest and the program management impediments inherent in the test-and-repair approach are alleviated by eliminating engine repairs alone from the test station. The NRDC commented that presumptive equivalency may be premature for a decentralized, test-only system. While EPA is concerned that states could poorly design and implement test-only programs, EPA believes the risks are no greater than that presented by a centralized system. The reality is that any kind of program can be badly implemented. EPA believes the comprehensive requirements contained in today's rule will lead to high levels of quality control and quality assurance in both types of systems.

B. Alternative Tests

1. Summary of Proposal

It was proposed that alternative test procedures be approved if they were shown to meet the criteria established by § 207 of the Clean Air Act and by the I/M rule. EPA requested comments on an enhanced performance standard that would incorporate steady-state and transient tests and comments and any available test data regarding the feasibility and potential effectiveness of an inspection comprised of steady-state exhaust and steady-state purge tests in a test in a test-only network. Specifically, EPA requested comments on the ability of a steady-state test to identify high emitting vehicles and enforce effective repairs.

2. Summary of Comments

Most commenters recommended that EPA continue to evaluate alternative tests such as the acceleration simulation mode test publicized by ARCO. The main reason offered for why EPA should evaluate and possibly adopt the test for the performance standard was that it was cheaper and faster than the IM240 test. It also was suggested that it might have fewer errors of commission, or false failures. Some automobile dealer associations suggested the test should be adopted in the regulation as equivalent or if not equivalent, better from a cost standpoint. These organizations offered no further data except what ARCO had presented to support their position. Environment Canada submitted data collected in a lab study it undertook in Ottawa. The California Environmental Protection Agency also submitted test data.

Unfortunately, these data have turned out to be defective because incorrect dynamometer settings were used in the testing.

Motor vehicle manufacturers and centralized contractors urged EPA not to approve tests that did not meet the criteria for approval proposed in the NPRM and that were not based on a significant amount of data. On the other hand, ARCO urged EPA to drop the requirement for Federal Test Procedure equivalence, arguing that the test should be approved based on its ability to identify high emitters.

3. Response to Comments

The status of investigating alternative tests has been addressed previously in the discussion of major issues. The final rule leaves the alternative test section unchanged from the proposal. ARCO's suggestion for dropping the correlation requirement would be contrary to the requirements of section 207 of the Clean Air Act. EPA agrees with the Motor Vehicle Manufacturers that a significant data base is necessary to assess the effectiveness of a test procedure—both laboratory data and data from I/M lane application of the test. Test procedures must be evaluated under the full range of circumstances under which they will be used and on the full range of vehicles. EPA is committed to fully evaluating the four-mode test procedure discussed earlier and developing I/M credits for such tests. If these tests prove effective, EPA will establish official test procedures pursuant to the criteria in section 207 of the Clean Air Act, provide emission reduction credits for them, and make them available to I/M programs. At this point in time, however, EPA believes that there is no technical basis for approving any steady-state loaded mode test as an alternative to the IM240.

C. Implementation Deadlines

1. Summary of Proposal

The proposal set out implementation deadlines with the goal of requiring the most expeditious implementation of programs practicable. For basic I/M areas implementing decentralized programs, July of 1993 was the proposed deadline. For basic areas implementing centralized programs, the proposed deadline was six months later, January of 1994. For enhanced areas, it was proposed that all program requirements go into effect by July of 1994, with phase-in of test-only coverage and high-tech testing allowed for areas switching from test-and-repair to test-only. Phase-in of transient testing and evaporative system checks was also proposed for test-only areas. Phase-in was structured such that 30% of the vehicles that were to eventually be subject to transient IM240 testing were to participate in the test-only system beginning in July of 1994. By January of 1998, all applicable model years and types were to be included in the test-only system. For existing test-only areas with contract expiration dates up to December 31, 1994, alternative phase-in schedules could be approved. EPA requested comment on alternative implementation schedules.

2. Summary of Comments

Most environmental groups that commented favored an accelerated implementation schedule. A chapter of the Sierra Club approved of the schedule, but felt that cutpoints should be tightened before 1996. These groups understand the need for States to have time to implement, but still feel EPA should accelerate the implementation schedule from what is in the regulation. The Natural Resources Defense Council argues that legally, EPA is required to begin the sanction process for states failure to implement programs by November 15, 1992, and for basic areas failure to meet the immediate SIP submission requirements of the Clean Air Act. They comment that EPA does
not have legal authority to offer deadline extensions to states through conditional SIP approvals.

ARCO argued that the different deadlines for decentralized programs versus centralized programs is an unfair advantage for centralized programs. This advantage may mean that decentralized programs will fail to meet the equivalency demonstration because of the lack of time to implement a good program.

States required to implement basic and enhanced programs commented that more implementation time is needed. The Alaska Department of Environmental Conservation and the Michigan Department of State commented that a July 1993 deadline for decentralized basic programs was too early, because analyzer manufacturers would not be able to complete the needed steps of designing, manufacturing, and shipping analyzers by then. The American Association of Motor Vehicle Administrators (AAMVA) agreed and suggested, as did Alaska, a deadline of January 1994 for basic decentralized programs. For basic areas implementing enhanced designs, AAMVA suggested a deadline of January 1995, with phase-in allowed as for enhanced areas. Ohio EPA was also concerned that basic areas not be discouraged from implementing enhanced programs because of the January 1994 deadline.

The California Environmental Protection Agency (CALEPA), the California I/M Review Committee, the South Coast Air Quality Management District (SCAQMD), and the Wisconsin Department of Transportation (WIDOT) all formally commented that more time was needed for implementation in enhanced areas. CALEPA is concerned because it believes it cannot obtain legislation until late in 1993. CALEPA suggests the implementation date for states switching to test-only be January 1996. Similarly, the California I/M Review Committee comments that the state legislature cannot be expected to grant broad authority for sweeping program changes on such a short schedule; they suggest that July of 1995 is the earliest practical date for implementation of a different program. These California agencies contend that the 30% phase-in between 1984 and 1996 does nothing to alleviate the time constraints of the implementation schedule. The SCAQMD commented that the phase-out period for decentralized test-and-repair programs should be longer than provided for, given that substantial inertia already exists against program changes. WIDOT favors a deadline for full enhanced program implementation by November 15, 1996, noting that States who are considering different I/M vendors instead of having current contractors upgrade the program will need more time.

The New Jersey, Utah, and New Hampshire I/M agencies also requested more time. The Texas Vehicle Inspectors Association contended that EPA originally promised phase-out of test-and-repair through the year 2000.

3. Response to Comments

EPA agrees in general that the original deadlines written into the proposed rule do not, at this late date, give states adequate time to accomplish the many tasks involved in implementing new or revised I/M programs. It should be noted that the Clean Air Act did not specify implementation dates for basic I/M programs. Sections 182(a)(2)(B)(i) and (b)(4) merely require states to submit plans “immediately after the date of enactment.” Nevertheless, the Clean Air Act contains ambitious deadlines for attainment and reasonable further progress that press for faster implementation than might normally be permissible. There is little time for states that are faced with a new I/M requirement; all of the other states have operating I/M programs and policy makers are generally familiar with many of the issues and requirements involved in upgrading and expanding I/M programs. This should help expedite the legislative and regulatory process to some extent.

On the other hand, EPA recognizes that the legislative and regulatory processes have inherent time constraints. The legislative process generally takes 3-4 months, at best, and the administrative procedures required in states typically require notice-and-comment proposal of regulations prior to being finally adopted. Then additional time is needed to implement the program. Thus, getting legislative changes, regulatory changes, and program modifications implemented in 7 months in basic, decentralized programs (as proposed) is not feasible in most cases and clearly not in the new basic areas. Similarly, the implementation time in centralized, basic programs is even longer because states must develop and issue RFPs, negotiate and award contracts, site and construct stations, and get them up and running smoothly prior to the start date. Thus, EPA believes that section 110(k)(4) gives the agency the authority to conditionally approve I/M SIP submittals based on a commitment by the state to adopt and submit enforceable I/M regulations by November 15, 1993. Where EPA can conditionally approve an I/M SIP submittal, EPA does not believe it is required to find either that a state has failed to submit an I/M program as required by section 182, or that such a submittal is incomplete within the meaning of 110(k)(1). EPA believes that conditional approval under 110(k)(4) is a
The proposal did not require mechanic training or mechanic certification.

2. Summary of Comments

Commenters were virtually unanimous in stating that advanced repair technician training is needed. The commenters felt that adequate training is often not available, and that without a systematic effort to insure the availability of training, I/M will continue to fall short of its goals. Commenters from every point view on other issues agreed that a national effort was needed and that EPA should do more, and the common thread was that consumers subject to mandatory I/M testing can get effective repairs. In addition, improved cost-effectiveness and better program acceptance were cited. A state automotive service association commented that mechanics in their area have a hard enough time fixing cars in the BAR90 program. IM240 and the increased waiver requirements in enhanced areas are expected to result in more problems, repair technician training is needed, that consumers that don't have the skills needed to effectively repair vehicles.

On-board diagnostics and information from the IM240 are expected to help, but commenters noted this would not oppose merely having a test or merely qualifying cars for a waiver. EPA is taking the lead to assure that national standards, tests specific to emission diagnosis and repair, and curricula are available for states to use. It is up to states to ensure the administration of these products. Therefore, today's action requires states, as part of the SIP process, to assure the availability of repair technician training in the local community. This is not a requirement for the state to conduct training, per se, but it is a requirement to take action to get adequate training programs started at local community colleges or vocational schools, or to attract private training providers to offer the kinds of training needed.

EPA believes that this is only a first step and that much more is needed. Even the most expert technicians in a community are going to be unfamiliar with the new test procedures, the standards, and other program related issues. It is essential that state programs take the initiative to set up a process that get this information to technicians, so that when motorists that fail start showing up for repairs, they won't be in the dark. This is the kind of activity that the outreach program required by the rule is intended to encourage. Beyond this, EPA would encourage states to establish repair technician and repair facility certification programs. The most commenters called for the establishment of a national technician certification program. At this point, EPA believes it can best contribute by establishing national examples and guidelines, but it is up to the states to actually implement and enforce certification requirements.

E. On-Road Testing

1. Summary of Proposal

Enhanced areas are required to use on-road testing; i.e., using remote sensing devices or roadside pullovers, to
evaluate the in-use performance of at least 0.5% of the subject fleet each year. Owners of vehicles found to be high emitters are to be required to pass an out-of-cycle follow-up inspection.

Emission credit for on-road testing is not specified but will be granted for a program designed to obtain significant reductions over and above those already achieved by other aspects of the program.

2. Summary of Comments

Comments on the on-road testing provisions were fairly balanced between those who believe EPA should strengthen on-road requirements and those who believe EPA should relax on-road requirements. In general, states opposed the 0.5% requirement as burdensome and statistically unjustified and the requirement for out-of-cycle inspections, given the limits of the technology and the high risk of false failures. California suggested a cap on the number of vehicles that would need to be tested in states with large vehicle populations. On the other hand, New York State Senator Owen Johnson commented that EPA is bypassing Congressional intent by requiring only 0.5% of the fleet to be on-road tested.

Remote Sensing Technologies suggests EPA should increase the minimum requirement to between 10 and 15%. Resources for the Future, Donald Stedman, and the New Jersey Chapter of the National Motorists Association suggest changes to the NPRM to increase the role of remote sensing. Mr. Stedman suggests that remote sensing can do a better job of testing than an idle or two-speed idle test in a traditional network.

Many organizations did not offer an opinion on the technical merits of the technology but demonstrated considerable interest in remote sensing as a way to possibly reduce costs and inconvenience of I/M, for example by serving as a screening mechanism, and as a way of possibly increasing an I/M program's effectiveness, for example by reducing between cycle tampering and encouraging better maintenance. These organizations urged EPA to continue to evaluate and improve remote sensing technology, and to use remote sensing as a supplement to traditional I/M programs.

The Motor Vehicle Manufacturers Association commented that the 0.5% requirement was arbitrary and that the requirement should be based on cost/benefit analysis. Ohio EPA and Remote Sensing Technologies commented that EPA should establish credits for on-road testing.

3. Response to Comments

EPA has considered the conflicting comments received and has chosen to leave the requirement as it was proposed, except for a cap on the minimum number of vehicles that must be tested and minor clarification of terms. The Clean Air Act clearly requires on-road testing to be part of enhanced I/M programs, not simply as window-dressing but as an active part of the overall system. Thus, taking measurements alone is not enough enforcement of emission limits must be pursued. EPA plans to issue guidance to states on how to employ remote sensing technology, addressing its current limitations and possibilities. EPA believes that the carbon monoxide channel is accurate enough to use in an I/M program setting as long as certain standards and criteria are employed. It should be reemphasized that remote sensing is not an adequate replacement for enhanced I/M testing. At this point, there is no NOx capability, it cannot detect evaporative emission system problems, and the hydrocarbon channel is still very coarse. The bottom line is that remote sensing is a useful supplement to enhanced I/M. What is not clear at this point is the amount of emission reduction that could be derived from on-road testing in the context of a stringent, comprehensive, and well-enforced enhanced I/M program, which the Clean Air Act also expects.

Therefore, EPA believes that more work is needed to actually deploy on-road testing instruments, require high-emitters to be repaired, and assess the emission reduction benefits derived given various levels of effort. Once this study is completed, EPA believes it will have enough information to establish a general credit model for on-road testing. In the interim, EPA would welcome specific on-road testing plans from states that include an analysis of the potential credit to be derived from the proposed program. EPA is ready to work with states to establish credit where appropriate.

The House Committee Report states that "On-road emission testing is to be a part of the emission testing system, but is to be a complement to testing otherwise required since on-road testing is not intended to replace such testing. On-road emission may not be practical in every season or for every vehicle, and is not required. However, it should play some role in the State program." (House Rept 101-490, part 1, page 239) It seems that Congress recognized practical difficulties and limitations of on-road testing but still wanted "some" role for it in enhanced programs. It clearly did not intend for all vehicles to receive on-road testing. In selecting the 0.5% test level for on-road testing, EPA felt it was important to establish minimum requirements but not to preclude different options. EPA chose the 0.5% minimum based on an analysis of the feasibility of employing either remote sensing devices or roadside pullover programs. EPA agrees with California that a cap on the number of vehicles required to be tested is appropriate and the rule has been modified to limit the minimum to 20,000 vehicles per year or 0.5% of the subject fleet, whichever is less. Setting the minimum testing requirement higher would make roadside pullover programs impractical for I/M programs, especially large ones. For example, in a 4,000,000 car fleet, to obtain a 0.5% test sample requires about 20 weeks of roadside pullovers. A 1% test sample would require on-road testing just about year round for a single team. EPA agrees with the House Committee report that on-road emission testing is not practical all year round. Weather conditions, especially, will limit when on-road testing can be performed—for both road-side pullovers and remote sensing. States are free, of course, to test more than the minimum.

F. Enhanced I/M Performance Standard

1. Summary of Proposal

EPA proposed an enhanced performance standard based on annual testing of all 1968 and later light duty vehicles and light duty trucks, with transient mass-emission testing of 1986 and later model year vehicles using the IM240 driving cycle, transient evaporative system purge test for 1966 and later model year vehicles, and evaporative system integrity test of 1983 and later model year vehicles. The performance standard includes a visual inspection of the catalyst and fuel inlet restrictor on all 1984 and later model year vehicles. The standard is based on a pre-1981 stringency rate (failure rate) of 20%, a waiver rate of 1%, and a compliance rate of 98%. States will have to use the most current version of EPA's mobile source emission factor model at the time of SIP submission (or an alternative approved by the Administrator) to demonstrate its program will achieve VOC, NOx, and/or CO emissions levels that are equal to or less than those that would be achieved by the model program.

It was proposed that NOx emission reductions not be required in any ozone nonattainment area where it was determined by the Administrator under section 182(b)(1)(A)(i) of the Act.
pertaining to reasonable further progress demonstrations or section 182(f)(1) of the Act pertaining to provisions for major stationary sources that such reductions would not be beneficial in lowering ozone concentrations.

EPA requested comment on the above issues including specifically: the legality of providing for NOx exemptions; the assumptions used for waiver rate, compliance rate, and model year coverage; comment on the low and medium performance standard options described in the preamble; and, comments on an enhanced performance standard that would incorporate steady-state tests.

2. Summary of Comments

The vast majority of commenters supported the high-option performance standard proposed by EPA, citing its cost-effectiveness and potential to significantly reduce the contribution of motor vehicles to the air quality problem. STAPPA/ALAPCO commented on the need for a strong performance standard in light of political pressure to preserve the status quo. They argue adopting a weaker standard will result in weak programs, necessitating more costly but more politically acceptable controls for stationary or new vehicle regulations. Motor vehicle manufacturers, oil companies, and chamber of commerce groups agreed. Comment and opposition focused on evaluating and/or allowing alternative test procedures to the IM240, not on lowering the performance standard to the level of the medium or low options. Most commenters recommended that EPA continue to evaluate tests such as the Acceleration Simulation Mode tests advocated by ARCO so that they might be used in place of the IM240 but virtually none commented that the ASM be the basis for the enhanced I/M performance standard.

There was mixed comment on whether NOx waivers should be allowed. Two parties, an oil company and a motor vehicle manufacturer supported the proposed waiver, while two parties, both state agencies, opposed the exemptions. Those opposed argued that NOx emission reductions are beneficial in any ozone nonattainment area, and that the Clean Air Act does not allow for such a waiver. They suggest that authority for NOx exemptions under the Act applies only to stationary sources.

On the issue of waivers and compliance, the American Lung Association commented that the standard should be based on 100% compliance and 0% waivers, arguing that the standard should be at least as strict as it was in the past for the basic standard. They argue states should have to make up the difference, if they fail to meet these goals, in some other way. A state agency and three oil companies commented that these rates were unrealistic, even with an increase in the waiver rate of $450. The state agency suggested compliance should be about 95%, and an oil company suggested 90-95%, based on California data from roadside checks showing above 5% of vehicles without valid registrations. The Natural Resources Defense Council urged EPA to strengthen the proposed standard to include high-tech testing for more model year vehicles, and to require inclusion of heavy duty trucks. The Arizona Department of Environmental Quality suggests that idle and two speed tests should be limited to areas not doing enhanced I/M, as these tests offer little or no advantage over a high-tech test.

3. Response to Comments

The final rule makes minor changes to the “model program” that forms the basis of the enhanced I/M performance standard. EPA believes that this is a cost-effective and reasonably achievable standard for enhanced I/M areas. The question of alternative tests has been addressed at length in a previous section. States will have the option of implementing other test regimes if ongoing evaluations show them to be effective. Strengthening the standard would diminish state flexibility in designing the enhanced I/M program. Section 182(c)(3)(B)(i) of the Act specified the model year coverage for the enhanced performance standard to include only light-duty cars and trucks. There is no requirement for heavy-duty trucks to be included in the performance standard. EPA believes it should be up to the states to weigh the costs and benefits of including heavy-duty trucks against making other program decisions—such as the cost and benefits of improving motorist compliance enforcement.

While the idle and two-speed tests are less effective at both identifying vehicles that need repair and ensuring effective repairs, the marginal benefit to the states in terms of the costs and benefits of including heavy-duty trucks against making other program decisions—such as the cost and benefits of improving motorist compliance enforcement. EPA sees no legal impediment to the NOx waiver provision and until ongoing air quality analyses are completed it won’t be clear in some areas as to whether NOx reductions are useful. The issue may be moot, however, if the current trend continues which indicates that NOx emission reductions are essential for attainment of the ozone standard. EPA acknowledges that the statute does not contain an explicit provision for waivers of NOx requirements with respect to the I/M program, as it does for certain stationary source requirements in section 182(f). EPA believes, however, that requiring NOx reductions where they would be useless or even counterproductive in reducing ozone concentrations would be absurd, and that Congress could not have meant for the Act to be implemented in a manner that would lead to absurd results. Therefore, EPA believes that where the Administrator has made the finding, necessary to support the section 182(f) exemptions, the NOx reductions would not be beneficial in reducing ozone concentrations, then NOx reductions would not be required by the I/M program. As stated previously, EPA does not now consider it likely that the vehicles and because they will dominate the fleet in the next few years and beyond. These tests do fairly well on old technology vehicles, although problems with reliability and consistency still exist—especially when it comes to defeat adjustments to make the vehicle pass. Nevertheless, it may be that states can mix idle, two-speed, and transient testing in the I/M program and get effective results at a lower cost than doing transient testing on all vehicles covered. On the other hand, the cost associated with deploying three different test regimes in one test network may outweigh the savings in time offered by the idle and two-speed tests. EPA believes states should weigh these options and the advantages and disadvantages for each very carefully before selecting a test regime.

In general, broader coverage of the transient test may well be the most cost-effective strategy. The failure rates for particular model years, and the emission benefits derived from testing them, are easily controlled by adjusting the emission standards to desired levels—as is the case with pre-1981 vehicles in I/M programs today. (Note, however, that tightening standards for 1981 and later vehicles than the 1.2% CO and 220 ppm HC levels in use today on the steady-state tests would result in major increases in false failures and would not be acceptable.)
Administrator would make such findings, in light of new scientific evidence that NOx reductions are significantly more important in achieving ozone reductions than previously believed.

The mobile source emission factor model has compliance and waiver rates as inputs. Lower compliance and higher waivers simply mean less emission reduction benefit. EPA does not believe that a compliance rate of 100%, as suggested by the American Lung Association, is realistic. EPA has reviewed the compliance issue and agrees with comments that 98% may not be achievable. On the other hand, some programs have clearly demonstrated that 90% compliance is achievable. Thus, the final “model program” has been modified to include a 90% compliance rate. It will be up to the states to assess the effectiveness of current and upgraded enforcement and waiver systems and commit to a performance level for these two criteria in the SIP.

The state will be held accountable for these commitments and must run the program such that they meet those standards. If a state chooses not to or structural limitations are such that they cannot achieve these levels of performance, then program expansion is necessary to account for the emission reduction losses that occur. For example, if a state could only achieve a 95% compliance rate instead of 90%, then one option would be to expand model year coverage of the high-tech tests to make up for the lost reductions. The state will need to make trade-off decisions between more resources dedicated to the enforcement process versus more testing.

EPA believes that achieving the waiver rates in the short run will be relatively easy since loosers cutpoints will be used in the early stages of the program. How well the state implements repair technician awareness program, however, will influence initial waiver experience. In the long run, as the program tightens the cutpoints to achieve the standards it will be more difficult for some vehicles to comply. This could cause waiver rates to increase. Again, repair technician training will be a key factor in ensuring effective repairs at this point. Thus, EPA has decided to increase the model program waiver rate to 3% of failed vehicles.

Compliance and waivers are important equity issues. EPA believes it unfair to the majority of motorists that comply with program requirements if the program is poorly enforced and a small portion of the vehicle population is allowed to slip through the cracks without complying. A similar situation exists with waivers. The data EPA has seen shows that most motorists that fail do go out and get the vehicle fixed, regardless of cost, because they are dedicated to the goal of the program. So, again, it is unfair to these motorists to set up a waiver system that allows economically able motorists to drive non-complying vehicles.

This rule establishes comprehensive quality control and quality assurance on both waivers and compliance. EPA believes these measures will go a long way towards eliminating the abuses of the program that are found in many programs. For all of these reasons, EPA sees no justification for weakening the compliance target or the waiver rate target in the enhanced I/M performance standard.

G. Basic I/M Performance Standard

1. Summary of Proposal

The NPRM proposed to keep the basic I/M performance the same as it was prior to enactment of the Clean Air Act Amendments of 1990. EPA requested public comment on whether the basic I/M performance standard should be strengthened to require additional emission reductions, including whether high-tech tests should be required in basic I/M programs. EPA also requested comment on whether the basic performance standard should be revised to better reflect typical program operation in terms of waivers, compliance and the inclusion of light-duty trucks.

2. Summary of Comments

There was support for strengthening the basic standard to include light-duty trucks, pressure tests, visual checks, and tests such as the 2-speed loaded mode or ASM-type tests that include NOx testing from environmental groups, oil companies, I/M contractors, and four state agencies. STAPPA/ALAPCO supported upgrading the standard. It was commented that the idle test has been discredited and should not be used, even in basic areas. There was little support for including IM240 type testing in basic areas from these groups. Three parties including the Motor Vehicle Manufacturers Association suggested it would not be worthwhile to require high-tech testing in areas where only basic testing is needed. Two I/M contractors and an association for emission control manufacturers were in favor of the best test available for all areas.

3. Response to Comments

EPA agrees with the comments that indicate that current science and technology with regard to I/M should be considered in establishing the performance standard for basic I/M areas. EPA believes states should seriously consider pursuing high-tech testing because it is a highly cost-effective approach to emission control, but does not believe, however, that requiring a performance level on the order of that required for enhanced I/M areas is appropriate at this time. In that NOx is viewed as increasingly important for ozone attainment, EPA believes that basic I/M areas that are nonattainment for ozone need to take this factor into consideration. Historically, I/M programs have been designed to reduce only emissions of VOCs and CO (and exhaust opacity in some areas). Such programs, however, can lead to small increases in NOx levels. EPA is concerned that such NOx increases could make ozone attainment more difficult. Thus, today’s action leaves the basic I/M performance standard as proposed except it requires that basic I/M programs in ozone nonattainment areas be designed and implemented in such a way as to prevent increases in NOx emissions, unless a demonstration can be made that such NOx increases would not delay or prevent attainment of the ozone standard. The deadline for meeting the NOx requirement shall be within 12 months of initial implementation of the I/M requirement pursuant to this rule to allow areas time to implement NOx reduction techniques, except that newly implemented basic programs shall include NOx controls from the start. Tropospheric ozone formation is a function of many site-specific variables, most importantly the local VOC to NOx ratio. In areas where the VOC/NOx ratio is relatively large, NOx reductions are needed to reduce ozone. EPA would encourage areas that are NOx limited to implement NOx emission testing to achieve appropriate NOx emission reductions.

Apart from demonstrating that NOx increases would not be harmful, states have a variety of program design options that would avoid NOx increases or actually decrease NOx. The most important way states could pursue NOx control is through three-way catalyst inspections. Replacement of missing or misfueled catalysts may get enough NOx benefit to overcome the increases in NOx from HC and OO repairs. EPA is also investigating the effect of relaxing CO cutpoints in ozone nonattainment areas that are CO attainment areas.
approach alone might be enough to overcome any NOx increases associated with HC repairs. Many states could add steady-state NOx testing fairly simply and require repair of vehicles with high NOx emissions. EPA anticipates that steady-state NOx testing will be effective enough to overcome the NOx increases associated with HC and CO repairs (see later discussions of steady-state tests for enhanced I/M programs). States could also design programs that emphasize evaporative emission repairs and other HC related strategies that would not increase NOx emissions. The technical support document contains further discussion and specific examples of program designs that would meet this requirement.

VII. Environmental and Health Benefits

This rule will provide environmental and health benefits by decreasing in-use motor vehicle emissions of VOCs, CO, and NOx. In 1985, motor vehicles were responsible for 70 percent of the nation's CO, 45 percent of the NOx, and 34 percent of the VOCs. Ozone, the major component of smog, is produced by the photochemical reaction of VOC and NOx emissions. Motor vehicles are also a significant source of toxic air pollutants. Their contribution to toxics is decreased as hydrocarbon levels are lowered. All of these pollutants have significant adverse effects on human health and the environment.

Carbon monoxide interferes with the oxygen-carrying capacity of the blood. Exposure aggravates angina and other aspects of coronary heart disease and decreases exercise tolerance in persons with cardiovascular problems. Infants, fetuses, elderly persons, and individuals with respiratory diseases are also particularly susceptible to CO poisoning.

Nitrogen oxides, a family of gases including nitrogen dioxide (NO2) and nitric oxide (NO), irritate the lungs, lower resistance to respiratory infections, and contribute to the development of emphysema, bronchitis, and pneumonia. NOx contributes to ozone formation and can also react chemically in the air to form nitric acid. HC emissions include VOC, which react with NOx to form ozone and other photochemical oxidants. Some VOCs, including benzene, formaldehyde, and 1,3-butadiene, are air toxics. They cause cancer and other adverse health effects, as well as toxic depositions in lakes and coastal waters.

As shown in the following table, when compared to the no-I/M case, current I/M programs obtain estimated total annual emission reductions of 110,000 tons of VOC and 1,566,000 tons of CO. Implementation of the recommended biennial high option would yield estimated annual emission reductions of 384,000 tons of VOC and 2,345,000 tons of CO from enhanced I/M programs, and 36,000 tons of VOC and 500,000 tons of CO from basic programs, as compared to the no-I/M case. Enhanced I/M programs would also reduce NOx emissions. The transient test with NOx cutpoints designed to fail 10% to 20% of the vehicles would yield estimated NOx reductions of 6% relative to emission levels with no program in place.

<table>
<thead>
<tr>
<th>National Benefits of I/M</th>
<th>[Annual tons of emission reductions in 2000 compared to the no-I/M case]</th>
</tr>
</thead>
<tbody>
<tr>
<td>VOC</td>
<td>CO</td>
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<tr>
<td>Expected Reductions</td>
<td></td>
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<td>Total Future Benefits</td>
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Thus, enhanced I/M and improvements to existing and new I/M programs will result in national emission reductions substantially greater than current I/M programs.

VIII. Economic Costs and Benefits

A. Impacts on Motorists

EPA has developed estimates of inspection and repair costs in a "high-tech" I/M program. The derivation of these estimates is detailed in the Regulatory Impact Analysis, included in the technical support documents for this rulemaking. A conventional steady-state I/M test including emission control device checks currently costs about $3.50 per vehicle on average in a centralized program, and $17.70 on average in decentralized programs. The test for 1986 and later vehicles in today's action, including transient, purge, and pressure testing, is expected to cost approximately $17 per vehicle in an effectively run, high-volume program. If the inspection were performed biennially (and extended to 1984 and 1985 vehicles) the estimated annual per vehicle cost would be about $9.

The cost to fix a transient test failure that would also fail the 2500/idle test is estimated at $75. The average cost to repair vehicles failing the transient test that would not fail the 2500/idle test is estimated to be $50. Thus, the overall average repair cost for transient failures is estimated to be $120. Average repair costs for pressure and purge test failures are estimated to be $36 and $70, respectively. Repairs for NOx failures are estimated to cost approximately $100 per vehicle. Data from a pilot program in Indiana indicate that it would be very rare for one vehicle to need all three of these repair costs. Also, some vehicles will be repaired at no charge to the owner, due to warranty coverage provided by the manufacturer.

These repairs have been found to produce fuel economy benefits that will at least partially offset the cost of repairs. Fuel economy improvements of 0.1% for repair of pressure test failures and 5.7% for repair of purge test failures were observed. Vehicles that failed the transient short test at the established cutpoints were found to enjoy a fuel economy improvement of 12.6% as a result of repairs. Fuel economy improvements persist beyond the year of the test.

Currently, there are an estimated 64 million vehicles subject to I/M nationwide. Of these, 24 million are in centralized programs and 40 million are in decentralized programs; some of these are annual programs and a few are biennial. EPA estimated the economic impact of continuing these programs as they exist today and evaluated this in the year 2000. Inspection fees would total an estimated $747 million annually, $182 million in centralized programs, and $565 million in decentralized programs. Repair costs would total an estimated $392 million, $140 million in centralized programs, and $252 million in decentralized programs. Fuel economy benefits from repairs would total an estimated $245 million, $92 million in centralized programs, and $153 million in decentralized programs. These costs are expressed in 1990 dollars but are not discounted since the costs and benefits of I/M accrue during each year the program is in operation.

As shown in the table below, estimates using EPA's cost effectiveness model show that total inspection costs in the year 2000 in enhanced I/M programs accounting for growth in the size of the inspected vehicle fleet due to expanded and additional program areas are expected to be $1.00. The overall repair costs for pressure and purge test failures were expected to be $36 and $70, respectively. The overall repair cost for transient failures is estimated to be $120. Average repair costs for pressure and purge test failures are estimated to be $36 and $70, respectively. Repairs for NOx failures are estimated to cost approximately $100 per vehicle. Data from a pilot program in Indiana indicate that it would be very rare for one vehicle to need all three of these repair costs. Also, some vehicles will be repaired at no charge to the owner, due to warranty coverage provided by the manufacturer.

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test and $208 million due to the functional evaporative tests.

In basic I/M programs, total annual inspection costs in the year 2000 are estimated at $162 million, and repair costs are expected to be approximately $113 million.

Thus, despite significant increases in repair expenditures as a result of the program, the switch to biennial testing and the improved fuel economy benefits will result in a lower national annual cost of the inspection program.

If EPA were to establish the low option as the performance standard, states could continue the kinds of programs we see being run today. EPA believes that this would result in significantly higher direct and indirect costs to the nation. There would be the direct cost, discussed above, of about $350 million that would be avoided by the changes called for in today's action. The indirect cost has to do with the cost of achieving the emission reductions forgone by establishing the low option standard. EPA believes that alternative VOC emission reduction strategies will, on the margin, cost about $5000 per ton. Given this, the cost of getting the additional tons of benefit that the high option offers from these more expensive sources amounts to about $1.25 billion. Thus, the total cost of implementing a low option I/M program may be as much as $1.6 billion more than the approach taken in today's action.

### PROGRAM COSTS AND ECONOMIC BENEFITS

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<td>613</td>
<td>602</td>
<td>(667)</td>
<td></td>
<td>(208)</td>
<td>541</td>
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</table>

1 Net cost is derived by adding inspection and repair costs and subtracting fuel economy benefits.

### B. Impacts on the Inspection and Repair Industry

EPA has determined that the regulations promulgated today may have a significant impact on a substantial number of the small businesses that own and operate emission test facilities in states that currently have decentralized test networks and are required to implement enhanced I/M. Testing revenues in such states are currently about $300 million. In states which choose a multiple-independence supplier, test-only format for inspections, this impact will involve the small businesses having to choose between providing inspection-only services and repair-only services, and the associated costs of making such a transition. In some cases, the businesses may not be able to make the investment to become a test-only station, but may also be unable or unwilling to compete successfully in the high-tech repair market. The impact of this rule could potentially mean closure for some of these businesses that are otherwise marginal. This is discussed in more detail later in this section. EPA has outlined a set of mitigation measures, discussed in detail previously, as well as later in this section, intended to ease the transition to an enhanced I/M program that separates test and repair functions. Given the phase-in of I/M requirements that discussed above and established by today's rule, EPA anticipates any negative impacts will be ameliorated, if not eliminated. By contrast, many small businesses will be positively affected by the major increase in repair activity expected as a result of today's action. The volume of repair expenditures is expected to increase from current levels of about $302 million to approximately $823 million. This includes an increase of $211 million in areas that currently have decentralized programs, $100 million in areas that currently have centralized programs, and $120 million in areas that are not currently operating I/M programs but are required to by the Act.

The types of small businesses that currently do inspections in decentralized I/M programs include car dealerships, service stations, general and specialized repair shops, and similar businesses. Equipment manufacturers were not examined here because such firms do not constitute small entities. In general, inspections are just one of many services these businesses provide, although some inspection stations are set up for the sole purpose of performing inspections and provide no other services. The average inspection station in decentralized programs tests about 1,025 vehicle per year. An average station has gross receipts of between $5,000 and $30,000 per year from providing emission testing services, depending on the allowable test fee in the state. After accounting for costs associated with purchasing and maintaining the analyzer, the test stations are left with a net gain of between $2,000 and $8,000 per year. Thus, it is clear that inspection services do not, by themselves, yield significantly high profit to the average inspection station. Even if the inspection labor is that of the owner of the station, which is often the case, average test volume alone would not generally sustain the business by itself.

While the average profit is low, the distribution of inspection volume varies considerably, with some stations, typically performing virtually no inspections at all ranging to some that perform over twice the average number of inspections. The best data available to EPA on this comes from California where equipment costs are high due to the transition to BAR90 analyzers in 1990 and inspection fees are high, as well. Obviously, the stations in...
Much of the emission repair business for no testing are repair-oriented shops. Of the licensed stations that do virtually no test activity, it is assumed that half report no test activity. For the purposes of this analysis, it is assumed that fewer tests than average because of test stations in current I/M programs fall in the test business and the repair business. To opt for the test business, an investment of about $140,000 will be needed for the equipment to perform the tests (EPA based this estimate on conversations with equipment manufacturers over the past year; however, more recent data indicate that a lower figure is more likely). This is a much larger investment than the $8,000-88,000 cost of equipment in most current decentralized programs, and very large even compared to the cost of BAR90 analyzers which are about $10,000-$15,000. The stations that are most likely to opt for the test business are those that currently derive substantial profit from the test business and little or none from repairs. For the purposes of this analysis, it is assumed that the 23% of stations performing over 150% of the average test volume might opt into the test-only business, or, to the same effect, that there is a new entrant to the test-only business for each of these 23% that chooses to pursue the repair-only business instead. After withdrawals by other stations, explained below, these stations would each do about 4,100 tests annually on average.

Car dealerships and repair shops, especially those that specialize in engine repair, will probably opt out of the test business but will compete for the additional repair business that enhanced I/M will create. Data available indicate that roughly 50% of test stations in current I/M programs fall into the dealership and engine-repair category. These stations also tend to do fewer tests than average because of their focus on repair, and some of them likely fall into the 22% of stations that report no test activity. For the purposes of this analysis, it is assumed that half of the licensed stations that do virtually no testing are repair-oriented shops. Much of the emission repair business for dealerships and repair shops is referrals from stations that do little or no emissions-related repair (data indicate that about half of the motorists that fail a test in a decentralized program go to another facility for repair). These businesses will be faced with the need to upgrade repair technician skills and to obtain equipment necessary to perform effective repairs on new technology vehicles. The emission analyzers owned by these stations will be useful in testing vehicles that will still be subject to steady-state testing and may also provide an indicator of repair success on vehicles receiving a transient emission test. In the case of BAR90 analyzers, this equipment was designed to down load OBD fault codes and to act as a platform for diagnosis of vehicle problems. The degree to which these businesses need to upgrade their skills and equipment will affect how the number that can afford to perform emissions repairs and depends much upon the current resources employed.

The remaining 27% of the licensed station population (i.e., 100%-50% dealer/repair shops-23% high-volume test stations) are a mix of: service stations some of which do some engine repairs including I/M repairs on some of the cars they test, in addition to gasoline sales; non-engine service or repair shops, such as brake and muffler shops; and retailers. Assuming that the other half of the 22% of stations that show virtually no test activity fall into this group, then 16% of the licensed stations (27%-11%) in decentralized programs are now active and may opt not to engage in the test business (which would preclude their repair business) and also opt not to make up for the lost test revenue by competing for some of the increased I/M-generated engine repair business. The 11% in this group that did no test business during the survey period are estimated to be unlikely to be adversely affected by this regulation since they are deriving no income from the inspection business at this time. The 16% that are doing test business all currently have other sources of income other than the inspection business, including non-emission related engine repairs, non-engine repairs, gasoline sales, and merchandising. Data are not available on the contribution of test business and associated repairs to total revenue in these businesses. Since these stations by definition perform less than 150% of the annual inspection volume, the lost profit should be less than $12,000 for inspections, plus about $5,000 from at most 200 I/M repairs each year. If 10% of the 16% of the stations comprising this category were so marginally profitable that the loss of inspection and associated repair revenue forced closure of the business it would amount to a total of 400 stations, in enhanced inspection programs nationwide that would close as a result of this action. The discussion in Section V.F. above on mitigating impacts on inspection stations is especially intended to address the impact on this group of station owners.

If a single contractor, centralized program was instituted in an area where a decentralized program is currently operating, the option to become a test-only station would not be available to the 23% of the station population that would be likely to pursue it. Members of this group without profitable alternatives would also face the risk of closure. The likelihood of closure would depend upon the fraction of incomes derived from inspections. Data on this is not available. Since many of these stations have other lines of business such as gasoline sales, auto parts sales, or various types of vehicle repair and servicing, the loss of inspection business will not necessarily mean closure. As before, if 10% of these stations might close as a result of a switch to a single-contractor, centralized system, as well as 10% of the 16% stations identified previously as being at risk, then 877 stations might close nationwide if all decentralized programs in enhanced I/M areas switched to centralized, single-contractor systems. If the areas containing half of the current inspection stations were to switch to a single-contractor, centralized system, then potential closures would number about 499.

The most severely impacted would be the test-only stations, which in California comprise 2% of the test stations (about 100 stations in California). EPA believes California probably has many more test-only stations than other decentralized I/M states due to the fact that average test fees are higher making it feasible to have testing as a sole source of income (there is no cap on test fees in California, as there is in most other states). Given that they have no other lines of business to compensate for the loss of inspection revenue, these test-only stations would almost certainly close if the area were to switch to a centralized single contractor system, unless these stations were able to win the contract (some of these businesses have made it clear to EPA that they intend to do this).

Section V.F. above, regarding mitigating impacts on existing test stations, details ways states could minimize or eliminate the loss of jobs or...
closure of small businesses. The regulation includes a phase-in of the test-only requirement, by January 1996, to allow adequate time for small businesses to make the transition.

These losses to the small business community and to labor would be offset by the increase in jobs resulting from a test-only program. Repair shop business is likely to increase and would require the services of additional mechanics, and test-only inspection stations would need additional inspectors. The $431 million in extra expenditures estimated in the section on Economic Costs is comprised of about 40% parts cost and the remainder for labor, profit, and overhead. The additional parts demand has potential economic benefits for the parts manufacturers as well as retailers in the local community. The 60% remainder is estimated to be about 50% profit and overhead at the repair shop and 50% labor (for about $130 million total). EPA estimates that in a high volume enhanced I/M lane, 3-4 inspectors would be needed per lane instead of the 1-2 typically employed in current high volume systems. The table below shows that current jobs in I/M areas are about 11,400, with approximately 9,100 in the inspection sector and 2,300 in the repair sector. As a result of today's action EPA expects the total number of jobs in the repair sector to increase to 6,200 jobs for a gain of 3,900 repair technician jobs. The change in inspector jobs depends upon the type of systems states choose to implement. If states choose the decentralized, test-only approach with multiple, independent suppliers, it is expected that more jobs would result, a total of 10,500 inspectors would be required in addition to the 2,700 inspector jobs in basic I/M programs. If states choose a single-supplier contractor approach, then about 2,700 inspector jobs would be needed in enhanced I/M areas. Thus, total future inspector jobs would range from 5,400 to 13,200. In addition to inspector and repair technician jobs, the increased expenditure for auto parts and for setting up and servicing test-only stations, will result in construction industry jobs, parts manufacturing jobs, and service industry jobs. EPA estimates a total of 3,600 additional jobs in these sectors. Overall, EPA estimates that today's action will result in between 3,600 and 11,600 additional jobs, directly or indirectly related to testing and repair of motor vehicles as a result of the program. It is important to note that these may not represent a net increase in nationwide employment overall. The resources allocated to test and repair services may otherwise have been spent on other goods and services in the economy. Thus, it may be that other sectors of the economy would incur an employment loss.

In conclusion, today's action may cause significant shifts in business opportunities. Small businesses that currently do both inspections and repairs in decentralized I/M programs may have to choose between the two. Significant new opportunities will exist in these areas for small businesses to continue to participate in the inspection and repair industry. This will mean shifts in jobs but an overall increase in jobs in the repair sector and a small to potentially large increase in the inspection sector, depending on state choices. Up to four years is provided by today's rule for this transition. EPA believes this will provide ample time for these businesses and individuals to take advantage of the new program. In addition, EPA believes there are several other ways states can help test stations, inspectors, and repair technicians make the transition to an enhanced I/M program, as described above.

### Changes in Jobs as a Result of the Rule

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<tr>
<th></th>
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<td>Current Test and Repair Jobs: Inspector Jobs</td>
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<td>Inspectors</td>
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<td>Total Net Gain in Jobs</td>
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### IX. Cost-Effectiveness

Based upon the inspection and repair costs and fuel economy benefits described above, a biennial high-tech I/M program satisfying the requirements of this rule has an estimated net annual cost of $5,400,000 per year per million vehicles. If all program costs are allocated to VOC reductions the biennial high-tech program has an annual cost effectiveness of $880 per ton of VOC (without inconvenience assumptions); if performed annually the cost effectiveness of the high-tech program is $1,700 per ton of VOC. This compares with a cost effectiveness of $5,400 per ton for basic I/M, $4,400 per ton for the Low Option, and $2,600 for the Medium Option. If all of the program costs were allocated to NOX, reductions (which only occur in the high option program), then the cost per ton for the annual high-tech program would be $8,200 per ton and for the biennial high-tech program $9,267 per ton of NOX benefits.

If program costs are allocated among all three pollutants as described in "Enhanced I/M Costs and Benefits," costs per ton of VOC reduction are estimated at $4,500 for Basic I/M, $3,700 for the Low Option, $2,200 for the Medium Option, and $500 for the biennial high-tech program. If the high-tech program were performed on an annual basis, the cost effectiveness would be $1,300 per ton.

The cost-effectiveness estimates discussed above do not include the cost associated with the time it takes for a motorist to get through the inspection process (to allow for straightforward comparisons among I/M options). In a well-designed, high-volume system (the type being required here), the time to drive to the station, get tested, and drive home is estimated to be about 45 minutes. Assuming a time value of $20 per hour, that would add $15 to the cost. Assuming this, the biennial high-tech program would have a cost-effectiveness of $1,600 per ton, rather than $500 per ton (with cost split among the three pollutants). If all costs were allocated to VOC, then the cost effectiveness including the inconvenience assumption is $2,000 per ton of VOC (as opposed to $880 per ton of VOC without the inconvenience assumption). This is still significantly lower than costs per ton of other available control strategies.

### X. Relationship to Other In-Use Control Strategies

Considerable emission control development effort has been expended in the last two decades by both the vehicle manufacturers and the federal government, and each new vehicle produced represents a monetary investment in terms of emission control components. These efforts and
investment have caused the passenger cars and light-duty trucks produced in recent years to be much lower emitting than their predecessors, provided that they are properly operating and that the conditions of temperature, traffic speeds, etc., they encounter are the same as the conditions of the EPA compliance test. However, a large body of evidence has been accumulated showing that current generation vehicles are not all operating properly in actual service. Moreover, they are often used under other temperature and driving conditions, and significant excess emissions are released as a result. These facts have been true of every generation of vehicles to some extent and have always been recognized by policy makers and professionals in the field of motor vehicle emission control.

However, as nearly total control over the emissions of properly functioning vehicles under standard test conditions has been achieved, the lack of equivalent control over malfunctions and during non-standard conditions has become more evident to all. The Clean Air Act Amendments of 1990 reflect a renewed realization of these two problems. The Amendments contain several provisions aimed at reducing them. This section explains these provisions and their interrelationships.

The Amendments address emissions performance under non-standard conditions by directing EPA to revise the procedures under which compliance is determined, for both exhaust and evaporative emissions. EPA is in the process of doing so, and has underway a number of studies and rulemakings in this area, some begun prior to the 1990 Amendments. When completed, these actions will ensure that properly functioning vehicles maintain excellent control over emissions under all conditions. In doing so, they will also help achieve an enhanced level of effectiveness in certain metropolitan areas. EPA is also directed to enforce the requirement for a “basic” I/M program in more areas, and to reconsider its previous policy for the design and operation of such programs. Basic and enhanced I/M programs both achieve their objective by identifying vehicles that have high emissions as a result of one or more malfunctions, and requiring them to be repaired. An “enhanced” program is enhanced in the sense that it must cover more of the vehicles in operation than has been the case to date in many metropolitan areas, must employ inspection methods which are better at finding all high emitting vehicles, and must have additional features to better ensure that all vehicles are tested properly and properly repaired if failed by the tests.

Third, section 202(m) of the amended Act directs EPA to promulgate onboard diagnostics regulations requiring new vehicles to be equipped with on-board diagnostic (OBD) systems. On-board diagnostic systems have been incorporated into some vehicles at the manufacturers’ initiative since 1980. The new regulations will require all manufacturers to install equipment that will monitor the performance of emission control equipment, the vehicle’s fuel metering system and ignition system, and other equipment and operating parameters for the purpose of detecting malfunction or deterioration in performance that would be expected to cause a vehicle to fail emission standards. When such problems are detected, a malfunction indicator lamp located in the dashboard of the vehicle will be illuminated, instructing the vehicle driver to “Service Engine Soon.” Codes indicating the likely problem will also be stored in the vehicle’s onboard computer for ready access by the servicing technician to aid in proper diagnosis and repair of the vehicle. The Agency has proposed onboard diagnostics regulations (September 24, 1991; 56 FR 46272) that would be phased in beginning with the 1994 model year. In accordance with section 202(m), today’s action allows the opportunity for case-by-case waivers until the 1996 model year.

OBD systems will have their greatest benefit when the vehicle owner observes the warning signal and on his or her initiative obtains appropriate emission system repair promptly. Prompt action minimizes the time the vehicle is operated in a higher polluting condition, and the possibility of a prolonged malfunction in one component or subsystem causing secondary damage to another. EPA is hopeful that many owners will take such prompt voluntary action. There is, of course, no way to ensure that they do. Another way that OBD systems will have an emissions benefit is that vehicle repair technicians may access the OBD codes when vehicles are presented to them with symptoms of poor driveability or even just for routine servicing, and thereby discover emission malfunctions of which the owner was unaware. EPA hopes that in many such cases the owner will consent to an appropriate repair of the vehicle.

An appropriately designed OBD system also presents an opportunity to include a scan of the stored malfunction codes at the time of the periodic I/M test, to identify vehicles whose owners did not seek repairs when the warning signal first occurred. The presence of one or more codes in a vehicle indicates the current or recent existence of a malfunction with the potential to cause high emissions. Such a car should be failed and required to return after repair. Code inspections can be viewed as a supplement to the inspection regime which improves its effectiveness in finding high emitting vehicles, but also as a possible long-term replacement to the other tests for identifying high emitting vehicles. With the rapid connection and data transfer capabilities which have been developed by industry and are required by EPA’s proposed OBD regulation, code inspections would not add significantly if at all to the time or cost for an inspection. The Act requires EPA to promulgate a rule which will require all...
I/M programs to include code inspections. Today's notice makes note here of this requirement, but does not actually establish that rule currently. EPA believes it would be inappropriate to do so prior to final adoption of OBD rules. EPA expects to make a proposal on OBD inspection simultaneously with or soon after finalizing the regulation which requires OBD systems to be installed on new vehicles.

OBD systems, in addition to improving the identification of high emitting vehicles in an I/M program will also be of great utility in the repair of vehicles which fail the inspection, including the exhaust emission test. OBD will speed identification of the responsible component, and help avoid trial and error replacement of components which the repair technician cannot evaluate otherwise. The Clean Air Act requires that OBD inspections be performed in I/M programs once vehicles with mandated OBD systems become part of the fleet. At this point, EPA believes it is too early to be absolutely certain about the potential for OBD to replace existing or newly established test procedures or how long it will take to refine the technology to the point where it could substitute.

Fourth, the Act requires the sale of reformulated gasoline in many of the worst ozone nonattainment areas, with the option for others to elect to be subject to the program also. The Act also requires the sale of oxygenated gasoline in all carbon monoxide nonattainment areas. These special fuels will reduce the emissions of vehicles that are not operating properly due to a malfunction, as well as emissions from properly functioning vehicles. Reformulated fuels will only partially soften the effect of a malfunction in the emission control system. Similarly, changes in certification test procedures and new vehicle standards will not eliminate the need to inspect and repair in-use vehicles.

Finally, EPA is undertaking an initiative in response to the Act which may reduce the need for certain enhanced I/M emission checks. On October 3, 1991 (56 FR 50196), EPA proposed a program in which EPA would, at the manufacturer's option, certify specific vehicle models as "inherently low emitting vehicles" (ILEVs). The inherently low emitting character of these vehicles would arise mostly in regard to their evaporative emissions, which are required to remain very low even under malfunction conditions.

XI. Other Issues

Since the publication of EPA's draft I/M guidance in April 1991, the Agency has been made aware of a unique situation warranting enhanced air quality planning for the City and County of El Paso, Texas. El Paso lies across the Rio Grande from Ciudad Juarez, Mexico. The 1990 populations of the two cities are about 592,000 and 798,000 respectively. Efforts are underway to develop an emissions inventory for Ciudad Juarez and to execute an Integrated Border Environmental Plan (IBEP) involving both the United States and Mexico over the next few years. Although the emission inventories are not yet complete, it is believed that the mobile source contribution from Ciudad Juarez is greater than that from El Paso County.

El Paso is a serious ozone nonattainment area, which makes it subject to the enhanced I/M provisions of the Act. Its required attainment date for ozone is November 15, 1999, by which time it must also achieve a 24 percent reduction in adjusted 1990 baseline emissions in order to comply with the reasonable further progress requirements of section 182(c)(2). Because of the influence of emissions from Ciudad Juarez, ozone attainment in El Paso is believed to be impossible without very significant new controls in that city, which despite progress on the IBEP are uncertain in the 1999 time frame. In recognition of this, Congress provided in section 179B for approval of plans from an area like El Paso that would otherwise be satisfactory to achieve attainment but for emissions emanating from outside the United States.

Nevertheless, the goal for El Paso should be to make as much progress as possible in reducing ambient ozone concentrations by 1999 and thereafter. In doing so, El Paso will also face additional obstacles due to the difficult economic situation in the area, the relatively long period for which vehicles are used before being retired, and the importance of vehicle emissions to the total inventory on the El Paso side of the border. Because of its special circumstances, EPA believes that El Paso should be allowed to use its limited resources with as much flexibility as possible in how they are applied to the ambient ozone problem, subject to the Act's reasonable further progress requirements. EPA therefore has explored whether and how it might establish a unique requirement for enhanced I/M in El Paso, within the range of discretion it has under the Act in defining enhanced I/M in general. Specifically, EPA has determined that the area can demonstrate that the 24% reasonable further progress requirement is being met, then the enhanced I/M program in El Paso shall meet a performance standard which is achievable by a model program that is identical to that for other areas except in the following ways: the transient emission test and transient purge test are conducted on 1990 and later model year vehicles, two speed testing on 1981-89 model year vehicles, idle testing on 1988-81 model year vehicles, and pressure testing on 1971 and later model year vehicles. El Paso must meet the emission reductions from this program in November 1999, and every three years thereafter until its attainment year. El Paso must meet the same SIP submittal deadlines discussed above as established for all other areas.

EPA received no comment challenging its ability to establish this special performance standard for El Paso. Small businesses in El Paso urged a more relaxed standard, but EPA does not believe that would be consistent with the statutory requirement for an enhanced I/M program.

XII. Administrative Requirements

A. Administrative Designation

Under Executive Order 12291, EPA has determined that this regulation is major. A Regulatory Impact Analysis has been prepared and is available from the address provided under "For More Information Contact."

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

B. Reporting and Record Keeping Requirement

The information collection requirements in this 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 (IOCR No. 763) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street SW. (PM-223Y), Washington, DC 20460, or by calling Sandy Farmer (202) 260-2740.

Public reporting burden for this collection of information is estimated to vary from 43 to 127 hours per response with an average of 85 hours per response, including time for reviewing
instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

These requirements are not effective until OMB approves them and a technical amendment to this effect is published in the Federal Register.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1990 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis. This analysis has been completed and is included in the docket. Issues related to this analysis have been addressed previously in various sections of this preamble.

XIII. Rationale for Effective Date

The Clean Air Act requires certain areas to submit SIP revisions containing I/M programs by November 15, 1992. This rule clarifies the content of those required SIP revisions. EPA believes that it is appropriate to make the rule effective on the date of publication so that states will know what the rule requires before the date for SIP submission. EPA has previously announced its intentions with respect to these required SIP submittals in the General Preamble for Implementation of Title I of the Act, 57 FR 13498 (April 16, 1992), and the Notice of Proposed Rulemaking for this rule, 57 FR 31058 (July 13, 1992). Consequently, states have been on notice for some time of how EPA would be interpreting the statutory requirements for I/M SIP submittals. States have repeatedly urged EPA to take final action on these rules before the statutory deadline for SIP submittal. For all of these reasons EPA concludes that it has good cause for making this rule effective on the date of publication. EPA is making this rule effective without thirty days advance notice for good cause shown and published with this rule.

List of Subjects in 40 CFR Part 51

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Motor vehicle pollution, Nitrogen oxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 1, 1992.
William K. Reilly,
Administrator.

For the reasons set out in the preamble, part 51 of chapter I, title 40 of the Code of Federal Regulations is revised as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 is revised to read as follows:
Authority: 42 U.S.C. 7401-7671q.

Appendix N to Part 51 [Removed and Reserved]

2. Appendix N of part 51 is removed and reserved.

3. A new subpart S is added to part 51 to read as follows:

Subpart S—Inspection/Maintenance Program Requirements

Sec.
51.350 Applicability.
51.351 Enhanced I/M performance standard.
51.352 Basic I/M performance standard.
51.353 Network type and program evaluation.
51.354 Adequate tools and resources.
51.355 Test frequency and convenience.
51.356 Vehicle coverage.
51.357 Test procedures and standards.
51.358 Test equipment.
51.359 Quality control.
51.360 Waivers and compliance via diagnostic inspection.
51.361 Motorist compliance enforcement.
51.362 Motorist compliance enforcement program oversight.
51.363 Quality assurance.
51.364 Enforcement against contractors, stations and inspectors.
51.365 Data collection.
51.366 Data analysis and reporting.
51.367 Inspector training and licensing or certification.
51.368 Public information and consumer protection.
51.369 Improving repair effectiveness.
51.370 Compliance with recall notices.
51.371 On-road testing.
51.372 State implementation plan submissions.
51.373 Implementation deadlines.

Appendices to Subpart S of Part 51
Appendix A to Subpart S—Calibrations, Adjustments and Quality Control
Appendix B to Subpart S—Test Procedures
Appendix C to Subpart S—Steady-State Short Test Standards
Appendix D to Subpart S—Steady-State Short Test Equipment
Appendix E to Subpart S—Transient Test Driving Cycle

Subpart S—Inspection/Maintenance Program Requirements

§ 51.350 Applicability.

Inspection/maintenance (I/M) programs are required in both ozone and carbon monoxide (CO) nonattainment areas, depending upon population and nonattainment classification or design value.

(a) Nonattainment area classification and population criteria. (1) States or areas within an ozone transport region shall implement enhanced I/M programs in any metropolitan statistical area (MSA), or portion of an MSA, within the state or area with a 1990 population of 100,000 or more as defined by the Office of Management and Budget (OMB) regardless of the area's attainment classification. In the case of a multistate MSA, enhanced I/M shall be implemented in all ozone transport region portions if the sum of these portions has a population of 100,000 or more, irrespective of the population of the portion in the individual ozone transport region state or area.

(2) Apart from those areas described in paragraph (a)(1) of this section, any area classified as serious or worse ozone nonattainment, or as moderate or serious CO nonattainment with a design value greater than 12.7 ppm, and having a 1980 Bureau of Census-defined (Census-defined) urbanized area population of 200,000 or more, shall implement enhanced I/M in the 1990 Census-defined urbanized area.

(3) Any area classified, as of November 5, 1992, as marginal ozone nonattainment or moderate CO nonattainment with a design value of 12.7 ppm or less shall continue operating I/M programs that were part of an approved State Implementation Plan (SIP) as of November 15, 1990, and shall update those programs as necessary to meet the basic I/M program requirements of this subpart. Any such area required by the Clean Air Act, as in effect prior to November 15, 1990, as interpreted in EPA guidance, to have an I/M program shall also implement a basic I/M program. Serious, severe and extreme ozone areas and CO areas over 12.7 ppm shall also continue operating existing I/M programs and shall upgrade such programs, as appropriate, pursuant to this subpart.

(4) Any area classified as moderate ozone nonattainment, and not required to implement enhanced I/M under paragraph (a)(1) of this section, shall implement basic I/M in any 1990 Census-defined urbanized area in the nonattainment area.
(5) Any area outside an ozone transport region classified as serious or worse ozone nonattainment, or moderate or serious CO nonattainment with a design value greater than 12.7 ppm, and having a 1990 Census-defined urban area population of less than 200,000 shall implement basic I/M in the 1990 Census-defined urbanized area.

(6) If the boundaries of a moderate ozone nonattainment area are changed pursuant to section 107(d)(4)(A)(i)-(iii) of the Clean Air Act, such that the area includes additional urbanized areas, then a basic I/M program shall be implemented in the newly included 1990 Census-defined urbanized areas.

(7) If the boundaries of a serious or worse ozone nonattainment area or of a moderate or serious CO nonattainment area with a design value greater than 12.7 ppm are changed any time after enactment pursuant to section 107(d)(4)(A) such that the area includes additional urbanized areas, then an enhanced I/M program shall be implemented in the newly included 1990 Census-defined urbanized areas.

(8) If a marginal ozone nonattainment area, not required to implement enhanced I/M under paragraph (a)(1) of this section, is reclassified to moderate, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area. If the area is reclassified to serious or worse, an enhanced I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area. If the area is reclassified to serious or worse, an enhanced I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area.

(9) If a moderate ozone or CO nonattainment area is reclassified to serious or worse, an enhanced I/M program shall be implemented in the 1990 Census-defined urbanized area, if the 1990 Census-defined urban area population is 200,000 or more. If less than 200,000, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area.

(10) If the boundaries of a moderate ozone nonattainment area are changed pursuant to section 107(d)(4)(A)(i)-(iii) of the Clean Air Act, such that the area includes additional urbanized areas, then an enhanced I/M program shall be implemented in the newly included 1990 Census-defined urbanized areas.

(11) If an area outside an ozone transport region, the program shall entirely cover all counties within subject MSAs or subject portions of MSAs, as defined by OMB in 1990, except largely rural counties having a population density of less than 200 persons per square mile based on the 1990 Census can be excluded provided that at least 50% of the MSA population is included in the program. This provision does not preclude the voluntary inclusion of portions of an excluded rural county. Non-urbanized islands not connected to the mainland by roads, bridges, or tunnels may be excluded without regard to population.

(2) Outside of ozone transport regions, programs shall nominally cover at least the entire urbanized area, based on the 1990 census. Exclusion of some urban population is allowed as long as an equal number of non-urban residents of the MSA containing the urbanized area is included to compensate for the exclusion.

(3) Emission reduction benefits from expanding coverage beyond the minimum required urban area boundaries can be applied toward the reasonable further progress requirements or can be used for offsets, provided the covered vehicles are operated in the nonattainment area, but not toward the enhanced I/M performance standard requirement.

(4) In multi-state urbanized areas outside of ozone transport regions, I/M is required in those states in the subject multi-state area that have an urban area population of 50,000 or more, as defined by the Bureau of Census in 1990. In a multi-state urbanized area with a population of 200,000 or more that is required under paragraph (a) of this section to implement enhanced I/M, any state with a portion of the urbanized area having a 1990 Census-defined population of 50,000 or more shall implement an enhanced program. The other coverage requirements in paragraph (b) of this section shall apply in multi-state areas as well.

(5) Requirements after attainment. All I/M programs shall provide that the program will remain effective, even if the area is redesignated to attainment status, until the state submits and EPA approves a maintenance plan, under section 175A, which convincingly demonstrates that the area can maintain the relevant standard for the maintenance period without benefit of the emission reductions attributable to the I/M program. The state shall commit to fully implement and enforce the program throughout such period, and, at a minimum, for the purposes of SIP approval, legislation authorizing the program shall not sunset prior to the attainment deadline.

(d) SIP requirements. The SIP shall describe the applicable areas in detail and, consistent with § 51.372 of this subpart, shall include the legal authority or rules necessary to establish program boundaries.

§ 51.351 Enhanced I/M performance standard.

(a) Enhanced I/M programs shall be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm), achieved from highway mobile sources as a result of the program. The performance standard shall be established using the following model I/M program inputs and local characteristics, such as vehicle mix and local fuel controls, except as provided in paragraph (e) of this section. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model or an alternative model approved by the Administrator, and shall meet the minimum performance standard both in operation and for SIP approval. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas subject to enhanced I/M, the performance standard must be met for both oxides of nitrogen (NOx) and volatile organic compounds (VOCs), except as provided in paragraph (d) of this section.

(1) Network type. Centralized testing.

(2) Start date. For areas with existing I/M programs, 1983. For areas newly subject, 1985.

(3) Test frequency. Annual testing.


(5) Vehicle type coverage. Light duty vehicles, and light duty trucks, rated up to 8,500 pounds Gross Vehicle Weight Rating (GVWR).

(6) Exhaust emission test type. Transient mass-emission testing on 1986 and later model year vehicles using the IM240 driving cycle, two-speed testing (as described in appendix B of this subpart S) of pre-1981 vehicles and idle testing (as described in appendix B of this subpart S) of pre-1981 vehicles is assumed.

(7) Emission standards. (i) Emission standards for 1986 through 1993 model year light duty vehicles, and 1994 and 1995 light-duty vehicles not meeting Tier 1 emission standards, of 0.80 gpm hydrocarbons (HC), 20 gpm CO, and 2.0 gpm NOx;
Milestones for standard shall include on-road testing of each applicable milestone and extreme ozone nonattainment areas, on nonattainment areas, and for severe and model program by 2000 for ozone same or lower emission levels as the programs shall be shown to obtain the compliance rate.

Inspections.

Subject to a steady-state test (as measured as no less than 6% CO plus S); and

Maximum exhaust dilution measured as no less than 6% CO plus carbon dioxide (CO2) on vehicles subject to a steady-state test (as described in appendix B of this subpart S); and

(a) Basic I/M programs shall be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels achieved from highway mobile sources as a result of the program. The performance standard shall be established using the following model I/M program inputs and local characteristics, such as vehicle mix and local fuel controls. Similarly, the emission reduction benefits of the state’s program design shall be estimated using the most current version of EPA’s mobile source emission model, and shall meet the minimum performance standard both in operation and for SIP approval.

Network type. Centralized testing.

Start date. For areas with existing I/M programs, 1983. For areas newly subject, 1994.

Test frequency. Annual testing.

Model year coverage. Testing of 1968 and later model year vehicles.

Vehicle type coverage. Light duty vehicles.

Exhaust emission test type. Idle test.

Emission standards. No weaker than specified in 40 CFR Part 65, Subpart W.

Emission control device inspections. None.

Stringency. A 20% emission test failure rate among pre-1981 model year vehicles.

Waiver rate. A 0% waiver rate.

Compliance rate. A 100% compliance rate.

Evaluation date. Basic I/M programs shall be shown to obtain the same or lower emission levels as the model inputs by 1997 for ozone nonattainment areas and 1998 for CO nonattainment areas; and, for serious or worse ozone nonattainment areas, on each applicable milestone and attainment deadline, thereafter.

Oxides of nitrogen. Basic I/M testing in ozone nonattainment areas shall be designed such that no increase in NOx emissions occurs as a result of the program. If the Administrator finds, under section 182(b)(1)(A)(i) of the Act pertaining to reasonable further progress demonstrations or section 182(f)(1) of the Act pertaining to provisions for major stationary sources, that NOx emission reductions are not beneficial in a given ozone nonattainment area, then NOx emission reductions are not required of the enhanced I/M program, but the program shall be designed to offset NOx increases resulting from the repair of HC and CO failures.

El Paso, Texas. In the case of El Paso, Texas, providing that its SIP has been approved as meeting the reasonable further progress requirements of the Act so that the Administrator has not determined that a milestone has been missed, the model program inputs shall be as in paragraph (a) of this section, except that the transient and purge tests shall be assumed for 1990 and later model year vehicles, two-speed testing on 1981-1989 model year vehicles, idle testing on 1966-1980 model year vehicles and pressure testing on 1971 and later vehicles.

Basic I/M performance standard.

(a) Basic I/M programs shall be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels achieved from highway mobile sources as a result of the program. The performance standard shall be established using the following model I/M program inputs and local characteristics.
§ 51.353 Network type and program evaluation.

Enhanced I/M programs shall be operated in a centralized test-only format, unless the state can demonstrate that a decentralized program is equally effective in achieving the enhanced I/M performance standard. Basic I/M programs can be centralized, decentralized, or a hybrid at the state’s discretion, but shall be demonstrated to achieve the same emission reduction as the program described in § 51.352 of this subpart.

(a) Presumptive equivalency. A decentralized network consisting of stations that only perform official I/M testing (which may include safety-related inspections) and in which owners and employees of those stations, or companies owning those stations, are contractually or legally barred from engaging in motor vehicle repair or service, motor vehicle parts sales, and motor vehicle sale and leasing, either directly or indirectly, and are barred from referring vehicle owners to particular providers of motor vehicle repair services (except as provided in § 51.356(b)(1) of this subpart) shall be considered equivalent to a centralized, test-only system. States may allow such stations to engage in the sale of refreshments for the use of employees and customers waiting at the station and may fulfill other functions typically carried out by the state such as renewal of vehicle registration and driver’s licenses, or tax and fee collections.

(b) Case-by-case equivalency. (1) Credits for test-and-repair networks, i.e., those not meeting the requirements of paragraph (a) of this section, are assumed to be 50% less than those for a test-only network for the tailpipe emission test, purge test, evaporative system integrity test, catalyst check, and gas cap check; and 75% less for the evaporative canister checks, PCV check, and air system checks. Smaller reductions in credits for the various test protocols may be claimed if a state can demonstrate to the satisfaction of the Administrator that based on past performance with the specific test-type and inspection standards employed, its test-and-repair system will exceed these levels. At a minimum, such a demonstration shall include:

(i) Surveys that assess the effectiveness of repairs performed on vehicles that failed the tailpipe emission test and evaporative system tests;

(ii) In programs including tampering checks, measurement of actual tampering rates, their change over time, and the change attributable to finding and fixing such tampering as opposed to deterrence effects; and

(iii) The results of undercover surveys of inspector effectiveness as it relates to identifying vehicles that need repair.

(2) In the case of hybrid systems, which may be implemented in basic I/M areas, including both test-only and test-and-repair facilities, full credit shall apply to the portion of the fleet initially tested and subsequently retested at a test-only facility meeting the requirements of paragraph (a) of this section, and to the portion of the fleet initially tested and failed at a test-and-repair facility but subsequently passing a comprehensive retest at a test-only facility meeting those same requirements. The credit loss assumptions described in paragraph (b)(1) of this section shall apply to the portion of the fleet initially passed at a test-and-repair facility, and to the portion initially failed at a test-only facility and retested at a test-and-repair facility.

(c) Program evaluation. Enhanced I/M programs shall include an ongoing evaluation to quantify the emission reduction benefits of the program, and to determine if the program is meeting the required standards of the Clean Air Act and this subpart.

(1) The state shall report the results of the program evaluation on a biennial basis, starting two years after the initial start date of mandatory testing as required in § 51.375 of this subpart.

(2) The evaluation shall be considered in establishing actual emission reductions achieved from I/M for the purposes of satisfying the requirements of sections 182(g)(1) and 182(g)(2) of the Clean Air Act, relating to reductions in emissions and compliance demonstration.

(3) The evaluation program shall consist, at a minimum, of those items described in paragraph (b)(1) of this section and mass emission test data using the procedure specified in § 51.357(a)(11) of this subpart, or any other transparent, mass emission test procedure approved as equivalent, and evaporative system test procedures. The test data shall be obtained from a representative, random sample, taken at the time of initial inspection (before repair), of at least 0.1 percent of the vehicles subject to inspection in a given year. Such vehicles shall receive a state administered or monitored IM240 mass emission test or equivalent, as specified in this paragraph (c)(3), at the time of the initial emission test.

(4) The program evaluation test data shall be submitted to EPA and used by the state to calculate fleet emission factors, to assess the effectiveness of the I/M program, and to determine if the performance standard is being met. EPA will update its emission factor model periodically to reflect the appropriate emission reduction effectiveness of program elements within § 51.351 of this subpart based on actual performance.

(d) SIP requirements. (1) The SIP shall include a description of the network to be employed, the required legal authority, and, in the case of areas making claims under paragraph (b) of this section, the required demonstration.

(2) The SIP shall include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation, and related details of the evaluation program, and the legal authority enabling the evaluation program.

§ 51.354 Adequate tools and resources.

(a) Administrative resources. The program shall maintain the administrative resources necessary to perform all of the program functions including quality assurance, data analysis and reporting, and the holding of hearings and adjudication of cases. A portion of the test fee or a separately assessed vehicle fee shall be collected, placed in a dedicated fund and retained, to be used to finance program oversight, management, and capital expenditures. Alternatives to this approach shall be acceptable if the state can demonstrate that adequate funding of the program can be maintained in some other fashion (e.g., through contractual obligation along with demonstrated past performance). Reliance on future uncommitted annual or biennial appropriations from the state or local General Fund is not acceptable.
unless doing otherwise would be a violation of the state's constitution. This section shall in no way require the establishment of a test fee if the state chooses to fund the program in some other manner.

(b) Personnel. The program shall employ sufficient personnel to effectively carry out the duties related to the program, including but not limited to administrative audits, inspector audits, data analysis, program oversight, public education and assistance, and enforcement against stations and inspectors as well as against motorists who are out of compliance with program regulations and requirements.

(c) Equipment. The program shall possess necessary equipment to achieve the objectives of the program and meet program requirements, including but not limited to a steady supply of vehicles for covert auditing, test equipment and facilities for program evaluation, and computer capable of data processing, analysis, and reporting. Equipment or equivalent services may be contractor supplied or owned by the state or local authority.

(d) SIP requirements. The SIP shall include a description of the resources that will be used for program operation, and discuss how the performance standard will be met.

(1) The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment (such as vehicles for undercover audits), and any other requirements discussed throughout, for the period prior to the next biennial self-evaluation required in § 51.366 of this subpart.

(2) The SIP shall include a description of personnel resources. The plan shall include the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions and the training attendant to each function.

§ 51.355 Test frequency and convenience.

(a) The performance standards for I/M programs assume an annual test frequency; other schedules may be approved if the required emission targets are achieved. The SIP shall describe the test schedule in detail, including the test year selection scheme if testing is other than annual. The SIP shall include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process.

(b) In enhanced I/M programs, test systems shall be designed in such a way as to provide convenient service to motorists required to get their vehicles tested. The SIP shall demonstrate that the network of stations providing test services is sufficient to insure short waiting times to get a test and short driving distances. Stations shall be required to adhere to regular testing hours and to test any subject vehicle presented for a test during its test period.

§ 51.356 Vehicle coverage.

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and light duty trucks up to 8,500 pounds GVWR, and includes vehicles operating on all fuel types. The standard for basic I/M programs does not include light duty trucks. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles.

Subject vehicles. (1) All vehicles of a covered model year and vehicle type shall be tested according to the applicable test schedule, including leased vehicles whose registration or titling is in the name of an equity owner other than the lessee or user.

(2) All subject fleet vehicles shall be inspected. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles. If all vehicles in a particular fleet are tested during one part of the cycle, then the quality control requirements shall be met during the time of testing only. Any vehicle available for rent in the I/M area or for use in the I/M area shall be subject. Fleet vehicles not being tested in normal I/M test facilities in enhanced I/M programs, however, shall be inspected in independent, test-only facilities, according to the requirements of § 51.353(a) of this subpart.

Subject vehicles which are registered in the program area but are primarily operated in another I/M area shall be tested, either in the area of primary operation, or in the area of registration. Alternate schedules may be established to permit convenient testing of these vehicles (e.g., vehicles belonging to students away at college should be rescheduled for testing during a visit home). I/M programs shall make provisions for providing official testing to vehicles registered elsewhere.

(4) Vehichles which are operated on Federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the state or local I/M area. This requirement applies to all employee-owned or leased vehicles (including vehicles owned, leased, or operated by civilian and military personnel on Federal installations) as well as agency-owned or operated vehicles, except tactical military vehicles, operated on the installation. This requirement shall not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year. In areas without test fees collected in the lane, arrangements shall be made by the installation with the I/M program for reimbursement of the costs of tests provided for agency vehicles, at the discretion of the I/M agency. The installation shall provide documentation of proof of compliance to the I/M agency. The documentation shall include a list of subject vehicles and shall be updated periodically, as determined by the I/M program administrator, but no less frequently than each inspection cycle. The installation shall use one of the following methods to establish proof of compliance:

(i) Presentation of a valid certificate of compliance from the local I/M program, from any other I/M program at least as stringent as the local program, or from any program deemed acceptable by the I/M program administrator.

(ii) Presentation of proof of vehicle registration within the geographic area covered by the I/M program, except for any program whose enforcement is not through registration denial.

(iii) Another method approved by the state or local I/M program administrator.

(5) Special exemptions may be permitted for certain subject vehicles provided a demonstration is made that the performance standard will be met.

(b) SIP requirements. (1) The SIP shall include a detailed description of the number and types of vehicles to be covered by the program, and a plan for how those vehicles are to be identified, including vehicles that are routinely operated in the area but may not be registered in the area.

(2) The SIP shall include a description of any special exemptions which will be granted by the program, and an estimate

...
of the percentage and number of subject vehicles which will be impacted. Such exemptions shall be accounted for in the emission reduction analysis.

(3) The SIP shall include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement.

§ 51.357 Test procedures and standards.

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program.

(a) Test procedure requirements. Emission tests and functional tests shall be conducted according to good engineering practices to assure test accuracy.

(1) Initial tests (i.e., those occurring for the first time in a test cycle) shall be performed without repair or adjustment at the inspection facility, prior to the test, except as provided in paragraph (a)(10)(i) of this section.

(2) The vehicle owner or driver shall have access to the test area such that observation of the entire official inspection process on the vehicle is permitted. Such access may be limited but shall in no way prevent full observation.

(3) An official test, once initiated, shall be performed in its entirety regardless of intermediate outcomes except in the case of invalid test condition, unsafe conditions, or fast pass/fail algorithms.

(4) Tests involving measurement shall be performed with program-approved equipment that has been calibrated accordingly to the accuracy procedures contained in appendix A to this subpart.

(5) Vehicles shall be rejected from testing if the exhaust system is missing or leaking, or if the vehicle is in an unsafe condition for testing.

(6) Vehicles shall be retested after repair for any portion of the inspection that is failed on the previous test to determine if repairs were effective. To the extent that repair to correct a previous failure could lead to failure of another portion of the test, that portion shall also be retested. Evaporative system repairs shall trigger an exhaust emissions retest.

(7) Steady-state testing. Steady-state tests shall be performed in accordance with the procedures contained in appendix B to this subpart.

(8) Emission control device inspection. Visual emission control device checks shall be performed through direct observation or through indirect observation using a mirror, video camera or other visual aid. These inspections shall include a determination as to whether each subject device is present and appears to be properly connected and appears to be the correct type for the certified vehicle configuration.

(9) Evaporative system purge test procedure. The purge test procedure shall consist of measuring the total purge flow (in standard liters) occurring in the vehicle's evaporative system during the transient dynamometer emission test specified in paragraph (a)(11) of this section. The purge flow measurement system shall be cycled to the purge portion of the evaporative system in series between the canister and the engine, preferably near the canister. The inspector shall be responsible for ensuring that all items that are disconnected in the conduct of the test procedure are properly reconnected at the conclusion of the test procedure. Alternative procedures may be used if they are shown to be equivalent or better to the satisfaction of the Administrator.

(10) Evaporative system integrity test procedure. The test sequence shall consist of the following steps:

(i) Test equipment shall be connected to the fuel tank canister hose at the canister end. The gas cap shall be checked to ensure that it is properly, but not excessively tightened, and shall be tightened if necessary.

(ii) The system shall be pressurized to 14±0.5 inches of water without exceeding 28 inches of water system pressure.

(iii) Close off the pressure source, seal the evaporative system and monitor pressure decay for up to two minutes.

(iv) Loosen the gas cap after a maximum of two minutes and monitor for a sudden pressure drop, indicating that the fuel tank was pressurized.

(v) The inspector shall be responsible for ensuring that all items that are disconnected in the conduct of the test procedure are properly reconnected at the conclusion of the test procedure.

(vi) Alternative procedures may be used if they are shown to be equivalent or better to the satisfaction of the Administrator. Except in the case of government-run test facilities claiming sovereign immunity, any damage done to the evaporative emission control system during this test shall be repaired at the expense of the inspection facility.

(11) Transient emission test. The transient emission test shall consist of 240 seconds of mass emission measurement using a constant volume sampler while the vehicle is driven through a computer-monitored driving cycle on a dynamometer with inertial weight settings appropriate for the weight of the vehicle. The driving cycle shall include acceleration, deceleration, and idle operating modes as specified in appendix E to this subpart. The 240 second sequence may be ended earlier using fast pass or fast fail algorithms and multiple pass/fail algorithms may be used during the test cycle to eliminate false failures. The transient test procedure, including algorithms and other procedural details, shall be approved by the Administrator prior to use in an I/M program.

(12) On-board diagnostic checks. Alternative test procedures may be approved if the Administrator finds that—

(i) Such procedures are in accordance with good engineering practice, including errors of commission (at cutoffs corresponding to equivalent emission reduction levels) no higher than the tests they would replace; and

(ii) Such procedures show a correlation with the Federal Test Procedure (with respect to their ability to detect high emitting vehicles and ensure their effective repair) equal to or better than the tests they would replace; and

(iii) Such procedures would produce equivalent emission reductions in combination with other program elements.

(b) Test standards—(1) Emissions standards. HC, CO, and CO+CO₂ (or CO₂ alone) emission standards shall be applicable to all vehicles subject to the program and repairs shall be required for failure of any standard regardless of the attainment status of the area. NOx emission standards shall be applied to vehicles subject to a transient test in ozone nonattainment areas and in an ozone transport region, unless a waiver of NOx controls is provided to the state under § 51.351(d) of this subpart.

(i) Steady-state short tests. The steady-state short test emission standards for 1981 and later model year light duty vehicles and light duty trucks shall be at least as stringent as those in appendix C to this subpart.

(ii) Transient test. Transient test emission standards shall be established for HC, CO, CO₂, and NOx for subject vehicles based on model year and vehicle type.

(2) Visual equipment inspection standards. (i) Vehicles shall fail visual inspections of subject emission control devices if such devices are part of the original certified configuration and are...
found to be missing, modified, disconnected, or improperly connected.

(ii) Vehicles shall fail visual inspections of subject emission control devices if such devices are found to be incorrect for the certified vehicle configuration under inspection. Aftermarket parts, as well as original equipment manufacture parts, may be considered correct if they are proper for the certified vehicle configuration. When an EPA aftermarket approval or self-certification program exists for a particular class of subject parts, vehicles shall fail visual equipment inspections if the part is neither original equipment manufacture nor from an approved or self-certified aftermarket manufacturer.

(3) Functional test standards—(i) Evaporative system integrity test. Vehicles shall fail the evaporative system pressure test if the system cannot maintain a system pressure above eight inches of water for up to two minutes after being pressurized to 14±0.5 inches of water or if no pressure drop is detected when the gas cap is loosened as described in paragraph (a)(10)(iv) of this section. Additionally, vehicles shall fail the evaporative test if the canister is missing or obviously damaged, if hoses are missing or obviously disconnected, or if the gas cap is missing.

(ii) Evaporative canister purge test. Vehicles with a total purge system flow measuring less than one liter, over the course of the transient test required in paragraph (a)(9) of this section, shall fail the evaporative purge test.

(4) On-board diagnostics test standards. (Reserved)

(c) Fast test algorithms and standards. Special test algorithms and pass/fail algorithms may be employed to reduce test time when the test outcome is predictable with near certainty, if the Administrator approves by letter the equivalency to full procedure testing.

(d) Applicability. In general, section 203(a)(3)(A) of the Clean Air Act prohibits altering a vehicle's configuration such that it changes from a certified to a non-certified configuration. In the inspection process, vehicles that have been altered from their original certified configuration are to be tested in the same manner as other subject vehicles.

(1) Vehicles with engines other than the engine originally installed by the manufacturer or an identical replacement of such engine shall be subject to the test procedures and standards for the chassis type and model year including visual equipment inspections for all parts that are part of the original or now-applicable certified configuration and part of the normal inspection. States may choose to require vehicles with such engines to be subject to the test procedures and standards for the engine to model year if it is newer than the chassis model year.

(2) Vehicles that have been switched from an engine of one fuel type to another fuel type that is subject to the program (e.g., from a diesel engine to a gasoline engine) shall be subject to the test procedures and standards for the current fuel type, and to the requirements of paragraph (d)(1) of this section.

(3) Vehicles that are switched to a fuel type for which there is no certified configuration shall be tested according to the most stringent emission standards established for that vehicle type and model year. Emission control device requirements may be waived if the program determines that the alternatively fueled vehicle configuration would meet the new vehicle standard year for that model year without such devices.

(4) Mixing vehicle classes (e.g., light-duty with heavy-duty) and certification types (e.g., California with Federal) within a single vehicle configuration shall be considered tampering.

(e) SIP requirements. The SIP shall include a description of each test procedure used. The SIP shall include the rule, ordinance or law describing and establishing the test procedures.

§ 51.358 Test equipment.

Computerized test systems are required for performing any measurement on subject vehicles.

(a) Performance features of computerized test systems. The test equipment shall be certified by the program requirements contained in appendix D to this subpart, and newly acquired systems shall be subjected to acceptance test procedures to ensure compliance with program specifications.

(1) Emission test equipment shall be capable of testing all subject vehicles and shall be updated from time to time to accommodate new technology vehicles as well as changes to the program.

(2) At a minimum, emission test equipment:

(i) Shall be automated to the highest degree commercially available to minimize the potential for intentional fraud and/or human error;

(ii) Shall be secure from tampering and/or abuse;

(iii) Shall be based upon written specifications; and

(iv) Shall be capable of simultaneously sampling dual exhaust vehicles.

(b) Functional characteristics of computerized test systems. The test system is composed of emission measurement devices and other motor vehicle test equipment controlled by a computer.

(1) The test system shall automatically:

(i) Make a pass/fail decision for all measurements;

(ii) Record test data to an electronic medium;

(iii) Conduct regular self-testing of recording accuracy;

(iv) Perform electrical calibration and system integrity checks before each test, as applicable; and

(v) Initiate system lockouts for:

(A) Tampering with security aspects of the test system;

(B) Failing to conduct or pass periodic calibration or leak checks;

(C) Failing to conduct or pass the constant volume sampler flow rate check (if applicable);
(D) Failing to conduct or pass any of the dynamometer checks, including coast-down, roll speed and roll distance, power absorption capability, and inertia weight selection checks (if applicable); (E) Failing to conduct or pass the pressure monitoring device check (if applicable); (F) Failing to conduct or pass the purge flow metering system check (if applicable); and 

(G) A full data recording medium or one that does not pass a cyclical redundancy check.

(2) Test systems in enhanced I/M programs shall include a real-time data link to a host computer that prevents unauthorized multiple initial tests on the same vehicle in a test cycle and to insure test record accuracy. 

(3) The test system shall insure accurate data collection by limiting, cross-checking, and/or confirming manual data entry. 

(4) On-board diagnostic test equipment requirements. [Reserved] 

c) SIP requirements. The SIP shall include written technical specifications for all test equipment used in the program and shall address each of the above requirements. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

§ 51.359 Quality control.

Quality control measures shall insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately recorded and maintained. 

(a) General requirements. (1) The practices described in this section and in Appendix A to this subpart shall be followed, at a minimum. Alternatives or exceptions to these procedures or frequencies may be approved by the Administrator based on a demonstration, including control chart analysis, of equivalent performance. 

(2) Preventive maintenance on all inspection equipment necessary to insure accurate and repeatable operation shall be performed on a periodic basis. 

(3) Computerized analyzers shall automatically record quality control check information, lockouts, attempted tampering, and any other recordable circumstances which should be monitored to insure quality control (e.g., service calls). 

(b) Requirements for steady-state emissions testing equipment. (1) Equipment shall be maintained according to demonstrated good engineering practices to assure test accuracy. The calibration and adjustment requirements in Appendix A to this subpart shall apply to all steady-state test equipment. States may adjust calibration frequencies and other quality control frequencies by using statistical process control to monitor equipment performance on an ongoing basis. 

(2) For analyzers that use ambient air as zero air, provision shall be made to draw the air from outside the inspection bay or lane in which the analyzer is situated. 

(3) The analyzer housing shall be constructed to protect the analyzer bench and electrical components from ambient temperature and humidity fluctuations that exceed the range of the analyzer's design specifications. 

(4) Analyzers shall automatically purge the analytical system after each test. 

(c) Requirements for transient exhaust emission test equipment. Equipment shall be maintained according to demonstrated good engineering practices to assure test accuracy. Computer control of quality assurance checks and quality control charts shall be used whenever possible. Exceptions to the procedures and the frequency of the checks described in Appendix A of this subpart may be approved by the Administrator based on a demonstration of equivalent performance. 

(d) Requirements for evaporative system functional test equipment. Equipment shall be maintained according to demonstrated good engineering practices to assure test accuracy. The calibration and adjustment requirements in Appendix A to this subpart shall apply to all steady-state test equipment. States may adjust adjustment requirements in Appendix A to this subpart to monitor equipment performance on an ongoing basis. 

(e) Document security. Measures shall be taken to maintain the security of all documents by which compliance with the inspection requirement is established including, but not limited to, inspection certificates, waiver certificates, license plates, license tabs, and stickers. This section shall in no way require the use of paper documents but shall apply if they are used by the program for these purposes.

(1) Compliance documents shall be counterfeit resistant. Such measures as the use of special fonts, water marks, ultra-violent inks, encoded magnetic strips, unique bar-coded identifiers, and difficult to acquire materials may be used to accomplish this requirement. 

(2) All inspection certificates, waiver certificates, and stickers shall be printed with a unique serial number and an official program seal.

(3) Measures shall be taken to ensure that compliance documents cannot be stolen or removed without being damaged. 

(f) SIP requirements. The SIP shall include a description of quality control and record keeping procedures. The SIP shall include the procedure manual, rule, ordinance or law describing and establishing the quality control procedures and requirements.

§ 51.360 Waivers and compliance via diagnostic inspection.

The program may allow the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards, as long as prescribed criteria are met. 

(a) Waiver issuance criteria. The waiver criteria shall include the following at a minimum. 

(1) Waivers shall be issued only after a vehicle has failed a retest performed after all qualifying repairs have been completed. 

(2) Any available warranty coverage shall be used to obtain needed repairs before expenditures can be counted towards the cost limits in paragraphs (a)(5) and (a)(6) of this section. The operator of a vehicle within the statutory age and mileage coverage under section 207(b) of the Clean Air Act shall present a written denial of warranty coverage from the manufacturer or authorized dealer for this provision to be waived for approved repairs applicable to the vehicle. 

(3) Waivers shall not be issued to vehicles for tampering-related repairs. The cost of tampering-related repairs shall not be applicable to the minimum expenditure in paragraphs (a)(5) and (a)(6) of this section. States may issue exemptions for tampering-related repairs if it can be verified that the part in question or one similar to it is no longer available for sale. 

(4) Repairs shall be appropriate to the cause of the test failure, and a visual check shall be made to determine if repairs were actually made if, given the nature of the repair, it can be visually confirmed. Receipts shall be submitted for review to further verify that qualifying repairs were performed. 

(5) Repairs shall be performed by a recognized repair technician (i.e., a person professionally engaged in vehicle repair, employed by a going concern whose purpose is vehicle repair, or possessing
(nationally recognized certification for emission-related diagnosis and repair) in order to qualify for a waiver. I/M programs may allow repairs performed by non-technicians (e.g., owners) to apply toward the waiver limit for pre-1990 model year vehicles.

(6) In basic I/M programs, a minimum of $75 for pre-81 vehicles and $200 for 1981 and later vehicles shall be spent in order to qualify for a waiver.

(7) In enhanced I/M programs, the motorist shall make an expenditure of at least $450 in repairs to qualify for a waiver. The I/M program shall provide that the $450 minimum expenditure shall be adjusted in January of each year by the Consumer Price Index for the preceding calendar year differs from the Consumer Price Index for 1989.

(i) The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year. A copy of the current Consumer Price Index may be obtained from the Emission Planning and Strategies Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

(ii) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

(8) States may establish lower minimum expenditures if a program is established to scrap vehicles that do not meet standards after the lower expenditure is made.

(9) A time extension, not to exceed the period of the inspection frequency, may be granted to obtain needed repairs on a vehicle in the case of economic hardship when waiver requirements have not been met, but the extension may be granted only once for a vehicle and shall be tracked and reported by the program.

(b) Compliance via diagnostic inspection. Vehicles subject to a transient IM240 emission test at the cutpoints established in § 51.351(a)(7) of this subpart may be issued a certificate of compliance without meeting the prescribed emission cutpoints, if, after failing a retest on emissions, a complete, documented physical and functional diagnosis and inspection performed by the I/M agency or a contractor to the I/M agency show that no additional emission-related repairs are needed. Any such exemption policy and procedures shall be subject to approval by the Administrator.

(c) Quality control of waiver issuance. If demonstrated to have been more effective than enforcement of the registration requirement in the past: Sticker-based enforcement programs and computer-matching programs. For newly implementing enhanced areas, including newly subject areas in a state with an I/M program in another part of the state, there is no provision for enforcement alternatives in the Act.

(a) Registration denial. Registration denial enforcement is defined as rejecting an application for initial registration or reregistration of a used vehicle (i.e., a vehicle being registered after the initial retail sale and associated registration) unless the vehicle has complied with the I/M requirement prior to granting the application.

(1) Provide an external, readily visible means of determining vehicle compliance with the registration requirement to facilitate enforcement of the program;
(2) Adopt a schedule of testing (either annual or biennial) that clearly determines when a vehicle shall comply prior to registration;
(3) Design a testing certification mechanism (either paper-based or electronic) that shall be used for registration purposes and clearly indicates whether the certification is valid for purposes of registration, including:
   (i) Expiration date of the certificate;
   (ii) Unambiguous vehicle identification information; and
   (iii) Whether the vehicle passed or received a waiver;
(4) Routinely issue citations to motorists with expired or missing license plates, with either no registration or an expired registration, and with no license plate decals or expired decals, and provide for enforcement officials other than police to issue citations (e.g., parking meter attendants) to parked vehicles in noncompliance;
(5) Structure the penalty system to deter non-compliance with the registration requirement through the use of mandatory minimum fines (meaning civil, monetary penalties, in this subpart) constituting a meaningful deterrent and through a requirement that compliance be demonstrated before a case can be closed;
(6) Ensure that evidence of testing is available and checked for validity at the time of a new registration of a used vehicle or registration renewal;
(7) Prevent owners or lessors from avoiding testing through manipulation of the title or registration system; title transfers may re-start the clock on the inspection cycle only if proof of current compliance is required at title transfer; and

(8) Prevent the fraudulent initial classification or reclassification of a vehicle from subject to non-subject or exempt by requiring proof of address changes prior to registration record modification, and documentation from the testing program (or delegate) certifying based on a physical inspection that the vehicle is exempt;

(9) Limit and track the use of time extensions of the registration requirement to prevent repeated extensions;

(10) Provide for meaningful penalties for cases of registration fraud;

(11) Limit and track exemptions to prevent abuse of the exemption policy for vehicles claimed to be out-of-state; and

(12) Encourage enforcement of vehicle registration transfer requirements when vehicle owners move into the I/M area by coordinating with local and state enforcement agencies and structuring other activities (e.g., drivers license issuance) to effect registration transfers.

(b) Alternative enforcement mechanisms—(1) General requirements.

The program shall demonstrate that a non-registration-based enforcement program is currently more effective than registration-denial enforcement in enhanced I/M programs or, prospectively, as effective as registration denial in basic programs. The following general requirements shall apply:

(i) In enhanced I/M programs, the audit in question shall have had an approved SIP with an operating I/M program using the alternative mechanism prior to enactment of the Clean Air Act Amendments of 1990. When modifications to improve compliance may be made to the program that was in effect at the time of enactment, the expected change in effectiveness cannot be considered in determining acceptability;

(ii) The state shall assess the alternative program's effectiveness, as well as the current effectiveness of the registration system, including the following:

(A) Determine the number and percentage of vehicles subject to the I/M program that were in compliance with the program over the course of at least one test cycle; and

(B) Determine the number and fraction of the same group of vehicles as in paragraph (b)(1)(ii)(A) of this section that were in compliance with the registration requirement over the same period. Late registration shall not be considered non-compliance for the purposes of this determination. The precise definition of late registration versus a non-complying vehicle shall be explained and justified in the SIP;

(iii) An alternative mechanism shall be considered more effective if the fraction of vehicles complying with the existing program, as determined according to the requirements of this section, is greater than the fraction of vehicles complying with the registration requirement. An alternative mechanism is as effective if the fraction complying with the program is at least equal to the fraction complying with the registration requirement.

(2) Sticker-based enforcement. In addition to the general requirements, a sticker-based enforcement program shall demonstrate that the enforcement mechanism will swiftly and effectively prevent operation of subject vehicles that fail to comply. Such demonstration shall:

(i) Require an expeditious system that results in at least 90% of the subject vehicles in compliance within 4 months of the compliance deadline;

(ii) Require that subject vehicles be given compliance deadlines based on the regularly scheduled test date, not the date of previous compliance;

(iii) Require that motorists pay monetary fines at least as great as the estimated cost of compliance with I/M requirements (e.g., test fee plus minimum waiver expenditure) for the continued operation of a noncomplying vehicle beyond 4 months of the deadline;

(iv) Require that continued non-compliance will eventually result in preventing operation of the non-complying vehicle (no later than the date of the next test cycle) through, at a minimum, suspension of vehicle registration and subsequent denial of reregistration;

(v) Demonstrate that the computer system currently in use is adequate to store and manipulate the I/M vehicle database, generate computerized notices, and provide regular backup to said system while maintaining auxiliary storage devices to insure ongoing operation of the system and prevent data losses;

(vi) Track each vehicle through the steps taken to ensure compliance, including:

(A) The compliance deadline;

(B) The date of initial notification;

(C) The dates warning letters are sent to non-complying vehicle owners;

(D) The dates notices of violation or other penalty notices are sent; and

(E) The dates and outcomes of other steps in the process, including the final compliance date;
(vii) Compile and report monthly summaries including statistics on the percentage of vehicles at each stage in the enforcement process; and
(viii) Track the number and percentage of vehicles initially identified as requiring testing but which are never tested as a result of being junked, sold to a motorist in a non-I/M program area, or for some other reason.

(c) SIP requirements. (1) The SIP shall provide information concerning the enforcement process, including:
(i) A description of the existing compliance mechanism if it is to be used in the future and the demonstration that it is as effective or more effective than registration denial enforcement;
(ii) An identification of the agencies responsible for performing each of the applicable activities in this section; (iii) A description of and accounting for all classes of exempt vehicles; and
(iv) A description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other subject vehicles, e.g., those operated in (but not necessarily registered in) the program area.

(2) The SIP shall include a determination of the current compliance rate based on a study of the system that includes an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism shall be supported with detailed analytical enforcement.

(3) The SIP shall include the legal authority to implement and enforce the program.

(4) The SIP shall include a commitment to an enforcement level to be used for modeling purposes and to be maintained, at a minimum, in practice.

§ 51.382 Motorist compliance enforcement program oversight.

The enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary.

(a) Quality assurance and quality control. A quality assurance program shall be implemented to ensure effective overall performance of the enforcement system. Quality control procedures are required to instruct individuals in the enforcement process regarding how to properly conduct their activities. At a minimum, the quality control and quality assurance program shall include:
(1) Verification of exempt vehicle status by inspecting and confirming such vehicles by the program or its delegate;
(2) Facilitation of accurate critical test data and vehicle identifier collection through the use of automatic data capture systems such as bar-code scanners or optical character readers, or through redundant data entry;
(3) Maintenance of an audit trail to allow for the assessment of enforcement effectiveness and information;
(4) Establishment of written procedures for personnel directly engaged in I/M enforcement activities;
(5) Establishment of written procedures for personnel engaged in I/M document handling and processing, such as registration clerks or personnel involved in sticker dispensing and waiver processing, as well as written procedures for the auditing of their performance;
(6) Follow-up validity checks on out-of-area or exemption-triggering registration changes;
(7) Analysis of registration-change applications to target potential violators;
(8) A determination of enforcement program effectiveness through periodic audits of test records and program compliance documentation;
(9) Enforcement procedures for disciplining, retraining, or removing enforcement personnel who deviate from established requirements, or in the case of non-government entities that process registrations, for defranchising, revoking or otherwise discontinuing the activity of the entity issuing registrations; and
(10) The prevention of fraudulent procurement or use of inspection documents by controlling and tracking document distribution and handling, and making stations financially liable for missing or unaccounted for documents by assessing monetary fines reflecting the “street value” of these documents (i.e., the test fee plus the minimum waiver expenditure).

(b) Information management. In establishing an information base to be used in characterizing, evaluating, and enforcing the program, the state shall:
(1) Determine the subject vehicle population;
(2) Permit EPA audits of the enforcement process;
(3) Assure the accuracy of registration and other program document files;
(4) Maintain and ensure the accuracy of the testing database through periodic internal and/or third-party review; through automated or redundant data entry; and, through automated analysis for valid alpha-numeric sequences of the vehicle identification number (VIN), certificate number, or license plate number;
(5) Compare the testing database to the registration database to determine program effectiveness, establish compliance rates, and to trigger potential enforcement action against non-complying motorists; and
(6) Sample the fleet as a determination of compliance through parking lot surveys, road-side pull-overs, or other in-use vehicle measurements.

(c) SIP requirements. The SIP shall include a description of enforcement program oversight and information management activities.

§ 51.383 Quality assurance.

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse and to determine whether procedures are being followed, are adequate, whether equipment is measuring accurately, and whether other problems might exist which would impede program performance. The quality assurance and quality control procedures shall be periodically evaluated to assess their effectiveness and relevance in achieving program goals.

(a) Performance audits. Performance audits shall be conducted on a regular basis to determine whether inspectors are correctly performing all tests and other required functions. Performance audits shall be of two types: overt and covert, and shall include:
(1) Performance audits based upon written procedures and results shall be reported using either electronic or written forms to be retained in the inspector and station history files, with sufficient detail to support either an administrative or civil hearing;
(2) Performance audits in addition to regularly programmed audits for stations employing inspectors suspected of violating regulations as a result of audits, data analysis, or consumer complaints;
(3) Overt performance audits shall be performed at least twice per year for each lane or test bay and shall include:
(i) A check for the observance of appropriate document security;
(ii) A check to see that required record keeping practices are being followed;
(iii) A check for licenses or certificates and other required display information; and
(iv) Observation and written evaluation of each inspector's ability to properly perform an inspection;
(4) Covert performance audits shall include:
(i) Remote visual observation of inspector performance, which may include the use of aids such as binoculars or video cameras, at least once per year per inspector in high-volume stations (i.e., those performing more than 4000 tests per year);
(ii) Site visits at least once per year per number of inspectors using covert vehicles set to fail (this requirement sets a minimum level of activity, not a requirement that each inspector be involved in a covert audit); (iii) For stations that conduct both testing and repairs, at least one covert vehicle visit per station per year including the purchase of repairs and subsequent retesting if the vehicle is initially failed for tailpipe emissions (this activity may be accomplished in conjunction with paragraph (a)(4)(i) of this section but must involve each station at least once per year); (iv) Documentation of the audit, including vehicle condition and inspection, sufficient for building a legal case and establishing a performance record; (v) Covert vehicles covering the range of vehicle technology groups (e.g., carbureted and fuel-injected vehicles) included in the program, including a full range of introduced malfunctions covering the emission test, the evaporative system tests, and emission control component checks (as applicable); (vi) Sufficient numbers of covert vehicles and auditors to allow for frequent rotation of both to prevent detection by station personnel; and (vii) Access to on-line inspection databases by state personnel to permit the creation and maintenance of covert vehicle records.

(b) Record audits. Station and inspector records shall be reviewed or screened at least monthly to assess station performance and identify problems that may indicate potential fraud or incompetence. Such review shall include:

(1) Software-based, computerized analysis to identify statistical inconsistencies, unusual patterns, and other discrepancies;
(2) Visits to inspection stations to review records not already covered in the electronic analysis (if any); and
(3) Comprehensive accounting for all official forms that can be used to demonstrate compliance with the program.

(c) Equipment audits. During overt site visits, auditors shall conduct quality control evaluations of the required test equipment, including (where applicable):

(1) A gas audit using gases of known concentrations at least as accurate as those required for regular equipment quality control and comparing these concentrations to actual readings;
(2) A check for tampering, worn instrumentation, blocked filters, and other conditions that would impede accurate sampling;
(3) A check for critical flow in critical flow CVS units;
(4) A check of the Constant Volume Sampler flow calibration;
(5) A check for the optimization of the Flame Ionization Detection fuel-air ratio using methane;
(6) A leak check;
(7) A check to determine that station gas bottles used for calibration purposes are properly labelled and within the relevant tolerances;
(8) Functional dynamometer checks addressing coast-down, roll speed and roll distance, inertia weight selection, and power absorption;
(9) A check of the system's ability to accurately detect background pollutant concentrations;
(10) A check of the pressure monitoring devices used to perform the evaporative canister pressure test; and
(11) A check of the purge flow metering system.

(d) Auditor training and proficiency.

(1) Auditors shall be formally trained and knowledgeable in:

(i) The use of analyzers;
(ii) Program rules and regulations;
(iii) The basics of air pollution control;
(iv) Basic principles of motor vehicle engine repair, related to emission performance;
(v) Emission control systems;
(vi) Evidence gathering;
(vii) State administrative procedures laws;
(viii) Quality assurance practices; and
(ix) Covert audit procedures.

(2) Auditors shall themselves be audited at least once annually.

(3) The training and knowledge requirements in paragraph (d)(1) of this section may be waived for temporary auditors engaged solely for the purpose of conducting covert vehicle runs.

(e) SIP requirements. The SIP shall include a description of the quality assurance program, and written procedures manuals covering both overt and covert performance audits, record audits, and equipment audits. This requirement does not include materials or discussion of details of enforcement strategies that would ultimately hamper the enforcement process.

§ 51.364 Enforcement against contractors, stations and inspectors.

Enforcement against licensed stations or contractors, and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements.

(a) Imposition of penalties. A penalty schedule shall be developed that establishes minimum penalties for violations of program rules and procedures.

(1) The schedule shall categorize and list violations and the minimum penalties to be imposed for first, second, and subsequent violations and for multiple violation of different requirements. In the case of contracted systems, the state may use compensation retainage in lieu of penalties.

(2) Substantial penalties or retainage shall be imposed on the first offense for violations that directly affect emission reduction benefits. At a minimum, in test-and-repair programs inspector and station license suspension shall be imposed for at least 6 months whenever a vehicle is intentionally improperly passed for any required portion of the test. In test-only programs, inspectors shall be removed from inspector duty for at least 6 months (or a retainage penalty equivalent to the inspector's salary for that period shall be imposed).

(3) All findings of serious violations of rules or procedural requirements shall result in mandatory fines or retainage. In the case of gross neglect, a first offense shall result in a fine or retainage of no less than $100 or 5 times the inspection fee, whichever is greater, for the contractor or the licensed station, and the inspector if involved.

(4) Any finding of inspector incompetence shall result in mandatory training before inspection privileges are restored.

(5) License or certificate suspension or revocation shall mean the individual is barred from direct or indirect involvement in any inspection operation during the term of the suspension or revocation.

(b) Legal authority. (1) The quality assurance officer shall have the authority to temporarily suspend station and inspector licenses or certificates (after approval of a superior) immediately upon finding a violation or equipment failure that directly affects emission reduction benefits, pending a hearing when requested. In the case of immediate suspension, a hearing shall be held within fourteen calendar days of a written request by the station licensee or the inspector. Failure to hold a hearing within 14 days when requested shall cause the suspension to lapse. In the event that a state's constitution precludes such a temporary license suspension, the enforcement system shall be designed with adequate resources and mechanisms to hold a hearing to suspend or revoke the station or inspector license within three station business days of the finding.

(2) The oversight agency shall have the authority to impose penalties against the licensed station or contractor, as
well as the inspector, even if the licensee or contractor had no direct knowledge of the violation but was found to be careless in oversight of inspectors or has a history of violations. Contractors and licensees shall be held fully responsible for inspector performance in the course of duty.

(c) Recordkeeping. The oversight agency shall maintain records of all warnings, civil fines, suspensions, revocations, and violations and shall compile statistics on violations and penalties on an annual basis.

(d) SIP requirements. (1) The SIP shall include the penalty schedule and the legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations.

(2) In the case of state constitutional impediments to immediate suspension authority, the state Attorney General shall furnish an official opinion for the SIP explaining the constitutional impediment as well as relevant case law.

(3) The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts, and jurisdictions are involved; who will prosecute and adjudicate cases; and other aspects of the enforcement of the program requirements, the resources to be allocated to this function, and the source of those funds. In states without immediate suspension authority, the SIP shall demonstrate that sufficient resources, personnel, and systems are in place to meet the three day case management requirement for violations that directly affect emission reductions.

§ 51.365 Data collection.

Accurate data collection is essential to the management, evaluation, and enforcement of an I/M program. The program shall gather test data on individual vehicles, as well as quality control data on test equipment.

(a) Test data. The goal of gathering test data is to unambiguously link specific test results to a specific vehicle. I/M program registrant, test site, and inspector, and to determine whether or not the correct testing parameters were observed for the specific vehicle in question. In turn, these data can be used to distinguish complying and noncomplying vehicles as a result of analyzing the data collected and comparing it to the registration database, to screen inspection stations and inspectors for investigation as to possible irregularities, and to help establish the overall effectiveness of the program. At a minimum, the program shall collect the following with respect to each test conducted:

(1) Test record number;
(2) Inspection station and inspector numbers;
(3) Test system number;
(4) Date of the test;
(5) Emission test start time and the time final emission scores are determined;
(6) Vehicle Identification Number;
(7) License plate number;
(8) Test certificate number;
(9) Gross Vehicle Weight Rating (GVWR);
(10) Vehicle model year, make, and type;
(11) Number of cylinders or engine displacement;
(12) Transmission type;
(13) Odometer reading;
(14) Category of test performed (i.e., initial test, first retest, or subsequent retest);
(15) Fuel type of the vehicle (i.e., gas, diesel, or other fuel);
(16) Type of vehicle preconditioning performed (if any);
(17) Emission test sequence(s) used;
(18) Hydrocarbon emission scores and standards for each applicable test mode;
(19) Carbon monoxide emission scores and standards for each applicable test mode;
(20) Carbon dioxide emission scores (CO + CO₂) and standards for each applicable test mode;
(21) Nitrogen oxides emission scores and standards for each applicable test mode;
(22) Results (Pass/Fail/Not Applicable) of the applicable visual inspections for the catalytic converter, air system, gas cap, evaporative system, positive crankcase ventilation (PCV) valve, fuel inlet restrictor, and any other visual inspection for which emission reduction credit is claimed;
(23) Results of the evaporative system pressure test expressed as a pass or fail; and
(24) Results of the evaporative system purge test expressed as a pass or fail along with the total purge flow in liters achieved during the test.

(b) Quality control data. At a minimum, the program shall gather and report the results of the quality control checks required under § 51.359 of this subpart, identifying each check by station number, system number, date, and start time. The data report shall also contain the concentration values of the calibration gases used to perform the gas characterization portion of the quality control checks.

§ 51.366 Data analysis and reporting.

Data analysis and reporting are required to allow for monitoring and evaluation of the program by program management and EPA, and shall provide information regarding the types of program activities performed and their final outcomes, including summary statistics and effectiveness evaluations of the enforcement mechanism, the quality assurance system, the quality control program, and the testing element. Initial submission of the following annual reports shall commence within 18 months of initial implementation of the program as required by § 51.373 of this subpart. The biennial report shall commence within 30 months of initial implementation of the program as required by § 51.373 of this subpart.

(a) Test data report. The program shall submit to EPA by July of each year a report providing basic statistics on the testing program for January through December of the previous year, including:

(1) The number of vehicles tested by model year and vehicle type;
(2) By model year and vehicle type, the number and percentage of vehicles:
   (i) Failing the emissions test initially;
   (ii) Failing each emission control component check initially;
   (iii) Failing the evaporative system functional and integrity checks initially;
   (iv) Failing the first retest for tailpipe emissions;
   (v) Passing the first retest for tailpipe emissions;
   (vi) Initially failed vehicles passing the second or subsequent retest for tailpipe emissions;
   (vii) Initially failed vehicles passing each emission control component check on the first or subsequent retest by component check;
   (viii) Initially failed vehicles passing the evaporative system functional and integrity checks on the first or subsequent retest by component;
   (ix) Initially failed vehicles receiving a waiver; and
   (x) Vehicles with no known final outcome (regardless of reason);
(3) The initial test volume by model year and test station;
(4) The initial test failure rate by model year and test station; and
(5) The average increase or decrease in tailpipe emission levels for HC, CO, and NOₓ (if applicable) after repairs by model year and vehicle type for vehicles receiving a mass emissions test.

(b) Quality assurance report. The program shall submit to EPA by July of each year a reporting providing basic statistics on the quality assurance
§ 51.367 Inspector training and licensing or certification.

All inspectors shall receive formal training and be licensed or certified to perform inspections.

(a) Training. (1) Inspector training shall impart knowledge of the following:

(i) The air pollution problem, its causes and effects;

(ii) The purpose, function, and goal of the inspection program;

(iii) Inspection regulations and procedures;

(iv) Technical details of the test procedures and the rationale for their design;

(v) Emission control device function, configuration, and inspection;

(vi) Test equipment operation, calibration, and maintenance;

(vii) Quality control procedures and their purpose;

(viii) Public relations; and

(ix) Safety and health issues related to the inspection process.

(2) If inspector training is not administered by the program, the responsible state agency shall monitor and evaluate the training program delivery.

(b) Certification. All inspectors shall be certified and be provided with an inspector's badge.

(c) Quality control report. The program shall submit to EPA by July of each year a report providing basic statistics on the quality control program for January through December of the previous year, including:

(1) The number of inspection stations and lanes operating throughout the year;

(2) The number of equipment audits by station and lane;

(3) The number and percentage of stations that have failed equipment audits; and

(4) Number and percentage of stations and lanes shut down as a result of equipment audits.

(d) Enforcement report. (1) All variations of enforcement programs shall, at a minimum, submit to EPA by July of each year a report providing basic statistics on the enforcement program for January through December of the previous year, including:

(i) An estimate of the number of vehicles subject to the inspection program, including the results of an analysis of the registration data base;

(ii) The percentage of motorist compliance based upon a comparison of the number of valid final tests with the number of subject vehicles;

(iii) The total number of compliance documents issued to inspection stations;

(iv) The number of missing compliance documents;

(v) The number of time extensions and other exemptions granted to motorists; and

(vi) The number of compliance surveys conducted, number of vehicles surveyed in each, and the compliance rates found.

(2) Registration denial based enforcement programs shall provide the following additional information:

(i) A report of the program's efforts and actions to prevent motorists from falsely registering vehicles out of the program area or falsely changing fuel type or weight class on the vehicle registration, and the results of special studies to investigate the frequency of such activity; and

(ii) The number of registration file audits, number of registrations reviewed, and compliance rates found in such audits.

(3) Computer-matching based enforcement programs shall provide the following additional information:

(i) The number and percentage of subject vehicles that were tested by the initial deadline, and by other milestones in the cycle;

(ii) A report on the program's efforts to detect and enforce against motorists falsely changing vehicle classifications to circumvent program requirements, and the frequency of this type of activity; and

(iii) The number of enforcement system audits, and the error rate found during those audits.

(4) Sticker-based enforcement systems shall provide the following additional information:

(i) A report on the program's efforts to prevent, detect, and enforce against sticker theft and counterfitting, and the frequency of this type of activity;

(ii) A report on the program's efforts to detect and enforce against motorists falsely changing vehicle classifications to circumvent program requirements, and the frequency of this type of activity; and

(iii) The number of parking lot sticker audits conducted, the number of vehicles surveyed in each, and the noncompliance rate found during those audits.

(e) Additional reporting requirements. In addition to the annual reports in paragraphs (a) through (d) of this section, programs shall submit to EPA by July of every other year, biennial reports addressing:

(1) Any changes made in program design, funding, personnel levels, procedures, regulations, and legal authority, with detailed discussion and evaluation of the impact on the program of all such changes; and

(2) Any weaknesses or problems identified in the program within the two-year reporting period, what steps have already been taken to correct those problems, the results of those steps, and any future efforts planned.

(f) SIP requirements. The SIP shall describe the types of data to be collected.
(3) In order to complete the training requirement, a trainee shall pass (i.e., a minimum of 80% of correct responses or lower if an occupational analysis justifies a written test covering all aspects of the training). In addition, a hands-on test shall be administered in which the trainee demonstrates without assistance the ability to conduct a proper inspection, to properly utilize equipment and to follow other procedures. Inability to properly conduct all test procedures shall constitute failure of the test. The program shall take appropriate steps to ensure the security and integrity of the testing process.

(b) Licensing and certification. (1) All inspectors shall be either licensed by the program (in the case of test-and-repair systems that do not use contracts with stations) or certified by an organization other than the employer (in test-only programs and test-and-repair programs that require station owners to enter into contracts with the training program) in order to perform official inspections.

(2) Completion of inspector training and passing required tests shall be a condition of licensing or certification.

(3) Inspector licenses and certificates shall be valid for no more than 2 years, at which point refresher training and testing shall be required prior to renewal. Alternative approaches based on more comprehensive skill exams and the second determination of inspector competency may be used.

(4) Licenses or certificates shall not be considered a legal right but rather a privilege bestowed by the program conditional upon adherence to program requirements.

(c) SIP requirements. The SIP shall include a description of the training program, the written and hands-on tests, and the licensing or certification process.

§ 51.369 Improving repair effectiveness.

Effective repairs are the key to achieving program goals and the state shall take steps to ensure the capability exists in the repair industry to repair vehicles that fail I/M tests.

(a) Technical assistance. The oversight agency shall provide the repair industry with information and assistance related to vehicle inspection diagnosis and repair.

(1) The agency shall regularly inform repair facilities of changes in the inspection program, training course schedules, common problems being found with particular engine families, diagnostic tips and the like.

(2) The agency shall provide a hot line service to assist repair technicians with specific repair problems, answer technical questions that arise in the repair process, and answer questions related to the legal requirements of state and federal law with regard to emission control device tampering, engine switching, or similar issues.

(b) Performance monitoring. (1) In enhanced I/M program areas, the oversight agency shall monitor the performance of individual motor vehicle repair facilities, and provide to the public at the time of initial failure, a summary of the performance of local repair facilities that have repaired vehicles for retest. Performance monitoring shall include statistics on the number of vehicles submitted for a retest after repair by the repair facility, the percentage passing on first retest, the percentage requiring more than one repair/retest trip before passing, and the percentage receiving a waiver. Programs may provide motorists with alternative statistics that convey similar information on the relative ability of repair facilities in providing effective and convenient repair, in light of the age and other characteristics of vehicles presented for repair at each facility.

(2) Programs shall provide feedback, including statistical and qualitative information, to individual repair facilities on a regular basis (at least annually) regarding their success in repairing failed vehicles.

(3) A prerequisite for a retest shall be a completed repair form that indicates which repairs were performed, as well as any technician recommended repairs that were not performed, and identification of the facility that performed the repairs.

(c) Repair technician training. The state shall assess the availability of adequate repair technician training in the I/M area and, if the types of training described in paragraphs (c)(1) through (4) of this section are not currently available, shall ensure that training is offered to all interested individuals in the community either through private or public facilities. The training available shall include:

(1) Diagnosis and repair of malfunctions in computer controlled, close-loop vehicles;

(2) The application of emission control theory and diagnostic data to the diagnosis and repair of failures on the transient emission test and the evaporative system functional checks;

(3) Utilization of diagnostic information on systematic or repeated failures observed in the transient emission test and the evaporative system functional checks; and

(4) General training on the various subsystems related to engine emission control.

(d) SIP requirements. The SIP shall include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of this section, and a description of the repair technician training resources available in the community.

§ 51.370 Compliance with recall notices.

States shall establish methods to ensure that vehicles subject to enhanced I/M and that are included in either a "Voluntary Emissions Recall" as defined at 40 CFR §85.1902(d), or in a remedial plan determination made pursuant to section 207(c) of the Act, receive the required repairs. States shall require
that owners of recalled vehicles have the necessary recall repairs completed, either in order to complete an annual or biennial inspection process or to obtain vehicle registration renewal. All recalls for which owner notification occurs after January 1, 1995 shall be included in the enhanced I/M recall requirement.

(a) General requirements. (1) The state shall have an electronic means to identify recalled vehicles based on lists of VINs with unresolved recalls made available by EPA, the vehicle manufacturers, or a third party supplier approved by the Administrator. The state shall update its list of unresolved recalls on a quarterly basis at a minimum.

(2) The state shall require owners or lessees of vehicles with unresolved recalls to show proof of compliance with recall notices in order to complete either the inspection or registration cycle.

(3) Compliance shall be required on the next registration or inspection date, allowing a reasonable period to comply, after notification of recall was received by the state.

(b) Enforcement. (1) A vehicle shall either fail inspection or be denied vehicle registration if the required recall repairs have not been completed.

(2) In the case of vehicles obtaining recall repairs but remaining on the updated list provided in paragraph (a)(1) of this section, the state shall have a means of verifying completion of the required repairs; electronic records or paper receipts provided by the authorized repair facility shall be required. The vehicle inspection or registration record shall be modified to incorporate the vehicle lists provided in paragraph (a)(1) of this section into the inspection or registration database. The quality control methods used to ensure that recall repairs are properly documented and tracked, and the method (inspection failure or registration denial) used to enforce the recall requirements.

§ 51.371 On-road testing.

On-road testing is defined as the measurement of HC, CO, NOx, and/or CO2 emissions on any road or roadside in the nonattainment area or the I/M program area. On-road testing is required in enhanced I/M areas and is an option in the I/M for area areas.

(a) General requirements. (1) On-road testing is to be part of the emission testing system, but is to be a complement to testing otherwise required.

(2) On-road testing is not required in every season or on every vehicle but shall evaluate the emission performance of 0.5% of the subject fleet statewide or 20,000 vehicles whichever is less, including any vehicles that may be subject to the follow-up inspection provisions of paragraph (a)(4) of this section, each inspection cycle.

(3) The on-road testing program shall provide information about the emission performance of in-use vehicles, by measuring on-road emissions through the use of remote sensing devices or roadside pullovers including tailpipe emission testing. The program shall collect, analyze and report on-road testing data.

(4) Owners of vehicles that have previously been through the normal periodic inspection and passed the final test and found to be high emitters shall be notified that the vehicles are required to pass an out-of-cycle follow-up inspection; notification may be by mailing in the case of remote sensing on-road testing or through immediate notification if roadside pullovers are used.

(b) SIP requirements. (1) The SIP shall include a detailed description of the on-road testing program, including the types of testing, test limits and criteria, the number of vehicles (the percentage of the fleet), to be tested, the number of employees to be dedicated to the on-road testing effort, the methods for collecting, analyzing, utilizing, and reporting the results of on-road testing and, the portion of the program budget to be dedicated to on-road testing.

(2) The SIP shall include the legal authority necessary to implement the on-road testing program, including the authority to enforce off-cycle inspection and repair requirements.

(3) Emission reduction credit for on-road testing programs shall be granted for a program designed to obtain significant emission reductions over and above those already predicted to be achieved by other aspects of the I/M program. The SIP shall include technical support for the claimed additional emission reductions.

§ 51.372 State implementation plan submissions.

(a) SIP submittals. The SIP shall address each of the elements covered in this subpart, including, but not limited to:

(1) A schedule of implementation of the program including interim milestones leading to mandatory testing. The milestones shall include, at a minimum:

(i) Passage of enabling statutory or other legal authority;

(ii) Proposal of draft regulations and promulgation of final regulations;

(iii) Issuance of final specifications and procedures;

(iv) Issuance of final Request for Proposals (if applicable);

(v) Licensing or certifications of stations and inspectors;

(vi) The date mandatory testing will begin for each model year to be covered by the program;

(vii) The date full-stringency cutpoints will take effect;

(viii) All other relevant dates;

(2) An analysis of emission level targets for the program using the most current EPA mobile source emission model or an alternative approved by the Administrator showing that the program meets the performance standard described in § 51.351 or § 51.352 of this subpart, as applicable:

(3) A description of the geographic coverage of the program, including ZIP codes if the program is not county-wide;

(4) A detailed discussion of each of the required design elements, including provisions for federal facility compliance;

(5) Legal authority requiring or allowing implementation of the I/M program and providing either broad or specific authority to perform all required elements of the program;

(6) Legal authority for I/M program operation until such time as it is no longer necessary (i.e., until a Section 175
maintenance plan without an I/M program is approved by EPA; (7) Implementing regulations, interagency agreements, and memoranda of understanding; and (8) Evidence of adequate funding and resources to implement all aspects of the program.

(b) Submittal schedule. The SIP shall be submitted to EPA according to the following schedule—

(1) States shall submit a SIP revision by November 15, 1992 which includes the schedule required in paragraph (a)(1) of this section and a formal commitment by the Governor to the adoption and implementation of an I/M program meeting all requirements of this subpart.

(2) A SIP revision, including all necessary legal authority and the items specified in (a)(1) through (a)(8) of this section, shall be submitted no later than November 15, 1993.

(3) States will be required to revise SIPs as EPA develops further regulations. Revisions to incorporate onboard diagnostic checks in the I/M program shall be submitted within 2 years after promulgation of OBD regulations under section 202(m)(3) of the Clean Air Act, as amended.

§ 51.373 Implementation deadlines.

I/M programs shall be implemented as expeditiously as practicable.

(a) Decentralized basic programs shall be fully implemented by January 1, 1994, and centralized basic programs shall be fully implemented by July 1, 1994.

(b) For areas newly required to implement basic I/M after promulgation of this subpart (as a result of failure to attain, reclassification, or nonattainment designation) decentralized programs shall be fully implemented within one year of obtaining legal authority. Centralized programs shall be fully implemented within two years of obtaining legal authority. More implementation time may be approved by the Administrator if an enhanced I/M program is implemented.

(c) All requirements related to enhanced I/M programs shall be implemented by January 1, 1995, with the following exceptions.

(1) Areas switching from an existing test-and-repair network to a test-only network may phase in the change between January 1, 1995 and January 1, 1996. Starting with the calendar year of 1995 at least 30% of the subject vehicles shall participate in the test-only system (in states with multiple I/M areas, implementation is not required in every area by January 1995 as long as statewide, 30% of the subject vehicles are involved in testing) and shall be subject to the new test procedures (including the evaporative system checks, visual inspections, and tailpipe emission tests). By January 1, 1996, all applicable vehicle model years and types shall be included in the test-only system. During the phase-in period, all requirements of this subpart shall be applied to the test-only portion of the program; existing requirements may continue to apply for the test-and-repair portion of the program until it is phased out by January 1, 1996.

(2) Areas starting new test-only programs and those with existing test-only programs may also phase in the new test procedures between January 1, 1995 and January 1, 1996. Other program requirements shall be fully implemented by January 1, 1995.

(d) In the case of areas newly required to implement enhanced I/M after promulgation of this subpart (as a result of failure to attain, reclassification, or nonattainment designation) enhanced I/M shall be implemented within 24 months of obtaining legal authority.

(e) Legal authority for the implementing agency or agencies to implement and enforce an I/M program consistent with this subpart shall be obtained from the state legislature or local governing body in the first legislative session after November 5, 1995, or after being newly required to implement or upgrade an I/M program as in paragraph (b) or (c) of this section, including sessions already in progress if at least 21 days remain before the final bill submittal deadline.

Appendices to Subpart S of Part 51

Appendix A to Subpart S—Calibrations, Adjustments and Quality Control

(1) Steady-State Test Equipment States may use transient emission test equipment for steady-state tests and follow the quality control requirements in paragraph (II) of this appendix instead of the following requirements.

(a) Equipment shall be calibrated in accordance with the manufacturers’ instructions.

(b) Prior to each test. (1) Hydrocarbon hang-up check. Immediately prior to each test the analyzer shall automatically perform a hydrocarbon hang-up check. If the HC reading, when the probe is sampling ambient air, exceeds 20 ppm, the system shall be purged with clean air or zero gas. The analyzer shall be calibrated from continuing the test until HC levels drop below 20 ppm.

(2) Automatic zero and span. The analyzer shall conduct an automatic zero and span check prior to each test. The span check shall include the HC, CO, and CO2 channels, and the NO and NOx channels, if present. If zero and span drift cause the signal levels to move beyond the adjustment range of the analyzer, it shall lock out from testing.

(3) Low flow. The system shall lock out from testing if sample flow is below the acceptable level as defined in paragraph (l)(b)(6) of appendix D to this subpart.

(c) Leak check. A system leak check shall be performed within twenty-four hours before the test if in low-volume stations whose performing less than the 5,000 inspections per year) and within four hours in high-volume stations (5,000 or more inspections per year) and may be performed in conjunction with the gas calibration described in paragraph (II)(d) of this appendix, if a leak check is not performed within the preceding twenty-four hours in low volume stations and within four hours in high-volume stations or if the analyzer fails the leak check, the analyzer shall lock out from testing. The leak check shall be a procedure demonstrated to effectively check the sample hose and probe for leaks and shall be performed in accordance with good engineering practices. An error of more than ±2% of the reading using low range span gas shall cause the analyzer to lock out from testing and shall require repair of leaks.

(d) Gas calibration. (1) On each operating day in high-volume stations, analyzers shall automatically require and successfully pass a two-point gas calibration for HC, CO, and CO2 and shall continually compensate for changes in barometric pressure. Calibration shall be checked within four hours before the test and the analyzer adjusted if the reading is more than 2% different from the span gas value. In low-volume stations, analyzers shall undergo a two-point calibration within seventy-two hours before each test, unless changes in barometric pressure are compensated for automatically and statistical process control demonstrates equal or better quality control using different frequencies. Gas calibration shall be accomplished by introducing span gas that meets the requirements of paragraph (II)(d)(3) of this appendix into the analyzer through the calibration port. If the analyzer reads the span gas within the allowable tolerance range (i.e., the square root of sum of the squares of the span gas tolerance described in paragraph (II)(d)(3) of this appendix and the calibration tolerance, which shall be equal to 2%), no adjustment of the analyzer is necessary. The gas calibration procedure shall correct readings that exceed the allowable tolerance range to the center of the allowable tolerance range. The pressure in the sample cell shall be the same with the calibration gas flowing during calibration as with the sample gas flowing during sampling. If the system is not calibrated, or the system fails the calibration check, the analyzer shall lock out from testing.

(2) Span points. A two point gas calibration procedure shall be followed. The span shall be accomplished at one of the following pairs of pressures:

(A) 300—ppm propane (HC) 1.0—% carbon monoxide (CO)

6.0—% carbon dioxide (CO2)

1000—ppm nitric oxide (if equipped with NO)

1200—ppm propane (HC) 4.0—% carbon monoxide (CO)

12.0—% carbon dioxide (CO2)

3000—ppm nitric oxide (if equipped with NO)
(b) 0—ppm propane
0.0—% carbon monoxide
0.0—% carbon dioxide
0—ppm nitric oxide (if equipped with NO)
600—ppm propane (HC)
7.8—% carbon monoxide (CO)
11.0—% carbon dioxide (CO2)
1200—ppm nitric oxide (if equipped with NO)

(3) Span gases. The span gases used for the gas calibration shall be traceable to National Institute of Standards and Technology (NIST) standards ±2%, and shall be within two percent of the span points specified in paragraph (d)(2) of this appendix. Zero gases shall conform to the specifications given in § 86.114-79(a)(5) of this chapter.

(e) Dynamometer checks—(1) Monthly check. Within one month preceding each loaded test, the accuracy of the roll speed indicator shall be verified and the dynamometer shall be checked for proper power absorber settings.

(2) Semi-annual check. Within six months preceding each loaded test, the road-load response of the variable-curve dynamometer or the frictional power absorption of the dynamometer shall be checked by a coast down procedure similar to that described in § 86.138-78 of this chapter. The check shall be done at 30 mph, and a power absorption load setting to generate a total horsepower (hp) of 4.3 hp. The actual coast down time from 45 mph to 15 mph shall be within ±1 second of the time calculated by the following equation:

\[
\text{Coast Down Time} = \frac{0.850 \times W}{\text{HP}}
\]

where \( W \) is the total inertia weight as represented by the weight of the rollers (excluding free rollers), and \( W \) inertia flywheels used, measured in pounds. If the coast down time is not within the specified tolerance the dynamometer shall be taken out of service and corrective action shall be taken.

(1) Other checks. In addition to the above periodic checks, these shall also be used to verify system performance under the following special circumstances:

(A) Gas calibration. (A) Each time the analyzer electronic or optical systems are repaired or replaced, a gas calibration shall be performed prior to returning the unit to service.

(B) In high-volume stations, monthly multi-point calibrations shall be performed. Low-volume stations shall perform multi-point calibrations every six months. The calibration curve shall be checked at 20%, 40%, 60%, and 80% of full scale and adjusted or repaired if the specifications in appendix D[1(b)(1)] to this subpart are not met.

(2) Leak checks. Each time the sample line integrity is broken, a leak check shall be performed prior to testing.

(II) Transient Test Equipment

(a) Dynamometer. Once per week, the calibration of each dynamometer and each flywheel shall be checked by a dynamometer coast-down procedure comparable to that in § 86.118-76 of this chapter between the speeds of 55 to 45 mph, and between 30 to 20 mph. All rotating dynamometer components shall be included in the coast-down check for the inertia weight selected. For dynamometers with uncoupled rolls, the unconnected rolls may undergo a separate coast-down check. If a vehicle is used to motor the dynamometer to the beginning coast-down speed, the vehicle shall be lifted off the dynamometer rolls before the coast down begins. If the difference between the measured coast-down time and the theoretical coast-down time is greater than 1 second, the system shall lock out, and corrective actions shall be taken to correct the dynamometer into calibration.

(b) Constant-volume sampler. (1) The constant volume sampler (CVS) flow calibration shall be checked daily by a procedure that identifies deviations in flow from the true value. Deviations greater than ±4% shall be considered acceptable.

(2) The sample probe shall be cleaned and checked at least once per month. The main CVS venturi shall be cleaned and checked at least once per year.

(3) Verifying that flow through the sample probe is adequate for the design shall be done daily. Deviations greater than the design tolerances shall be corrected.

(c) Analyzer system—(1) Calibration checks. (A) Upon initial operation, calibration curves shall be generated for each analyzer. The calibration curve shall consider the entire range of the analyzer as one curve. At least 6 calibration points plus zero shall be used in the lower portion of the range corresponding to an average concentration of approximately 2 ppm for HC, 30 ppm for CO, 3 ppm for NOx, and 400 ppm for CO2. For the case where a low and a high range analyzer is used, the high range analyzer shall use at least 6 calibration points plus zero in the lower portion of the high range scale corresponding to approximately 100% of the full-scale value of the low range analyzer. For all analyzers, at least 6 calibration points shall also be used to define the calibration curve in the region above the 6 lower calibration points. The high range analyzer may be used to obtain the intermediate points for the general range classifications specified. The calibration curves generated shall be a polynomial of no greater order than 4th order, and shall fit the data within ±0.5% at each calibration point.

(B) For all calibration curves, curve checks, span adjustments, and span checks, the zero gas shall be considered a down-scale reference gas, and the analyzer zero shall be set at the trace concentration value of the specific zero gas used.

(2) The basic curve shall be checked monthly by the same procedure used to generate the curve, and to the same tolerances.

(3) On a daily basis prior to vehicle testing—

(A) The curve for each analyzer shall be checked by adjusting the analyzer to correct for zero gas and an up-scale span gas, and then biasing the analyzer by reading a mid-scale span gas within ±2% of point. If the analyzer does not read the mid-scale span point within ±2% of point, the system shall lock out. The up-scale span gas concentration for each analyzer shall correspond to approximately 80 percent of full scale, and the mid-point concentration shall correspond to approximately 15 percent of full scale.

(B) After the up-scale span check, each analyzer in a given facility shall analyze a sample of a random concentration corresponding to approximately 0.5 to 3 times the cut point (in gpm) for the constituent. The value of the random sample may be determined by a gas blender. The deviation in analysis from the mid-scale concentration for each analyzer shall be recorded and compared to the historical mean and standard deviation for the analyzers at the facility and at all facilities. Any reading exceeding 3 sigma shall cause the analyzer to lock out.

(4) Flame ionization detector check. Upon initial operation, and after maintenance to the detector, each Flame Ionization Detector (FID) shall be checked, and adjusted if necessary, for proper peaking and characterization. Procedures described in SAE Paper No. 770141 are recommended for this purpose. A copy of this paper may be obtained from the Society of Automotive Engineers, Inc. (SAE), 400 Commonwealth Drive, Warrendale, Pennsylvania, 15096-0001.

Additionally, every month the response of each FID to a methane concentration of approximately 50 ppm CH4 shall be checked. If the response is outside of the range of 1.10 to 1.20, corrective action shall be taken to bring the FID response within this range. The response shall be computed by the following formula:

\[
\text{FID response in ppm} = \frac{\text{Response}}{\text{ppm methane in cylinder}}
\]

(5) Spanning frequency. The zero and up-scale span point shall be checked, and adjusted if necessary, at 2 hour intervals following the daily mid-scale curve check. If the zero or the up-scale span point drifts by more than 2% for the previous check (except for the initial check of the day), the system shall lock out, and corrective action shall be taken to bring the system into compliance.

(6) Spanning limit checks. The tolerance on the adjustment of the up-scale span point is 0.4% of point. A software algorithm to perform the span adjustment and subsequent calibration curve adjustment shall be used. Additionally, software up-scale span adjustments greater than ±10% shall cause the system to lock out, requiring system maintenance.

(7) Integrator checks. Upon initial operation, and every three months thereafter, emissions from a randomly selected vehicle with official test value greater than 60% of the standard (determined retrospectively) shall be simultaneously sampled by the normal integration method and by the bag method in each test. The data from each method shall be put into a historical database for determining normal and deviant performance for each test lane, facility, and all facilities.
combined. Specific deviations exceeding ±5% shall require corrective action.

(8) Interference. CO and CO\textsubscript{2} analyzers shall be checked prior to initial service, and on a yearly basis thereafter, for water interference. The specifications and procedures used shall generally comply with either § 86.122–78 or § 86.321–78 of this chapter.

(9) NO\textsubscript{2} converter check. The converter efficiency of the NO\textsubscript{2} to NO converter shall be checked on a weekly basis. The check shall generally conform to § 86.123–78 of this chapter, or EPA MVEL Form 305–01.

(10) NO/NO\textsubscript{2} flow balance. The flow balance between the NO and NO\textsubscript{2} test modes shall be checked weekly. The check may be combined with the NO\textsubscript{2} converter check as illustrated in EPA MVEL Form 305–01.

(11) Additional checks. Additional checks shall be performed in accordance with §§ 86.112–79 and 86.114–79, subparts A and B. The specification for the calibration of purge meters shall be checked according to paragraph III of this appendix.

Additional checks shall also apply to the dynamometer used for purge tests.

(IV) Evaporative System Integrity Test Equipment

(a) On a weekly basis pressure measurement devices shall be checked against a specification or performance specifications equal to or better than those specified for the measurement device.

(b) Systems that monitor evaporative system leaks shall be checked for integrity on a daily basis by sealing and pressurizing.

Appendix B to Subpart S—Test Procedures

(1) Idle test

(a) General requirements—(1) Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations shall begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations shall be analyzed at a minimum rate of two times per second. The measured value for pass/fail determinations shall be a simple running average of the measurements taken over five seconds.

(2) Pass/fail determination. A pass or fail determination shall be made for each applicable test mode based on a comparison of the short test standards contained in appendix C to this subpart, and the measured value for HC and CO as described in paragraph (11)(a)(1) of this appendix. A vehicle shall pass the test mode if any pair of simultaneous measured values for HC and CO are below or equal to the applicable short test standards. A vehicle shall fail the test mode if the values for either HC or CO or both, in all simultaneous pairs of values are above the applicable standards.

(3) Void test conditions. The test shall immediately end and any exhaust gas measurements shall be voided if the measured concentration of CO plus CO\textsubscript{2} falls below six percent or the vehicle’s engine stalls at any time during the test sequence.

(4) Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes shall be sampled simultaneously.

(5) This test shall be immediately terminated upon reaching the overall maximum test time.

(b) Test sequence. (1) The test sequence shall consist of a first-chance test and a second-chance test as follows:

(i) The first-chance test, as described under paragraph (c) of this section, shall consist of an idle mode.

(ii) The second-chance test as described under paragraph (d)(i) of this appendix shall be performed only if the vehicle fails the first-chance test.

(2) The test sequence shall begin only after the following requirements are met:

(i) The vehicle shall be tested in the as-received condition with the transmission in neutral or park and all accessories turned off. The engine shall be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating).

(ii) The tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer’s instructions.

(iii) The sample probe shall be inserted into the vehicle’s tailpipe at a minimum depth of 10 inches. If the vehicle’s exhaust system prevents insertion to this depth, a tailpipe extension shall be used.

(iv) The measured concentration of CO plus CO\textsubscript{2} shall be greater than or equal to six percent.

(c) First-chance test. The test shall start (tt=0) when the conditions specified in paragraph (11)(b)(2) of this appendix are met.

(i) The first-chance test shall have an overall maximum test time of 145 seconds (tt=145).

(ii) The first-chance test shall consist of an idle mode only.

(1) The mode shall start (tt=0) when the engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or fails below 350 rpm, the mode timer shall reset to zero and the mode testing shall be performed.

The maximum mode length shall be determined as described under paragraph (11)(c)(2) of this appendix. The maximum mode length shall be 90 seconds elapsed time (mt=90).

(2) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10).

A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(i) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(ii) The vehicle shall pass the idle mode and the test shall be immediately terminated at the end of an elapsed time of 30 seconds (mt=30), if prior to that time the vehicle fails the criteria of paragraph (11)(c)(2)(i) of this appendix.

(iii) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), the measured values are less than or equal to the applicable short test standards as described in paragraph (11)(a)(2) of this appendix.

(iv) The vehicle shall fail the idle mode and the test shall be immediately terminated if none of the provisions of paragraphs (11)(c)(2)(i), (ii), and (iii) of this appendix is satisfied by an elapsed time of 90 seconds (mt=90).

Alternatively, the vehicle may fail the first-chance test if the vehicle fails the criteria of paragraphs (11)(c)(2)(i) and (ii) of this appendix and is not met within an elapsed time of 30 seconds.

(v) Optional. The vehicle may fail the first-chance test and the second-chance test shall be conducted if no exhaust gas concentration lower than 1600 ppm HC is found by an elapsed time of 30 seconds (mt=30).

(d) Second-chance test. If the vehicle fails the first-chance test, the test shall immediately reset to zero (tt=0) and a second-chance test shall be performed. The second-chance test shall have an overall maximum test time of 425 seconds (tt=425).

The test shall consist of a
preconditioning mode followed immediately by an idle mode.  

(1) Preconditioning mode. The mode timer shall start when the engine speed is between 2200 and 2800 rpm. The mode timer shall continue for an elapsed time of 90 seconds (mt = 90). If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than five seconds in any one excursion, or 15 seconds over all excursions, the mode timer shall reset to zero and resume timing.

(2) Idle mode. (a) Ford Motor Company and Honda vehicles. The engines of 1981-1984 Ford Motor Company vehicles and 1984-1985 Honda Preludes shall be shut off for not more than 10 seconds and restarted. This procedure may also be used for 1988-1989 Ford Motor Company vehicles but should not be used for other vehicles. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure.  

(b) The mode timer shall start (mt = 0) when the vehicle engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum idle mode length shall be determined as described in paragraph (E)(ii) of this appendix. The maximum idle mode length shall be satisfied by an elapsed time of 190 seconds (mt = 190). If engine speed falls below 350 rpm or exceeds 1100 rpm for more than five seconds in any one excursion, or 15 seconds over all excursions, the mode timer shall reset to zero and resume timing.

(3) Void test conditions. The test shall immediately end and any exhaust gas measurements shall be voided of the measured concentration of CO plus CO2 falls below six percent or the vehicle's engine stalls at any time during the test sequence.

(4) Multiple exhaust pipes. Exhaust gas concentrations from vehicles equipped with multiple exhaust pipes shall be sampled simultaneously.

(5) The test shall be immediately terminated upon reaching the overall maximum test time.

(b) Test sequence. (1) The test sequence shall consist of a first-chance test and a second-chance test as follows:  

(i) The first-chance test, as described under paragraph (E)(ii) of this appendix, shall consist of an idle mode followed by a high-speed mode.  

(ii) The second-chance high-speed mode, as described under paragraph (E)(ii) of this appendix, shall follow the first-chance high-speed mode. It shall be performed only if the vehicle fails the first-chance test. The second-chance idle mode, as described under paragraph (E)(ii) of this appendix, shall follow the second-chance high-speed mode and be performed only if the vehicle fails the idle mode of the first-chance test.

(2) The test sequence shall begin only after the following requirements are met:  

(i) The vehicle shall be in an as-received condition with the transmission in neutral or park and all accessories turned off. The engine shall be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating)

(ii) The tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(iii) The sample probe shall be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension shall be used.

(iv) The measured concentration of CO plus CO2 shall be greater than or equal to six percent.

(c) First-chance test and second-chance high-speed mode. The test timer shall start (mt = 0) when the conditions specified in paragraph (E)(ii) of this section are met. The first-chance test and second-chance high-speed mode shall have an overall maximum test time of 425 seconds (mt = 425). The first-chance test shall consist of an idle mode followed immediately by a high-speed mode. This is followed immediately by an additional second-chance high-speed mode, if necessary.

(1) First-chance idle mode. (i) The mode timer shall start (mt = 0) when the vehicle engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum idle mode length shall be determined as described in paragraph (E)(ii)(ii) of this appendix. The maximum idle mode length shall be 90 seconds elapsed time (mt = 90).

(ii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt = 10). A pass/fail determination shall be made for the vehicle and the mode terminated as follows:

(A) The vehicle shall pass the idle mode and the mode shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt = 30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall fail the idle mode and the mode shall be terminated if, prior to an elapsed time of 30 seconds (mt = 30), measured values are not less than or equal to the applicable short test standards as described in paragraph (E)(ii)(ii) of this appendix.

(C) The vehicle shall fail the idle mode and the mode shall be terminated if, at any point between an elapsed time of 30 seconds (mt = 30) and 90 seconds (mt = 90), the measured values are less than or equal to the applicable short test standards described in paragraph (E)(ii)(ii) of this appendix.

(D) The vehicle shall fail the idle mode and the mode shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt = 30) and 90 seconds (mt = 90), the measured values are less than or equal to the applicable short test standards as described in paragraph (E)(ii)(ii) of this appendix.

(2) The second-chance high-speed mode, as described under paragraph (E)(ii) of this appendix, shall follow the first-chance high-speed mode. It shall be performed only if the vehicle fails the first-chance test. The second-chance idle mode, as described under paragraph (E)(ii) of this appendix, shall follow the second-chance high-speed mode and be performed only if the vehicle fails the idle mode of the first-chance test.

(2) The test sequence shall begin only after the following requirements are met:  

(i) The vehicle shall be in an as-received condition with the transmission in neutral or park and all accessories turned off. The engine shall be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating)

(ii) The tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(iii) The sample probe shall be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension shall be used.

(iv) The measured concentration of CO plus CO2 shall be greater than or equal to six percent.

(c) First-chance test and second-chance high-speed mode. The test timer shall start (mt = 0) when the conditions specified in paragraph (E)(ii) of this section are met. The first-chance test and second-chance high-speed mode shall have an overall maximum test time of 425 seconds (mt = 425). The first-chance test shall consist of an idle mode followed immediately by a high-speed mode. This is followed immediately by an additional second-chance high-speed mode, if necessary.
(ii) Ford Motor Company and Honda vehicles. For 1981–1987 model year Ford Motor Company vehicles and 1984–1985 model year Honda Preludes, the pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10) using the following procedure. This procedure may also be used for 1988–1989 Ford Motor Company vehicles but should not be used for other vehicles.

(A) A pass or fail determination, as described below, shall be made for vehicles that passed the idle mode, to determine whether the high-speed test should be terminated prior to or at the end of an elapsed time of 180 seconds (mt=180).

(1) The vehicle shall pass the high-speed mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(2) The vehicle shall pass the high-speed mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (II)(c)(2)(i)(A)(2) of this appendix are not satisfied, and the measured values are less than or equal to the applicable short test standards as described in paragraph (II)(a)(2) of this appendix.

(B) A pass or fail determination shall be made for vehicles that failed the idle mode and the high-speed mode terminated at the end of an elapsed time of 180 seconds (mt=180) as follows:

(1) The vehicle shall pass the high-speed mode and the mode shall be terminated at an elapsed time of 180 seconds (mt=180) if any measured values are less than or equal to the applicable short test standards as described in paragraph (II)(a)(2) of this appendix.

(2) The vehicle shall fail the high-speed mode and the test shall be terminated if paragraph (II)(c)(2)(iii)(B)(1) of this appendix is not satisfied by an elapsed time of 180 seconds (mt=180).

(d) Second-chance idle mode. If the vehicle fails the first-chance idle mode and passes the high-speed mode, the test timer shall reset to zero (t=0) and a second-chance idle mode shall commence. The second-chance idle mode shall have an overall maximum test time of 145 seconds (t=145). The test shall consist of an idle mode only.

(1) The engines of 1961–1987 Ford Motor Company vehicles and 1984–1985 Honda Preludes shall be shut off for not more than 10 seconds and restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. This procedure may also be used for 1986–1988 Ford Motor Company vehicles but should not be used for other vehicles.

(2) The mode timer shall start (mt=0) when the vehicle engine speed is between 350 and 1100 rpm. If the engine speed exceeds 1100 rpm or falls below 350 rpm the mode timer shall reset to zero and resume timing. The minimum second-chance idle mode length shall be determined as described in paragraph (II)(d)(3)(i) of this appendix. The maximum second-chance idle mode length shall be 90 seconds elapsed time (mt=90).

(3) The pass/fail analysis shall begin after an elapsed time of 30 seconds (mt=30). A pass or fail determination shall be made for the vehicle and the second-chance idle mode shall be terminated as follows:

(i) The vehicle shall pass the second-chance idle mode and the test shall be immediately terminated at an elapsed time of 30 seconds (mt=30), any measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(ii) The vehicle shall pass the second-chance idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (II)(c)(2)(iii)(B)(1) of this appendix are not satisfied, and the measured values are less than or equal to the applicable short test standards as described in paragraph (II)(a)(2) of this appendix.

(iii) The vehicle shall pass the second-chance idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), the measured values are less than or equal to the applicable short test standards as described in paragraph (II)(a)(2) of this appendix.

(iv) The vehicle shall fail the second-chance idle mode and the test shall be terminated if none of the provisions of paragraph (II)(d)(3)(i), (ii), and (iii) of this appendix are satisfied.
appendix is satisfied by an elapsed time of 90 seconds (mt = 90).

(III) Loaded Test

(a) General requirements—(1) Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations shall begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations shall be analyzed at a minimum rate of two times per second. The measured value for pass/fail determinations shall be a simple running average of the measurements taken over five seconds.

(2) Pass/fail determination. A pass or fail determination shall be made for each applicable test mode based on a comparison of the short test standards contained in Appendix C to this subpart and the measured value for HC and CO as described in paragraph (III)(a)(1) of this appendix. A vehicle shall pass the test mode if any pair of simultaneous values for HC and CO are below or equal to the applicable short test standards. A vehicle shall fail the test mode if the values for either HC or CO, or both, in all measured values are above the applicable standards.

(b) Void test conditions. The test shall immediately end and any exhaust gas measurements shall be voided if the measured concentration of CO plus CO₂ falls below six percent or the vehicle's engine stalls at any time during the test sequence.

(c) Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes shall be sampled simultaneously.

(d) The test shall be immediately terminated upon reaching the overall maximum test time.

(e) Test sequence. (1) The test sequence shall consist of a loaded mode using a chassis dynamometer followed immediately by an idle mode as described under paragraphs (III)(c)(1) and (2) of this appendix.

(2) The test sequence shall begin only after the following requirements are met:

(i) The dynamometer shall be warmed up, in stabilized operating condition, adjusted, and calibrated in accordance with the procedures of appendix A to this subpart. Prior to each test, variable-curve dynamometers shall be checked for proper setting of the road-load indicator or road-load controller.

(ii) The vehicle shall be tested in an accepted condition with all accessories turned off. The engine shall be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch probe on the radiator hose, or other visual observation for overheating).

(iii) The vehicle shall be operated during each mode of the test with the gear selector in the following position:

(A) In drive for automatic transmissions and in second (or third if more appropriate) for manual transmissions for the loaded mode.

(B) In park or neutral for the idle mode.

(iv) The tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(v) The sample probe shall be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension shall be used.

(vi) The measured concentration of CO plus CO₂ shall be greater than or equal to six percent.

(c) Overall test procedure. The test timer shall start (t = 0) when the conditions specified in paragraph (III)(b)(2) of this appendix are met and the mode timer initiates as specified in paragraph (III)(c)(1) of this appendix. The test sequence shall have an overall maximum test time of 240 seconds (tt = 240). The test shall be immediately terminated upon reaching the overall maximum test time.

(1) Loaded mode—(i) Ford Motor Company and Honda vehicles. (Optional) The engines of 1981-1987 Ford Motor Company vehicles and 1984-1985 Honda Preludes shall be shut off for not more than 10 seconds and restarted. This procedure may also be used for 1988-1989 Ford Motor Company vehicles but should not be used for other vehicles. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure.

(ii) The mode timer shall start (mt = 0) when the dynamometer speed is zero and the vehicle engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum idle mode length shall be determined as described in paragraph (II)(c)(2)(ii) of this appendix. The maximum idle mode length shall be 90 seconds elapsed time (mt = 90).

(iii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt = 10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(A) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt = 30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt = 30) if, prior to that time, the criteria of paragraph (II)(c)(2)(iii)(A) of this appendix are not satisfied, and the measured values are less than or equal to the applicable short test standards as described in paragraph (III)(a)(2) of this appendix.

(C) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt = 30) and 90 seconds (mt = 90), measured values are less than or equal to the applicable short test standards described in paragraph (III)(a)(2) of this appendix.

(D) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (III)(c)(2)(ii)(A), (c)(2)(iii)(B), and (c)(2)(iii)(C) of this appendix is satisfied by an elapsed time of 90 seconds (mt = 90).

(iv) Preconditioned IDLE TEST

(a) General requirements—(1) Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations shall begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations shall be analyzed at a minimum rate of two times per second. The measured value for pass/fail determinations shall be a simple running average of the measurements taken over five seconds.

(b) Pass/fail determination. A pass or fail determination shall be made for each applicable test mode based on a comparison of the short test standards contained in appendix C to this subpart, and the measured value for HC and CO as described in paragraph (IV)(a)(1) of this appendix. A vehicle shall pass the test mode if any pair of simultaneous values for HC and CO are below six percent or the vehicle's engine stalls at any time during the test sequence.

Prior to each test, variable-curve dynamometers shall be checked for proper setting of the road-load indicator or road-load controller.

(i) The dynamometer shall be warmed up, in stabilized operating condition, adjusted, and calibrated in accordance with the procedures of appendix A to this subpart. Prior to each test, variable-curve dynamometers shall be checked for proper setting of the road-load indicator or road-load controller.

(ii) The vehicle shall be tested in an accepted condition with all accessories turned off. The engine shall be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch probe on the radiator hose, or other visual observation for overheating).

(iii) The vehicle shall be operated during each mode of the test with the gear selector in the following position:

(A) In drive for automatic transmissions and in second (or third if more appropriate) for manual transmissions for the loaded mode.

(B) In park or neutral for the idle mode.

(iv) The tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(v) The sample probe shall be inserted into the vehicle's tailpipe to a minimum depth of...
below or equal to the applicable short test standards. A vehicle shall fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable short test standards.

(3) Void test conditions. The test shall immediately end and any exhaust gas concentrations shall be analyzed as described in paragraph (IV)(c)(2)(iii) of this appendix. The maximum idle mode length shall be 90 seconds elapsed time (mt=90).

(ii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(A) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (IV)(c)(2)(ii)(A) of this appendix are not satisfied, and the measured values are less than or equal to the applicable short test standards as described in paragraph (IV)(a)(2) of this appendix.

(C) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), measured values are less than or equal to the applicable short test standards as described in paragraph (IV)(e)(2) of this section.

(D) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (IV)(c)(2)(ii)(A), (B), and (C) of this appendix is satisfied by an elapsed time of 30 seconds (mt=30). Alternatively, the vehicle may be failed if the provisions of paragraphs (IV)(c)(2)(ii)(A) and (ii) of this appendix are not met within an elapsed time of 30 seconds.

(E) Optional. The vehicle may fail the first-chance test and the second-chance test shall be performed. The second-chance test shall have an overall maximum test time of 425 seconds. The test shall consist of a preconditioning mode followed immediately by an idle mode.

(1) Preconditioning mode. The mode timer shall start (mt=0) when engine speed is between 2250 and 2900 rpm. The mode shall continue for an elapsed time of 30 seconds (mt=30). If engine speed falls below 2250 rpm or exceeds 2900 rpm for more than five seconds in any one excursion, or 15 seconds over all excursions, the mode timer shall reset to zero and resume timing.

(2) Idle mode. The idle mode timer shall start (mt=0) when the engine speed is between 2250 and 2900 rpm. The mode shall continue for an elapsed time of 30 seconds (mt=30). If engine speed falls below 2250 rpm or exceeds 2900 rpm for more than five seconds in any one excursion, or 15 seconds over all excursions, the mode timer shall reset to zero and resume timing.

(iii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(A) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO. The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (IV)(c)(2)(ii)(A) of this appendix are not satisfied, and the measured values are less than or equal to the applicable short test standards as described in paragraph (IV)(a)(2) of this appendix.

(C) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), measured values are less than or equal to the applicable short test standards as described in paragraph (IV)(e)(2) of this appendix.

(D) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (IV)(c)(2)(ii)(A), (B), and (C) of this appendix is satisfied by an elapsed time of 90 seconds (mt=90). Alternatively, the vehicle may be failed if the provisions of paragraphs (IV)(c)(2)(ii)(A) and (ii) of this appendix are not met within an elapsed time of 30 seconds.

(V) Idle Test With Loaded Preconditioning

(a) General requirements.—(1) Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations shall begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations shall be analyzed at a minimum rate of two times per second. The measured value for pass/fail determinations shall be a simple running average of the measurements taken over five seconds.

(3) Pass/fail determination. A pass or fail determination shall be made for each applicable test mode based on a comparison of the short test standards contained in appendix C to this subpart, and the measured value for HC and CO as described in paragraph (V)(e)(1) of this appendix. A vehicle shall pass the test mode if any pair of simultaneous values for HC and CO are below or equal to the applicable short test standards. A vehicle shall fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

(3) Void test conditions. The test shall immediately end and any exhaust gas measurements shall be voided if the measured concentration of CO plus CO2 falls below six percent or the vehicle’s engine stalls at any time during the test sequence.

(4) Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes shall be sampled simultaneously.

(5) The test shall be immediately terminated upon reaching the overall maximum test time.

(b) Test sequence. (1) The test sequence shall consist of a first-chance test and a second-chance test as follows:

(i) The idle mode length shall be 90 seconds elapsed time (mt=90).

(ii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10).
(i) The first-chance test, as described under paragraph [V](c) of this appendix, shall consist of an idle mode.

(ii) The second-chance test as described under paragraph [V](d) of this appendix shall be performed only if the vehicle fails the first-chance test.

(2) The test sequence shall begin only after the following requirements are met:

(i) The dynamometer shall be warmed up, is in an idle mode, and temperature, pressure, and humidity readings shall be adjusted, and calibrated in accordance with the procedures of appendix A to this subpart. Prior to each test, variable-curves shall be checked for proper setting of the road-load indicator or road-load controller.

(ii) The vehicle shall be tested in an unconditioned condition with all accessories turned off. The engine shall be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating).

(iii) The vehicle shall be operated during each mode of the test with the gear selector in the following position:

(A) In drive for automatic transmissions

(B) In park or neutral for the idle mode.

(iv) The tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer’s instructions:

(v) The sample probe shall be inserted into the vehicle’s tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension shall be used.

(vi) The measured concentration of CO plus CO₂ shall be greater than or equal to six percent.

(c) First-chance test. The test timer shall start (tt=0) when the conditions specified in paragraph [V](b)(2) of this appendix are met. The test shall have an overall maximum test time of 155 seconds (tt=155). The first-chance test shall consist of an idle mode only.

(1) The mode timer shall start (mt=0) when the vehicle engine speed is between 550 and 1100 rpm. If the engine exceeds 1100 rpm or falls below 550 rpm, the mode timer shall reset to zero and resume timing. The minimum mode length shall be determined as described in paragraph [V](c)(2) of this appendix. The maximum mode length shall be 90 seconds elapsed time (mt=90).

(2) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(i) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable short test standards as described in paragraph [V](a)(2) of this appendix.

(ii) The mode timer shall start (mt=0) when the dynamometer speed is zero and the vehicle engine speed is between 350 and 1100 rpm. If the engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum idle mode length shall be determined as described in paragraph [V](d)(2)(ii) of this appendix. The maximum idle mode length shall be 90 seconds elapsed time (mt=90).

(iii) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable short test standards as described in paragraph [V](a)(2) of this appendix.

(2) Pass/fail determination. A pass or fail determination shall be made for each applicable test mode based on a comparison of the test mode to the applicable short test standards contained in appendix C to this subpart, and the measured value for HC and CO as described in paragraph [VIII](a)(1) of this appendix. A vehicle shall pass the test mode if any pair of simultaneous values for HC and CO are below or equal to the applicable short test standards. A vehicle shall fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

(3) Void test conditions. The test shall not be performed if any exhaust gas measurements shall be voided if the measured concentration of CO plus CO₂ falls below six percent or the vehicle’s engine stalls at any time during the test sequence.

(4) Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes shall be sampled simultaneously.

(5) Test shall be immediately terminated upon reaching the overall maximum test time.
The test shall have an overall maximum test start (tt=0) when the conditions specified in seconds of the final measured value used in seconds over all excursions within 30 rpm or exceeds 2800 rpm for more than two seconds. If the engine speed falls below 2200 rpm, the vehicle engine speed is between 2200 and 2800 rpm. If the engine speed falls below 2200 rpm or exceeds 2800 rpm for more than two seconds in one excursion, or more than six seconds over all excursions within 30 seconds of the final measured value used in the pass/fail determination, the measured value shall be invalided and the mode continued. If any excursion lasts for more than ten seconds, the mode timer shall reset to zero (mt=0). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(A) If the vehicle fails both the high-speed speed mode and first-chance idle mode, the second-chance test shall commence. The test timer shall reset to zero (tt=0) and a pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(A) The vehicle shall pass the high-speed mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall pass the idle mode and the test shall be terminated if at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), the measured values are less than or equal to the applicable short test standards as described in paragraph (VI)(a)(2) of this appendix.

(C) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), the measured values are less than or equal to the applicable short test standards as described in paragraph (VI)(a)(2) of this appendix.

(D) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (VI)(c)(2)(ii) (A), (B), and (C) of this appendix are satisfied by an elapsed time of 90 seconds (mt=90). Alternatively, the vehicle may be failed if the provisions of paragraphs (VI)(c)(2)(ii) and (iii) of this appendix are not met within the elapsed time of 90 seconds (mt=90).

(iv) Second-chance test.

(A) If the vehicle fails both the first-chance high-speed mode and first-chance idle mode, the second-chance test shall commence. The second-chance test shall be performed based on the first-chance test failure mode or modes as follows:

(A) If the vehicle failed both the first-chance high-speed mode and first-chance idle mode, the second-chance test shall consist of a second-chance high-speed mode as described in paragraph (VI)(d)(2) of this appendix. The overall maximum test time shall be 280 seconds (tt=280).

(B) If the vehicle failed only the first-chance high-speed mode, the second-chance test shall consist of a second-chance high-speed mode as described in paragraph (VI)(c)(2)(ii) (A) of this appendix. The overall maximum test time shall be 280 seconds (tt=280).

(C) The vehicle shall pass the high-speed mode and the test shall be immediately terminated if, at any point between an elapsed time for 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable short test standards as described in paragraph (VI)(a)(2) of this appendix.
be made for the vehicle and the mode shall be terminated as follows:

(A) The vehicle shall pass the high-speed mode and the mode shall be terminated at the end of an elapsed time of 180 seconds (mt = 180). If any measured values are less than or equal to applicable short test standards as described in paragraph (VI)(a)(2) of this appendix.

(B) The vehicle shall fail the high-speed mode and the mode shall be terminated if paragraph (VI)(d)(4)(ii)(A) of this appendix is not satisfied by an elapsed time of 197 seconds (mt = 180).

(3) Second-chance preconditioning mode.

The mode timer shall start (mt = 0) when engine speed is between 2200 and 2800 rpm. The mode shall continue for an elapsed time of 10 seconds (mt = 10). If the engine speed falls below 2200 rpm or exceeds 2800 rpm for more than five seconds in any one excursion, or 15 seconds over all excursions, the mode timer shall be reset and resume timing.

(4) Second-chance idle mode.

(i) Ford Motor Company and Honda vehicles. The engines of 1981–1987 Ford Motor Company vehicles and 1984–1985 Honda Preludes shall be shut off for not more than 10 seconds and the probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. This procedure may also be used for 1988–1989 Ford Motor Company vehicles but should not be used for other vehicles.

(ii) The mode timer shall start (mt = 0) when the vehicle engine speed is between 350 and 1100 rpm. If the engine speed exceeds 1100 rpm or falls below 350 rpm the mode timer shall reset to zero and resume timing. The minimum second-chance idle mode length shall be determined as described in paragraph (VI)(d)(4)(i) of this appendix. The maximum second-chance idle mode length shall be 90 seconds elapsed time (mt = 90).

(iii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt = 10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(A) The vehicle shall pass the second-chance idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt = 30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall pass the second-chance idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt = 30) if, prior to that time, the criteria of paragraph (VI)(d)(4)(ii)(A) of this appendix are not satisfied, and the measured values are less than or equal to the applicable short test standards as described in paragraph (VI)(a)(2) of this appendix.

(C) The vehicle shall pass the second-chance idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt = 30) and 90 seconds (mt = 90), measured values are less than or equal to the applicable short test standards described in paragraph (VI)(d)(4)(ii) of this appendix.

(D) The vehicle shall fail the second-chance idle mode and the test shall be terminated if none of the provisions of paragraphs (VI)(d)(4)(ii)(A), (B), and (C) of this appendix is satisfied by an elapsed time of 90 seconds (mt = 90).

Appendix C to Subpart S—Steady-State Short Test Standards

(1) Short Test Standards for 1981 and Later Model Year Light-Duty Vehicles

For 1981 and later model year light-duty vehicles for which any of the test procedures described in appendix B to this subpart are utilized to establish Emissions Performance Warranty eligibility (i.e., 1981 and later model year light-duty vehicles at low altitude and 1982 and later model year vehicles at high altitude to which high altitude certification standards of 1.5 gpm HC and 15 gpm CO or less apply), short test emissions for all tests and test modes shall not exceed:

(a) Hydrocarbons: 220 ppm as hexane.

(b) Carbon monoxide: 1.2%.

(2) Short Test Standards for 1981 and Later Model Year Light-Duty Trucks

For 1981 and later model year light-duty trucks for which any of the test procedures described in appendix B to this subpart are utilized to establish Emissions Performance Warranty eligibility (i.e., 1981 and later model year light-duty trucks at low altitude and 1982 and later model year trucks at high altitude to which high altitude certification standards of 2.0 gpm HC and 26 gpm CO or less apply), short test emissions for all tests and test modes shall not exceed:

(a) Hydrocarbons: 220 ppm as hexane.

(b) Carbon monoxide: 1.2%.

Appendix D to Subpart S—Steady-State Short Test Equipment

(1) Steady-State Test Exhaust Analysis System

(a) Sampling system—(1) General requirements. The sampling system for steady-state tests shall be designed to provide for the efficient collection of sample gas at least once per second for all tests for which the analyzer manufacturer is authorized to do so. This sampling system shall be capable of being inserted to a depth of at least ten inches into the tailpipe of the vehicle being tested, or into an extension boot if one is used. A digital display for dynamometer speed and load shall be included if the test procedures described in appendix B to this subpart, paragraphs (III) and (V), are conducted. Minimum specifications for optional NO analyzers are also described in this appendix. The analyzer system shall be able to test, as specified in at least one section in appendix B to this subpart, all model vehicles in service at the time of sale of the analyzer.

(2) Temperature operating range. The sampling system and all associated hardware shall be designed to operate within the performance specifications described in paragraph (I)(b) of this appendix in ambient air temperatures ranging from 41 to 110 degrees Fahrenheit. The analyzer system shall, where necessary, include features to keep the sampling system within the specified range.

(3) Humidity operating range. The sampling system and all associated hardware shall be of a design certified to operate within the performance specifications described in paragraph (I)(b) of this appendix at a minimum of 80 percent relative humidity throughout the required temperature range.

(4) Barometric pressure compensation. Barometric pressure compensation shall be provided. Compensation shall be made for elevations up to 8000 feet (above mean sea level). At any given altitude and ambient conditions specified in paragraph (I)(b) of this appendix, errors due to barometric pressure changes of ±2 inches of mercury shall not exceed the accuracy limits specified in paragraph (I)(b) of this appendix.

(5) Dual sample probe requirements. When testing a vehicle with dual exhaust pipes, a dual sample probe shall be used. The dual sample probe may be designed so that the analyzer manufacturer is required to provide equal flow in each leg shall be used. The equal flow requirement is considered to be met if the flow rate in each leg of the probe has been measured under two sample pump flow rates (normal rate and a rate equal to the one at which the flow rates in each of the legs are found to be equal to each other (within 15% of the flow rate in the leg having lower flow).

(6) System lockout during warm-up. Functional operation of the gas sampling unit shall remain disabled throughout a warm-up procedure.

(7) Electromagnetic isolation and interference. Electromagnetic signals found in an automotive service environment shall not cause malfunctions or changes in the accuracy of the electronics of the analyzer system. The instrument design shall ensure that readings do not vary as a result of electromagnetic radiation and induction devices normally found in the automotive environment, including high energy vehicle ignition systems, radio frequency transmission radiation sources, and building electrical systems.

(8) Vibration and shock protection. System operation shall be unaffected by the vibration and shock encountered under the normal operating conditions encountered in an automotive service environment.

(9) Propane equivalency factor. The propane equivalency factor shall be displayed in a manner that enables it to be viewed conveniently, while permitting it to be altered only by personnel specifically authorized to do so.

(b) Analyzers—(1) Accuracy. The analyzers shall be of a design certified to meet the following accuracy requirements when calibrated to the span points specified in appendix A to this subpart:
(2) Minimum analyzer display resolution. The analyzer electronics shall have sufficient resolution to achieve the following:

<table>
<thead>
<tr>
<th>Channel</th>
<th>Range</th>
<th>Accuracy</th>
<th>Noise</th>
<th>Repeatability</th>
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<tr>
<td>400-1000</td>
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<td>1000-2000</td>
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<td>± 120</td>
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(3) Response time. The response time from the probe to the display for HC, CO, and CO₂ analyzers shall not exceed eight seconds to 90% of a step change in input. For NO analyzers, the response time shall not exceed twelve seconds to 90% of a step change in input.

(4) Display refresh rate. Dynamic information being displayed shall be refreshed at a minimum rate of twice per second.

(5) Interference effects. The interference effects for non-interest gases shall not exceed ±10 ppm for hydrocarbons, ±0.05 percent for carbon monoxide, ±0.20 percent for carbon dioxide, and ±20 ppm for oxides of nitrogen.

(6) Low flow indication. The analyzer shall provide an indication when the sample flow is below the acceptable level. The sampling system shall be equipped with a flow meter (or equivalent) that shall indicate sample flow degradation when meter error exceeds three percent of full scale, or causes system response time to exceed 13 seconds to 90 percent of a step change in input, whichever is less.

(7) Engine speed detection. The analyzer shall utilize a tachometer capable of detecting engine speed in revolutions per minute (rpm) with a 0.5 second response time and an accuracy of ±3% of the true rpm.

(8) Test and mode timers. The analyzer shall have the capability of simultaneously determining the amount of time elapsed in a test, and in a mode within that test.

(9) Sample rate. The analyzer shall be capable of measuring exhaust concentrations of gases specified in this section at a minimum rate of twice per second.

(c) Demonstration of conformity. The analyzer shall be demonstrated to the satisfaction of the inspection program manager, through acceptance testing procedures, to meet the requirements of this section and that it is capable of being maintained as required in appendix A to this subpart.

(II) Steady-State Test Dynamometer

(a) The chassis dynamometer for steady-state short tests shall provide the following capabilities:

(1) Power absorption. The dynamometer shall be capable of applying a load to the vehicle's driving tire surfaces at the horsepower and speed levels specified in paragraph (II)(b) of this appendix.

(2) Short-term stability. Power absorption at constant speed shall not drift more than ±0.5 horsepower (hp) during any single test mode.

(3) Roll weight capacity. The dynamometer shall be capable of supporting a driving axle weight up to four thousand (4,000) pounds or greater.

(4) Between roll wheel lift. These shall be controllable and capable of lifting a minimum of four thousand (4,000) pounds.

(5) Roll brakes. Both rolls shall be locked when the wheel lift is up.

(6) Speed indications. The dynamometer speed display shall have a range of 0-60 mph, and a resolution and accuracy of at least 1 mph.

(7) Safety interlock. A roll speed sensor and safety interlock circuit shall be provided which prevents the application of the roll brakes and upward lift movement at any roll speed above 0.5 mph.

(b) The dynamometer shall produce the load speed relationships specified in paragraphs (III) and (V) of appendix B to this subpart.

(III) Transient Emission Test Equipment [Reserved]

(IV) Evaporative System Purge Test Equipment [Reserved]

(V) Evaporative System Integrity Test Equipment [Reserved]

Appendix E to Subpart S—Transient Test Driving Cycle

(I) Driver's trace. All excursions in the transient driving cycle shall be evaluated by the procedures defined in §86.115—43(b)(1) and §86.115—43(c) of this chapter. Excursions exceeding these limits shall cause a test to be void. In addition, provisions shall be available to utilize cycle validation criteria, as described in §86.3341—99 of this chapter, for trace speed versus actual speed as a means to determine a valid test.

(II) Driving cycle. The following table shows the time speed relationship for the transient IM240 test procedure.
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**LIST OF PUBLIC LAWS**

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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**ELECTRONIC BULLETIN BOARD**

Free Electronic Bulletin Board Service for Public Law Numbers is available on 202-275-1538 or 275-0920.
GUIDE to Record Retention Requirements in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

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The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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Arranged by subject matter, this edition of the Codification contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the Codification to determine the latest text of a document without having to "reconstruct" it through extensive research.

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