10–25–96
Vol. 61 No. 208
Pages 55201–55544

Friday
October 25, 1996

federal register

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1620

Thrift Savings Plan Participation for Certain Employees of the District of Columbia Financial Responsibility and Management Authority

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board is publishing interim regulations to implement sections 102 (e) and (f) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (Act), as amended. Under this Act, a newly hired employee of the District of Columbia Financial Responsibility and Management Assistance Authority (Authority) can elect FERS retirement coverage; and certain persons who separate from Federal employment and who are employed by the Authority may elect to participate in the Federal retirement system in which they last participated before separating from Federal service. These regulations address participation in the Thrift Savings Plan (TSP) by eligible employees of the Authority who elect Federal retirement coverage. These regulations do not apply to eligibility to participate in retirement programs administered by the Office of Personnel Management (OPM).

DATES: This interim rule is effective October 25, 1996. Comments must be received on or before December 24, 1996.

ADDRESSES: Comments may be sent to Patrick J. Forrest, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest, (202) 942–1662.

SUPPLEMENTARY INFORMATION: The Federal Retirement Thrift Investment Board (Board) administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986, Pub. L. 99–335, 100 Stat. 514 (1986), which has been codified, as amended, largely at 5 U.S.C. 8401–8479 (1994). The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code.

The District of Columbia Financial Responsibility and Management Assistance Act of 1995 (1995 Act), Pub. L. 104–8, section 101, 109 Stat. 97, 100, established the District of Columbia Financial Responsibility and Management Assistance Authority (Authority) as an entity within the Government of the District of Columbia. Under the 1995 Act, a person who separated from Federal employment and who became employed by the Authority within two months could elect to participate in the Federal retirement system in which he or she last participated before separating from Federal service. On January 29, 1996, the Board published an interim rule, with request for comments in the Federal Register (61 FR 2872), which governed TSP participation by eligible employees of the Authority who elected retirement coverage under the Federal Employees' Retirement System (FERS) or the Civil Service Retirement System (CSRS). The Board received no comment on that interim rule.

On April 26, 1996, the 1995 Act was amended by the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Omnibus Act), Pub. L. 104–134, section 153, 110 Stat. 1321, *reprinted in* 1996 U.S.C.C.A.N. (110 Stat. 1321) 221–224. Under the 1995 Act, as amended, a newly hired employee of the Authority can elect FERS retirement coverage; and an employee who leaves Federal service to work for the Authority can elect continued Federal retirement coverage, but only if the election is made before the employee separates from Federal service and if employment with the Authority commences within three days after separating from Federal service.

The Board is amending its interim rule so that it applies to any employee of the Authority who is covered by FERS or CSRS, whether the employee elected Federal retirement coverage under the 1995 Act or under the 1995 Act as amended by the Omnibus Act.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will affect only a small number of employees of a single agency of the Government of the District of Columbia.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553 (b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. Elections made under these regulations will affect some qualifying employees' participation in the TSP retroactive to their entry on duty with the Authority. The intent of the legislation is to allow eligible employees to participate in the TSP as soon as practicable. A delay in the effective date of these regulations would be contrary to the intent of the legislation and to the public interest because it would delay the election opportunity for eligible employees of the Authority.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA), as amended by the Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, title II, 110 Stat. 847, 857–875 (5 U.S.C. 801(a)(1)(A)), the Board submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of this rule in today's Federal Register. This rule is not a major rule as defined in section 804(2) of the APA as amended (5 U.S.C. 804(2)).

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, section 201, 109 Stat. 48, 64, the effect of this regulation on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, or tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

List of Subjects in 5 CFR Part 1620

District of Columbia, Employment benefit plans, Government employees, Pensions, Retirement.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,

Executive Director.

For the reasons set out in the preamble, 5 CFR Chapter VI is amended as set forth below:

PART 1620—CONTINUATION OF ELIGIBILITY

1. The authority citation for part 1620 is revised to read as follows:

Authority: 5 U.S.C. 8474 and 8432b; Pub. L. 99–591, 100 Stat. 3341; Pub. L. 100–238, 101 Stat. 1744; Pub. L. 100–659, 102 Stat. 3910; Pub. L. 101–508, 104 Stat. 1388; Pub. L. 104–106, 110 Stat. 186; Pub. L. 104–134, 110 Stat. 1321.

2. Section 1620.110 is revised to read as follows:

§ 1620.110 Scope.

The District of Columbia Financial Responsibility and Management Assistance Authority (Authority) was established by the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. 104–8, 109 Stat. 97, which was amended by the Omnibus Consolidated Rescissions and Appropriations Act of 1996, section 153, Pub. L. 104–134, 110 Stat. 1321. Although the Authority is an agency of the District of Columbia Government, certain of its employees may elect Federal Employees' Retirement System (FERS) or Civil Service Retirement System (CSRS) coverage. This subpart governs participation in the Thrift Savings Plan (TSP) by employees of the Authority who elect to be covered by FERS or CSRS.

3. Section 1620.111 is amended by revising the definition of *Basic pay* to read as follows:

§ 1620.111 Definitions.

* * * * *

Basic pay means basic pay as defined in 5 U.S.C. 8331(3), and it is the rate of pay used in computing any amount the individual is otherwise required to contribute to the Civil Service Retirement and Disability Fund as a condition for participating in the Civil Service Retirement System or the Federal Employees' Retirement System, as the case may be.

* * * * *

4. Section 1620.112 is revised to read as follows:

§ 1620.112 Eligibility requirements.

To be eligible to participate in the TSP, an employee of the Authority must be covered by FERS or CSRS pursuant to the District of Columbia Financial Responsibility and Management Assistance Act of 1995, as amended.

5. Section 1620.114 is revised to read as follows:

§ 1620.114 Employee contributions.

(a) An employee of the Authority who is separated from Federal service for less than 31 full calendar days before commencing employment with the Authority and who is covered by FERS or CSRS will be eligible to contribute to the TSP as though he or she had transferred to the Authority from the losing Federal agency, *i.e.*, as though the employee did not have a TSP separation as defined by the TSP.

(b) An employee of the Authority who is separated from Federal service for 31 or more full calendar days before commencing employment with the Authority and who is covered by FERS or CSRS will be eligible to contribute to the TSP as follows:

(1) If the employee was previously eligible to participate in the TSP, the employee will be eligible to contribute to the TSP in the first open season (as determined in accordance with paragraph (d) of this section) beginning after the date the employee commences employment with the Authority.

(2) If the employee was not previously eligible to participate in the TSP, the employee will be eligible to contribute to the TSP in the second open season (as determined in accordance with paragraph (d) of this section) beginning after the date the employee commences employment with the Authority.

(c) An employee of the Authority with no period of prior Federal service who elects to be covered by FERS will be eligible to contribute to the TSP in the second open season (as determined in accordance with paragraph (d) of this section) beginning after the effective date of the FERS coverage.

(d) If an employee of the Authority who is described in paragraphs (b) and (c) of this section is employed by the Authority during an open season but before the election period (the last calendar month of the open season), that open season will be considered the employee's first open season.

(e) TSP employee contributions from employees of the Authority are subject to the limits described at 5 CFR part 1600, subpart C.

6. Section 1620.118 is revised to read as follows:

§ 1620.118 Failure to participate or delay in participation.

If an employee of the Authority who elects to be covered by FERS or CSRS fails to participate or is delayed in participating in the TSP because of a delay in the implementation of the Act, the employee may request that retroactive corrective action be taken in accordance with 5 CFR part 1605, as though the delay were attributable to employing agency error. Lost earnings shall be payable pursuant to 5 CFR part 1606 due to delay described in this section, as though the delay were attributable to employing agency error.

[FR Doc. 96–27548 Filed 10–24–96; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 932 and 944

[Docket No. FV96–932–3FIR]

Olives Grown in California and Imported Olives; Establishment of Limited-Use Olive Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule authorizing the use of smaller-sized olives in the production of limited-use styles for olives grown in California. This final rule allows more olives into market channels and is consistent with current market demand for olives. As required under section 8e of the Agricultural Marketing Agreement Act of 1937, this final rule also changes the olive import regulation so that it conforms with the requirements established under the California olive marketing order.

EFFECTIVE DATE: November 25, 1996.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, telephone (209) 487–5901; or Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 148 and Order No. 932 (7 CFR Part 932), as amended, regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This final rule is also issued under section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities, including olives, imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities regulated under the Federal marketing orders.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations under the Act are based on those established under Federal marketing orders.

There are 4 handlers of California olives who are subject to regulation under the marketing order and approximately 1,200 olive producers in California. There are also approximately 25 importers of olives subject to the olive import regulation. Small agricultural service firms, which includes handlers and importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. None of the domestic olive handlers may be classified as small entities. The majority of producers and importers may be classified as small entities.

This rule provides that smaller olives may be used in the production of limited-use styles (sliced, wedged, halved, or chopped) and will assist the California olive industry as well as importers meet the increasing market demand for such olives. Annual domestic shipment data for olives indicate that for the last 5 seasons (1991 to 1995), limited-use style shipments ranged from 35 percent to 41 percent of the total annual domestic shipments. Absent this rule, many smaller California olives would have to be disposed of in less-profitable, non-canning uses, and the smaller olives from other countries could not be imported into the United States. Both the California olive industry and olive importers should, thus, benefit from the issuance of this rule.

Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

An interim final rule was issued on July 31, 1996, and published in the Federal Register (61 FR 40507, August 5, 1996), with an effective date of August 8, 1996. That rule amended § 932.153 of the rules and regulations in effect under the order, and § 944.401 of the import regulations. That rule authorized the use of smaller-sized limited-use olives under the order and for importation into the United States. That rule provided a 30-day comment period which ended September 4, 1996. No comments were received.

Nearly all of the olives grown in the United States are produced in California. California olives are used for canned black ripe whole, whole pitted, and sliced olives which are eaten out of hand as hors d'oeuvres, or used as an ingredient in cooking, in salads, or on pizzas. The canned ripe olive market is essentially a domestic market. A few shipments of California olives are exported.

Olive production has fluctuated from a low of 24,200 tons during the 1972–73 crop year to a high of 163,023 tons during the 1992–93 crop year. The California Olive Committee (committee) indicated that the total production for the 1995–96 crop year was 73,648 tons. While there is no estimate yet available for the 1996–97 crop, it is expected to be larger than the 1995–96 crop. Olive trees are subject to alternate bearing characteristics. This may result in high production one year and low the next, which can cause the total crop to vary greatly from year to year.

Paragraph (a)(3) of § 932.52 of the order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited-use styles, if recommended by the committee and approved by the Secretary. The minimum sizes which can be authorized for limited use were established in a 1971 amendment to the marketing order. The use of smaller olives for limited-use styles has been authorized in all but two crop years since the order was amended in 1971.

Under the marketing order, olives smaller than the prescribed minimum sizes which are authorized for limited uses must be disposed of through less-profitable, non-canning uses such as in frozen or acidified forms, or crushed for oil. Returns to producers are lower on fruit used for such purposes.

On June 13, 1996, the committee recommended, by a unanimous vote, establishment of quality and size regulations for limited-use size olives on a continuing basis pursuant to paragraph (a)(3) of § 932.52 of the order. This rule authorizes the use of additional olives for limited-use styles by relaxing the minimum sizes and making more olives available to handlers for limited-use styles.

The minimum sizes authorized for limited-use styles by this rule are smaller than those in effect last year, but are the same as those in effect for the 1991–92, 1992–93, and 1993–94 crop years.

The minimum sizes were reduced for the 1991–92 season after handler tests during the 1990–91 crop year confirmed the feasibility of using such fruit in limited-use styles. However, the use of such fruit for limited-use styles was not recommended by the committee for the 1994–95 season. At that time, the handlers reported that the use of certain smaller olives in limited-use styles resulted in greater percentages of broken slices, wedges, and halves. The inconsistencies of the product, especially sliced olives, were not favored by the handlers' customers, and the committee recommended that use of certain smaller olives for limited-use styles be discontinued. At its recent meeting, the committee recommended that limited-use sizes include the sizes authorized prior to the 1994–95 season.

There have been substantial changes to olive pitting and slicing equipment since the 1993–94 season. New machinery yields a greater percentage of unbroken slices, wedges, and halves by making such slices, wedges, and halves thicker and less likely to break. The new equipment also eliminates the problem of double-feeding, in which the pitter's feed wheel sends not one, but two, olives into the same pitting chamber, leaving one of the two olives unpitted. Because of these advances in the pitting and slicing equipment, the committee believes that undersized olives may again be utilized in limited-use styles effectively and to the satisfaction of the handlers' customers.

This rule will help growers and handlers meet the increasing market demand for limited-use style olives based upon current conditions. This demand can be illustrated in the increasing shipments of sliced olives in the previous three years. Shipments of sliced olives increased by 17.11 percent from the 1991–92 season to the 1992–93 season and by an additional 14.5 percent from the 1992–93 season to the 1993–94 season. According to handlers, such shipments continue to increase. The limited-use size requirements allow the use of sizes which would otherwise have to be disposed of for less-profitable, non-canning uses. Permitting the use of such smaller olives for limited-use styles should, therefore, improve grower returns and help handlers meet the increasing need for limited-use style olives.

The authority for limited-use size olives has been subject to an annual reconsideration by the committee since first authorized in 1971. The committee now believes that making the authority for limited-use sizes continuous rather than annual will provide handlers an opportunity to plan for and develop new markets, thereby increasing the market share of domestically-produced olives. Such increased production of limited-use sizes is expected to increase returns to growers.

Based on past production and marketing experience, the committee believes that handlers will need smaller olives to meet market demand for limited-use styles of canned olives. The committee also believes that the handlers will need undersized olives on a continuing basis to meet the market demand for limited-use styles of canned olives.

To effectuate this change, Section 932.153 of the order's rules and regulations is being revised. The committee recommended that these new minimum sizes become effective August 1, 1996, the beginning of the new crop year.

Limited-use size olives are too small to meet the minimum size requirements established for whole and whole pitted canned ripe olives. However, they are large enough to be suitable for processing into limited-use styles such as sliced, wedged, halved and chopped styles. Absent this action, olives which are smaller than those authorized for whole and whole pitted canning uses would have to be disposed of by handlers into non-canning uses such as frozen or acidified forms, or crushed for oil.

The specified sizes for the different olive variety groups are the minimum sizes which are deemed desirable for use in the production of limited-use styles at this time. As in past years, permitting the use of smaller olives in the production of limited-use styles allows handlers to take advantage of the strong market for sliced, wedged, halved, and chopped style olives. By permitting the use of such olives, handlers will be able to market more olives than would be permitted in the absence of this relaxation in size requirements, thus increasing returns to growers.

Although these limited-use sizes are effective for an indefinite period, the committee will continue to meet prior to or during each crop year to consider recommendations for modification of these limited-use sizes. The dates and times of committee meetings are available from the committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate the committee's recommendations and other available information to determine whether modification of the limited-use sizes is needed. Further rulemaking will be undertaken as necessary.

Section 8(e) of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for olives under a domestic marketing order, imported olives must meet the same or comparable requirements. This rule allows smaller olives to be used in the production of limited-use styles under the marketing order. Therefore, a corresponding change is needed in the olive import regulation.

Canned ripe olives, and bulk olives for processing into canned ripe olives, imported into the United States must meet certain minimum quality and size requirements specified in *Olive Regulation 1* (7 CFR § 944.401). All canned ripe olives are required to be inspected and certified prior to importation (release from custody of the United States Custom Service), and all bulk olives for processing into canned ripe olives must be inspected and certified prior to canning. ''Canned ripe olives'' means olives in hermetically sealed containers and heat sterilized under pressure, of two distinct types, ''ripe'' and ''green-ripe'', as defined in the U.S. Standards for Grades of Canned Ripe Olives. The term does not include Spanish-style green olives.

Any lot of olives failing to meet the import requirements may be exported, disposed of, or shipped for exempt uses. Exportation or disposal of such olives would be accomplished under the supervision of the Processed Products Branch of the Fruit and Vegetable Division, with the costs of certifying the disposal of the olives borne by the importer. Exempt olives are those imported for processing into oil or donation to charity. Any person may also import up to 100 pounds (drained weight) of canned ripe olives or bulk olives exempt from these quality and size requirements.

This final rule modifies paragraph (b)(12) of the olive import regulation to authorize the importation of bulk olives which do not meet the minimum size requirements established for olives for

whole and whole pitted uses to be used in the production of limited-use styles. Such authority will be on a continuing basis, rather than on an annual basis, as has been done in previous years.

This final rule also modifies paragraphs (b)(12)(i) through (b)(12)(v) by relaxing the minimum sizes of olive permitted to be imported for limited-use styles.

Permitting the use of smaller olives in the production of limited-use styles will allow importers to better take advantage of the strong market for sliced, wedged, halved, and chopped style olives. Importers will be able to import and market more olives than would be permitted in the absence of this relaxation in size requirements.

The two largest exporters of ripe and bulk olives to the United States are Spain and Mexico, respectively. Imports comprise approximately 50 percent of total annual U.S. consumption.

In accordance with section 8e of the Act, the U.S. Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant material presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, without change, as published in the Federal Register (61 FR 40507, August 5, 1996) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 932 and 944 are amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 932 which was published at 61 FR 40507 on August 5, 1996, is adopted as a final rule without change.

PART 944—FRUITS; IMPORT REGULATIONS

Accordingly, the interim final rule amending 7 CFR part 944, which was published at 61 FR 40507 on August 5, 1996, is adopted as a final rule without change.

Dated: October 18, 1996.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96–27456 Filed 10–24–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1137

[DA–96–13]

Milk in the Eastern Colorado Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends certain performance standards of the Eastern Colorado Federal milk order. Mid-America Dairymen, Inc., a cooperative association that supplies milk for the market's fluid needs, requested the suspension. The suspension will make it easier for handlers to qualify milk for pool status and will prevent uneconomic milk movements that otherwise would be required to maintain pool status for milk of producers who have been historically associated with the market.

EFFECTIVE DATES: The suspension to § 1137.7 is effective from September 1, 1996, through February 28, 1997. The suspensions to § 1137.12 are effective September 1, 1996, through August 31, 1997.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 30, 1996; published September 6, 1996 (61 FR 47092).

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a milk marketings guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy farmers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of June 1996, 429 dairy farmers were producers under the Eastern Colorado milk order. Of these, all but 108 would be considered small businesses, having less than 326,000 pounds of milk marketings a month. Of the dairy farmers in the small business category, 181 marketed less than 100,000 pounds of milk, 105 marketed between 100,000 to 200,000 pounds, and 35 marketed between 200,000 to 326,000 pounds of milk during June.

There were 10 handlers operating 11 plants for the month of June 1996 which were pooled, or regulated, under the Eastern Colorado order. The individual plants, for the most part, would meet

the Small Business Administration's definition of a small business, having less than 500 employees. However, most of these plants are part of larger businesses that operate multiple plants and meet the definition of large entities on that basis.

This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act, as amended, and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the Federal Register on September 6, 1996 (61 FR 46214), concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. Two comments supporting and no comments opposing the suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. For the months of September 1, 1996, through February 28, 1997: In the second sentence of § 1137.7(b), the words ''plant which has qualified as a'' and ''of March through August''; and

2. For the months of September 1, 1996, through August 31, 1997: In the first sentence of § 1137.12(a)(1), the words ''from whom at least three deliveries of milk are received during the month at a distributing pool plant''; and in the second sentence, the words ''30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of'', and the word ''distributing''.

Statement of Consideration

This rule suspends certain portions of the pool plant and producer definitions of the Eastern Colorado order. The suspension will make it easier for handlers to qualify milk for pooling under the order.

The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that has pooled milk of dairy farmers on the Eastern Colorado order for several years. Mid-Am requested the suspension to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers who have been historically associated with the Eastern Colorado order.

For the months of September 1996 through February 1997, the restriction on the months when automatic pool plant status applies for supply plants will be removed. For the months of September 1996 through August 1997, the touch-base requirement will not apply and the diversion allowance for cooperatives will be raised.

These provisions have been suspended for several years to maintain the pool status of producers who have historically supplied the fluid needs of Eastern Colorado distributing plants. The marketing conditions which justified the prior suspensions continue to exist.

Mid-Am asserts that they have made a commitment to supply the fluid milk requirements of distributing plants if the suspension request is granted. Without the suspension action, to qualify certain of its milk for pooling, it would be necessary for the cooperative to ship milk from distant farms to Denver-area bottling plants. The distant milk would displace milk produced on nearby farms that would then have to be shipped from the Denver area to manufacturing plants located in outlying areas.

There are ample supplies of locally produced milk that can be delivered directly from farms to distributing plants to meet the market's fluid needs without requiring shipments from supply plants.

This suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to ensure that producers whose milk has long been associated with the Eastern Colorado marketing area will continue to benefit from pooling and pricing under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Two comments supporting the suspension were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the Federal Register.

List of Subjects in 7 CFR Part 1137

Milk marketing orders.

For the reasons set forth in the preamble 7 CFR Part 1137, are amended as follows:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1137.7 [Suspended in part]

2. In § 1137.7, paragraph (b), the second sentence is amended by suspending the words ''plant which has qualified as a'' and ''of March through August'' for the months of September 1, 1996, through February 28, 1997.

§ 1137.12 [Suspended in part]

3. In § 1137.12, paragraph (a)(1), the first sentence the words ''from whom at least three deliveries of milk are received during the month at a distributing pool plant'' are suspended from September 1, 1996, through August 31, 1997.

4. In § 1137.12, paragraph (a)(1), in the second sentence the words ''30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of'', and the word ''distributing'' are suspended from September 1, 1996, through August 31, 1997.

Dated: October 17, 1996.

Terry Medley,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–27457 Filed 10–24–96; 8:45 am]

BILLING CODE 3410–02–P

Food Safety and Inspection Service

9 CFR Parts 304, 308, 310, 320, 327, 381, 416, and 417

[Docket No. 93–016–9N]

Demonstration Projects for Small Plants

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is holding a

meeting, ''Demonstration Projects for Small Plants.'' This meeting will focus on the problems and techniques of Hazard Analysis and Critical Control Point (HACCP) systems implementation and operation in ''small'' and ''very small'' plants.

DATES: The meeting will be held on October 31, 1996, from 8:30 a.m. until 5:00 p.m. Registration will begin at 8:00 a.m.

ADDRESSES: The meeting will be held at the U.S. Department of Agriculture, 1400 Independence Avenue, SW, Back of the South Building Cafeteria (between the 2nd and 3rd Wings).

FOR FURTHER INFORMATION CONTACT: To register for the meeting, call (800) 485–4429, FAX (202) 501–7642, or E-mail usdafsis/s=confer@mhs.attmail.com. If you require a sign language interpreter or other special accommodations, contact Ms. Shelia Johnson at (202) 501–7138 by October 25, 1996.

SUPPLEMENTARY INFORMATION: On July 25, 1996, FSIS published a final rule, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems'' (61 FR 38805). This rule introduced sweeping changes to the meat and poultry inspection system. In the preamble of the rule, FSIS stated that the Agency plans to conduct HACCP demonstration projects for ''small'' and ''very small'' establishments, as defined in the final rule.

To discuss the demonstration projects, FSIS will hold the meeting, ''Demonstration Projects for Small Plants.'' The purpose of the meeting is to identify effective teaching and technical assistance approaches for HACCP training, discuss examples of successful ''small'' and ''very small'' plant hazard analyses and HACCP plan development, and identify materials, technical assistance, and organizations that can assist small plants. Representatives from the Federal Government, State governments, academia, trade associations, and ''small'' and ''very small'' plant owners/operators have been invited to participate. FSIS encourages ''small'' and ''very small'' plant owners/operators to attend and present their views.

Done at Washington, DC, on October 18, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–27459 Filed 10–22–96; 2:37 pm]

BILLING CODE 3410–DM–P

9 CFR Parts 304, 308, 310, 320, 327, 381, 416, and 417

[Docket No. 93–016–8N]

Federal/State Conference on Food Safety

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS), in cooperation with the Food and Drug Administration, will hold a conference, ''Federal/State Conference on Food Safety.'' This conference will focus on how FSIS and State agencies can effectively allocate resources at the Federal, State, and local levels of governments to improve food safety.

DATES: The conference will be held on October 30, 1996, from 8:30 a.m. until 5:00 p.m. Registration will begin at 8:00 a.m.

ADDRESSES: The conference will be held at the Doubletree Park Terrace Hotel, 1515 Rhode Island Avenue, NW, Washington, DC 20250, (202) 232–7000.

FOR FURTHER INFORMATION CONTACT: To register for the conference, call (800) 485–4429, FAX (202) 501–7642, or E-mail usdafsis/s=confer@mhs.attmail.com. If you require a sign language interpreter or other special accommodations, contact Ms. Shelia Johnson at (202) 501–7138 by October 25, 1996.

SUPPLEMENTARY INFORMATION: On July 25, 1996, FSIS published a final rule, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems'' (61 FR 38805). This rule introduced sweeping changes to the meat and poultry inspection system. In the preamble of the rule, FSIS addressed ''Farm-to-Table'' strategies which include preventive approaches to hazards that occur during, transportation, distribution, and retail sale of meat and poultry products. To effect these strategies, close coordination between Federal and State governments is necessary.

FSIS is holding the ''Federal/State Conference on Food Safety'' to discuss ''Farm-to-Table'' strategies. The conference will focus on issues related to respective roles and responsibilities and coordination between the states and the Federal Government. Representatives from USDA, the Food and Drug Administration, the Center for Disease Control, and State food safety agencies have been invited to participate.

Done at Washington, DC, on: October 21, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–27460 Filed 10–22–96; 2:37 pm]

BILLING CODE 3410–DM–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 791

Rules of NCUA Board Procedure; Promulgation of NCUA Rules and Regulations; Public Observation of NCUA Board Meetings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This rule amends NCUA's current regulations on NCUA Board procedure by providing that items will be placed on the Board agenda by determination of the Chairman or at the request of any two Board members. This amendment more clearly defines the authority of the Board members in setting the agenda.

EFFECTIVE DATE: This amendment is effective October 25, 1996.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, General Counsel, Office of the General Counsel, at the above address or telephone (703) 518–6540. E-mail questions may be sent to ogcmail@ncua.gov.

SUPPLEMENTARY INFORMATION: NCUA's Rules of Board Procedure, 12 CFR part 791, govern the manner in which the Board acts on behalf of NCUA; the conduct, scheduling and subject matter of Board meetings, the use of notation votes, and the recording of Board actions. Prior to this amendment, Section 791.6(a) vested final authority to determine the agenda for a particular Board meeting with the Chairman.

The NCUA Board has determined that any two Board members shall have the ability to have an item considered by the Board within 60 days of a written request that includes an NCUA ''B–1 Form'' and a Board Action Memorandum. Accordingly, section 791.6(a) is amended to provide that the Chairman determines the *order* of the meeting agenda, and that items shall be placed on the agenda either by determination of the Chairman, or within 60 days of the submission of such a request by any two Board members. At the same time, section 791.6(b) is amended to clarify that *recommended* agenda items may be submitted by Board members and Office

Directors; actual agenda items are determined by the Chairman and Board.

Immediate Effective Date

Because this amendment concerns rules of NCUA Board procedure, prior notice and public comment are not required by 5 U.S.C. 553, and the rule is effective upon publication in the Federal Register.

Regulatory Procedures

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the NCUA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This rule affects internal NCUA Board operations only. Thus, it will not result in additional burden for regulated institutions. The purpose of this rule is to enhance the operations of the NCUA Board.

Paperwork Reduction Act

The amendments do not contain any collection of information requirements.

Executive Order 12612

The rule, like the provision of part 791 it replaces, only applies to the NCUA Board. Accordingly, the Board has determined that the rule will not have a substantial direct effect on the states, on the relationship between that national government and the states, or on the distribution of power and responsibilities among various levels of government. Further, the rule will not preempt provisions of state law or regulations.

List of Subjects in 12 CFR Part 791

Administrative practice and procedure, Sunshine Act.

By the National Credit Union Administration Board on October 16, 1996.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 791 as follows:

PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

1. The authority citation for Part 791 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and 5 U.S.C. 552b.

2. Section 791.6 is revised to read as follows:

§ 791.6 Subject matter of a meeting.

(a) *Agenda.* The Chairman is responsible for the final order of each meeting agenda. Items shall be placed on the agenda by determination of the Chairman, or within 60 days of receipt of a written request from two Board members that includes an NCUA B–1 form and a Board Action Memorandum.

(b) *Submission of recommended agenda items.* Recommended agenda items may be submitted to the Secretary of the Board by Board members, the Executive Staff (which includes all Office Directors and President of the Central Liquidity Facility), and Regional Directors.

[FR Doc. 96–27131 Filed 10–24–96; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–001; Order No. 587–A]

Standards for Business Practices of Interstate Natural Gas Pipelines

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule; Order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission is denying a request for rehearing of its final rule revising the Commission's regulations to require interstate natural gas pipelines to follow standardized procedures for critical business practices—nominations; allocations, balancing, and measurement; invoicing; and capacity release—and standardized mechanisms for electronic communication between the pipelines and those with whom they do business. (61 FR 39053 (July 26, 1996)). The order reaffirms the Commission's determination to incorporate by reference into its regulations standards promulgated by the Gas Industry Standards Board.

DATES: The regulations were effective August 26, 1996, and are to be implemented based on a staggered scheduling with *pro forma* tariff filings in October through December, 1996 and corresponding implementation in April through June, 1997.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–1283

Kay Morice, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0507

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, N.E., Washington D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS in ASCII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 2A, 888 First Street, N.E., Washington D.C. 20426.

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- After logging on, type: /go FERC

To access the FedWorld system, through the Internet:

- Telnet to: fedworld.gov
- Select the option: [1] FedWorld
- Logon to the FedWorld system
- Type: /go FERC

or:

- Point your Web Browser to: http://www.fedworld.gov
- Scroll down the page to select FedWorld Telnet Site
- Select the option: [1] FedWorld

- Logon to the FedWorld system
- Type: /go FERC

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Issued October 21, 1996.

On July 17, 1996, the Federal Energy Regulatory Commission (Commission) issued a final rule revising the Commission's regulations to require interstate natural gas pipelines to follow standardized procedures for critical business transactions between the pipelines and their customers.[1] The final rule incorporated by reference standards promulgated by the Gas Industry Standards Board (GISB), a consensus standards organization comprised of members from all segments of the natural gas industry. On August 16, 1996, Natural Gas Clearinghouse and Vastar Gas Marketing, Inc. (NGC/Vastar), filing jointly, and Louisiana-Nevada Transit Company (LNT) filed for rehearing. For the reasons discussed below, the rehearing requests are denied.

Rehearing Requests

NGC/Vastar principally contend the Commission acted arbitrarily and capriciously in giving deference to the GISB standards without offering a reasoned analysis of the GISB standards as compared with the alternative proposals put forward by NGC/Vastar/Conoco.[2] NGC/Vastar contend that the Commission's failure to address each of NGC/Vastar/Conoco's proposed standards ran afoul of the Administrative Procedure Act, because the Commission ''failed to consider an important aspect of the problem'' [3] and ignored ''important arguments or evidence.'' [4]

NGC/Vastar further maintain that § 12 of the National Technology Transfer and Advancement Act of 1995 (NTT&AA)[5] and OMB Circular A–119,[6] which require government agencies to use private consensus standards, do not justify the Commission's reliance on the GISB standards or the Commission's failure to analyze NGC/Vastar/Conoco's alternative standards. NGC/Vastar reiterate their position that the NTT&AA applies only to government agencies' use of private consensus standards for procurement, not for regulation of monopoly service providers, like pipelines.

Finally, NGC/Vastar maintain the Commission exceeded its authority in finding that pipeline tariff provisions inconsistent with the GISB standards are unjust and unreasonable under section 5 of the Natural Gas Act (NGA). They maintain the Commission should not find unjust and unreasonable tariff provisions the Commission specifically approved as part of settlement negotiations.

LNT challenges the Commission's incorporation by reference of the GISB standards. It avers incorporation by reference unreasonably requires LNT either to view the standards in Washington, D.C., or to purchase the standards from GISB for a charge of $2,000 for the four volumes, which it claims is excessive.

Discussion

The principal issues raised in the rehearing requests are whether the Commission adequately considered the comments of NGC/Vastar and others on the notice of proposed rulemaking (NOPR),[7] and whether the Commission is justified in giving deference to the GISB standards and incorporating them by reference into the regulations. As to the first issue, the Commission reviewed all the comments submitted and determined that the GISB standards are just and reasonable. Indeed, examination of NGC/Vastar/Conoco's comments reveals that they fundamentally disagree with only one GISB standard. Their principal position is that to attain maximum efficiency, some of the standards need supplementation and additional standards are required. Rather than rejecting NGC/Vastar/Conoco's proposed enhancements or additions, the Commission found that many of their suggestions may indeed have merit and deferred consideration of these issues until GISB and the industry had a further opportunity to consider them. Since the proposed GISB standards can be implemented without resolving the deferred issues, providing additional opportunity for industry review causes little or no harm and will have the benefit of helping to produce more considered and balanced standards.

In reviewing the comments, the Commission was warranted in giving greater deference to the consensus viewpoint than to the views of one or even several parties. Giving deference to the consensus decision is consistent with the NTT&AA. It also is warranted by the Commission's consistent policy goal of developing standards that satisfy the needs of the broadest possible base of industry participants.[8] Deference is due to consensus standards, first because the gas industry possesses specialized knowledge and expertise in the areas of business practices and computer protocols. Second, when all is said and done, it is the industry that has to operate businesses using these standards. The standards, therefore, should be acceptable to as many industry participants as possible. In short, adopting business practice standards that command a consensus of the industry is the most likely method of providing the greatest overall benefit to the industry as a whole. Moreover, as discussed in the final rule and below, the Commission considered the substantive changes put forward by NGC/Conoco and others and found that modifying the standards to try and accommodate the concerns of the minority would be inconsistent with the goals to be achieved through standardization.

LNT's concern is not over the substance of the standards, but goes to the manner by which the Commission adopted the standards, and is addressed below.

A. Deference to the GISB Standards Is Warranted and Consistent With the NTT&AA and OMB Circular A–119

In examining the standards proposed by GISB and the comments and alternative standards of NGC/Vastar/Conoco and others, the Commission was warranted in giving greater weight to the consensus agreement. Section 12 of the NTT&AA establishes governmental policy that federal agencies shall use technical standards that are developed or adopted by voluntary consensus standards bodies unless such use is ''inconsistent with applicable law or otherwise impractical.'' Although, as NGC/Vastar point out, Senator Rockefeller, a sponsor of the bill,

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[1] Standards for Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,039 (Jul. 17, 1996).

[2] Conoco did not join in the request for rehearing.

[3] Citing American Horse Protection Assoc. v. Yeutter, 917 F.2d 594, 598 (D.C. Cir. 1992).

[4] Citing Natural Resources Defense Council, Inc. v. U.S. Environmental Protection Agency, 822 F.2d 104, 111 (D.C. Cir. 1987).

[5] Pub L. No. 104–113, § 12(d), 110 Stat. 775 (1996).

[6] ''Federal Participation in the Development and Use of Voluntary Standards'' (Oct. 20, 1993). The Circular can be obtained from the Internet at http://www.whitehouse.gov/WH/EOP/OMB/html/circular.html. An earlier version is available at 47 FR 49496 (Nov. 1, 1992).

[7] Standards For Business Practices Of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 61 FR 19211 (May 1, 1996), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,517 (Apr. 24, 1996).

[8] The Commission sought industry consensus when it began the standardization process by setting up a technical conference to develop standards for capacity release transactions. Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Notice of Informal Conferences, Docket No. RM93–4–000 (March 10, 1993).

referred to government use of standards for procurement purposes,[9] nothing in the final language of the Act limits its applicability to procurement. Congressman Brown, a cosponsor of the Act, in fact, specifically refers to the use of standards for ''procurement and *regulatory* purposes.'' [10] In addition, § 12 of the NTT&AA was intended to codify OMB Circular A–119, which did not limit the policy of using private sector standards to procurement.

Even if § 12 of the NTT&AA does not strictly apply here, the Commission is warranted in giving significant weight to the consensus standards. Not only does the industry possess specialized knowledge of business and electronic communication practices, but, since the industry itself has to operate under these standards, the standards should implement practices that are favored by the broadest cross-section of industry members.

Indeed, well before the passage of § 12 of the NTT&AA, government agencies relied on private sector standards for regulatory purposes, including protection of public health and safety.[11] Agencies rely on industry standards for much the same reasons the Commission has chosen to give GISB's standards great weight. Industry possesses specialized knowledge and expertise in the relevant technical areas, and the procedural process of consensus standards development helps ensure that the process is open to all affected interests and that the standards reflect a consensus of these interests.[12] There is no reason to make a distinction between the frequent use of standards by agencies to protect the public health and safety and the Commission's use of industry standards as part of its efforts to regulate the terms and conditions under which a monopoly service is provided.

NGC/Vastar point to language in OMB Circular A–119 cautioning federal agencies that private standards-setting is vulnerable to abuse. They contend the evidence NGC/Vastar/Conoco put forward in their comments shows that the pipeline interests unfairly dominated the task force meetings (the committees that developed and submitted draft standards to the GISB Executive Committee for final voting).

Without repeating all the discussion in the final rule, the Commission reviewed GISB's standards-development process and found that GISB reasonably assured broad based approval of the standards by all segments of the gas industry. At the Executive Committee level, the record shows that the voting generally exceeded GISB's rigorous consensus requirement; [13] most of the standards received virtually unanimous support. [14] The record also shows that the Standards Committee did not merely rubber stamp the recommendations from the drafting committee, as suggested by NGC/Vastar. The Executive Committee conducted preliminary sessions prior to its public meeting to debate and refine the standards. Its public meeting lasted for two full days, going late into the night, with the Committee making significant and fundamental changes to the task force recommendations.

The Commission, however, is not ignoring potential problems with consensus standard development, as NGC/Vastar argue. For instance, under GISB's procedures, a concerted effort by a single interest can prevent the adoption of a standard supported by the rest of the industry. That is why the Commission has been particularly vigilant about examining those areas in which GISB has failed to reach consensus on standards. The Commission, in fact, agreed with NGC/Vastar that, in many of these areas, standards appear necessary and instituted procedures to have GISB and the industry develop the needed standards.

The Commission established a September 30, 1996 date for submission of detailed reports on the additional standards, and, on that date, GISB submitted a report containing additional approved standards and a voting record for the standards that did not receive the necessary votes.

B. Response to NGC/Vastar/Conoco's Comments

While GISB's standards are legitimately entitled to great weight, the Commission did not, as NGC/Vastar/Conoco maintain, delegate to GISB the sole responsibility to develop these standards. The Commission has and is still taking an active role in the process. It has identified the areas requiring standardization. And, as discussed below, the Commission reviewed the GISB standards in light of NGC/Vastar/Conoco's comments and those of other participants and determined that the standards provide a just and reasonable solution to the lack of standardization in the industry.

With the exception of the requirement for a nationwide nomination schedule, NGC/Vastar/Conoco did not fundamentally disagree with the GISB standards passed. Rather, their principal concerns were that a few of the GISB standards, in their view, do not go far enough and need to be improved and enhanced and that standards in additional areas need to be adopted.

1. NGC/Vastar/Conoco's Objections to the GISB Standards

NGC/Vastar/Conoco raised six specific concerns with the GISB standards in their comments on the NOPR: uniform nomination deadline; pooling; tracking of title transfers; intra-day nominations; prior period adjustments; and unit of measure. [15]

a. Uniform Nomination Deadline. GISB established a uniform nomination deadline for the entire country, starting at 11:30 a.m. CCT (central clock time). (Nomination Standard 1.3.2). NGC/Vastar/Conoco, as well as others, argued a staggered nomination timeline would be more efficient. NGC/Vastar/Conoco suggested that upstream pipelines should go first while others suggested a regional nomination system.

As was the case with many of the standards, the Commission found that the determination of an appropriate nomination schedule was a matter of judgment, not fact, and accepted the

[9] 142 Cong. Rec. S1080 (daily ed. Feb. 7, 1996).

[10] 142 Cong. Rec. H1266 (daily ed. Feb. 27, 1996) (emphasis added).

[11] For just a few examples of the use of standards for non-procurement purposes, see 42 CFR 405.2150, 60 FR 48039 (Sept. 18, 1995) (Health Care Financing Administration incorporation of Association for the Advancement of Medical Instrumentation standards for reuse of hemodialyzers); 49 CFR Part 659, 60 FR 67034 (Dec. 27, 1995) (Federal Transit Administration incorporation by reference of APTA rail transit system safety plans); 49 CFR 192.11, 193.2005 (Department of Transportation incorporation by reference of practice standards relating to transportation of petroleum gas and LNG); 24 CFR 200.926b, part 200, App. A, 3280.801 (Housing and Urban Development minimum property standards and manufactured housing standards); 16 CFR Material Approved for Incorporation by Reference, at 483 (1996) (listing standards incorporated by Consumer Product Safety Commission); 21 CFR 801.410 (FDA standards for impact-resistant eye glasses).

[12] *See* 142 Cong. Rec. S1081 (daily ed. Feb. 7, 1996) (remarks of Senator Rockefeller); 142 Cong. Rec. H1266 (daily ed. Feb. 27, 1996)(remarks of Congressman Brown).

[13] Under GISB rules, 17 out of 25 Executive Committee members must approve a standard with at least two affirmative votes from each of the five industry segments. The five segments are pipelines, local distribution companies (LDCs), producers, end-users, and services (including marketers and third-party computer service providers).

[14] See Volume III of GISB's March 15, 1996 filing, Voting Work papers.

[15] NGC/Vastar/Conoco also raised concerns about GISB's adoption of internet protocols as the electronic method for communication of the high priority data elements. They argued that, while the use of internet protocols is a step forward, GISB did not go far enough in using internet technology. This issue is not yet ripe for consideration. The Commission has not yet adopted the electronic delivery mechanism standards, because GISB had not completed the standards in time for the final rule. The Commission, however, did agree with some aspects of NGC/Vastar/Conoco's comments regarding the need to eventually replace pipeline electronic bulletin boards with a more uniform method of communication. 61 FR 39057, 39065, III FERC Stats. & Regs. Preambles at 30,063, 30,076.

consensus rationale for adopting a nationwide schedule. The industry consensus was that a nationwide timeline provides shippers with more assurance of their transportation arrangements. A nationwide nomination schedule enables a shipper using multiple pipelines to nominate and schedule each link in its transaction chain at one time. It also enables the shipper to learn quickly whether its nomination will go through as scheduled.

A staggered schedule could leave a shipper with one (or more) scheduled pipeline and one (or more) unscheduled.[16] For example, under a system where nominations on upstream pipelines are processed first, a shipper may receive confirmation of transportation on the upstream pipeline, without knowing whether it will be able to acquire transportation to deliver that gas to its needed destination.

b. Pooling. GISB's standard requires pipelines to offer one pool if requested by a shipper or supplier. (Nomination Standard 1.3.17). NGC/Vastar/Conoco agree with the standard, but object to the requirement that pooling must be requested by a shipper or supplier. They suggest pipelines may take a long time to establish pooling mechanisms and, therefore, argue the ''shipper request'' requirement could drag out implementation for years.

Although pooling is either already provided, or is likely to be requested, on larger pipelines, pooling may not be needed or demanded on smaller pipelines. The ''shipper request'' requirement helps to ensure that pipelines do not unnecessarily establish pools that are not needed. The ''shipper request'' requirement also should not cause any delay in implementing pooling. The standard requires nothing more than a request by a shipper or a supplier to trigger the obligation for the pipeline to establish a pool. Since the tariff changes to comply with the standards are not due to start being filed until October of 1996, and implementation does not begin until April of 1997, there is ample time for shippers needing pooling to make their requests, and for implementation to be timely.

c. Title Transfer Tracking. GISB adopted two principles dealing with title transfers[17]—title transfer tracking improves certainty and users of title transfers should bear the cost of the service (Nomination Principles 1.1.10 and 1.1.11). But GISB failed, after much discussion, to reach agreement on a title tracking standard.[18] NGC/Vastar/Conoco request the Commission to eliminate the two principles because the entire issue of title transfers has been deferred for further consideration.

Although the Commission adopted the principles, pipelines need not comply with them unless, and until they are adopted as standards. NGC/Vastar/Conoco, in fact, agree with the general principle that title transfer tracking is important, and improves certainty,[19] and the Commission concurred, including title transfer tracking as an issue for further consideration by GISB and the industry.[20] NGC/Vastar/Conoco have suffered no harm from adoption of the two principles, since pipelines are not required to revise their tariffs to comply with them, and, in any event, they are subject to revision based on the future deliberations.

d. Intra-day Nominations. GISB's standards for intra-day nominations (a nomination made after the nomination deadline for a gas day) provide that pipelines must allow shippers to submit at least one intra-day nomination four hours prior to gas flow and that intra-day nominations can be used to request increases or decreases in total flow and changes to receipt or delivery points for scheduled gas. (Nomination Standards 1.3.8, 1.3.10, and 1.3.11). NGC/Vastar/Conoco maintain that these standards, while a ''step in the right direction,'' do not go far enough to ensure equitable treatment of shippers. They propose six revised standards covering additional areas such as bumping rights, for example, between shippers submitting intra-day nominations to primary points and shippers using those points as secondary points.

The Commission accepted the GISB standards as a reasonable point of departure. NGC/Vastar/Conoco do not maintain that the GISB standards should not be implemented as written, only that their suggested additions may improve the efficiency of the market. The Commission agrees that improvements probably can be made in this area as the standards are refined. While permitting the industry to review such revisions through the consensus process may be somewhat slower than NGC/Vastar/Conoco would prefer, such review will lead to a better and more considered decision.

e. Prior Period Adjustments. GISB adopted three standards dealing with prior period adjustments (allocations, measurement, and invoices) that impose a six-month period for the adjustment and a three-month rebuttal period. (Flowing Gas Standards 2.3.26 and 2.3.14 and Invoicing Standard 3.3.15.) NGC/Vastar/Conoco contend the six-month reconciliation period does not reflect commercial realities, because most pipelines are unable to provide adjustments that quickly, the adjustments therefore may be inaccurate, and the six-month period is inconsistent with companies' internal and external auditing procedures. They recommend a two-year period for adjustments.

The consensus view of all segments of the industry, including the pipeline segment, is that expedition of these adjustments is important and can be made accurately within the six-month time period specified. There is no factual basis, at this point, to determine whether these adjustments can be made accurately. The question of how fast reconciliation is needed and what reasonably can be accomplished is a matter of judgment, and the Commission, therefore, chose to adopt the position supported by the majority of the industry.[21] Given the importance of obtaining financial data promptly, the Commission is unwilling to accept NGC/Vastar/Conoco's assumption that pipelines will fail to perform in the manner to which they have agreed. Pipelines are subject to the risks of alienating their own customer base as well as possible Commission action if they fail to follow the standards. Indeed, NGC/Vastar/Conoco's reluctance to hold the pipelines to the speed-up in reconciliation, to which the pipelines agreed, is at odds with the general thrust of NGC/Vastar/Conoco's arguments, on other standards, that pipelines should be forced to do more, and do it faster, than the consensus agreement.

f. Unit of Measure. GISB adopted dekatherms as the standard unit for nominations. (Nomination Standard 1.3.14.) It further adopted a standard providing that, subject to regulatory and/or contractual considerations for standardizing billing units on invoices, dekatherms should be used for invoices

[16] 61 FR 39061, III FERC Stats. & Regs. Preambles at 30,067–68.

[17] Title transfer tracking refers to keeping computerized record of nominations showing the transfer between parties of title to gas whether or not the gas is being physically transported on the pipeline.

[18] *See* Transcript of March 7, 1996 GISB Executive Committee Meeting, Docket No. RM96–1–000, at 316–370 (filed March 27, 1996).

[19] See Comments and Proposed Alternative Standards of NGC/Vastar/Conoco, Docket No. RM96–1–000, at 67 (May 28, 1996) (''title transfers create liquidity in the market, which in turn enhances reliability and competitiveness of natural gas as a fuel'').

[20] 61 FR 19216; IV FERC Stats. & Regs. Proposed Regulations at 33,213.

[21] 61 FR 39062, III. FERC Stats. & Regs. Preambles at 30,068–69.

to be consistent with nomination standard. (Invoicing Standard 3.3.3.)

NGC/Vastar/Conoco accepted the use of dekatherms for nominations, but contended dekatherms should not be required for billing. They contended that this standard ignores the commercial reality that thousands of contracts are based on Mcf and that parties such as LDCs, intrastate pipelines, and gatherers may have state rates based on Mcf and may not measure dekatherms. They recommended that Mcf should be included as an optional field.

The GISB standard, on its face, is conditioned on the relevant contractual relations between the parties, so that it will not result in trumping those agreements in the absence of negotiations between the parties. Thus, customers can still continue to receive invoices in Mcf if provided by their contract. The consensus standard, however, establishes parameters for future and renegotiated contracts to provide consistency in the measurement and billing process, which is a reasonable objective.

2. Deferred Issues

NGC/Vastar/Conoco's primary concern was with the standards that fall under the heading of deferred issues: the issues the Commission determined required further consideration by GISB and the industry. NGC/Vastar/Conoco contended the Commission should not have deferred resolution of these issues, but should have resolved them immediately based on NGC/Vastar/Conoco's proposed standards. NGC/Vastar/Conoco further contended the ''reserved'' issues are among the most complex facing the industry and, since GISB failed to resolve them the first time, its chances of resolving them on a second try are a ''false hope.''

The Commission heeded the comments of NGC/Vastar/Conoco, finding that ''many of NGC/Vastar/Conoco's points may have merit.'' [22] Where the Commission differed with NGC/Vastar/Conoco was in the process for resolving these issues. While recognizing that the additional standards need prompt consideration, the Commission concluded the GISB standards could be implemented while standards in the additional areas are being considered.[23] Indeed, although NGC/Vastar/Conoco contended that implementation of their proposed additional standards immediately may reduce the costs of ironing out the details in later filings, they did not suggest that implementation of the additional standards is a prerequisite to implementation of the GISB standards.

The Commission has determined to try to obtain resolution of standards issues through the consensus process and is not prepared to discard that process at this stage of the proceedings. Particularly for complex issues, achievement of a consensus that fairly balances the concerns of all industry segments is desirable. On its first try at standardization, GISB and the industry had to face and resolve a wide range of issues in a short timeframe. GISB conducted 45 meetings within a 53 day period and reached consensus on a significant number of critical issues. The Commission is not willing to short-circuit that process without giving the industry a chance to consider the deferred issues.

Moreover, the Commission could not have resolved these issues immediately based on the existing record. Since no party had an opportunity to respond to NGC/Vastar/Conoco's comments, the Commission would have had to establish additional procedures to resolve the issues in any event. The better path, therefore, is to proceed as the Commission has done and provide the industry with additional time to consider the issues. Even if the industry does not succeed at reaching consensus, the review by GISB and the industry will cast additional light on the issues involved in these complex areas, enabling the Commission to reach a more reasoned resolution if it is required to intervene in the process.

The Commission, however, recognized the need to monitor industry progress on these standards to ensure that a stalemate does not impede development of the standards. Thus, the Commission rejected calls to extend the September 30, 1996 deadline to report to the Commission on the industry's progress on these issues.[24] Analysis of the reports filed on September 30 by GISB and others should reveal whether the industry is en route to resolving these issues or whether the Commission should institute additional procedures.

C. The Commission's § 5 Action Is Warranted

NGC/Vastar take issue with the Commission's finding that pipeline tariff provisions inconsistent with the GISB standards are unjust and unreasonable under § 5 of the NGA. They maintain that a § 5 finding is inappropriate since the Commission has specifically ordered or approved many of these provisions, which were crafted as part of extensive settlement processes.

As the Commission pointed out in the final rule, pipeline tariff provisions governing business practices initially were crafted in individual restructuring proceedings pursuant to Order No. 636. But experience under these tariffs clearly showed the policy of relying on individual, non-standardized tariff filings was not sufficient to create the uniform pipeline grid the Commission envisioned in Order No. 636. [25] Indeed, before initiating this rulemaking, the Commission held a technical conference on September 21, 1995, to assess the industry's standardization progress.[26] At that conference, all segments of the industry agreed that relying on individual pipeline procedures inhibited efficiency. One participant aptly summarized the problem:

> Moving gas across multiple pipelines today is a logistical nightmare. Each pipeline wants data specified in a different way. Delays are standard operating procedure, errors are routine, and the cost of this process is too great for all of us. * * * Let me give you an example of the problem. Today, the 18 largest pipelines use 14 different nomenclatures to describe a pipeline receipt point. About 80 unique data elements are required to execute a nomination on these pipelines.[27]

NGC/Vastar, themselves, recognize that individual pipeline tariff procedures are not sufficient and that ''standardization of pipeline business practices will go a long way to making the trading of natural gas in an integrated market more efficient, and should make gas service more reliable.'' [28]

Through this rulemaking proceeding, the Commission sought to correct this obstacle to efficiency by requiring standardization of pipeline business practices. Accordingly, tariff provisions that conflict with the Commission's standardization policy are, of necessity, unjust and unreasonable.

D. Incorporation by Reference Is Appropriate

LNT does not object to the substance of the GISB standards, but to the Commission's incorporation of the standards by reference into its regulations. LNT complains that by

[22] 61 FR 39060, III FERC Stats. & Regs. Preambles at 30,068.

[23] 61 FR 19216, IV FERC Stats. & Regs. Proposed Regulations at 33,213.

[24] 61 FR 39066, III FERC Stats. & Regs. Preambles at 30,076–79.

[25] 61 FR 39056, III. FERC Stats. & Regs. Preambles at 30,059.

[26] Technical Conference, Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Docket No. RM93–4–000 (Sept. 21, 1995).

[27] Transcript of September 21, 1995 Technical Conference, *supra,* note, at 44–45.

[28] Request for Rehearing, August 16, 1996, at 1.

incorporating the standards by reference, rather than reprinting the standards in the Code of Federal Regulations, the Commission has forced it to incur either the expense of traveling to Washington, DC. to view the standards at the Commission or the Office of the Federal Register or the $2,000 cost of purchasing the standards from GISB. LNT maintains the $2,000 cost is exorbitant and, therefore, argues the standards are not reasonably available to the class of persons affected by the regulations, contrary to the regulations promulgated by the Office of the Federal Register.[29]

As discussed earlier, section 12 of NTT&AA establishes a government policy under which agencies are to rely upon, and adopt, private sector standards whenever practicable and appropriate. The Freedom of Information Act and implementing regulations establish that the proper method of adopting such copyrighted material is to incorporate it by reference into the agency's regulations. [30] To be eligible for incorporation by reference, the document must be reasonably available to the class of persons affected by the publication. [31] Once adopted, a copy must be provided to the Office of the Federal Register for viewing, and the material must be available and readily obtainable. Neither the statute nor the regulations require that the standards be available at no cost. Indeed, standards incorporated by reference are exempt from the requirement that the agency provide copies of documents according to the agency's fee schedule. [32]

GISB, in fact, is not insisting on payment for the reproduction for regulatory purposes of the business practice standards and the associated datasets (data dictionaries), so small companies or municipalities will have easy access to the standards for purposes of reviewing and responding to pipeline tariff filings. [33] The only material for which GISB has restricted reproduction is the complex and detailed ASC X12 mappings and other computer protocols and examples.

It is common practice for standards organizations to charge for copies of their standards in order to defray the publishing costs as well as some of the administrative, legal, and other costs of developing the standards.[34] The GISB price of $2,000 covers the complete four volume set of documents, running over 2,000 pages, including the provision without charge for one year, of the updates and revisions that are certain to be forthcoming. Determining an appropriate price for such standards is not simply a matter of calculating the direct costs of publishing the standards, but involves consideration of the administrative, legal, and other developmental costs as well as the anticipated number of purchasers. In this case, this determination was made, not by an independent publishing firm, but by those who themselves have to purchase the documents—the GISB membership composed of firms, of varying sizes, from all segments of the industry.[35] The Commission has no basis to disagree with their determination of the price. Even for small pipelines, like LNT, a regulatory cost of $2,000, whether for legal fees or for acquiring standards, is within the normal course of doing business. Moreover, LNT can seek to include the costs of compliance with the GISB standards in future rate proceedings.

The Commission orders: The requests for rehearing are denied.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27432 Filed 10–24–96; 8:45 am]

BILLING CODE 6717–01–P

[29] 1 CFR 51.7(4).

[30] 5 U.S.C. § 553(a)(1); 1 CFR 51.7(4). *See* 28 U.S.C. § 1498 (government liability for patent and copyright infringement). Other government agencies similarly incorporate private standards by reference. *See, e.g.,* note 11, *supra.*

[31] *See* 5 U.S.C. 553(a)(1); 1 CFR 51.7(4).

[32] 5 U.S.C. 553(a)(3).

[33] Letter of September 12, 1996 from counsel for GISB to the Secretary of the Commission (Docket No. RM96–1–000).

[34] *See* Why There Is a Charge for Standards and Standards Information, American National Standards Institute (explaining why charges need to be assessed for standards even if obtained electronically, with no publishing costs). The document is accessible at ANSI's Internet site, http://www.ansi.org/why__chrg.html.

[35] Although GISB members can receive the four volume set at the member's fee of $1,000, their yearly membership dues of $2,000 help defray the administrative, legal, and other costs of developing the standards. See Gas Industry Standards Board Standards Action Bulletin, September 17, 1996, at 8. The Bulletin is accessible via GISB's Internet site at http://www.NeoSoft.com/~gisb/gisb.htm.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1210

[NHTSA Docket No. 96–007; Notice 2]

RIN 2127–AG20

Operation of Motor Vehicles by Intoxicated Minors

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule implements a new program enacted by the National Highway System Designation (NHS) Act of 1995, which provides for the withholding of Federal-aid highway funds from any State that does not enact and enforce a ''zero tolerance'' law. This final rule clarifies what States must do to avoid the withholding of funds.

DATES: The regulation contained in this final rule becomes effective on November 25, 1996.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Ms. Marlene Markison, Office of State and Community Services, NSC–01, telephone (202) 366–2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, NCC–30, telephone (202) 366–1834.

In FHWA: Ms. Mila Plosky, Office of Highway Safety, HHS–20, telephone (202) 366–6902; or Mr. Raymond W. Cuprill, HCC–20, telephone (202) 366–0834.

SUPPLEMENTARY INFORMATION: The National Highway System Designation (NHS) Act of 1995, Pub. L. 104–59, was signed into law on November 28, 1995. Section 320 of the Act established a new Section 161 of Title 23, United States Code (Section 161), which requires the withholding of certain Federal-aid highway funds from States that do not enact and enforce ''zero tolerance'' laws. As provided in Section 161, these ''zero tolerance'' laws must consider an individual under the age of 21 who has a blood alcohol concentration of 0.02 percent or greater while operating a motor vehicle in the State, to be driving while intoxicated or driving under the influence of alcohol.

Section 161 specifically provides that the Secretary must withhold from apportionment a portion of Federal-aid highway funds from any State that does not enact and enforce a conforming ''zero tolerance'' law.

In accordance with Section 161, if a State does not meet the statutory requirements on October 1, 1998, five percent of its FY 1999 Federal-aid highway apportionment under 23 U.S.C. 104(b)(1), 104(b)(3) and 104(b)(5)(B) shall be withheld on that date. These sections relate to the National Highway System (NHS), the Surface Transportation Program (STP) and the Interstate System.

If the State does not meet the statutory requirements on October 1, 1999, ten percent of its FY 2000 apportionment will be withheld on that date. Ten percent will continue to be withheld on October 1 of each subsequent fiscal year, if the State does not meet the requirements on those dates.

Notice of Proposed Rulemaking

On March 7, 1996, NHTSA and the FHWA issued a joint notice of proposed rulemaking (NPRM) proposing the criteria States must meet to avoid the withholding of apportionment of Federal-aid highway funds. The agencies explained in the NPRM that Section 161 provides that, to avoid the withholding, a State must enact and enforce:

> a law that considers an individual under the age of 21 who has a blood alcohol concentration of 0.02 percent or greater while operating a motor vehicle in the State to be driving while intoxicated or driving under the influence of alcohol.

The agencies proposed to require that States must meet the following criteria to avoid the withholding of Federal-aid highway funds:

1. *Under the Age of 21*

The State law must apply to all persons under the age of 21. It will not be sufficient for the State law to apply, for example, only to persons under the age of 18.

2. *Blood Alcohol Concentration of 0.02 Percent*

The State law must set 0.02 percent as the legal limit for blood alcohol concentration. States with laws that set a lower percentage (such as 0.00 percent) as the legal limit would also conform to the Federal requirement. It will not be sufficient for the State law to establish, for example, .04 or .07 percent as the legal limit.

3. *Per Se Law*

The State law must consider individuals under the age of 21 whose blood alcohol concentration exceeds the legal limit while operating a motor vehicle in the State to be driving while intoxicated or driving under the influence of alcohol.

In other words, the State must establish a ''per se'' law for persons under the age of 21, that makes driving with a BAC that exceeds the legal limit itself an offense for such persons. It will not be sufficient for the State law, for example, to provide that .02 percent establishes prima facie evidence.

4. *Primary Enforcement*

The State must enact and enforce a zero tolerance law that provides for primary enforcement. It will not be sufficient for the State law to provide that enforcement may be accomplished only as a secondary action to some other violation or offense.

Since Section 161 did not explicitly prescribe the penalties that must be imposed on offenders who violate zero tolerance laws, the agencies did not propose to include a penalties criterion in the implementing regulation.

The agencies concluded in the NPRM that, while Congress intended to encourage all States to enact and enforce effective zero tolerance laws, it also intended to provide States with sufficient flexibility so they could develop laws that suit the particular conditions that exist in those States.

General Comments on NPRM

The agencies received 22 comments in response to the NPRM. The commenters included the National Association of Governors' Highway Safety Representatives (NAGHSR), 13 State agencies, Mothers Against Drunk Drivers (the National Office, three State Chapters and a memorandum documenting a meeting held with MADD representatives), Advocates for Highway and Auto Safety, the National Association of Beverage Retailers (NABR) and a concerned individual.

Several commenters objected to the proposed rule based on philosophical, legal or constitutional grounds. Massachusetts objected to the use of sanctions against States. It asserted that the ''Sanctions/withholding of funds [will have an adverse impact on] State entities that are not involved in the purview of the intended remedy (e.g., zero tolerance impacting Federal-aid construction funds).''

The National Association of Beverage Retailers (NABR) opposed the ''arbitrary lowering of the legal BAC, for any age category.'' The NABR asserted that the government ''should program its precious resources in areas that will achieve the greatest results per dollar spent * * * [such as] education, information * * * and consistent and fair law enforcement. * * *''

The State of Oklahoma expressed concern that the Federal requirement would pose ''serious legal dilemmas'' for States that ''already have a per se law applicable to all drivers.''

A concerned individual from the State of Colorado challenged the adoption of zero tolerance laws for persons under the age of 21. The commenter asserted that such laws would violate the 14th amendment guaranteeing equal protection for persons under the age of 21 because they would ''apply two unequal standards to a previously enacted law.'' This commenter also expressed the view that the ''double standard'' that would be created by such zero tolerance laws will create ''continuing disrespect * * * among the youth of this country for the law in general.''

The agencies recognize that the enactment by States of zero tolerance laws and the imposition by the Federal government of sanctions on States that do not enact and enforce such laws may be controversial to some. However, Congress has directed the U.S. Department of Transportation to implement the Section 161 program, under which the Secretary must impose a sanction on any State that does not enact and enforce a conforming zero tolerance law. Since the Section 161 program has been mandated by Congress, the agencies are required to implement this program.

Moreover, the agencies believe this program has the potential to save a significant number of lives and prevent many serious injuries. It has been estimated that, since the enactment of the National Minimum Drinking Age Act in 1984, 8400 lives have been saved and over $1.8 billion in economic costs to our society have been prevented because of this law. As President Clinton stated, in a letter in support of the bill, to Senator Byrd, the bill's sponsor:

> [Zero tolerance] laws work—alcohol-related crashes involving teenage drivers are down as much as 10–20 percent in those states [that have enacted such laws]. If all states had such laws, hundreds more lives could be saved and thousands of injuries could be prevented.

In addition, the agencies disagree that zero tolerance laws will be vulnerable to legal or constitutional challenge. Nearly two-thirds of the States in the nation have already enacted zero tolerance laws, and these laws have consistently held up to challenges on constitutional and other legal grounds.

Comments Concerning the Compliance Criteria

The remaining comments addressed the proposed compliance criteria. As stated above, the proposed criteria provided that conforming zero tolerance laws must: (1) apply to all persons under the age of 21; (2) set 0.02 percent

as the legal limit for blood alcohol concentration; (3) establish .02 as a ''per se'' offense; and (4) provide for primary enforcement. The NPRM did not include a penalties criterion. None of the comments received by the agencies opposed criteria #1–3. These criteria will continue to be included in the regulation.

Three respondents commented on criterion #4. MADD supported the primary enforcement requirement. Although its zero tolerance law currently contains a secondary enforcement provision, the State of Nebraska did not take issue with criterion #4. In fact, the State predicted that its secondary enforcement provision ''will be corrected * * * because it will be recognized by state policy makers as an appropriate and effective change.'' The State of Illinois expressed concern that its law would be considered nonconforming under criterion #4. The agencies have found, however, that Illinois' law qualifies under the primary enforcement criterion. This criterion has been adopted without change.

As noted above, since Section 161 did not explicitly prescribe the penalties that must be imposed on offenders who violate zero tolerance laws, the agencies did not propose to include a penalties criterion in the implementing regulation.

Most of the commenters, including NAGHSR and eleven States, agreed with that portion of the agencies' proposal. Advocates and MADD (both the National Office and the three State Chapters) recommended instead that the agency expand the criteria to include a penalties criterion. Advocates recommended that the zero tolerance criteria should require that States impose a mandatory 30-day licensing sanction for any violation. It asserted that the adoption of this requirement would ''ensure that [the] new [zero tolerance] program can be implemented right from the start in a manner that maximizes its safety benefits to the nation.''

Each of the MADD commenters recommended that the criteria should provide for ''licensing sanctions.'' They did not specify, however, a minimum length of suspension or provide other details concerning the nature of the sanctions. MADD's National Office stated that licensing sanctions are ''the most effective means of deterring drinking and driving by those under the age of 21.''

Neither Advocates nor MADD specifically addressed whether sanctions should be ''hard,'' i.e. prohibiting the availability of restricted, provisional or conditional licenses during the suspension period. Both organizations asserted that the legislative history supports the inclusion of a penalties criterion.

The agencies agree that licensing sanctions are effective. NHTSA is aware of studies that have shown their effectiveness in deterring drinking and driving among the general population. ''Changes in Alcohol-Involved Fatal Crashes Associated With Tougher State Alcohol Legislation,'' DOT HS 807511, July 1989. Other studies suggest that such sanctions would be at least as effective against persons who are less than 21 years of age. ''Lower Legal Blood Alcohol Limits for Younger Drivers,'' Hingson, et al., Public Health Reports, 1994. The agencies also agree that ''zero tolerance'' laws that do not contain licensing sanctions would be far less effective than laws that present young people with the risk of losing their driver's license.

Moreover, the agencies strongly favor mandatory licensing sanctions. In fact, NHTSA's Section 410 drunk driving incentive grant program has required, since its inception, that States include mandatory 30-day hard licensing sanctions in their ''0.02 BAC per se'' laws to qualify for grant funds. In a final rule, published separately in today's Federal Register, NHTSA announces that the Section 410 program will continue to require these sanctions.

After a careful and studied review of both the statute and the legislative history, the agencies have decided to establish an additional criterion requiring appropriate penalties. Specifically, in view of Congress' intent that States enact effective laws that contain appropriate sanctions, the agencies believe it is appropriate to require that States authorize the use of driver licensing suspensions or revocations as sanctions for any violation of a State zero tolerance law. However, the agencies conclude that the statute does not permit the inclusion of a mandatory license sanction requirement for this new ''zero tolerance'' program.

Congress has required mandatory licensing sanctions in some of the programs it has established in recent years. Section 159 of Title 23, United States Code, for example, specifies that States must impose a six month license suspension against all persons who are convicted of drug offenses (or conform to section 159 through other means) to avoid a withholding of Federal-aid construction funds. Section 410 of Title 23, United States Code specifies that States must impose a 90-day license suspension on all first offenders and a one-year license suspension on all repeat offenders to qualify for incentive grant funds based on one of its criteria (expedited driver's license suspension or revocation system).

Neither the statutory language contained in Section 161 nor any of the legislative history concerning the section provide for or otherwise make reference to the inclusion of a mandatory licensing sanction. In a program such as this one, which provides that States that fail to comply are sanctioned (as opposed to a program such as Section 410, which provides simply that States that fail to comply do not receive incentive grants), the agencies consider the absence of an explicit statutory mandate to be an important factor in determining whether Congress intended for mandatory licensing sanctions to be required.

Moreover, the legislative history in both the Senate and the House of Representatives contains various statements that lead to the conclusion that the legislation was not intended to require a mandatory licensing sanction.

Senator Byrd stated in June 1995 that 24 States and the District of Columbia ''have already enacted the zero-tolerance law which is called for in [the] amendment.'' Senator Lautenberg, Congresswoman Morella and President Clinton cited the same number of States.[1]

If the agencies were to require a mandatory 30-day hard license suspension, six of the 24 States that had already enacted zero tolerance laws at the time these statements were being made in Congress would fail to comply on the basis of that requirement. If the agencies were to require a mandatory 30-day license suspension, but permit hardship or restricted licenses, three of those States would fail to comply.

In addition, some of the States specifically mentioned in the legislative history as examples that other States should follow, would fail to comply. For example, Senator Byrd stated:

> In * * * North Carolina * * * which [has] adopted zero tolerance laws, lower blood alcohol limits for minors resulted in a 34 percent decline in nighttime fatal crashes among younger drivers. * * * A 1992 Federal study in Maryland found that car accidents involving drivers under the age of 21 who had been drinking, declined eleven percent after the zero-tolerance law was adopted. Further, there was a 50 percent drop in accidents in areas where the penalties were promoted with a publicity campaign.

[1] A statement from Advocates for Highway and Auto Safety was included in the record, which indicated that, as of April 1994, 26 States and the District of Columbia had zero tolerance (.00, .01 or .02) laws.

Senator Lautenberg, Congresswomen Lowey and Morella, and Advocates for Highway and Auto Safety also cited Maryland and/or North Carolina as examples to follow in their statements in the record.

If the agencies were to require a mandatory 30-day hard license suspension, neither of these two States would comply. Instead, they would be subject to a withholding of funds. Even if States were allowed to issue hardship or restricted licenses during the suspension period, one of these States would still fail to comply. The agencies do not believe this is the result that was intended by Congress.

Congress did intend, however, that States would be required to enact effective laws that contain appropriate sanctions. Senator Byrd stated, when he introduced the legislation in the Senate:

> This amendment sets the right example, and tells our Nation's youth that drinking and driving is wrong; that it is a violation of law; and that it will be appropriately punished *according to the laws of each State.* [emphasis added]

The agencies note that every State that has enacted a ''zero tolerance'' law to date has included license suspensions among their sanctions for a violation. In most of these States, licensing sanctions are mandatory. In other States, they are authorized but are not mandatory (i.e., they may be imposed at the discretion of the court). There are no States in which fines are the only sanctions available.

Accordingly, the agencies will add a fifth criterion. This criterion will not require mandatory licensing sanctions, but will require that the State's law authorizes the use of driver licensing suspensions or revocations as sanctions for any violation of the State zero tolerance law. The agencies conclude this is consistent with Congress' intent to recognize the accomplishments of the States that had already enacted zero tolerance laws, and to encourage other States to enact effective zero tolerance laws that contain appropriate sanctions.

Based on a review of current zero tolerance laws, the agencies are aware of only one State law that will fail to comply with this new criterion. That law does not authorize the use of driver licensing sanctions on first offenders who are between the ages of 18 and 21.

While this regulation requires only that States authorize the use of driver licensing sanctions and does not establish a minimum length of suspension, the agencies strongly encourage the States to enact zero tolerance laws that in fact impose mandatory hard licensing sanctions for a reasonable minimum period of time. Since the introduction of the zero tolerance legislation in Congress, 13 States have enacted zero tolerance laws. Even though the agencies' zero tolerance NPRM did not propose to include any licensing sanction requirement, each of these 13 laws included provisions that authorize the use of licensing sanctions for all zero tolerance offenders.

Moreover, 10 of these States enacted laws that provide for a mandatory 30-day hard license suspension or revocation. These States concluded that a mandatory 30-day hard licensing sanction was the appropriate punishment for zero tolerance offenders and would ensure that their laws will be most effective. The agencies urge the remaining States to consider carefully the seriousness of the drunk driving problem among young people and the tragic loss of young lives that results, as they develop their legislation. In particular, these States are urged to follow the lead set by the ten States mentioned above and to enact the most effective law possible.

In addition, States are reminded that, if they enact zero tolerance laws that require a mandatory 30-day hard license suspension, they may become eligible for Section 410 incentive grant funds.

Other Proposed Provisions

The agencies also proposed in the NPRM to include provisions in the regulation governing the submission of certifications to demonstrate State compliance, notifications from the agencies regarding State compliance or noncompliance, and the period of availability of funds that are withheld. The NPRM proposed to include these provisions in sections 1210.5 through 1210.10 of the regulation. A more detailed discussion of these proposed sections can be found in the preamble to the NPRM. 61 FR 9122.

Washington State requested the opportunity to submit its certification for review by July 1, 1996, and receive a determination prior to November 1, 1996. The agencies would be pleased to review a certification from any State in advance of the deadlines established in the regulation.

The agencies received no other comments concerning these sections of the proposed rule. They are being adopted without change.

Separate Final Rule in Today's Federal Register

In today's Federal Register, NHTSA has also published a separate final rule, relating to Part 1313, the agency's regulation that implements its Section 410 program.

On March 7, 1996, NHTSA published an interim final rule in the Federal Register, amending Part 1313 to reflect changes that were made to 23 U.S.C. 410 by the NHS Act, and requesting comments on these changes. In the interim final rule, NHTSA recognized that one of the grant criteria under the section 410 program, which requires that States ''deem persons under age 21 who operate a motor vehicle with a BAC of 0.02 or greater to be driving while intoxicated,'' is similar to the new ''zero tolerance'' sanction requirement contained in Section 320 of the NHS Act (23 U.S.C. Section 161). The interim final rule requested comments regarding whether additional changes should be made to the section 410 ''0.02'' grant criterion, as a result of the new ''zero tolerance'' sanction program.

The final rule, published separately in today's Federal Register, announces that NHTSA will make no changes to the section 410 ''0.02'' grant criterion. This grant criterion will continue to require that States provide for a mandatory 30-day hard suspension.

Regulatory Analyses and Notices

Executive Order 12778 (Civil Justice Reform)

This final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

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

The agencies have determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. States can choose to enact and enforce a zero tolerance law, in conformance with Public Law 104–59, and thereby avoid the withholding of Federal-aid highway funds. While specific criteria that State laws must meet have been established in this final rule, they are mandated by Public Law 104–59. Accordingly, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agencies have evaluated the effects of this action on small entities. Based on the evaluation, we

certify that this action will not have a significant impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

The requirements in this final rule that States certify that they conform to the statutory requirements to avoid the withholding of Federal-aid highway funds are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. The reporting and recordkeeping requirement associated with this rule is subject to approval by the Office of Management and Budget in accordance with 44 U.S.C. Chapter 35. These reporting requirements will occur only once for each State and will record only if the State's law changes.

Accordingly, these requirements have been submitted to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). These requirements have been approved until September 30, 1999, under OMB No. 2127–0582.

National Environmental Policy Act

The agencies have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have determined that it will not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Accordingly, the preparation of a Federalism Assessment is not warranted.

List of Subjects in 23 CFR Part 1210

Alcohol and abuse, Grant programs—transportation, Highway safety, Reporting and recordkeeping requirements, Youth.

In accordance with the foregoing, a new Part 1210 is added to Title 23 of the Code of Federal Regulations to read as follows:

PART 1210—OPERATION OF MOTOR VEHICLES BY INTOXICATED MINORS

Sec.

1210.1 Scope.
1210.2 Purpose.
1210.3 Definitions.
1210.4 Adoption of zero tolerance law.
1210.5 Certification requirements.
1210.6 Period of availability of withheld funds.
1210.7 Apportionment of withheld funds after compliance.
1210.8 Period of availability of subsequently apportioned funds.
1210.9 Effect of noncompliance.
1210.10 Procedures affecting states in noncompliance.

Authority: 23 U.S.C. 161; delegation of authority at 49 CFR 1.48 and 1.50.

§ 1210.1 Scope.

This part prescribes the requirements necessary to implement 23 U.S.C. 161, which encourages States to enact and enforce zero tolerance laws.

§ 1210.2 Purpose.

The purpose of this part is to specify the steps that States must take to avoid the withholding of Federal-aid highway funds for noncompliance with 23 U.S.C. 161.

§ 1210.3 Definitions.

As used in this part:

(a) *Alcohol concentration* means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) *BAC* means either blood or breath alcohol concentration.

(c) *Operating a motor vehicle* means driving or being in actual physical control of a motor vehicle.

§ 1210.4 Adoption of zero tolerance law.

(a) The Secretary shall withhold five percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3) and 104(b)(5) of title 23, United States Code, on the first day of fiscal year 1999 if the State does not meet the requirements of this part on that date.

(b) The Secretary shall withhold ten percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3) and 104(b)(5) of title 23, United States Code, on the first day of fiscal year 2000 and any subsequent fiscal year if the State does not meet the requirements of this part on that date.

(c) A State meets the requirements of this section if the State has enacted and is enforcing a law that considers an individual under the age of 21 who has a BAC of 0.02 percent or greater while operating a motor vehicle in the State to be driving while intoxicated or driving under the influence of alcohol. The law must:

(1) Apply to all individuals under the age of 21;

(2) Set a BAC of not higher than 0.02 percent as the legal limit;

(3) Make operating a motor vehicle by an individual under age 21 above the legal limit a per se offense;

(4) Provide for primary enforcement; and

(5) Provide that license suspensions or revocations are authorized for any violation of the State zero tolerance law.

§ 1210.5 Certification requirements.

(a) Until a State has been determined to be in compliance with the requirements of 23 U.S.C. 161, to avoid the withholding of funds in any fiscal year, beginning with FY 1999, the State shall certify to the Secretary of Transportation, before the last day of the previous fiscal year, that it meets the requirements of 23 U.S.C. 161, and this part.

(b) The certification shall contain:

(1) A copy of the State zero tolerance law, regulation, or binding policy directive implementing or interpreting such law or regulation, that conforms to 23 U.S.C. 161 and § 1210.4(c); and

(2) A statement by an appropriate State official, that the State has enacted and is enforcing a conforming zero tolerance law. The certifying statement shall be worded as follows:

I, (Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and is enforcing a zero tolerance law that conforms to the requirements of 23 U.S.C. 161 and 23 CFR 1210.4(c).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications he or she receives to appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 161, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under paragraphs (a) and (b) of this section if the State's zero tolerance legislation changes.

§ 1210.6 Period of availability of withheld funds.

(a) Funds withheld under § 1210.4 from apportionment to any State on or before September 30, 2000, will remain available for apportionment until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(b) Funds withheld under § 1210.4 from apportionment to any State after September 30, 2000 will not be available for apportionment to the State.

§ 1210.7 Apportionment of withheld funds after compliance.

Funds withheld from a State from apportionment under § 1210.4, which remain available for apportionment under § 1210.6(a), will be made available to the State if it conforms to the requirements of §§ 1210.4 and 1210.5 before the last day of the period of availability as defined in § 1210.6(a).

§ 1210.8 Period of availability of subsequently apportioned funds.

Funds apportioned pursuant to § 1210.7 will remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are apportioned.

§ 1210.9 Effect of noncompliance.

If a State has not met the requirements of 23 U.S.C. 161 and this part at the end of the period for which funds withheld under § 1210.4 are available for apportionment to a State under § 1210.6, then such funds shall lapse.

§ 1210.10 Procedures affecting states in noncompliance.

(a) Each fiscal year, each State determined to be in noncompliance with 23 U.S.C. 161 and this part, based on NHTSA's and FHWA's preliminary review of its law, will be advised of the funds expected to be withheld under § 1210.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is not in compliance with 23 U.S.C. 161 and this part, based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20590.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 161 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being withheld under § 1210.4 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

Issued on: October 21, 1996.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 96–27313 Filed 10–22–96; 12:30 pm]

BILLING CODE 4910–59–P

National Highway Traffic Safety Administration

23 CFR Part 1313

[Docket No. 89–02; Notice 9]

RIN 2127–AD01

Incentive Grant Criteria for Drunk Driving Prevention Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule announces that the changes that were made in an interim final rule to the agency's regulations to implement the agency's drunk driving prevention incentive grant program, under 23 U.S.C. 410, will remain in effect. In addition, this final rule amends the regulation by simplifying the application process for subsequent year Section 410 grants.

DATES: This final rule becomes effective October 25, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Marlene Markison, Chief, Program Support Staff, NSC–10, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, DC 20590; telephone (202) 366–2121 or Ms. Heidi L. Coleman, Assistant Chief Counsel for General Law, Office of Chief Counsel, NCC–30, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590, telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION: Section 410, title 23, United States Code, as amended, established an incentive grant program under which States may qualify for basic and supplemental grant funds for adopting and implementing comprehensive drunk driving prevention programs that meet specified statutory criteria.

On November 28, 1995, the National Highway System Designation Act of 1995 (NHS Act) was enacted into law. Section 324 of the NHS Act contained amendments to 23 U.S.C. 410.

Interim Final Rule

On March 7, 1996, NHTSA published in the Federal Register an interim final rule to implement these changes and requested comments from the public. The changes affected two of the section 410 incentive grant criteria: the statewide program for stopping motor vehicles and the 0.02 blood alcohol concentration (BAC) per se law for persons under age 21.

General Comments on Interim Final Rule

The agency received eleven comments in response to the interim final rule. Comments were received from the National Association of Governors' Highway Safety Representatives (NAGHSR), Advocates for Highway and Auto Safety (Advocates), the National Transportation Safety Board (NTSB), and eight State agencies. The comments, and the agency's responses to them, are discussed in detail below. (The agency also received some comments to Docket No. 96–007, Notice 1, concerning a notice of proposed rulemaking on a new zero tolerance program, which related to the interim final rule. These comments have also been considered by the agency.)

Statewide Program for Stopping Motor Vehicles

Before its amendment by the NHS Act, Section 410 contained a basic grant criterion requiring that States must provide for ''a statewide program for stopping motor vehicles.'' To qualify for a basic grant under this criterion, States were required to provide:

> A statewide program for stopping motor vehicles on a nondiscriminatory, lawful basis for the purpose of determining whether or not the operators of such motor vehicles are driving while under the influence of alcohol.

On June 30, 1992, NHTSA issued an interim final rule to implement this provision. The preamble to the interim final rule stated:

> NHTSA is aware * * * that the courts in some States have declared the use of checkpoints or roadblocks to be unconstitutional under their State constitution [and has, therefore, * * *] attempted in this final rule to provide some flexibility to enable these States to describe other Statewide programs for stopping motor vehicles, using alternative methods * * *
>
> The agency[, however,] expects most States will meet this criterion by describing their plans for conducting a Statewide checkpoint or roadblock program.

Section 324(b)(1) of the NHS Act amended Section 410 by providing an alternative method of demonstrating compliance with this Section 410 basic grant criterion, for those States in which checkpoints or roadblocks have been declared to be unconstitutional. Section 324(b)(1) provides:

A State shall be treated as having met the requirement of this paragraph if—

(i) the State provides to the Secretary a written certification that the highest court of the State has issued a decision indicating that implementation of subparagraph (A) would constitute a violation of the constitution of the State; and

(ii) the State demonstrates to the satisfaction of the Secretary that—

(I) the alcohol fatal crash involvement rate in the State has decreased in each of the 3 most recent calendar years for which statistics for determining such rate are available; and

(II) the alcohol fatal crash involvement rate in the State has been lower than the average such rate for all States in each of such calendar years.

As a result of the changes made by the agency's interim final rule, dated March 7, 1996, States were permitted to demonstrate compliance with this criterion by submitting a certification to the agency. The certification must provide that the highest court of the State has issued a decision, indicating that a Statewide program for the stopping of motor vehicles on a nondiscriminatory, lawful basis for the purpose of determining whether or not the operators of such motor vehicles are driving while under the influence of alcohol, would constitute a violation of the State's Constitution. The State must also provide a copy of the court's decision.

NHTSA explained in the interim final rule that it will then, based on data contained in the Fatal Accident Reporting System (FARS) and using NHTSA's method for estimating alcohol involvement, determine the alcohol involvement rate in fatal crashes in the State in each of the three most recent calendar years for which statistics for determining this rate are available and the average such rate for all States in each of these three years.

The State will qualify, under this criterion, in the first and in subsequent years, if NHTSA determines that the data show that the alcohol involvement rate in fatal crashes in the State has decreased in each of the three most recent calendar years for which statistics for determining such rate are available, and that the alcohol involvement rate in fatal crashes in the State has been lower than the average such rate for all States in each of such calendar years.

The agency received four comments regarding the regulatory changes concerning this criterion. California and Massachusetts supported the changes made to this criterion in the interim final rule. Massachusetts said the changes seem ''reasonable and obtainable.'' California urged NHTSA to finalize the change.

NAGHSR urged NHTSA to determine compliance with this criterion by comparing ''fatality rates'' rather than ''absolute numbers of fatalities.'' The agency would like to clarify that the interim final rule did provide that compliance would be determined based on fatality rates. The interim final rule states that:

A State shall be treated as having met the requirement of this paragraph if * * * NHTSA determines, based on data contained in the Fatal Accident Reporting System (FARS) and using NHTSA's method for estimating alcohol involvement, that the *alcohol involvement rate* in fatal crashes in the State:

(A) has decreased in each of the 3 most recent calendar years for which statistics for determining *such rate* are available; and

(B) the *alcohol involvement rate* in fatal crashes in the State has been lower than the average *such rate* for all States in each of such calendar years. [emphasis added]

The agency would like to clarify how it will calculate the alcohol involvement rate. The rate will be derived by calculating the percentage of total traffic fatalities in the State in which a driver, pedestrian or bicyclist had a positive BAC (or are estimated to have had a positive BAC) out of the total traffic fatalities in the State, based on Fatal Accident Reporting System data. For example, if a State had 200 traffic fatalities in which a driver, pedestrian or bicyclist had a positive BAC (.01 or higher) out of a total of 500 fatalities, then the alcohol involvement rate for the State is 200/500, or 40 percent. The agency believes this measure represents the most reliable and most consistent indicator of alcohol involvement in fatal crashes. In addition, the data used to calculate this rate are easily accessible and widely used in the highway safety community.

North Dakota had no objections to the change made in the interim final rule, but noted that NHTSA now permits States to qualify under this criterion using saturation patrols, in lieu of sobriety checkpoints. The State expressed its support for the agency's flexibility, and notified the agency of its intention to apply for second year Section 410 grant funding, based on the State's saturation patrol program.

NHTSA will continue to permit States to qualify under this criterion based on saturation patrol programs. Four States (including North Dakota) have qualified for Section 410 funding on this basis.

Based on the agency's review of the comments, the regulatory changes made in the interim final rule to the Section 410 basic grant Statewide Program for Stopping Motor Vehicles criterion will remain in effect. No additional changes to that portion of the regulation will be made at this time.

0.02 BAC Per Se Law for Persons Under Age 21

Prior to the enactment of the NHS Act, Section 410 provided that, to qualify for basic grant funds, a State was required to meet five out of six basic grant criteria.[1] If a State qualified for a basic grant, it could also seek to qualify for funds under one or more of seven supplemental grants. To qualify under the first of these seven supplemental grants, a State was required to provide that any person under age 21 with a BAC of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

Section 324(b)(2) of the NHS Act amended Section 410 by converting this ''0.02 BAC'' requirement from a supplemental to a basic grant criterion. Accordingly, as a result of the changes made by the agency's interim final rule dated March 7, 1996, the ''0.02 BAC'' requirement remained the same. However, it was removed from the list of supplemental grants (reducing the number of such grants from seven to six), and added to the list of basic grant criteria under Section 410 (increasing the total of basic grant criteria from six to seven).

In the interim final rule, NHTSA explained that to qualify for basic grant funds, States must now meet five out of seven basic grant criteria.[2] As before, if a State qualifies for a basic grant, it can also seek to qualify for funds under one or more of the supplemental grants. However, the number of supplemental grants has been reduced from seven to six.

Massachusetts objected to the movement of the 0.02 BAC requirement from a supplemental to a basic grant criterion, but recognized that the change was Congressionally mandated. NHTSA received no other comments regarding this change. It will remain in effect.

New Zero Tolerance Sanction

In the interim final rule, NHTSA explained that Section 320 of the NHS Act added a new Section 161 to title 23, United States Code, which created a

[1] To receive a basic grant, States that qualified for section 410 funding in FY 1992 could demonstrate compliance with only four out of the five basic grant criteria that were in effect at that time.

[2] To receive a basic grant, States that qualified for section 410 funding in FY 1992 have two options. They may qualify either by demonstrating compliance with four out of the five basic grant criteria that were in effect at that time, or by demonstrating compliance with five out of the seven current basic grant criteria.

new zero tolerance sanction program. The zero tolerance sanction program requires the withholding of certain Federal-aid highway funds from States that do not enact and enforce a ''zero tolerance'' law. The ''zero tolerance'' requirement contained in Section 161 is similar, but not identical, to the ''0.02 BAC'' grant criterion contained in Section 410.

Section 410 provides that, to qualify for funding under the ''0.02 BAC'' grant criterion, a State must provide ''that any person under age 21 with a BAC of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.'' Section 161 provides that, to avoid the withholding of Federal-aid highway funds, a State must enact and enforce ''a law that considers an individual under the age of 21 who has a BAC of 0.02 percent or greater while operating a motor vehicle in the State to be driving while intoxicated or driving under the influence of alcohol.''

In an NPRM dated March 7, 1996, NHTSA and the Federal Highway Administration (FHWA), the agencies responsible for jointly administering this new sanction program, stated that:

> The agencies believe that, while Congress intended to encourage all States to enact and enforce effective zero tolerance laws, it also intended to provide States with sufficient flexibility so they could develop laws that suited the particular conditions that exist in those States. Accordingly, the statute prescribes only a limited number of basic elements that State laws must meet to avoid the withholding of Federal-aid highway funds.

NHTSA and the FHWA proposed in the NPRM that, to avoid the sanction, States must demonstrate that they have enacted and are enforcing a law that: (1) Applies to all individuals under the age of 21; (2) sets a BAC of not higher than 0.02 percent as the legal limit; (3) makes operating a motor vehicle by an individual under the age of 21 above the legal limit a per se offense; and (4) provides for primary enforcement.

(In today's Federal Register, NHTSA and the Federal Highway Administration have published a separate final rule, relating to the zero tolerance program established in Section 161 of the NHS.)

Impact of New Zero Tolerance Sanction on 0.02 BAC Criterion

In the interim final rule, NHTSA explained that the proposed requirement under the new zero tolerance sanction differs from the current requirement under the Section 410 ''0.02 BAC'' grant criterion. To qualify for a Section 410 grant under the ''0.02 BAC'' grant criterion, a State must satisfy the requirements listed above, and also provide for a 30-day driver's license suspension or revocation. The 30-day suspension or revocation period must be a mandatory hard suspension or revocation (i.e., it may not be subject to hardship, conditional or provisional driving privileges). To demonstrate compliance with this criterion, States must submit a law that provides for each element of the criterion, except that States with laws that do not specifically provide for a 30-day suspension period may submit data showing that the average length of the suspension term for offenders meets or exceeds 30 days.

In the interim final rule, NHTSA requested comments regarding whether further changes to Part 1313 should be made in light of the new zero tolerance program. Specifically, NHTSA requested comments regarding whether it should retain different requirements under the ''zero tolerance'' sanction and the Section 410 ''0.02 BAC'' grant criterion, or whether it should amend the Section 410 ''0.02 BAC'' criterion to be the same as the ''zero tolerance'' sanction requirement.

The agency received fourteen comments concerning this issue. Comments were received from NAGHSR, eleven States, the NTSB and Advocates for Highway and Auto Safety.

1. Whether To Adopt a Single or Different Standards for 0.02

NAGHSR and nine State commenters urged the agency to adopt a single standard for both the Section 410 ''0.02 BAC'' grant criterion and the ''zero tolerance'' sanction requirement. These commenters believe the Section 410 ''0.02 BAC'' grant criterion has been too stringent, and they recommend that it be reduced to match the criterion that was proposed for the zero tolerance program. NTSB also recommended that the agency adopt a single standard for the two programs, but NTSB favored the criterion currently contained in Section 410 over the proposed zero tolerance requirement.

In support of its recommendation that NHTSA adopt a single standard, NAGHSR argued that a single standard would provide clarity and would enable legislatures to pass conforming legislation more easily. Its comments stated:

> NAGHSR urges NHTSA to consider the adoption of one zero tolerance standard—the standard proposed under the March 7 Notice of Proposed Rulemaking (NPRM) implementing the NHS sanctions. If such an approach were taken, states would have to go to their legislature *only once* to adopt the necessary legislation. The likelihood of passage would be greater, encouraging more states to adopt zero tolerance laws more quickly. This, in turn, would help reduce the number of impaired teenagers and young adults on the road and reduce the number of fatalities in this age group. [emphasis added]

Elsewhere in its comments, NAGHSR stated:

> In our view, it is better for a state to adopt *any* zero tolerance measure and *then revisit* the legislation and strengthen it in *subsequent* legislative sessions. The effect of such a strategy is to enable a state to quickly close a significant loophole in its minimum drinking age law while allowing it to add desirable legislative features later on. [emphasis added]

Advocates and the States of New York and Illinois supported the use of two different standards. Advocates asserted that there is:

> * * * no logical reason for Section 161 and the Section 410 program 0.02 BAC requirement to have identical penalty criterion. Section 161 is a Congressional mandate that sets a nationally uniform minimum level for zero tolerance * * *. With respect to the Section 410 program, the license suspension requirement should be longer.

Illinois and New York expressed similar views. Illinois stated:

> Although the two provisions are similar, they involve different issues. The ''zero tolerance'' sanction involves a highway funding penalty, and the Section 410 ''0.02 BAC'' criterion involves an incentive. It is our opinion that keeping the license suspension or revocation provision within the Section 410 ''0.02 BAC'' criterion is reasonable.

New York asserted:

> We see nothing inappropriate about having one standard for incentives and another standard for penalties. This allows states to make choices among different levels of compliance that better represent each state's tolerance for safety legislation.

NHTSA agrees with this view. It has decided to establish a stricter standard for the Section 410 criterion than for the zero tolerance requirement. All States must meet the zero tolerance requirement, or they will be subject to the mandatory withholding of funds. If States wish to meet the stricter criterion contained in Section 410, they may be eligible for additional incentive grant funds.

2. Whether To Change the Section 410 ''0.02 BAC'' Criterion

As explained above, NAGHSR and nine State commenters expressed their belief that the Section 410 ''0.02 BAC'' grant criterion has been too stringent, and they recommend that it be reduced to match the criterion that was proposed

for the zero tolerance program. In particular, they recommend eliminating the 30-day mandatory licensing sanction requirement currently contained in Section 410. In support of its position, NAGSHR stated:

> While it may be highly desirable for states to enact strong zero tolerance laws, it may not always be possible to motivate state legislatures to do so. Similarly, while it may be good public policy to reward states only if they adopt the best possible legislation, such legislation may not be feasible or attainable in a state for reasons totally unrelated to the merits of the issue.
>
> * * * * *
>
> The goal, in NAGHSR's view, is to encourage states to enact zero tolerance laws, not just laws that fit a rigid zero tolerance definition. States should not be deemed ineligible simply for their failure to qualify with laws that meet narrowly defined standards.

Advocates disagreed with NAGHSR's position. According to Advocates:

> The goal of Section 410 is not to assure that all states have an equal opportunity to obtain grants but rather to assure that those states that make substantive improvements in their state safety laws will receive grant funds to enable them to sustain those efforts.

Since Advocates supported a 30-day license suspension requirement for the zero tolerance program, it recommended that NHTSA consider a 90-day license suspension requirement under Section 410.

NTSB and the States of New York and Illinois supported the current Section 410 criterion, which requires a mandatory 30-day hard suspension, and urged that this criterion not be changed. NTSB expressed its belief that the existing Section 410 30-day requirement is ''consistent with the Safety Board's recommendations * * * and with the intent of Congress.'' New York commented that ''NHTSA has struck an appropriate balance that will keep public policy focused in a productive direction for saving our youth.'' Illinois stated:

> Retention of the 30-day hard suspension is supported by our experience. In the first year of our zero tolerance law enforcement, we saw an increase in young driver citations.
>
> Research shows that the swift and sure loss of driving privileges is the most effective penalty for offenders. We strongly encourage NHTSA to retain the license suspension or revocation provision in the Section 410 ''0.02 BAC'' criterion and to make no further amendments to Part 1313.

After considering carefully all of the comments received, NHTSA has decided that it will not change the Section 410 ''0.02 BAC'' grant criterion.

Subsequent Year Applications

NAGHSR, Washington State and North Dakota recommend that the qualification process for subsequent year Section 410 grants should be simplified. NAGHSR suggests that, once a State has qualified for a Section 410 grant in one year, the State should only be required to certify its continued compliance in subsequent years, by certifying that ''there has been no substantive changes in laws or conditions.''

NAGHSR asserts that States are required, under the current Section 410 regulation, to invest considerable time and expense to qualify for Section 410 grants every year, which places ''a serious burden on very limited resources.'' North Dakota explained that a recertification process ''would allow staff to concentrate on traffic safety programs rather [than on] re-documenting information already presented in the original application.''

NHTSA appreciates these thoughtful comments. Under the current Section 410 regulation, States are required to submit different items of information to demonstrate compliance under each of the criteria. These items of information fall into three categories: laws; plans and descriptions of programs; and data and other information showing effectiveness.

We agree that, if a State has qualified under a criterion based on its laws and there have been no substantive changes in the laws since the time of the original application, there is little reason to require the State to resubmit its laws in its application for subsequent year funds. Similarly, if a State has qualified under a criterion based on a plan for conducting a program or a description of its program and there have been no substantive changes in the State's plans or program since the time of the original application, there is little reason to require the State to submit another detailed plan or description in its subsequent year application. The agency will no longer require this additional information. The regulation has been amended to reflect this change.

In lieu of resubmitting its laws to demonstrate compliance in subsequent years the State receives a grant under Basic Criterion No. 1 (Expedited Driver's License Suspension or Revocation System), Basic Criterion No. 2 (Per Se Law), Basic Criterion No. 4 (Self-Sustaining Drunk Driving Prevention Program), Basic Criterion No. 6 (Mandatory Sentencing), Basic Criterion No. 7 (Per Se Law for Persons Under Age 21), Supplemental Criterion No. 1 (Program Making Unlawful Open Containers and Consumption of Alcohol in Motor Vehicles), Supplemental Criterion No. 2 (Suspension of Registration and Return of License Plate Program), Supplemental Criterion No. 3 (Mandatory Alcohol Concentration Testing Program), Supplemental Criterion No. 4 (Drugged Driving Prevention), or Supplemental Criterion No. 5 (Per Se Level of 0.08), the State may submit either a statement certifying that there have been no substantive changes in the State's laws that would affect compliance with Section 410 or a copy of any amendments to the State's laws.

In lieu of resubmitting a plan for conducting a program or a program description to demonstrate compliance in subsequent years under Basic Criterion No. 3 (Statewide Program for Stopping Motor Vehicles), Basic Criterion No. 5 (Minimum Drinking Age Prevention Program), Supplemental Criterion No. 4 (Drugged Driving Prevention), or Supplemental Criterion No. 6 (Video Equipment Program), and in lieu of resubmitting two detailed examples of community programs to demonstrate compliance in subsequent years under Basic Criterion No. 4, the State may submit either a statement certifying that there have been no substantive changes in the State's plans or program that would affect compliance with Section 410 or a copy of any changes to the State's plans or program.

However, under some of the criteria, the submission of data or certain other information showing effectiveness is required. This information does change from year to year, and the agency has considered these submissions to be critical to ensure and evaluate the effectiveness of alcohol countermeasures. Accordingly, portions of the regulation that require data or other information showing effectiveness in subsequent years will not be changed at this time.

States will continue to be required to submit data under Basic Criterion No. 1 (Expedited Driver's License Suspension or Revocation System), information documenting that the prior year's plan was effectively implemented under Basic Criterion No. 3 (Statewide Program for Stopping Motor Vehicles), data and certifications under Basic Criterion No. 4 (Self-Sustaining Drunk Driving Prevention Program), and information documenting that the prior year's plan was effectively implemented under Basic Criterion No. 5 (Minimum Drinking Age Prevention). ''Data States'' will continue to be required to submit data under Basic Criterion No. 6 (Mandatory Sentencing) and Basic

Criterion No. 7 (Per Se Law for Persons Under Age 21).

To qualify in subsequent years for supplemental grants, States will continue to be required to submit information showing that it is actively enforcing its open container and anti-consumption statute under Supplemental Criterion No. 1 (Program Making Unlawful Open Containers and Consumption of Alcohol in Motor Vehicles), data and information showing that the State is actively enforcing its law and regarding any hardship exceptions contained in its law under Supplemental Criterion No. 2 (Suspension of Registration and Return of License Plate Program), data under Supplemental Criterion No. 3 (Mandatory Alcohol Concentration Testing Program), evidence of the State's participation in the Drug Evaluation and Classification or an equivalent program and information and data on prosecutions under Supplemental Criterion No. 4 (Drugged Driving Prevention), and information and data on the use and effectiveness of the equipment under Supplemental Criterion No. 6 (Video Equipment Program).

Regulatory Analyses and Notice

Executive Order 12778 (Civil Justice Reform)

This final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

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

The agency has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or Department of Transportation Regulatory Policies and Procedures. Section 410 is a voluntary program. Accordingly, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agency has evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action will not have a significant impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

The requirements relating to the regulation that this rule is amending that States retain and report to the Federal government information which demonstrates compliance with drunk driving prevention incentive grant criteria, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320.

Accordingly, these requirements have been submitted previously to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). These requirements have been approved under OMB No. 2127–0501. This final rule reduces for the States previous information collection requirements. A request for an extension of the OMB approval through November 1998 is currently pending.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it will not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Accordingly, the preparation of a Federalism Assessment is not warranted.

List of Subjects in 23 CFR Part 1313

Alcohol abuse, Drug abuse, Grant programs—transportation, Highway safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the interim rule published in the Federal Register of March 7, 1996, 61 FR 9101, amending 23 CFR Part 1313, is adopted as final, with the following changes:

PART 1313—INCENTIVE GRANT CRITERIA FOR DRUNK DRIVING PREVENTION PROGRAMS

1. The authority citation for Part 1313 continues to read as follows:

Authority: 23 U.S.C. 410; delegation of authority at 49 CFR 1.50.

2. Section 1313.5 is amended by adding paragraph (h) to read as follows:

§ 1313.5 Requirements for a basic grant.

* * * * *

(h) *Subsequent year submissions.* (1) In lieu of resubmitting its laws, regulations or binding policy directives to demonstrate compliance in subsequent years the State receives a basic grant as provided in paragraphs (a)(2)(ii), (a)(3)(ii), (b)(2), (d)(2)(i), (f)(2)(i), (f)(3)(i), (g)(2)(i), or (g)(3)(i) of this section, the State may submit either a statement certifying that there have been no substantive changes in the State's laws, regulations or binding policy directives that would affect compliance with Section 410 or a copy of any amendments to the State's laws, regulations or binding policy directives.

(2) In lieu of resubmitting a plan for conducting a program to demonstrate compliance in subsequent years the State receives a basic grant as provided in paragraphs (c)(3) or (e)(3) of this section, the State may submit either a statement certifying that there have been no substantive changes in the State's plans that would affect compliance with Section 410 or a copy of any changes to the State's plans.

(3) In lieu of resubmitting two detailed examples of community programs to demonstrate compliance in subsequent years the State receives a basic grant as provided in paragraph (d)(2)(ii) of this section, the State may submit either a statement certifying that there have been no substantive changes in the State's community programs that would affect compliance with Section 410 or a copy of any changes to the State's programs.

3. Section 1313.6 is amended by adding paragraph (g) to read as follows:

§ 1313.6 Requirements for supplemental grants.

* * * * *

(g) *Subsequent year submissions.* (1) In lieu of resubmitting its laws, regulations or binding policy directives to demonstrate compliance in subsequent years the State receives a supplemental grant as provided in paragraphs (a)(2)(ii), (b)(2)(ii), (c)(2)(ii), (c)(3)(i), (d)(2)(i), or (e)(2) of this section, the State may submit either a statement certifying that there have been no substantive changes in the State's laws, regulations or binding policy directives that would affect compliance with Section 410 or a copy of any amendments to the State's laws, regulations or binding policy directives.

(2) In lieu of resubmitting a plan or a description of its program in subsequent years the State receives a supplemental grant as provided in paragraph (d)(2)(iv) or (f)(3) of this section, the State may submit either a statement certifying that

there have been no substantive changes in the State's plan or program that would affect compliance with Section 410 or a copy of any changes to the State's plan or program.

Issued on: October 21, 1996.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 96–27314 Filed 10–22–96; 12:30pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 960828232–6294–02]

RIN 0651–AA90

Establishment of Recordal Fees Associated With the Fastener Quality Act

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules of practice to establish fees associated with recordation of insignia of manufacturers and private label distributors to ensure the traceability of a fastener to its manufacturer or private label distributor. This amendment is in accordance with the provisions of the Fastener Quality Act. 15 U.S.C. 5401 et seq.

EFFECTIVE DATE: November 25, 1996.

FOR FURTHER INFORMATION CONTACT: Lizbeth Kulick by telephone at (703) 308–8900, or by fax at (703) 308–7220, or by mail marked to her attention and addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia, 22202–3513.

SUPPLEMENTARY INFORMATION: On August 17, 1992, the Department of Commerce issued a notice of proposed rulemaking to implement the Fastener Quality Act (Act). 57 FR 37032. In that notice, the PTO was identified as the Office within the Commerce Department with the responsibility for recording the fastener insignia of manufacturers and private label distributors as required by Section 8 of the Act. 57 FR 37033–35, August 17, 1992. The notice proposed that the costs of recording insignia be recovered by user fees. 57 FR 37035–36, August 17, 1992.

The PTO must publish a notice in the Federal Register of any change of its fees at least 30 days before the effective date thereof. 15 U.S.C. 1113(a). On September 17, 1996, a notice of proposed rulemaking was published in the Federal Register, at 61 FR 48872–73, to announce three proposed fees of twenty dollars each, to recover costs associated with the insignia recordal program. The PTO has received no comments regarding the proposed fees.

Additionally, the September 17th notice proposed to remove two rules from Part 2, 37 CFR 2.53 and 2.189, because they were deemed not administratively necessary. Section 2.53 specifies the manner in which drawings must be transmitted. Section 2.189 simply states the Office's policy on publishing amendments to the rules. This policy is not changing, but will no longer be stated as a rule. No comments were received on the proposed removal of the two rules.

Other Considerations

This rule is not significant for the purposes of Executive Order 12866. The Office of Management and Budget approved the information collections required by this rule on October 1, 1996 (OMB number 0651–0028). This clearance expires October 31, 1999. The affected public is manufacturers and private label distributors of certain types of industrial fasteners. The estimated average number of responses is six hundred. The estimated time per response is ten minutes, so the estimated total annual burden is one hundred hours. The collected information is needed to ensure that a fastener can be traced to its manufacturer or private label distributor.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

This proposed fee does not require notice and comment under 5 U.S.C. 553 or any other statute, so no analysis or certification is required under 5 U.S.C. 603(a).

List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set out in the preamble, 37 CFR Part 2 is amended as set forth below.

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

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

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.7 is added to read as follows:

§ 2.7 Fastener Recordal Fees.

(a) Application fee for recordal of insignia	$20.00
(b) Renewal of insignia recordal	$20.00
(c) Surcharge for late renewal of insignia recordal	$20.00

§ 2.53 [Removed]

3. Section 2.53 is removed.

§ 2.189 [Removed]

4. Section 2.189 and the undesignated center heading ''Amendment of Rules'' are removed.

Dated: October 23, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96–27628 Filed 10–24–96; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5638–9]

Montana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Montana has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Montana's application and has made a decision, subject to public review and comment, that Montana's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Montana's hazardous waste program revisions. Montana's application for program revision is available for public review and comment.

DATES: Final authorization for Montana shall be effective December 24, 1996, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Montana's program revision

application must be received by the close of business November 25, 1996.

ADDRESSES: Copies of Montana's program revision application are available during regular business hours at the following addresses for inspection and copying: Permitting and Compliance Division, Montana Department of Environmental Quality, 2209 Phoenix Ave., Helena, Montana 59601, Phone: 406/444–1430 and U.S. EPA Region VIII, Montana Office, 301 S. Park, Federal Building, Helena, MT 59626, Phone: 406/441–1130. Written comments should be sent to: Eric Finke, U.S. Environmental Protection Agency, 301 S. Park, Drawer 10096, Helena, MT 59626.

FOR FURTHER INFORMATION CONTACT: Eric Finke, Waste and Toxics Team Leader, U.S. EPA, 301 S. Park, Drawer 10096, Helena, MT 59626, Phone: (406) 441–1130 x239.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act (''RCRA'' or the ''the Act''), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter ''HSWA'') allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive ''interim authorization'' for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–268, 124, 270, and 279. These regulatory changes are grouped into clusters.

B. Montana

Montana received partial Phase I Interim authorization in February, 1981. Complete Phase I authorization was received in February, 1982. Final authorization of the ''base program'' was received in July, 1984. Montana received final authorization of its first update, known as Non-HSWA clusters I through IV in March 1994. A draft program revision application was submitted in August 1992 and the final application on February 27, 1995. Today Montana is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3). Specific provisions which are included in the Montana program authorization revision sought today are listed in the Table below.

EPA has reviewed Montana's application and has made an immediate final decision that Montana's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Montana. The public may submit written comments on EPA's immediate final decision until November 25, 1996. Copies of Montana's application for program revision are available for inspection and copying at the locations indicated in the ''Addresses'' section of this notice.

Approval of Montana's program revision shall become effective in 60 days unless a comment opposing the authorization revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either: (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision. Upon the effective date of this approval, Montana will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the following provisions of the Federal program:

HSWA or *FR* Reference	State Equivalent [1]
Identification and listing of Hazardous Waste; Treatability Studies Sample Exemption, 53 *FR* 27290, 07/19/88	75–10–403, 75–10–405, MCA.
Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems, 53 *FR* 34079, 09/02/88.	75–10–405, MCA.
Identification and Listing of Hazardous Waste; and Designation, Reportable Quantities, and Notification, 53 *FR* 35412, 09/13/88.	75–10–405, MCA
Permit Modifications for Hazardous Waste Management Facilities, 53 *FR* 37912, 09/28/88; and 53 *FR* 41649, 10/24/88.	75–10–405, 75–10–406, MCA
Statistical Methods for Evaluation ground Water Monitoring data from Hazardous Waste Facilities, 53 *FR* 39720, 10/11/88.	75–10–405, MCA.
Identification and Listing of Hazardous Waste; Removal of Iron Dextran from the List of Hazardous Wastes, 53 *FR* 43878, 10/31/88.	75–10–405, MCA.
Identification and Listing of Hazardous Waste; Removal of Strontium Sulfide from the List of Hazardous Wastes, 53 *FR* 43881, 10/31/88.	75–10–405, MCA.
Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators (Technical Correction), 54 *FR* 615, 01/09/89.	75–10–405, MCA.
Amendment to Requirements for Hazardous Waste Incinerator Permits, 54 *FR* 4286, 01/30/89	75–10–405, MCA.
Changes to Interim Status Facilities for Hazardous Waste Management Permits; Modifications of Hazardous Waste Permits; Procedures for Post-Closure Permitting, 54 *FR* 9596, 03/07/89.	75–10–404 and 75–10–405, MCA.

[1] References are to the Administrative Rules of Montana, revised September 30, 1995 and the Montana Code as Annotated (MCA).

Indian Reservations

The program revision does not extend to ''Indian Country'' as defined in 18 U.S.C. Section 1151, including lands within the exterior boundaries of the following Indian reservations located within the State of Montana.

1. Blackfeet Indian Reservation
2. Crow Tribe of Montana Indian Reservation
3. Flathead Indian Reservation
4. Fort Belknap Indian Reservation
5. Fort Peck Indian Reservation
6. Northern Cheyenne Indian Reservation
7. Rocky Boy's Indian Reservation

In excluding Indian Country from the scope of this program revision, EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over sources in Indian Country. Should the State of Montana

choose to seek program authorization within Indian Country, it may do so without prejudice. Before EPA would approve the State's program for any portion of Indian Country, EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice.

There are no EPA-issued RCRA permits in Indian Country at this time.

C. Decision

I conclude that Montana's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Montana is granted final authorization to operate its hazardous waste program as revised by this application.

Montana has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Montana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to issue orders under Section 3008, 3013, and 7003 of RCRA.

Compliance with Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under existing State law which are being authorized by EPA. EPA's authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

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

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a ''Federal mandate'' and because it does not impose annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because the requirements of the Montana program are already imposed by the State and subject to State law. Second, the Act also generally excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program. Montana's participation in an authorized hazardous waste program is voluntary.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Montana program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under existing state law which are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912 (a), 6926, 6974(b).

Dated: October 9, 1996.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 96–27479 Filed 10–24–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 101696A]

Fraser River Sockeye and Pink Salmon Fisheries; Inseason Orders

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason orders.

SUMMARY: NMFS publishes inseason orders regulating fisheries in U.S. waters. The orders were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and

subsequently approved and issued by the Secretary of Commerce (Secretary) during the 1996 sockeye fisheries within the Fraser River Panel Area (Panel Area). These orders established fishing times, areas, and types of gear for U.S. treaty Indian and all-citizen fisheries during the period that the Commission exercised jurisdiction over these fisheries. Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1996 orders are therefore being published in this document as a composite of the year's inseason orders.

EFFECTIVE DATES: Each of the following inseason orders was effective upon announcement on telephone hotline numbers as specified at 50 CFR 300.97(b)(1).

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140.

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631–3644.

Under authority of the Act, Federal regulations at 50 CFR part 300 subpart F (61 FR 35548, July 5, 1996) provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Panel for sockeye and pink salmon fisheries in the Panel Area that apply during the period each year when the Commission exercises jurisdiction over these fisheries.

The regulations close the Panel Area to sockeye and pink salmon fishing unless opened by Panel regulations or by inseason orders of the Secretary that give the effect to Panel orders, unless such orders are determined not to be consistent with domestic legal obligations. During the fishing season, the Secretary may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations. The Secretary issues inseason orders through his delegate, the Regional Administrator, Northwest Region, NMFS. Official notice of these inseason actions of the Secretary is provided by two telephone hotline numbers described at 50 CFR 300.97(b)(1). Inseason orders of the Secretary must be published in the *Federal Register* as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impractical. The 1996 orders are therefore being published in this document as a composite of the year's inseason actions.

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by the Secretary during the 1996 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220–22.

Order No, 1996–1: Issued 12:50 p.m., July 30, 1996

Treaty Indian Fishery

Areas 4B, 5, and 6C: Open for drift gillnets from 12 p.m., August 1 to 12 p.m., August 4.

Order No. 1996–2: Issued 3:30 p.m., August 2, 1996

Treaty Indian Fishery

Areas 4B, 5, and 6C: Closed for drift gillnets effective 12 p.m., August 3.

Order No. 1996–3: Issued at 11:25 a.m., August 5, 1996

Treaty Indian Fishery

Areas 4B, 5, and 6C: Drift gillnets open 12 p.m., August 6 to 12 p.m., August 7.

Areas 6, 7, and 7A: Open for net fishing from 5 a.m. to 9 p.m., August 7.

Order No. 1996–4: Issued 3:55 p.m., August 11, 1996

Treaty Indian Fishery

Areas 4B, 5, and 6C: Drift gillnets open 5 p.m., August 11 to 5 p.m., August 13.

Areas 6, 7, and 7A: Open for net fishing from 5 p.m., August 12 to 9 p.m., August 13 southerly and easterly of a line from the low water range marker in Boundary Bay on the International Boundary, through the east tip of Point Roberts, to the East Point Light on Saturna Island.

Order No. 1996–5: Issued 2 p.m., August 12, 1996

Treaty Indian Fishery

Areas 4b, 5, and 6C: Drift gillnets open from 5 p.m., August 13 to 12 p.m., August 15.

Order No. 1996–6: Issued at 4:15 p.m., August 14, 1996

Treaty Indian Fishery

Areas 4B, 5, and 6C: Drift gillnets open from 12 p.m., August 15 to 12 p.m., August 17.

All-Citizen Fishery

Areas 7 and 7A southerly and easterly of a line from the low water range marker in Boundary Bay on the International Boundary, through the east tip of point Roberts, to the East Point Light on Saturna Island: Purse seines open 6 a.m. to 10 a.m., August 16. Gillnets open 5 p.m. to 9 p.m., August 16.

Order No. 1996–7: Issued 1:45 p.m., August 16, 1996

Treaty Indian Fishery

Areas 4B, 5, and 6C: Drift gillnets open from 12 p.m., August 17 to 12 p.m., August 23.

Order No. 1996–8: Issued at 12:15 p.m., August 19, 1996

All-Citizen Fishery

Areas 7 and 7A southerly of a line from Iwersen's Dock on Point Roberts to the Georgina Point Light at the entrance to Active Pass: Gillnets open 7 p.m., August 19 to 7 a.m., August 20.

Purse seines open 7 a.m. to 7 p.m., August 20.

Order No. 1996–9: Issued at 12:45 p.m., August 23, 1996

Treaty Indian and All-Citizen Fisheries

Areas 4B, 5, and 6C: Relinquish regulatory control effective Sunday, August 25.

Order No. 1996–10: Issued at 1:05 p.m., August 27, 1996

All-Citizen Fishery

Area 7A: Gillnets open 7 p.m., August 27 to 7 a.m., August 28. Purse seines open 7 a.m. to 7 p.m., August 28, with non-retention of chinook salmon.

Order No. 1996–11: Issued at 11:45 a.m., September 12, 1996

Treaty Indian and All-Citizen Fisheries

Area 7A: Relinquish regulatory control effective Sunday, September 15.

Classification

This action is authorized by 50 CFR 300.97, and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 3636(b).

Dated: October 18, 1996

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine

Fisheries Service.

[FR Doc. 96–27368 Filed 10–24–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 208
Friday, October 25, 1996

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AH65

Pay Under the General Schedule; Locality Pay Areas for 1998

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing proposed regulations to remove two metropolitan areas from the ''Rest of U.S.'' locality pay area and establish two new locality pay areas in January 1998 corresponding to these metropolitan areas. The two metropolitan areas affected by this proposed regulation are Hartford, CT, and Orlando, FL. These proposed changes are based on a recommendation of the Federal Salary Council. The purpose of this notice is to solicit public comments on the boundaries of locality pay areas recommended by the Federal Salary Council before the President's Pay Agent makes a final determination on this matter.

DATES: Comments must be received on or before November 25, 1996.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415 (FAX: (202) 606–0824).

FOR FURTHER INFORMATION CONTACT: Jeanne D. Jacobson, (202) 606–2858 or FAX: (202) 606–0824.

SUPPLEMENTARY INFORMATION: Section 5304(a)(1) of title 5, United States Code, provides that locality payments shall be payable within each locality determined to have a pay disparity greater than 5 percent. Section 5304(f)(1) authorizes the President's Pay Agent (consisting of the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of the Office of Personnel Management (OPM)) to provide for such pay localities as the Pay Agent considers appropriate. In so doing, the Pay Agent must give thorough consideration to the views and recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations and pay and representatives of Federal employee organizations. Members of the Federal Salary Council are appointed by the President and meet regularly to consider issues related to the locality pay system for General Schedule employees.

Starting with the January 1996 locality payments, 5 U.S.C. 5304(d)(1) requires the Pay Agent to make recommendations to the President on the locality pay areas no later than 13 months before the start of the calendar year for which the locality payments are paid. In late 1995, the President's Pay Agent adopted the recommendations of the Federal Salary Council concerning locality pay areas for 1997 in their entirety. These recommendations resulted in the establishment of a total of 30 locality pay areas consisting of 29 areas corresponding to Metropolitan Statistical Areas (MSA's) or Consolidated Metropolitan Statistical Areas (CMSA's) (as defined by OMB), including certain ''areas of application'' contiguous to two areas, plus one area composed of the ''Rest of U.S.'' (See 61 FR 40949, August 7, 1996.) If OMB makes changes in the boundaries of MSA's and CMSA's, the boundaries of the corresponding locality pay areas are automatically changed accordingly.

At its meeting on October 4, 1996, the Federal Salary Council recommended that two areas—Hartford, CT, and Orlando, FL—be removed from the ''Rest of U.S.'' locality pay area and established as separate locality pay areas effective in January 1998. These two new locality pay areas ″would be in addition to the 30 locality pay areas established for the 1997 locality payments.

At the direction of the Pay Agent following an earlier recommendation of the Federal Salary Council, the Bureau of Labor Statistics (BLS) conducted additional local salary surveys in 1995–96 in the MSA's for Hartford, CT, and Orlando, FL. The surveys showed that the pay disparity in the Orlando, FL MSA was slightly below the pay disparity in the ''Rest of U.S.'' locality pay area. Because the pay disparity was less than 2/10ths of a percentage point below the pay disparity for ''Rest of U.S.,'' the Federal Salary Council recommended establishing Orlando, FL, as a separate locality pay area. (Under established policy, any surveyed area with a pay disparity of 2/10ths of a percentage point or more below the ''Rest of U.S.'' pay disparity does not qualify to be established or continued as a locality pay area. Also, a locality pay area must be dropped if its pay disparity is below the ''Rest of U.S.'' pay disparity in three consecutive annual surveys.)

The Federal Salary Council also recommended that the Orlando, FL, locality pay percentage be set equal to the ''Rest of U.S.'' locality pay percentage in 1998 and that the Orlando, FL, pay gap be averaged with the ''Rest of U.S.'' pay gap to determine the combined pay gap for the two areas. This is consistent with past practices for dealing with locality pay areas in which the locality pay percentage is below the ''Rest of U.S.'' percentage.

The BLS surveys showed that the pay disparity in the Hartford, CT MSA was greater than the pay disparity in the ''Rest of U.S.'' locality pay area. Thus, the Federal Salary Council recommended that the Hartford, CT MSA be added as a separate locality pay area. It also recommended that that portion of New London County, CT, outside the Hartford, CT MSA be added to the Hartford locality pay area as an ''area of application.''

''Areas of application'' are areas contiguous to an MSA or CMSA that are included in the corresponding pay locality for locality pay purposes. In 1994, the Federal Salary Council developed the following criteria for consideration as areas of application to pay localities:

a. *County-wide areas of application.* To be considered, the affected county must meet all of the following criteria:

1. Be contiguous to a pay locality.

2. Contain at least 2,000 GS–GM employees.

3. Have a significant level of urbanization, based on 1990 Census data. (A ''significant level of urbanization'' is defined as a population density of more than 200 per square mile or at least 90 percent of the population in urbanized areas.)

4. Demonstrate some economic linkage with the pay locality, defined as

commuting at a level of 5 percent or more into or from the areas in question. (The areas in question are the contiguous county under consideration and the central counties—or in the case of New England, the central cores—identified by the Census Bureau for the process of defining the CMSA's or MSA's involved.)

b. *Federal facilities crossing pay locality boundaries.* To be included in a pay locality the portion of a federal facility which crosses pay locality boundaries and which is not in the pay locality must meet all of the following criteria:

1. Have at least 1,000 GS–GM employees.

2. Have the duty station(s) of the majority of GS–GM employees within 10 miles of the prime critical survey boundary area.

3. Have a significant number of its employees commuting from the pay locality.

However, because OMB defines CMSA's and MSA's in New England by townships and cities instead of counties, the above-stated criteria for consideration as an ''area of application'' cannot be fully applied to New London County, part of which is outside the Hartford, CT MSA. Therefore, the Federal Salary Council has adopted the following set of criteria for consideration of partial counties as ''areas of application'':

Criteria for Partial-County Areas of Application in New England

1. The partial-county area must be contiguous to the pay locality (exclusive of any other areas of application) and must currently be included in the ''Rest of U.S.'' locality pay area.

2. The partial-county area must contain at least 2,000 GS employees.

3. The entire county must have a population density of more than 200 per square mile or at least 90 percent of the population in urbanized areas.

4. The entire county must demonstrate some economic linkage with the pay locality, defined as commuting at a level of 5 percent or more into or from the areas in question. (The areas in question are the entire county under consideration and the central core of the MSA as defined by the Census Bureau for use in establishing metropolitan areas.)

Because New London County, CT, meets all of the above-stated criteria, the Federal Salary Council has recommended that that portion of New London County, CT, outside the Hartford, CT MSA be included in the Hartford, CT, locality pay area as an ''area of application.''

The definitions of the MSA's and CMSA's that comprise the locality pay areas are found in OMB Bulletin No. 96–08, June 28, 1996. Based on these definitions, the two proposed locality pay areas for 1998 will be composed of the following geographic areas:

Orlando, FL, Locality Pay Area

Lake County
Orange County
Osceola County
Seminole County

Hartford, CT, Locality Pay Area

Hartford County (part)

Avon town
Berlin town
Bloomfield town
Bristol city
Burlington town
Canton town
East Granby town
East Hartford town
East Windsor town
Enfield town
Farmington town
Glastonbury town
Granby town
Hartford city
Manchester town
Marlborough town
New Britain city
Newington town
Plainville town
Rocky Hill town
Simsbury town
Southington town
South Windsor town
Suffield town
West Hartford town
Wethersfield town
Windsor town
Windsor Locks town

Litchfield County (part)

Barkhamsted town
Harwinton town
New Hartford town
Plymouth town
Winchester town

Middlesex County (part)

Cromwell town
Durham town
East Haddam town
East Hampton town
Haddam town
Middlefield town
Middletown city
Portland town

New London County (all)

Tolland County (part)

Andover town
Bolton town
Columbia town
Coventry town
Ellington town
Hebron town
Mansfield town
Somers town
Stafford town
Tolland town
Vernon town
Willington town

Windham County (part)

Ashford town
Chaplin town
Windham town

The Pay Agent's decision regarding locality pay areas for 1998 must be made no later than November 30, 1996. Therefore, OPM has established a 30-day public comment period for these proposed regulations. After the public comment period, the Pay Agent will consider the comments received from Federal employees, agencies, employee organizations, and other interested parties before making its determination on the establishment of pay localities. The Pay Agent also will consider any additional views and recommendations expressed directly to the Pay Agent by any member of the Federal Salary Council or by employee organizations not represented on the Council. The final regulations issued by OPM will reflect the Pay Agent's final determination on this matter.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is proposing to amend part 531 of title 5, Code of Federal Regulations, as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316.

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5535(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

Subpart F—Locality-Based Comparability Payments

2. In § 531.603, paragraph (b) is revised to read as follows:

§ 531.603 Locality pay areas.

* * * * *

(b) The following are locality pay areas for the purpose of this subpart:

(1) Atlanta, GA—consisting of the Atlanta, GA MSA;

(2) Boston–Worcester–Lawrence, MA–NH–ME–CT—consisting of the Boston–Worcester–Lawrence, MA–NH–ME–CT CMSA;

(3) Chicago–Gary–Kenosha, IL–IN–WI—consisting of the Chicago–Gary–Kenosha, IL–IN–WI CMSA;

(4) Cincinnati–Hamilton, OH–KY–IN—consisting of the Cincinnati–Hamilton, OH–KY–IN CMSA;

(5) Cleveland–Akron, OH—consisting of the Cleveland–Akron, OH CMSA;

(6) Columbus, OH—consisting of the Columbus, OH MSA;

(7) Dallas–Fort Worth, TX—consisting of the Dallas–Fort Worth, TX CMSA;

(8) Dayton–Springfield, OH—consisting of the Dayton–Springfield, OH MSA;

(9) Denver–Boulder–Greeley, CO—consisting of the Denver–Boulder–Greeley, CO MSA;

(10) Detroit–Ann Arbor–Flint, MI—consisting of the Detroit–Ann Arbor–Flint, MI CMSA;

(11) Hartford, CT—consisting of the Hartford, CT MSA plus that portion of New London County, CT, not located within the Hartford, CT MSA;

(12) Houston–Galveston–Brazoria, TX—consisting of the Houston–Galveston–Brazoria, TX CMSA;

(13) Huntsville, AL—consisting of the Huntsville, AL MSA;

(14) Indianapolis, IN—consisting of the Indianapolis, IN MSA;

(15) Kansas City, MO–KS—consisting of the Kansas City, MO–KS MSA;

(16) Los Angeles–Riverside–Orange County, CA—consisting of the Los Angeles–Riverside–Orange County, CA CMSA; plus Santa Barbara County, CA, and that portion of Edwards Air Force Base, CA, not located within the Los Angeles–Riverside–Orange County, CA CMSA;

(17) Miami–Fort Lauderdale, FL—consisting of the Miami–Fort Lauderdale, FL CMSA;

(18) Milwaukee–Racine, WI—consisting of the Milwaukee–Racine, WI CMSA;

(19) Minneapolis–St. Paul, MN–WI—consisting of the Minneapolis–St. Paul, MN–WI MSA;

(20) New York–Northern New Jersey–Long Island, NY–NJ–CT–PA—consisting of the New York–Northern New Jersey–Long Island, NY–NJ–CT–PA CMSA;

(21) Orlando, FL—consisting of the Orlando, FL MSA;

(22) Philadelphia–Wilmington–Atlantic City, PA–NJ–DE–MD—consisting of the Philadelphia–Wilmington–Atlantic City, PA–NJ–DE–MD CMSA;

(23) Pittsburgh, PA—consisting of the Pittsburgh, PA MSA;

(24) Portland–Salem, OR–WA—consisting of the Portland–Salem, OR–WA CMSA;

(25) Richmond–Petersburg, VA—consisting of the Richmond–Petersburg, VA MSA;

(26) Sacramento–Yolo, CA—consisting of the Sacramento–Yolo, CA CMSA;

(27) St. Louis, MO–IL—consisting of the St. Louis, MO–IL MSA;

(28) San Diego, CA—consisting of the San Diego, CA MSA;

(29) San Francisco–Oakland–San Jose, CA—consisting of the San Francisco–Oakland–San Jose, CA CMSA;

(30) Seattle–Tacoma–Bremerton, WA—consisting of the Seattle–Tacoma–Bremerton, WA CMSA;

(31) Washington–Baltimore, DC–MD–VA–WV—consisting of the Washington–Baltimore, DC–MD–VA–WV CMSA, plus St. Mary's County, MD; and

(32) Rest of U.S.—consisting of those portions of the continental United States not located within another locality pay area.

[FR Doc. 96–27629 Filed 10–24–96; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1007, 1011, 1046

[Docket No. AO–388–A9, et al.; DA–96–08]

Milk in the Carolina and Certain Other Marketing Areas; Notice of Extension of Time for Filing Comments

7 CFR Part	Marketing area	AO Nos.
1005	Carolina	AO–388–A9
1007	Southeast	AO–366–A38
1011	Tennessee Valley	AO–251–A40
1046	Louisville-Lexington-Evansville.	AO–123–A67

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing comments to the tentative partial decision.

SUMMARY: This notice extends the time for filing comments to the tentative partial decision which would incorporate a transportation credit balancing fund into four Federal milk marketing orders in the southern United States. The amendments are based on the record of a public hearing held May 15–16, 1996, in Charlotte, North Carolina. Carolina Virginia Milk Producers Association requested additional time to observe and evaluate the amendments. The time has been extended forty-five (45) days to November 30, 1996.

DATES: Comments are now due on or before November 30, 1996.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding:

Notice of Hearing: Issued May 1, 1996; published May 3, 1996 (61 FR 19861).

Tentative Partial Decision: Issued July 12, 1996; published July 18, 1996 (61 FR 37628).

Interim Amendment of Rules: Issued August 2, 1996; published August 9, 1996 (61 FR 41488).

Notice of Extension of Time for Filing Comments to Tentative Partial Decision: Issued August 16, 1996; published August 23, 1996 (61 FR 43474).

A notice was published in the Federal Register on August 23, 1996 (61 FR 43474), extending the time to file comments to the tentative partial final decision regulating the handling of milk in the Carolina, Southeast, Tennessee Valley and Louisville-Lexington-Evansville marketing areas from August 17 to October 16, 1996. Notice is hereby given that the time for filing comments to the tentative partial decision regulating the handling of milk in the aforesaid marketing areas is hereby further extended from October 16 to November 30, 1996.

The initial comment period was extended, from August 16 to October 17, 1996, at the request of Carolina Virginia Milk Producers Association, to allow interested persons to comment more accurately on the amendments. The cooperative has asked that the comment period be extended an additional forty-five (45) days to November 30, 1996, to allow more observation time to evaluate the amendments. The cooperative stated that the amendments went into effect on August 10, 1996, and it has only observed the amendments for one Federal order pool.

It should be noted that any finalization of the tentative partial decision, with or without modification, may only be based on the factual record received in evidence at the oral hearing on May 15–16, 1996. To the extent that any comments will be based on subsequent factual occurrences, the Secretary would have to reopen the oral hearing if he believed consideration of such subsequent facts to be warranted. Nonetheless, the Secretary welcomes full participation by all interested persons in the rulemaking process. Thus, the comment period is further extended from October 16 to November 30, 1996.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

List of Subjects in 7 CFR Parts 1005, 1007, 1011, and 1046

Milk marketing orders.

Dated: October 18, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–27458 Filed 10–24–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 708

Contractor Employee Protection Program

AGENCY: Department of Energy.

ACTION: Notice of inquiry.

SUMMARY: The Department of Energy's contractor employee protection program provides recourse to DOE contractor employees who believe that they have been retaliated against for such activities as disclosing information regarding mismanagement of environmental, safety, health, and other matters, for participating in Congressional proceedings, or for refusing to engage in illegal or dangerous activities. Under this program, the Department has been investigating and adjudicating cases for the past four and one half years. As part of Secretary Hazel R. O'Leary's policy of ''zero tolerance for reprisal'' against employees who raise workplace concerns, the DOE invites members of the public, particularly those persons with experience under this process (e.g., claimants, contractors, attorneys), to recommend any regulatory changes that might help to streamline the process and make it more responsive to the needs of both claimants and contractors.

DATES: Comments are due on December 24, 1996.

ADDRESSES: Comments (5 copies) may be submitted to: William A. Lewis, Jr., Director, Office of Employee Concerns, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Att: Contractor Employee Protection NOI.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Crater, Office of the Under Secretary, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, 202–586–6479.

SUPPLEMENTARY INFORMATION: Pursuant to the Atomic Energy Act of 1954 (Act) [42 U.S.C. 2011 *et seq.*] and the Department of Energy Organization Act, the Department of Energy (Department) carries out numerous programs, including research, development, production, and environmental cleanup. These programs are carried out by contractors under the supervision of the Department at various Department-owned and/or operated facilities around the United States.

As part of a comprehensive set of health and safety policies, the Department has promulgated a regulation on contractor employee protection, which is codified at 10 CFR part 708. This regulation, promulgated in 1992, 57 FR 7541 (March 3, 1992), provides a remedy for a contractor employee who has been discriminated against as a result of having disclosed information about waste, fraud, abuse, or mismanagement of health, safety, or environmental related matters, or about violations of law or regulation, for participating in Congressional proceedings, or for having in good faith refused to engage in illegal or dangerous activities. Since its inception, the Department has received comments and suggestions on how to improve the contractor employee protection program. In November 1995, the Office of Contractor Employee Protection was transferred to the Office of Inspector General. In response to congressional directive, the Office of Contractor Employee Protection was disestablished through a reorganization effective October 1, 1996. The Office of Inspector General will continue to investigate allegations of retaliation against contractor employees covered by Part 708.

Accordingly, the Department plans to amend part 708 to enhance its effectiveness and to address the reorganization of the contractor employee protection program. Although the Department has consulted with various stakeholders about this subject, the Department hereby invites public input from any interested person who thinks that part 708 should be revised and has suggestions for particular amendments. It will be followed eventually by a notice of proposed rulemaking that will give interested members of the public an opportunity to comment on the Department's formal proposal to amend part 708.

Issued in Washington, D.C., on October 11, 1996.

William A. Lewis, Jr.,

Director, Office of Employee Concerns.

[FR Doc. 96–27418 Filed 10–24–96; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–96–7]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received December 24, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the following internet address: nprmcmtsfaa.dot.gov.

The petition, any comments received, and copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes, (202) 267–3939, or Marisa Mullen, (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on October 22, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 28678
Petitioner: Independent Pilots Association
Regulations Affected: 14 CFR 121.356
Description of Rulechange Sought: To require Traffic Alert and collision Avoidance System II on all transport category airplanes flown in all-cargo part 121 operations, not just those airplanes with more than 30 passenger seats. The petitioner feels that such change would significantly enhance aviation safety by reducing the risk of cargo planes colliding with each other and with passenger aircraft operating in the same airspace.

Docket No.: 28712
Petitioner: Independent Pilots Association
Regulations Affected: 14 CFR 25.810 and 121.310
Description of Rulechange Sought: To require automatically deployable exit slides or their equivalent at the crew entry door for transport category airplanes manufactured for or flown in all-cargo operations, and to eliminate the acceptability of providing only ropes at any emergency exit. The petitioner feels that such change would provide a level of safety for cargo-only flightcrew that is consistent with that available for passenger, supernumeraries, and flight crew on passenger carrying aircraft.

[FR Doc. 96–27492 Filed 10–24–96; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 96–SW–17–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing priority letter airworthiness directive (AD), applicable to certain Bell Helicopter Textron, Inc. Model 412 helicopters, that currently requires a daily inspection of certain swashplate support assemblies. It also requires a reduction in V_{NE}, and installation of appropriate airspeed indicator markings and a placard. This action would require the same actions required by the existing Priority Letter AD, but would restrict the applicability to the Model 412 helicopters with a certain steel main rotor control swashplate support assembly (steel swashplate support assembly) installed. This AD also proposes to allow the installation of an improved main rotor control swashplate assembly that terminates the requirements of this AD. This proposal is prompted by reported cracks and in-service failures of certain steel swashplate support assemblies. The actions specified by the proposed AD are intended to prevent failure of the steel swashplate support assembly that could result in loss of main rotor control and subsequent loss of control of the helicopter.

DATES: Comments must be received by December 24, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–17–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Harrison, Federal Aviation Administration, Southwest Region, Rotorcraft Certification Office, ASW–170, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, FAX (817) 222–5959.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–SW–17–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–17–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On January 31, 1992, the FAA issued priority letter AD 92–03–13, to require, before further flight and thereafter before the first flight of each day, an inspection of the forward and aft clevis areas of the steel swashplate support assembly, part number (P/N) 412–010–453–101. It also requires a reduction in the maximum allowable airspeed to the lesser of 110 knots or V_{NE}, and further requires the installation of appropriate airspeed indicator markings and a placard. That AD also mandates that if a crack is found in the clevis areas of the steel swashplate support assembly, the steel swashplate support assembly must be removed and replaced with an airworthy part. That action was prompted by two reported in-service failures of a swashplate support assembly. The requirements of that AD are intended to prevent loss of main rotor control and subsequent loss of control of the helicopter.

Since the issuance of that AD, an improved steel swashplate support assembly, P/N 412–010–453–105, has become available. Installation of the improved steel swashplate support assembly, P/N 412–010–453–105, or an aluminum swashplate support assembly, P/N 412–010–443–101 or –109, terminates the requirements of this AD. BHTI issued Alert Service Bulletin (ASB) No. 412–92–61, dated May 14, 1992, to provide for installation of this improved steel swashplate support assembly. Additionally, some editorial changes have been made to the AD.

Since an unsafe condition has been identified that is likely to exist or develop on other Bell Helicopter Textron, Inc. Model 412 helicopters of the same type design, the proposed AD would supersede priority letter AD 92–03–13, issued January 13, 1992, to require a daily inspection of certain steel main rotor control swashplate support assemblies, a reduction in V_{NE}, and installation of appropriate airspeed markings and a placard. It also proposes an optional installation of an improved steel main rotor control swashplate support assembly or an aluminum swashplate support assembly, that when installed, constitutes a terminating action for the requirements of this AD. The actions would be required to be accomplished in accordance with ASB No. 412–92–61, dated May 14, 1992, and ASB No. 412–92–57, Revision A, dated January 30, 1992.

The FAA estimates that 40 helicopters of U.S. registry would be affected by this proposed AD, that it would take 20 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The aluminum swashplate support assembly, P/N 412–010–443–101 or –109 costs $4,526. The steel swashplate support assembly, P/N 412–010–453–105, costs $9,234. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $417,360, if all the swashplates in the fleet are replaced with support assemblies, P/N 412–010–453–105.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bell Helicopter Textron, Inc.: Docket No. 96–SW–17–AD. Supersedes priority letter AD 92–03–13, issued January 31, 1992, Docket No. 92–ASW–31.

Applicability: Model 412 helicopters, with steel main rotor control swashplate support assembly (steel swashplate support assembly), part number (P/N) 412–010–453–101, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent failure of the steel swashplate support assembly that could result in loss of main rotor control and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight after the effective date of this AD, and thereafter, before the first flight of each day, visually inspect, with an inspection mirror and a bright light, the forward and aft clevis areas of the steel swashplate support assembly, part number (P/N) 412–010–453–101, in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) 412–92–57, Revision A, dated January 30, 1992.

(b) Before further flight after the effective date of this AD, install a red radial arc on each airspeed indicator to prohibit airspeeds above 110 knots. Near the pilot's airspeed indicator, install a placard made of material that is not easily erased, disfigured, or obscured that contains the following statement in lettering that is 0.2 inch minimum in height: ''V_{NE} not to exceed 110 KIAS or V_{NE} from the airspeed limitation placard, whichever is less.''

Note 2: ASB No. 412–92–58, dated January 27, 1992, contains information on the airspeed limitation.

(c) If a crack is found, before further flight, replace the steel swashplate support assembly, P/N 412–010–453–101, with an airworthy part.

(d) Installation of an improved steel swashplate support assembly, P/N 412–010–453–105, or aluminum swashplate support assembly, P/N 412–010–443–101 or -109, in

accordance with the Accomplishment Instructions of ASB 412–92–61, dated May 14, 1992, constitutes a terminating action for the requirements of this AD, and the red radial arc on each airspeed indicator and the airspeed placard installed as a result of this AD may be removed.

(e) An alternative method of compliance or an adjustment of the compliance time that provides an equivalent level of safety may be used if approved by the Manager, Rotorcraft Certification Office. Operators shall submit their requests through an FAA principal maintenance inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on October 17, 1996.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–27393 Filed 10–24–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–142–AD]

RIN 2120–AA64

Airworthiness Directives; Beech (Raytheon) Model BAe 125–800A and Hawker 800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Beech (Raytheon) Model BAe 125–800A and Hawker 800 series airplanes, that would have required a detailed visual inspection of the fuel feed hose assemblies of the auxiliary power unit (APU) to detect overheating, degradation, proper routing, and adequate clearance; and the correction of any discrepancies found. That proposal was prompted by reports of heat damage to the fuel feed hose assembly of the APU due to contact between the hose assembly and hot surfaces. This action revises the proposed rule by adding a requirement to modify the fuel feed hose of the APU. The actions specified by this proposed AD are intended to prevent heat damage of the fuel feed hose, which could lead to a possible fire/smoke hazard when failure of the hose assembly occurs and consequent fuel mist or spray is emitted into the rear equipment bay.

DATES: Comments must be received by November 15, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–142–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Beech (Raytheon) Model BAe 125–800A and Hawker 800 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the Federal Register on December 22, 1995 (60 FR 66527). That NPRM would have required a one-time detailed visual inspection to:

1. detect overheating or degradation of the hose assemblies;
2. verify proper routing of the fuel feed hose assembly of the auxiliary power unit (APU); and
3. verify if adequate clearance (0.5 inch) exists between the hose assembly and the left-hand mixer valve/main air valve assemblies and associated hot air ducting.

The NPRM referenced Hawker Service Bulletin SB.49–45, dated May 15, 1995, as the source of service information containing the procedures for accomplishing this inspection.

That NPRM was prompted by reports of heat damage to the fuel feed hose assembly of the APU due to contact between the hose assembly and hot surfaces. That condition, if not corrected, could lead to a possible fire/smoke hazard when failure of the hose assembly occurs and consequent fuel mist or spray emitted into the rear equipment bay.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the manufacturer has issued Hawker Service Bulletin SB.49–47–25A825A, dated August 1, 1995, which describes procedures for modification of the fuel feed hose of the APU. The modification involves replacing the existing conduit made from vinyl, which can withstand operating temperatures of 80 °C, with a conduit made from convoluted PTFE, which can withstand temperatures of up to 240 °C. Accomplishment of the modification will eliminate the need for

the one-time visual inspection. The modification will improve the protection of the conduit of the fuel feed hose from heat damage.

Explanation of New Requirements of Proposal

The FAA finds that the one-time visual inspection procedures, as specified in the previously issued proposal, alone do not provide the degree of safety assurance necessary to address to unsafe condition. The FAA has determined that, in order to adequately address the unsafe condition presented by the problems associated with heat damage in the subject areas, the proposed rule must be revised to include a requirement to modify the fuel feed hose of the APU. The modification would be required to be accomplished in accordance with Hawker Service Bulletin SB.49–47–25A825A, dated August 1, 1995, described previously. Installation of this modification would preclude the need for the one-time visual inspection.

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 70 Beech (Raytheon) Model BAe 125–800A and Hawker 800 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $8,400, or $120 per airplane.

It would take approximately 4 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $218 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $32,060, or $458 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Beech Aircraft Company (Raytheon Aircraft Company): Docket 95–NM–142–AD.

Applicability: Model BAe 125–800A (including military variants C–29A and U–125) and Hawker 800 series airplanes, constructor's numbers 8091 and subsequent; equipped with Turbomach auxiliary power unit (APU) (Modification 259404B); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent heat damage to the fuel feed hose assemblies of the auxiliary power unit (APU), which could lead to a possible fire/smoke hazard if failure of the hose assembly occurs and fuel mist or spar is consequently emitted into the rear equipment bay, accomplish the following:

(a) Within 75 days after the effective date of this AD, perform a one-time detailed visual inspection to detect overheating or degradation of the hose assemblies; to verify proper routing of fuel feed hose assembly of the auxiliary power unit (APU); and to verify if adequate clearance (0.5 inch) exists between the hose assembly (outlet from the fuel pump box of the APU) and the left-hand mixer valve/main air valve assemblies and associated hot air ducting; in accordance with Hawker Service Bulletin SB.49–45, dated May 15, 1995.

(1) If any overheating or degradation is detected, prior to further flight, replace the hose assembly with a new assembly and ensure that proper clearance and routing exists, in accordance with the service bulletin.

(2) If the clearance of the hose assembly is improperly routed, prior to further flight, re-route the assembly maintaining proper clearance, in accordance with the service bulletin.

(3) If the clearance of the hose assembly is inadequate and the hose assembly is properly routed, prior to further flight, adjust the hose assembly to achieve the 0.5-inch clearance, in accordance with the service bulletin.

(b) Prior to the accumulation of 200 flight hours after the effective date of this AD, modify the fuel feed hose of the APU, in accordance with Hawker Service Bulletin SB.49–47–25A825A, dated August 1, 1995.

(c) Accomplishment of the modification of the fuel feed hose of the APU in accordance with Hawker Service Bulletin SB.49–47–25A825A, dated August 1, 1995, constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 18, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–27394 Filed 10–24–96; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 31

Financial Reports of Futures Commission Merchants, Introducing Brokers and Leverage Transaction Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed Rules.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is proposing to amend its Rule 1.10(d)(4), which requires that each Form 1–FR filed with the Commission contain an oath or affirmation attesting that, to the best knowledge and belief of the individual making such oath or affirmation, the information contained therein is true and correct. The proposed rule amendment would provide that, for the purposes of making this attestation when filing a financial report with the Commission electronically, the use of a personal identification number (''PIN'') would be deemed to be the equivalent of a manual signature.[1] The proposal also would amend Rule 1.10(c) to account for the possibility that registrants may choose to file certain financial reports electronically using a Commission issued PIN rather than filing such reports in paper form with the regional office of the Commission nearest the principal place of business of the registrant. The proposal would add Rule 1.10(b)(2)(iii) to clarify that certified financial reports may not be filed electronically.

In addition, the Commission is proposing to amend Rules 1.10(g) and 31.13(m) to clarify that certain portions of the financial reports will be deemed public and other portions nonpublic, and to eliminate the requirement that firms filing financial reports need to separately bind portions of such reports generally treated as nonpublic in order for such portions of the reports to be accorded nonpublic treatment.

DATES: Comments must be received on or before November 25, 1996.

ADDRESSES: Comments on the proposed amendments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5221, or by electronic mail to secretary@cftc.gov. Reference should be made to ''Attestation Amendments''.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Lawrence T. Eckert, Attorney Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington D.C. 20581. Telephone (202) 418–5450.

SUPPLEMENTARY INFORMATION:

I. Background

Commission Rule 1.10 sets forth the financial reporting requirements for futures commission merchants (''FCMs'') and independent introducing brokers (''IBIs'').[2] This rule requires generally that FCMs file with the Commission financial reports on Form 1–FR–FCM each quarter and that IBIs file financial reports on Form 1–FR–IB semiannually.[3] Pursuant to paragraph (d)(4) of the rule, each Form 1–FR must include an attached oath or affirmation that, to the best knowledge or belief of the individual making such oath or affirmation, the information contained in the Form 1–FR is true and correct. If the applicant or registrant is a sole proprietorship, partnership or corporation, the oath or affirmation must be made by the proprietor, a general partner or by the chief executive officer or chief financial officer, respectively.

The Commission's Division of Trading and Markets (''Division'') issued a no-action letter to the Chicago Board of Trade (''CBT'') in February, 1996 concerning the attestation of financial reports where an FCM is organized as a partnership.[4] The no-action letter provided relief to CBT member firms that are registered as FCMs and organized as partnerships with only a corporation or limited liability company as a general partner such that the FCM's chief financial officer (or the individual who has these responsibilities) could sign the attestation on Form 1–FR-FCM. However, the letter stated that in the case of an FCM organized as a partnership with another partnership as its general partner, the general partner of such other partnership must make the attestation required by Rule 1.10(d)(4). The no-action letter also provided relief to CBT to permit it to administer its financial filing rule, CBT Capital Rule 311, in a similar manner.[5]

CBT's request for relief stated that the request was prompted by the fact that CBT was in the process of issuing PINs to those individuals who are eligible to provide the required attestations in connection with CBT's upcoming implementation of the electronic filing of financial reports. Such filing is permitted by CBT Capital Rule 311. Subsequently, the Division issued Advisory 12–96 to inform FCMs, IBIs and self-regulatory organizations (''SROs'') that they would be granted similar no-action treatment if they acted in accordance with the Division's letter to CBT.[6]

On May 28, 1996, the Commission issued Advisory 28–96, to alert FCMs, IBs and SROs that in connection with any SRO program for electronic filing of financial reports approved by the Commission, and to the extent the SRO program does not require a manual signature for purposes of attestation, the use of a PIN would be deemed to be the equivalent of a manual signature for purposes of attestation under Commission Rule 1.10(d)(4).[7] The Commission noted therein that it planned to implement procedures that would permit firms filing electronically with an SRO to submit certain financial reports to the Commission via electronic

[1] Commission Rule 1.10(h) permits registrants that are also registered as securities broker-dealers with the Securities and Exchange Commission to file a copy of their Financial and Operational Combined Uniform Single Report (''FOCUS'') with the Commission in lieu of Form 1–FR. The amendments discussed herein are intended to apply equally to registrants who file Form 1–FR or FOCUS with the Commission.

[2] Approximately two-thirds of introducing brokers enter into a guarantee agreement with an FCM and thus are not required to raise their own regulatory capital or file financial reports.

[3] The Commission is currently proposing to amend certain of its financial reporting requirements for FCMs and IBIs, including time requirements for filing Form 1–FR. *See* 61 FR 7080 (Feb. 26, 1996).

[4] CFTC Interpretative Letter 96–21, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,633 (Feb. 29, 1996).

[5] Commission Rule 1.52(a), 17 CFR 1.52(a)(1996), requires each self-regulatory organization (''SRO'') to adopt and submit for Commission approval rules prescribing minimum financial and related reporting requirements for member FCMs and IBs. Such requirements must be the same as, or more stringent than, those contained in Commission Rules 1.10 and 1.17, 17 CFR 1.10 and 1.17 (1996).

[6] This was reprinted as CFTC Advisory 96–21 in [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,640 (March 8, 1996).

[7] [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,711 (May 28, 1996).

transmission. The Commission currently is developing these procedures and intends to implement them in the coming year.

At the outset of the Commission's program to permit firms to submit non-certified financial reports electronically, the Commission will require that those firms which choose to file financial reports electronically continue to file a paper report with their appropriate regional office of the Commission as the official filing of such report. After obtaining experience with the electronic filing system, the Commission anticipates that it will permit registrants to file non-certified financial reports solely by electronic means. Electronic filing of certified financial reports will not be permitted.

II. Proposed Rule Amendments

A. Electronic Filing Issues

The Commission is proposing to amend its Rule 1.10(d)(4) such that the use of a PIN in filing a Form 1–FR pursuant to Rule 1.10 would be deemed to be the equivalent of a manual signature under the rule. Therefore, the rule would make clear that the transmission of a financial report to the Commission or an SRO under a PIN will constitute a representation that the person whose PIN is used in such transmission attests that, to the best knowledge and belief of that person, the information contained in the financial report is true, correct and complete.[8] As many firms are already filing financial reports with their SRO via electronic transmission in accordance with SRO rules approved by the Commission and Advisory 28–96, this amendment will simply serve to restate the Commission's position set forth in that Advisory. In so doing, the amendment will make clear that a PIN may be used in place of a manual signature with respect to non-certified reports filed with the Commission and permit the Commission to enforce the rule directly. The Commission hopes that this amendment will encourage and facilitate the process of electronic filing of such reports with the Commission but notes that, while it encourages the use of the electronic filing option, the amendments would not mandate electronic filing with the Commission.

As noted above, the Commission currently is developing procedures that will allow it to accept non-certified financial reports electronically. The Commission intends to adopt procedures for issuing PINs to facilitate electronic filing with the Commission consistent with the procedure currently in use by SROs such as CBT and the Chicago Mercantile Exchange (''CME''). Under these procedures, an FCM or IBI would be required to submit a PIN request form to the Commission's Central Regional Office on company letterhead with a manual signature. The request must be signed by the proprietor if the registrant is a sole proprietorship, by a general partner if the registrant is a partnership[9] and by the chief financial officer or chief executive officer if the registrant is a corporation. The individual representing the registrant must acknowledge that the use of the PIN will be considered to be a substitute for his or her manual signature attesting that, to the best knowledge and belief of that person, the information contained in the financial report is true, correct and complete. A new PIN request form would be required if the firm wished to change the individual authorized to use a PIN to file the firm's financial report.

The Commission also is proposing to amend paragraph (c) of Rule 1.10 and add a Rule 1.10(b)(2)(iii). The amendment to Rule 1.10(c) would make clear that a registrant may file non-certified financial reports via electronic transmission using a Commission issued PIN in accordance with instructions issued by the Commission. New Rule 1.10(b)(2)(iii) would make clear that registrants will continue to be required to file their certified financial reports, which must accompany the application for registration and be submitted as of each fiscal year end following registration, in paper form.

As noted above, the Commission would require at the outset of its electronic filing program that firms filing non-certified financial reports electronically continue to file a paper report with the appropriate regional office of the Commission. However, the Commission contemplates that, following some experience with electronic transmission of financial data, it may be permissible for firms to submit non-certified financial reports to the Commission solely via electronic transmission.

B. Freedom of Information Act Issues

Currently, the Commission makes available only a paper copy of a firm's financial report in response to a request for such report under the Freedom of Information Act (''FOIA''). Consistent with this current practice, the Commission intends to respond to an FOIA request for a financial report that was filed with the Commission solely by electronic transmission by printing a paper copy of the responsive, public data and forwarding it to the requestor.

The data which the Commission would print and forward to the requestor would be the public portions of a Form 1–FR. As clarified by the proposed amendment to Rule 1.10(g), these are, for FCMs and IBIs, the statement of financial condition and the statement of the computation of the minimum capital requirements, and, in addition, for FCMs only, the statements concerning segregation of customer funds and the secured amount for foreign futures and option customers. Currently under Rule 1.10(g), the Commission requires that the other portions of the Form 1–FR[10] be separately bound from the portions of the form set forth in the preceding sentence in order to be accorded nonpublic treatment.

Through the proposed amendment to Rule 1.10(g), the Commission will reconfirm the current demarcation as to which portions of the Form 1–FR are generally treated as public and nonpublic and eliminate the need for firms to use a separate binding procedure to receive such treatment for their reports, whether reports are filed in paper form or electronically. The Commission believes that, in the context of financial reports submitted electronically, it would be unduly cumbersome to require a procedure similar to separate binding of paper reports. Further, whether or not a firm chooses to file its reports in the future electronically or in paper form, the Commission's rules concerning the treatment of certain portions of Form 1–FR as public and others as nonpublic have been extant for almost 20 years and are quite well-known in the industry.

The Commission intends to propose to clarify, in a separate release, its rules under FOIA and the Government in the Sunshine Act (''GINSA'') in order to: (1) reaffirm that certain portions of the Form 1–FR are generally public and the remainder are nonpublic; and (2) state that it will no longer process petitions for confidential treatment of the generally public portions of a Form 1–FR. The proposed amendments to Rule 1.10(g) (1) and (2)[11] are intended to

[8] Commission Rule 1.10(c) provides that financial reports must be filed with the Commission and the firm's designated self-regulatory organization.

[9] Similar signatures would be permitted, as discussed above, for partnerships whose general partner is a non-natural person.

[10] These are the statements of income (loss), cash flows, changes in ownership equity and changes in liabilities subordinated to the claims of general creditors. Only the latter two statements are required to be filed with non-certified financial reports and thus would generally be filed as part of a Form 1–FR submitted electronically. *See* Rule 1.10(d)(1) (i) and (ii).

[11] The Commission has proposed to remove and reserve paragraph (g)(3) and to revise paragraph

complement these contemplated amendments of the FOIA and GINSA rules and to eliminate a burden on firms to bind separately certain portions of a Form 1–FR to assure nonpublic treatment.[12]

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rules discussed herein will affect FCMs, LTMs and IBIs. The Commission already has established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[13] FCMs and LTMs [14] have been determined not to be small entities under the RFA.

With respect to IBIs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBIs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.[15] The proposed amendments would not require any IBI to submit financial reports electronically but would only govern the attestation of the completeness and accuracy of such reports so filed. Presumably, an IBI would only choose to file a financial report electronically if it were cost-effective to do so. These rule amendments as proposed should impose no additional burden or requirements on an IBI and thus, if adopted, would not have a significant economic impact on a substantial number of IBIs. Accordingly, pursuant to Rule 3(a) of the RFA, 5 U.S.C. 605(b), the Chairperson, on behalf of the Commission, certifies that these proposed amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. While this proposed rule has no burden, the group of rules (3038–0024) of which this is a part has the following burden:

Average Burden Hours Per Response: 128.

Number of Respondents: 3,148.

Frequency of Response: Quarterly, Monthly or On Occasion.

Persons wishing to comment on the information which would be required by this proposed/amended rule should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503 (202) 395–7340. Copies of the information collection submission to OMB are available from Gerald P. Smith, CFTC Clearance Officer, 1155 21st Street, N.W., Washington, DC 20581, (202) 418–5160.

List of Subjects

17 CFR Part 1

Commodity futures, Consumer protection, Minimum financial and related reporting requirements.

17 CFR Part 31

Commodity futures, Consumer protection, Leverage transactions, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, Sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6f, 6g and 12a(5), the Commission hereby proposes to amend Parts 1 and 31 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6m, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.10 is amended by adding paragraph (b)(2)(iii) and revising paragraphs (c), (d)(4), (g)(1) and (g)(2) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

* * * * *

(b) * * *

(2) * * *

(iii) A Form 1–FR required to be certified by an independent public accountant in accordance with § 1.16 which is filed by a futures commission merchant, an introducing broker or an applicant for registration in either category, must be filed in paper form and may not be filed electronically.

* * * * *

(c) *Where to file reports.* The reports provided for in this section will be considered filed when received by the regional office of the Commission nearest the principal place of business of the registrant (except that a registrant under the jurisdiction of the Commission's Western Regional Office must file such reports with the Southwestern Regional Office) and by the designated self-regulatory organization, if any; and reports required to be filed by this section by an applicant for registration will be considered filed when received by the National Futures Association and by the regional office of the Commission nearest the principal place of business of the applicant (except that an applicant under the jurisdiction of the Commission's Western Regional Office must file such reports with the Southwestern Regional Office): *Provided, however,* That any report filed pursuant to paragraphs (b)(1) or (b)(4) of this section or § 1.12(b) which need not be certified in accordance with § 1.16 may be submitted to the Commission in electronic form using a Commission-assigned Personal Identification Number, and otherwise in accordance with instructions issued by the Commission: *And, Provided, further,* That information required of a registrant pursuant to paragraph (b)(4) of this section need be furnished only to the self-regulatory organization requesting such information and the Commission, and that information required of an applicant pursuant to paragraph (b)(4) of this section need be furnished only to the National Futures Association and the Commission.

(d) * * *

(4) Attached to each Form 1–FR filed pursuant to this section must be an oath or affirmation that to the best knowledge and belief of the individual making such oath or affirmation the information contained in the Form 1–FR is true and correct. If the applicant or registrant is a sole proprietorship, then the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; or if a corporation, by the chief executive officer or chief financial officer. In the case of a Form 1–FR filed via electronic transmission in accordance with procedures established by the Commission, such transmission must be accompanied by the Commission-assigned Personal Identification Number of the authorized

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(g)(5) of Rule 1.10. 61 FR 7080, 7085. The proposed amendments discussed herein would not interfere with or require further amendment of those earlier proposals.

[12] Although there are currently no registered leverage transaction merchants (''LTMs''), the Commission is also proposing to amend Rule 31.13(m) which currently provides for a separate binding procedure similar to that set forth in Rule 1.10(g) with respect to LTMs submitting financial reports on Form 2–FR.

[13] 47 FR 18618–18621 (April 30, 1982).

[14] *See* 50 FR 102, 108 n.11 (Jan. 2, 1985).

[15] *See* 48 FR 35248, 35275–78 (Aug. 3, 1983).

signer and such Personal Identification Number will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the oath or affirmation referred to in this paragraph.

* * * * *

(g) *Nonpublic treatment of reports.* (1) The following portions of Forms 1–FR filed pursuant to this section will be public: the statement of financial condition, the statement of the computation of the minimum capital requirements, the statements (to be filed by a futures commission merchant only) of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, and the statement (to be filed by a futures commission merchant only) of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter. The other financial statements (including the statement of income (loss)), footnote disclosures and schedules of Form 1–FR, trade secrets and certain other commercial or financial information on such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and Parts 145 and 147 of this chapter.

(2) The following portions of copies of the Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA filed pursuant to paragraph (h) of this section, will be public: The statement of financial condition, the statement of the computation of the minimum capital requirements, the statements (to be filed by a futures commission merchant only) of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, and the statement (to be filed by a futures commission merchant only) of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter. The other financial statements (including the statement of income (loss)), footnote disclosures and schedules of the Financial and Operational Combined Uniform Single Report under the Securities and Exchange Act of 1934, Part II or Part IIA, trade secrets and certain other commercial or financial information on such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter.

* * * * *

PART 31—LEVERAGE TRANSACTIONS

3. The authority citation for Part 31 continues to read as follows:

Authority: 7 U.S.C. 12a and 23.

4. Section 31.13 is amended by revising paragraph (m) to read as follows:

§ 31.13 Financial reports of leverage transaction merchants.

* * * * *

(m) The following portions of Form 2–FR filed pursuant to this section will be public: The statement of financial condition, the computation of the minimum capital requirements pursuant to § 31.9, the schedule of coverage requirements and cover provided, and the schedule of segregation requirements and funds on deposit in segregation. The other financial statements (including the statement of income (loss)), footnote disclosures and schedules of Form 2–FR, trade secrets and certain other commercial or financial information on such other statements and schedules, will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and Parts 145 and 147 of this chapter. All information on such other statements, footnote disclosures and schedules will, however, be available for official use by any official or employee of the United States or any State, by any self-regulatory organization of which the person filing such report is a member, by the National Futures Association in the case of an applicant, and by any other person to whom the Commission believes disclosure of such information is in the public interest. The independent public accountant's opinion filed pursuant to this section will be deemed to be public information.

* * * * *

Issued in Washington, DC, on October 21, 1996 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–27415 Filed 10–24–96; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

27 CFR Parts 252 and 290

[Notice No. 842; Ref: Notice No. 835; 95R–046P]

RIN 1512–AA98 and 1512–AB03

Exportation of Alcoholic Beverages, Denatured Alcohol, Tobacco Products and Cigarette Papers and Tubes

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

ACTION: Advance notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document reopens the comment period for Notice No. 835, an advance notice of proposed rulemaking, published in the Federal Register on August 9, 1996 concerning exportation of alcoholic beverages, denatured alcohol, tobacco products, and cigarette papers and tubes. ATF has received two requests to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues raised in the notice.

DATES: Written comments must be received on or before December 9, 1996.

ADDRESSES: Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *ATTN: Notice No. 835.*

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1996, ATF published an advance notice of proposed rulemaking in the Federal Register soliciting comments from the public and industry on a proposal to revise and recodify the regulations pertaining to exportation of alcoholic beverages, denatured alcohol, tobacco products, and cigarette papers and tubes. (Notice No. 835; 61 FR 41500).

The comment period for Notice No. 835 was scheduled to close on October 8, 1996. Prior to the close of the comment period ATF received a request from a national trade association, the Presidents' Forum of the Beverage Alcohol Industry, to extend the comment period for sixty days. The Presidents' Forum stated that it needed additional time to address the numerous

and complex issues raised in the advance notice. A member of regulated industry, Brown and Williamson Tobacco Corporation, requested a two-week extension, saying that they discovered during the preparation of their written comments that several issues were more complicated than they originally assessed. In consideration of the above, ATF finds that a reopening of the comment period is warranted.

Disclosure

Copies of this notice, Notice No. 835, and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

Drafting Information

The author of this document is Marjorie D. Ruhf, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed Forces, Authority delegations, (government agencies), Beer, Claims, Excise taxes, Exports, Fishing vessels, Foreign Trade Zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations (government agencies), Claims, Cigarette papers and tubes, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Surety bonds, Vessels, Warehouses.

Authority and Issuance

This notice is issued under the authority in 26 U.S.C. 5301, 7805, and 27 U.S.C. 205.

Signed: October 18, 1996.

John W. Magaw,

Director.

[FR Doc. 96–27366 Filed 10–24–96; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 4

RIN 1215–AA78

Service Contract Act; Labor Standards For Federal Service Contracts

AGENCY: Office of the Secretary, Labor.

ACTION: Proposed rule; notice of publication of regulatory impact analysis; request for comments.

SUMMARY: By notice of proposed rulemaking published in the Federal Register on May 2, 1996 (61 FR 19770), the Department of Labor (DOL or the Department) proposed alternative approaches for procedures to establish minimum health and welfare benefits requirements in the regulations issued under the McNamara-O'Hara Service Contract Act (SCA). As was explained in the proposed rule, it was not feasible to publish a regulatory impact analysis for comment with the proposed rule due to judicially imposed time constraints.

In the meantime, the Department has developed data on the occupational mix of service contract employees in order to provide a basis for the impact analysis and to aid in the selection of the most appropriate methodology. The analysis has been completed and is now being published for comment. Comments may also be submitted on the various alternatives set forth previously for comment. Comments on this document will be reviewed together with comments submitted on the May 2, 1996 proposed rule prior to promulgation of a final rule.

DATES: Comments are due on or before November 25, 1996.

ADDRESSES: Submit written comments to Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card, or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile (''FAX'') machine to (202) 219–5122 (this is not a toll-free number). If transmitted by facsimile and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the facsimile transmission.

FOR FURTHER INFORMATION CONTACT: William Gross, Director, Division of Wage Determinations, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3506, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 219–8353. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Survey of Occupational Employment Covered by the McNamara-O'Hara Service Contract Act; Health and Welfare Benefit Level Impact Analysis

Survey Description and Findings

Background

The McNamara-O'Hara Service Contract Act of 1965 (SCA) requires that contracts over $2,500 (if the predecessor contract was not subject to a collective bargaining agreement) contain wage determinations issued by DOL that specify the minimum monetary wages and fringe benefits that must be paid to the various classes of workers who perform work on the service contract, based upon rates determined by DOL to be prevailing in the locality where the work is to be performed. However, because fringe benefit data are not generally available on an occupation-specific or locality basis, DOL has issued fringe benefit determinations for health and welfare based on nationwide data ever since SCA was enacted.

Following a challenge by the Service Employees International Union (SEIU) to the methodology utilized by DOL to determine health and welfare benefits, the DOL's Board of Service Contract Appeals remanded the matter to the Wage and Hour Division to consider alternative methodologies for implementing the statutory objectives. Accordingly, the Administrator of the Wage and Hour Division, by Notice published in the Federal Register on May 2, 1996 (61 FR 19770), proposed for public comment various alternative methodologies.

In the meantime, the Department has developed data to determine the occupational mix of service employees engaged in the performance of SCA-covered contracts. Based on data collected by the Federal Procurement Data System for Fiscal Year 1994, the Department has conducted a survey to obtain specific information on service contract employment by occupation within SIC industry classifications. The information collected provides a basis for the following estimates of the economic impact of the various proposed alternatives.

In an action filed by the SEIU in the U.S. District Court for the District of Columbia, the court has set a deadline

for publication of the final rule of December 24, 1996. *SEIU* v. *Reich*, CA No. 91–0605 (August 27, 1996).

Purpose and Process

In the Fall of 1995, the Wage and Hour Division of the Employment Standards Administration conducted a survey of occupational employment under the McNamara-O'Hara Service Contract Act (SCA). Primary objectives of the survey were to: (1) Assist in the development of a process to determine prevailing health and welfare benefit levels under the SCA; and (2) furnish data that may be useful in assessing the costs of various health and welfare benefit alternatives.

The survey population consisted of almost 20,000 contracts, and includes all contracts identified as SCA-covered in the Federal Procurement Data System (FPDS) automated data base. These contracts represented $20.5 billion in procurement actions during FY 1994. The sample, which was selected by contract value within industry group, consisted of 7,084 contracts, awarded by 129 Federal agencies, and administered by 1,039 agency contracting offices. Contracts represented by the sample included 35 percent of the number of contracts in the population, and 63 percent of population contract value.

With the assistance of designated Federal procurement agency Survey Coordinators, and procurement officers who were responsible for the contracts in the sample, 1,430 usable survey responses were received and processed. This represented a usable response rate of 20.2 percent. The usable response contained 7.2 percent of all contracts in the targeted population and 19.0 percent of population contract value.

For additional information on the survey design, survey sample and population, the sampling technique utilized, use of the sample to estimate the population, and the data collection process and response rate, see the Technical Note, following the Impact Analysis.

Findings

Employment by Occupation. Based upon the Wage and Hour Division survey of occupational employment under the SCA, there were 275,800 full-time equivalent positions (FTEs) under the FPDS universe of contracts in FY 1994 . Utilizing survey data, estimated FTEs by broad occupational group are presented in Table 1, below.

TABLE 1.—ESTIMATE OF FULL-TIME EQUIVALENT POSITIONS BY BROAD OCCUPATIONAL GROUP

Group title	Number	Percent of total
Professional, Specialty, & Technical.	36,900	13.4
Administrative Support/ Clerical.	48,300	17.5
Precision Production, Craft, & Repair.	88,200	32.0
Transportation & Material Moving.	11,200	4.1
Handlers, Cleaners, Helpers, & Laborers.	33,200	12.0
Service Workers	58,000	21.0
Total, All Groups	275,800	100.0

By far, the occupational group with the largest numbers of FTEs was Precision Production, Craft, and Repair occupations, representing almost one-third of total employment. The Service Worker group was next in order of significance, having over one-fifth of total employment. Three broad occupational groups each accounted for close to 15 percent of the FTE total: Administrative Support and Clerical occupations, 17.5 percent; Professional, Specialty, and Technical occupations, 13.4 percent; and Handlers, Cleaners, Helpers, and Laborers, 12.0 percent. The broad group with the fewest positions was Transportation and Material Moving occupations, 4.1 percent. The most frequently listed occupations, under each broad occupational group, are listed in order of employment, in Table 2, below.

TABLE 2.—FREQUENTLY LISTED OCCUPATIONS WITHIN BROAD OCCUPATIONAL GROUPS

Professional, Technical, & Specialty (13.4%)	Administrative Support & Clerical (17.5%)	Precision Production, Craft, Repair (32.0%)
Engineering Technician.	General Clerk	Electronic Tech, Maintenance.
Licensed Practical Nurse.	Secretary	Aircraft Mechanic.

TABLE 2.—FREQUENTLY LISTED OCCUPATIONS WITHIN BROAD OCCUPATIONAL GROUPS—Continued

Professional, Technical, & Specialty (13.4%)	Administrative Support & Clerical (17.5%)	Precision Production, Craft, Repair (32.0%)
Computer Programmer.	Key Entry Operator.	Telecommunication Mechanic.
Instructor	Computer Operator.	Gen Maintenance Worker.
Medical Lab Technician.	Word Processor.	Maintenance Electrician.
Systems Analyst.	Accounting Clerk.	Maintenance Carpenter.
Drafter	Supply Technician.	Maintenance Painter.
	Switchboard Op/Receptionist.	Maintenance Plumber.
	.....	Heavy Equip Mechanic.
	.....	Heating, Refrig, & AC Mechn.
	.....	Welder.
	.....	Mach Maintenance Mechanic.
Transportation/Material Moving (4.1%)	Handlers/ Cleaners/ Helpers/ Laborers (12.0%)	Service Workers (21.0%)
Truck Driver	Stock Clerk	Nursing Assistant.
Heavy Equipment Operator.	Laborer	Janitor.
Forestry Equip Operator.	Laborer Ground Maintenance.	Food Service Worker.
Driver Messenger.	Housekeeping Aide.	Guard.
	Tree Planter	Court Security Officer.
	.....	Cook.
	.....	Dishwasher.

Information by Industry. According to survey data, more than two-thirds of all the contract FTEs were located in five broad industry groups: Engineering, Accounting, Research, Management, and Related Services; Business Services; Health Services; Miscellaneous Repair Services; and Electronic & Other Electrical Equipment & Components, Except Computer Equipment. Specific industries included under each of these groups are listed in Table 3, below.

TABLE 3.—FREQUENTLY LISTED INDUSTRIES WITHIN BROAD SIC INDUSTRY GROUPS

Engineering, Accounting, Research, Management, and Related Services	Business Services	Health Services
Engineering, Architectural, & Surveying Services.	Computer Programming, Data Processing, & other Computer Related Services.	Hospitals.
Research, Development, & Testing Services/Laboratories.	Miscellaneous Business Services/Guard Services.	Doctor & Dentist Offices & Clinics.
Management & Public Relations Services/Base Maintenance.	Services to Dwellings & other Buildings/Cleaning & Maintenance.	Medical & Dental Laboratories.
Miscellaneous Repair Services	Electronic & other Electrical Equipment & Components, except Computer Equipment	
Miscellaneous & Electrical Repair Shops	Communications Equipment. Electronic Components & Accessories. Miscellaneous Electrical Equipment & Supplies..	

Also accounting for two percent or more of total FTEs were Eating and Drinking Places, Miscellaneous Services/Weather Forecasting, Transportation Equipment, Special Trade Contractors, and Forestry.

Health and Welfare Benefit Level Impact Analysis

Purpose and Process

Utilizing the survey data described above, and other relevant information, cost estimates have been developed for each of eight alternative methods for determining health and welfare benefit levels under the McNamara-O'Hara Service Contract Act. These alternatives were published for comment in the Federal Register on May 2, 1996 (61 FR 19769).

The cost estimates provided apply to the almost 20,000 SCA-covered contracts reported to be active in FY 1994, by the Federal Procurement Data System of the General Services Administration. Where required, the number of full-time equivalent positions (FTEs) estimated through the use of survey data, less the estimate of FTEs whose wages and benefits are determined by collective bargaining agreements (CBAs), pursuant to Section 4(c) of the SCA, were utilized in the development of alternative cost estimates. (See Table 4, below.)

TABLE 4.—ESTIMATE OF FTES BY SCA HEALTH & WELFARE BENEFIT LEVEL

Contracts				Employment	
Type*	Number	Percent of total	FTEs	Percent of total	Average FTEs
Insurance	16,129	80.7	94,048	34.1	5.8
Total Benefits	2,858	14.3	117,215	42.5	41.0
4(c)	999	5.0	64,537	23.4	64.6
All Types, Total	19,986	100.0	275,800	100.0	13.8

*These levels are currently utilized for the issuance of SCA wage determinations. The ''Insurance'' level is based upon the cost of life, accident, and health insurance for establishments employing less than 100 workers. The ''Total Benefits'' level is based upon the cost of insurance, retirement and savings, sick leave, other leave, and other benefits for establishments employing 100 or more workers. Assignment of health and welfare benefit level was based upon wage determination information provided by survey respondents.

Findings

The eight alternative methods being considered to compute SCA health and welfare benefit levels are fully explained in 61 FR 19770, published May 2, 1996. Full understanding of the implications of the following impact analysis requires reference to that document. However, a statement of each alternative in summary follows:

Alternative I: Issue a single benefit level based upon ECI data for workers in private industry.

Alternative II–A: Issue a single benefit level for each of six major occupational groupings based on ECI data for all workers in each grouping in private industry.

Alternative II–B: Issue a single benefit rate adjusted to reflect the difference between the BLS ECI occupational universe and the actual mix of comparable occupations on SCA-covered contracts.

Alternative II–C: Issue two benefit levels, based on a combination of the occupational groupings: white collar and production occupations.

Alternative III: Issue a single benefit rate for each of four geographic regions based on ECI data for all workers in private industry.

Alternative IV: Issue a single fringe benefit rate (as a percent of wages) based on the relationship between the ECI all-private industry ''total benefit'' rate and the ECI all private industry average wage rate.

Alternative V–A: Issue two fringe benefit levels—''Insurance'' and ''Total Benefits''—(see Table 5 note), based on BLS ECI size-of-establishment data for all workers in private industry. Apply these levels based upon the nature of the contract; i.e., routine contracts receive the Insurance level and the Total Benefits level is provided for large base support contracts, solicitations based on OMB circular A–76, solicitations for highly technical services typically provided by large corporations, and other selected solicitations without regard to size of contract.

Alternative V–B: Issue two fringe benefit levels, using the BLS ECI all

industry Total Benefits data for (1) establishments with fewer than 100 workers and (2) establishments with 100 or more workers. Apply these levels based upon the employment size of respective contracts.

These alternatives appear to offer a narrow range of annual health and welfare benefit costs for FTEs whose rates are not determined by collective bargaining agreement (CBA). The range computed is from $3,551.45 for Alternative V–A to $4,100.63 for Alternative II–A. This range of $549.18 is just 14.1 percent of the average cost of all eight alternatives, $3,908.74. (See Table 5, below.) Similarly, the total non-CBA estimated cost for all SCA-covered contracts included in the FPDS data base ranges from about $750 million (V–A) to $866 million (II–A). As discussed in the Technical Note below, the FPDS system contains the best available data for determining the SCA-covered universe. However, the data in the system understates the size of the SCA-covered universe. This is due to such factors as exclusion of most contracts under $25,000, exclusion of contracts of the U.S. Postal Service and the Air Force/Army Exchange System, and possible under-reporting of SCA-covered contracts in the FPDS system, as well as possible errors in determinations as to whether contracts are covered by SCA.

TABLE 5.—ESTIMATION OF ANNUAL COSTS PER FTE OF EIGHT ALTERNATIVE SCA HEALTH & WELFARE METHODS

Alternative	Rank*	Cost Per FTE—1995 data
I. Single Benefit/ECI/Private Industry	4	$3,931.20
II–A. Single Benefit/Six Occupational Groups	8	4,100.63
II–B. Single Benefit/ Adjusted to Employment Composition	7	4,097.60
II–C. White Collar & Production Workers	6	4,095.98
III. Single Rate/Four BLS Regions	2	3,676.73
IV. Single Benefit Rate As A Percent of Wages	3	3,872.67
V–A. Insurance & Total Benefits Rates/Based upon Size of Establishment/Applied by Nature of Contract	1	3,551.45
V–B. Total Benefits Rates/Based upon Size of Establishment/Applied by Employment Size of Contract	5	3,943.67

*Rank, 1 to 8, is from least to most costly. Alternative V–A is the current methodology. Current costs per FTE ($3,787.05) are based upon the use of Alternative V–A and 1994 ECI data. Note that cost differences between Alternatives II–A, II–B, and II–C, are due to rounding.

Based upon the use of survey data, Alternatives I, IV, and V–B, the first two utilizing single benefit ECI data, approximate the average alternative cost per FTE of about $3,909. Alternatives II–A, II–B, and II–C, each of which is controlled by occupational criteria, appear to be higher cost options, at about $4,100. Alternatives V–A and III, determined by size-of-establishment and regional data, are relatively lower cost options, each falling below $3,700. Note that the relative costs by alternative may change over time as FTE distribution by industry and occupation changes. For example, if the distribution of FTEs by occupation were to change significantly, one would expect corresponding changes in Alternative-II costs.

As noted in the notice of proposed rule making, 61 FR 19770, each alternative offers certain advantages and disadvantages. The cost estimates provided in Table 5 furnish additional information for use in considering how each alternative meets relevant evaluation criteria, such as statistical accuracy, enforceability, administrative feasibility for contractors and contracting agencies, and conformance with statutory requirements and intent.

The notice of proposed rulemaking (60 FR 19770), fully discusses the advantages and disadvantages which the Department of Labor currently perceives in the various alternatives. Comments were solicited on a number of issues to assist in preparing a final regulatory impact analysis and in making a determination of the alternatives which should be selected, including in particular information regarding administrative and/or recordkeeping burdens; economic and budgetary impact from the point of view of service contractors, service employees and Federal procurement agencies; transitional difficulties if the rule departs from the current methodology; the nature of SCA-covered contracts and the fringe benefit practices typical of service contractors; and the effects on contracting activity and employment.

Without input from the commenters the Department was unable to include in this analysis a discussion of the administrative costs to contractors and to the Government of the various alternatives. Presumably, all alternatives except Alternative V–A would involve the burden of changing fringe benefit programs because of increased or decreased fringe benefit levels. Several alternatives (II–A and –C, IV, and to lesser extent III) may require that employers either provide different fringe benefits to different employees in their work force or make up the difference in cash. Because of this issue, the Department also requested comments on the administrative feasibility and recordkeeping burden of the average cost approach, which would allow employers to average fringe benefits costs across the work force. These issues will be addressed more fully in the final rule, after review of the comments received.

The Department lacks sufficient data to be able to quantify the benefits to the affected workers and to society of providing workers prevailing fringe benefits, or any indirect effects on jobs, productivity, or the Federal deficit. The Service Contract Act was enacted in order to protect service employees from the practices of contractors who undercut prevailing wages and benefits in order to be the low bidder on service contracts. These workers are especially vulnerable since wages and benefits are frequently the predominant cost of service contracts. With regard to fringe benefits in particular, the Department believes that most contractors provide workers benefits only at the level provided on the wage determination. Thus SCA permits workers to receive fringe benefits—including in particular health benefits—which might not otherwise be provided because of the pressure of being the low bidder on the Government contract.

A preliminary regulatory flexibility analysis discussing the anticipated impact of the proposed rule on small businesses was also included in the notice of proposed rulemaking. In most respects the impact on small businesses will be the same as the impact on other businesses, although it is anticipated that any administrative difficulty may be greater for smaller firms. As discussed above, some alternatives appear to have greater administrative difficulty than others. It is anticipated that any impact could be mitigated by

the statutory authority for SCA-covered contractors to discharge their obligations to furnish prevailing fringe benefits by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash. Impact may also be minimized because (1) Such businesses with SCA-covered contracts are currently required to pay their employees prevailing fringe benefits; and (2) SCA contractors will continue to be reimbursed by the Federal procurement agencies for fringe benefit expenditures.

Tables 6 through 9 provide many of the key statistics required to compute cost estimates for the eight alternative methodologies. Following these tables are detailed presentations of each methodology's data requirements and computations.

TABLE 6.—OCCUPATIONAL GROUP ECI TOTAL BENEFIT RATES & SCA FTE DISTRIBUTION

Occupational group	1995 ECI rates		SCA FTE distribution (percent)
	Total benefits	Wage*	
Professional, Specialty, & Technical	$3.03	$20.65	13.4
Administrative Support/Clerical	1.87	10.47	17.5
Precision Production/Craft/Repair	2.71	14.72	32.0
Transportation & Material Moving	2.09	11.42	4.1
Handlers/Cleaners/Helpers/ Laborers	1.24	8.18	12.0
Service Workers	0.65	6.35	21.0

*Provided for information only.

TABLE 7.—ECI TOTAL BENEFITS RATES, 1995

All Private Industry	$1.89
SCA Occupational Distribution*	1.97
White Collar	2.37
Production Worker	1.79
Northeast	2.30
South	1.64

TABLE 7.—ECI TOTAL BENEFITS RATES, 1995—Continued

Midwest	1.83
West	1.84
Estabs of 100 or more Workers	2.42
Estabs 1–99 Workers	1.29

*Rate weighted by FTEs in 6 broad occupational groups. Utilized in Alternative II–B.

TABLE 8.—ECI WAGE & SALARY LEVELS*

Private Industry	$12.25
SCA Weighted	12.09

*Utilized in Alternative IV.

TABLE 9.—SCA EXPENDITURES AND FTES BY REGION

	Expenditures (billions)	Percent of total	Estimate of SCA FTEs*
Northeast	2.0	9.9	20,919
South	11.9	58.6	123,822
Midwest	1.4	6.9	14,580
West	5.0	24.6	51,980

*Excludes workers under CBAs. Source: FPDS universe data.

Alternative Data Requirements & Cost Computations

Alternative I:

Single benefit level based upon ECI data for workers in private industry.

Data Requirements

1995:		
Sick leave	0.14	
Other leave	0.05	
Insurance	1.15	
Retirement & savings.	0.52	Hours=2,080/ FTE.
Other benefits.	0.03	
	1.89	

Cost Computations

Cost per FTE=Hours Worked×Benefit Rate per Hour =2,080×1.89=$*3,931.20*

Alternative II–A

Single benefit level for each of six major occupational groups.

Data Requirements

ECI H&W BENEFIT LEVELS OF OCCUPATIONAL GROUP

Occupational group	Sick leave *	Other leave *	Insurance	Retire & savings	Other benefits	Total
Prof., spec., & tech.	N.P.	N.P.	1.67	0.91	0.05	3.03
Adm. support/clerical	N.P.	N.P.	1.22	0.42	0.02	1.87
Precision, prod./craft/repair	N.P.	N.P.	1.67	0.82	0.06	2.71
Trans. & material moving	N.P.	N.P.	1.31	0.65	0.01	2.09
Handlers, cleaners, & helpers	N.P.	N.P.	0.83	0.35	0.01	1.24

ECI H&W BENEFIT LEVELS OF OCCUPATIONAL GROUP—Continued

Occupational group	Sick leave *	Other leave *	Insurance	Retire & savings	Other benefits	Total
Service workers	N.P.	N.P.	0.45	0.11	0.01	0.65

*Not publishable.

SURVEY DISTRIBUTION OF EMPLOYMENT

Occupational group	Percent of total	Number of FTEs	
Professional	13.4	28,314	Hours = 2,080.
Administrative.	17.5	36,978	
Precision	32.0	67,616	
Transportation.	4.1	8,663	
Handlers	12.0	25,356	
Service	21.0	44,373	

Cost Computations

Cost per occupation=FTEs×Hours×Occupation H&W Rate:

Prof., Specialty, & Tech.—$28,314×2080×$3.03=$178,446,154

Admin. Support & Clerical—$36,978×2080×$1.87=$143,829,629

Precision Prod./Craft & Repair—$67,616×2080×$2.71=$381,137,869

Transp. & Material Moving—$8,663×2080×$2.09=$37,659,794

Handlers, Cleaners, Helpers & Laborers—$25,356×2080×$1.24=$65,398,195

Service Workers—$44,373×2080×$0.65=$59,992,296

Sum=$866,463,937

Cost per FTE=Total Cost/211,300=$4,100.63

Alternative II–B

Single benefit rate adjusted to employment composition of covered contracts.

Data Requirements

FTEs by Occupational Group: See II–A Data requirements. ECI H & W benefit levels by Occupational Group: See II–A data requirements.

Cost Computations

Total cost=FTEs for each Occupational Group×Corresponding H & W Rate; Sum and Divide by Total FTEs; Multiply Product by Total FTEs and then by Hours.

Occupational group	FTE's	H & W rate	Product
Prof., spec., & technical	28,314	3.03	85,791
Admin. support/clerical	36,978	1.87	69,149
Precision prod/craft/rep.	67,616	2.71	183,239
Trans. & material movers	8,663	2.09	18,106
Handlers/cleaners/helpers/laborers	25,356	1.24	31,441
Service workers	44,373	0.65	28,842
Sum			416,568

416,568 divided by 211,300=1.97

Cost per FTE=1.97×2080=$4,097.60

Alternative II–C

Reconfigure II–A rates into two groups: white-collar and production occupation rates.

Data Requirements

White Collar=Summation of Professional, Specialists, & Technical Grouping and Administrative Support/Clerical Grouping.

Production=Summation of Precision, Transportation, Handler, and Service Groupings.

Cost Computations

For each combined group, obtain a weighted rate as in II–B; multiply each combination rate by the FTEs included and the hours worked; then sum the costs for the two combination groups.

White collar	FTEs	H & W rate	Product
Prof, Specialists And Technicians	28,314	3.03	85,791
Admin. Support/Clerical	36,978	1.87	*69,149*
Sum	65,292		154,940

Combined Rate=154,940 divided by 65,292 = 2.37.

Cost=2.37x65,292x2080 = 321,863,443.

Production worker	FTEs	H & W rate	Product
Precision Prod./Craft/Rep	67,616	2.71	183,239
Transportation And Material Movers	8,663	2.09	18,106
Handlers/Cleaners/Helpers/ Laborers	25,356	1.24	31,441
Service Workers	44,373	0.65	*28,842*
Sum	146,008		261,628

Combined Rate=261,628/146,008 = 1.79.

Cost=1.79x146,008x2080 = 543,616,986.

Total Cost=321,863,443+543,616,986 = 865,480,429.

Cost per FTE=865,480,429/211,300 = $4,095.98.

Note: Alternative II–C also could be computed by weighting in accordance with the national incidence of the various occupational groups. No cost data are provided for this option.

Alternative III

Single benefit rate for each of four Bureau of Labor Statistics regions.

DATA REQUIREMENTS

[FPDS Distribution of SCA–Covered Contract Expenditures by Region*]

	Percent	Billion	FTEs
Northeast	9.9	$2.0	20,919
South	58.6	11.9	123,822
Midwest	6.9	1.4	14,580
West	24.6	5.0	51,980
Total	100.0	20.3	211,301

*Based upon FPDS universe data.

H & W Benefit Levels by Region

	Sick leave	Other leave	Insurance	R & S	Other benefits	Total
Northeast	0.19	0.07	1.39	0.62	0.03	2.30
South	0.11	0.04	1.01	0.46	0.02	1.64
Midwest	0.11	0.04	1.15	0.49	0.04	1.83
West	0.15	0.04	1.11	0.51	0.03	1.84

Cost Computations

Total Cost=For each Region, FTEs x H & W Rate x Hours, then Sum for Total Cost.

Northeast—
20,919x2.30x2080=100,076,496.

South—
123,822x1.64x2080=422,381,606.

Midwest—
14,580x1.83x2080=55,497,312.

West—
51,980x1.84x2080=198,937,856
Sum=776,893,270.

Cost per FTE=776,893,270/211,300=$3,676.73.

Alternative IV

Single fringe benefit rate as a percent of wages.

Data Requirements

Single total benefits rate=$1.89 (See Alternative I)

ECI Ave. Wage & Salary for 1995=$12.25

ECI Ave. Wage & Salary weighted to SCA for 1995=$12.09

ECI AVERAGE WAGE WEIGHTED TO SCA OCCUPATIONS DISTRIBUTION

(1)—Occupational group	(2)—ECI rate	(3)—SCA FTE's	(4)—Product (2)×(3)
Professional, specialty & technical	20.65	28,314	584,684
Administrative support/clerical	10.47	36,978	387,160
Precision production, craft & repair	14.72	67,616	995,308
Transportation & material movers	11.42	8,663	98,931
Handlers, cleaners, helpers, & laborers	8.18	25,356	207,412
Service workers	6.35	44,373	281,769
		211,300	2,555,264

Average SCA Wage=2,555,264÷211,300=$12.09

Total benefits level/Average wages and salaries: 1.89÷12.25=15.4%

Cost Computations

Cost per FTE=(Hours×Average SCA Wage) (15.4%)

=(2080×12.09) (.154)

=$3,872.67

Note: This alternative may provide for application of the 15.4 percent to each occupational group wage. However, for the purpose of this cost analysis, the 15.4 percent was applied to the all-occupational group average wage.

Alternative V–A

''Insurance'' and ''Total Benefits'' levels based upon size-of-establishment ECI data but applied according to the ''nature of the contract.''

Data Requirements

Insurance level=Insurance for establishments of 1–99 workers=0.82

Total benefits=Summation of Insurance, Sick Leave, Other Leave, Retirement and Savings, and Other Benefits for establishments of 100 workers or more:

Ins	1.45	FTEs by National Health and Welfare Level:
SL	0.17	
OL	0.06	Insurance=94,048
R & S ...	0.69	
OB	0.05	Total Benefits=117,215
	2.42	

Source: See Table 4.

Cost Computations

Cost: For each level, multiply FTEs×Benefit Rate X Hours; then sum to obtain total costs.

Insurance Cost=FTEs × Benefit Rate × Hour
=94,048 × 0.82 × 2080
=160,408,269

Total Benefit Cost = FTEs × Benefit Rate × Hours
=117,215 × 2.42 × 2080
=590,013,424

Cost per FTE=(160,408,269+590,013,424)/211,300
=$3,551.45

Note: For comparison purposes, 1995 data are utilized. Actual Health and Welfare benefit levels for FY 1996 continue to utilize 1994 ECI data.

Comparable computations utilizing rates currently issued, based upon 1994 ECI data:

Insurance=94,048 × 0.90 × 2080 = 176,057,856

Total Benefits=117,215 × 2.56 × 2080 = 624,146,432

Cost per FTE=(176,057,856 + 624,146,432)/211,300
=$3,787.05

Alternative V–B

Total Benefit levels, based upon size of establishment data, applied by employment size of establishments.

Data Requirements

TOTAL BENEFITS

	Establishments of 1–99 workers	Establishments of 100 workers or more
SL	0.10	
OL	0.03	$2.42
Ins.	0.82	
R&S	0.33	
OB	0.01	
	$1.29	

FTEs for contracts not subject to Section 4(c) collective bargaining agreements, 1–99 workers and 100 workers or more:

- Distribution of employment for known 4(c) contracts by establishment size—1–99: 13.6%; 100 & over: 86.4%.
- Obtain distribution of employment for 4(c) contracts by establishment size by multiplying the above percents by 64,537.
- Subtract 4(c) employment for each establishment category from the corresponding employment total.

100 & over: 169,084 − 55,760=113,324
1–99: 106,746 − 8,777=97,969

Compute percent distribution of non-4(c) contracts by establishment category:
100 & over: 113,324—53.6%
1–99: 97,969—46.4%
Total: 211,293—100.0%

Cost Computations

Cost = For each size group, FTEs × Corresponding Benefit Rate × Hours
Sum two size group totals:
100 & over:
113,324×2.42×2080=570,427,686
1–99: 97,969×1.29×2080=262,870,421
Cost per FTE=(579,427,686 + 262,870,421)/211,300
=$3,943.67

Technical Note

Survey Design

Design of the survey benefited from guidance provided by representatives of the U.S. Army, the Bureau of Labor Statistics, the Office of Federal Procurement Policy, and the Federal Procurement Data System. In addition, a pilot test of the survey instruments and procedures was conducted with the assistance of the General Services Administration and the U.S. Air Force. Design of the survey's proportionate, systematic sampling, mailing of the survey materials, and data collection and processing were accomplished by the University of Tennessee, under contract to the Wage and Hour Division.

Sample and Population

The most comprehensive universe of detailed information about contracts under the McNamara-O'Hara Service Contract Act is the Federal Procurement Data System (FPDS) operated by the General Services Administration. This automated system is routinely and continually updated by information provided by Federal procurement officers on the contracts they administer. While the FPDS represents a rich source of statistical information, it is recognized that this data base is not all-inclusive. For example, it does not contain data from the U.S. Postal Service, the Air Force/Army Exchange Service, and most contracts under $25,000. Therefore, since the Impact Analysis is based upon a sample drawn from the FPDS population, estimates made only represent the covered contracts included in the FPDS, and should not be considered as representing the universe of all covered contracts. For this reason, the focus of the Impact Analysis is on the relative differences among costs likely to be generated by each alternative listed. It should be noted that although contracts for which the required wages and fringe benefits were determined by collective bargaining agreements in accordance with Section 4(c) of the SCA were included in the universe and survey to determine contract employment, these contracts were excluded from the cost computations. Since fringe benefits on these contracts are not determined on the basis of prevailing fringe benefits, the cost of these contracts is not affected by the methodology selected.

Sample Selection

Sample selection was proportional and systematic, by two-digit Standard Industrial Classification (SIC) Major Group. For example, assume that out of $20 billion in covered contracts, total contract value in SIC 01 was $100 million. A sample ratio of 0.005 (100,000,000/20,000,000,000) is computed for SIC 01. If we further assume that the survey sample within the FPDS data base includes a total of 7,000 covered contracts, then 7,000 X 0.005 or 35 would be the number of contracts selected for SIC 01. To randomly select the 35 contracts, first, the total number of FPDS contracts in SIC 01—further assumed to be 105—are arranged sequentially from most to least costly. One of the first three contracts is selected by chance, and then every third contract (105/35) is systematically selected.

Using Sample Data to Estimate the Population

Population estimates were developed by computing the ratio of Full Time Equivalent positions (FTEs) by occupation to total contract value for each SIC Major Group; population estimates by occupation for all SICs were added together to compute occupational population estimates; and population estimates for all occupations were added together to provide industry totals, and the all industry sum.

Continuing the above example, assume that six usable responses to the survey were received in SIC 01. Further assume that the employment data provided on the completed questionnaires revealed FTEs in six occupations. To obtain population estimates for employment in Occupation #1 for SIC 01, the total employment reported on the six questionnaires—8—is divided by the total contract value for the six contracts represented ($10,000,000). The resulting ratio—0.0000008—is then multiplied by the total contract value of all contracts in SIC 01 in the FPDS population—$100,000,000. The product of this multiplication—80—is the population estimate for Occupation #1, SIC 01. Like calculations for the other five occupations found in SIC 01 would be completed to permit the estimation of the remaining population employment in SIC 01. Once these calculations are completed for all SICs and occupations, employment totals by occupation, industry, and total employment may be obtained.

Note that the survey data were collected by occupational groupings and definitions contained in the *Service Contract Act Directory Of Occupations*, a resource tool utilized in the issuance of Service Contract Act wage determinations, and generally familiar to contractors with covered contracts. For those contractors not familiar with the Directory's standard job titles and definitions, copies were made available. Once the survey data were received and verified, the occupational entries were reclassified into the six Census groups for which health and welfare benefit information is available from the Bureau of Labor Statistics. FTEs represent the number of annual full-time equivalents budgeted to the contract in FY 1994 from the obligated funds for each occupation listed. Since FTEs represent 2080 work hours per year, and sample data were collected and population estimates developed on this basis, and cost estimates developed reflect this definition.

Data Collection and Response Rate

Collection of survey data was through a network of Federal Procurement Executives and Federal agency Data Collection Coordinators designated for this survey. Survey introductory materials were transmitted to the Federal Procurement Executives in September 1995. In October, all Data Collection Coordinators were provided with a comprehensive package of survey orientation materials. Later in October, and early November, agency procurement offices responsible for contracts selected for the sample were provided with survey questionnaires and materials. From December through March, Data Collection Coordinators were provided with their agency response rates and the list of contracts for which data were not yet received; an additional mailing was made to the Federal Procurement Executives; copies of the *Service Contract Act Directory Of Occupations* were provided on request; and data review and follow-up with submitting offices were carried-out.

The survey usable response rate—20.2 percent—varied somewhat by industry and Federal agency. In general the highest response rates, weighted by value, were for those industries that account for the majority of covered employment. For example, for the four industries that account for over two-thirds of population contract value (SICs 87, 73, 37, and 89), the sample contracts represented in the responses were valued at over $3.4 billion, or 39.7 percent of the total value in the sample for those industries, and averaged over $850 million per SIC (and not falling below $303 million). The responses therefore appear to be similar to the FPDS data in the universe by industry, providing a measure of external validity that appears to limit the potential for bias of the estimates obtained from the sample data. For this reason it is believed that the responses received follow the general industry framework and represent the best picture the Department was able to obtain of employment in the various industries that make up the SCA universe. The process whereby FTE/contract value ratios (by occupational group within industry group), once established, are applied to the *population* (not the sample) to estimate FTE totals (as explained more fully in ''Using Sample Data to Estimate the Population'', above), is another factor that would tend to limit the potential for bias caused by the low response rate. However, the low response rate does not allow for a reasonable measure of internal validity to be assigned to the sample data.

Document Preparation: This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 4

Administrative practice and procedures, Employee benefit plans, Government contracts, Investigations, Labor, Law enforcement, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, Wages.

Signed in Washington, DC, on this 21st day of October, 1996.

Maria Echaveste,

Administrator, Wage and Hour Division.

[FR Doc. 96–27402 Filed 10–24–96; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–208–FOR]

Kentucky Regulatory Program

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

ACTION: Proposed rules; reopening of comment period.

SUMMARY: OSM is reopening the public comment period on a proposed amendment to the Kentucky permanent regulatory program (hereinafter referred to as the ''Kentucky program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to sections of the Kentucky Administrative Regulations (KAR) dealing with the assessment of civil penalties. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., [E.D.T.] November 12, 1996.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to William J. Kovacic, Field Office Director, at the address listed below.

Copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky, 40503. Telephone: (606) 233–2896.

Department of Surface Mining Reclamation, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601. Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Field Office Director, Lexington Field Office, Telephone: (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982, Federal Register (47 FR 21404). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 917.11, 917.15, 197.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated July 19, 1994 (Administrative Record No. KY–1304), Kentucky submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. The proposed amendments were announced in the August 9, 1994, Federal Register (59 FR 40503). By letter dated January 11, 1995 (Administrative Record No. KY–1331), Kentucky resubmitted a proposed amendment that completed its regulation promulgation process. OSM reopened the public comment period in the February 17, 1995, Federal Register (60 FR 9314). By letter dated March 2, 1995 (Administrative Record KY–1347), Kentucky submitted additional revisions to the proposed amendment pertaining civil penalty assessment and revegetation. Based on the revised information, OSM reopened the comment period in the April 17, 1995, Federal Register (60 FR 19193). During its review of the proposed revisions, OSM noted that Kentucky did not submit the January 6, 1995, ''Procedures for Assessment of Civil Penalties'' incorporated by reference in the March 2, 1995, submission. Because the document was not made part of the administrative record, it was not subject

to public comment. OSM is, therefore, reopening the comment period at this time.

''Procedures for Assessment of Civil Penalties'' replaces the June 15, 1994, version and includes a general description of the assessment process, an explanation of the assessment factors, the assessment mechanism, and the application of the assessment factors to specific violations. Specific changes include the following. Chapter I: at section B(1), the provision that a penalty may be assessed if the violation is noncorrectable is deleted. At section D(1), the language is revised to require that the penalty for a cessation order issued for failure to abate be assessed pursuant to 405 KAR 7:092, section 13(2). At section D(2), the language is revised to require that the penalty for an imminent danger cessation order be issued pursuant to 405 KAR 7:092 section 13(1). The assessment shall be based on the four criteria in 405 KAR 7:095 section 3. Additional penalties shall be assessed in the event a failure to abate cessation order is issued. At section D(3), the language is revised to require that the penalty for an illegal mining cessation order be assessed pursuant to 405 KAR 7:092 section 13(3). Chapter IV: at section B(5)b, the ''Topsoil Affected'' damage point chart is revised.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. Specifically, OSM is seeking comments on the revision to the State's regulation that was submitted on July 19, 1994 (Administration Record No. KY–1304), with the subsequent revisions and additions as noted above. Comments should address whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 16, 1996.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 96–27404 Filed 10–24–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 166

[CGD 93–044]

Port Access Routes off the Coast of California

AGENCY: Coast Guard, DOT.

ACTION: Notice of study results.

SUMMARY: The Coast Guard is publishing the results of a port access route study which evaluated the need for vessel routing measures in the approaches to California ports. The study concluded that the southern approach lanes of the existing traffic separation scheme (TSS) off San Francisco should be shifted seven miles seaward; the existing TSS in the Santa Barbara Channel should be extended from Point Conception to Point Arguello; and a precautionary area should be established at the northwest end of the Santa Barbara Channel TSS. The remaining TSS approach lanes, precautionary areas, areas to be avoided, and the shipping safety fairways within the studied area should remain as presently configured. No navigational need for additional offshore routing measures was identified.

FOR FURTHER INFORMATION CONTACT: CDR Chip Sharpe, Project Officer, Eleventh Coast Guard District at (510) 437–2975 or Margie G. Hegy. Project Manager, Coast Guard Headquarters at (202) 267–0415

SUPPLEMENTARY INFORMATION

The Study

The Coast Guard has concluded its port access route study to review and analyze the vessel routing measures in the approaches to California ports and within the offshore California national marine sanctuaries. The study was announced in a notice published in the Federal Register on August 24, 1993 (58 FR 44634).

The study consisted of two parts: (1) a port access route study to evaluate the need for vessel routing measures; and (2) a joint study with the National Oceanic and Atmospheric Administration (NOAA) mandated by the National Marine Sanctuaries Program Amendments Act of 1992 (Pub. L. 102–587) (NMSPA Act of 1992) to determine what, if any, vessel regulations are needed to protect resources in the Monterey Bay National Marine Sanctuary. This notice publishes only the results of the port access route part of the study. The results of the second part of the study will be contained in a report to Congress as required by the NMSPA Act of 1992. The Coast Guard will announce the completion of that report in a separate Federal Register notice.

A number of vessel routing measures, i.e., traffic separation schemes (TSSs), precautionary areas (PA), areas to be avoided (ATBA), and a shipping safety fairway (SSF), currently exist to mitigate navigation safety problems for vessels entering or departing the entrances to San Francisco Bay, Santa Barbara Channel, and the ports of Los Angeles and Long Beach.

A *traffic separation scheme* is an internationally recognized routing measure intended to minimize the risk of collision by separating vessels into separate, opposing lanes of traffic. Vessel use of a TSS is voluntary; however, vessels operating in or near an IMO approved TSS are subject to Rule 10 of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS).

A *precautionary area* is a routing measure comprising an area within defined limits where ships must navigate with particular caution. Direction of traffic flow may be recommended with a precautionary area.

An *area to be avoided* is a voluntary routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties. All ships, or certain classes of ships, may be advised to avoid the area.

A *shipping safety fairway* is a lane or corridor in which no fixed structures, either temporary or permanent, are permitted. Shipping safety fairways are routing measures which provide safe port access routes for vessels where the primary risk to vessels is collision with offshore structures. Vessel use of shipping safety fairways is voluntary and the direction of traffic flow within a shipping safety fairway may be recommended.

Existing Routing Measures

The TSS off San Francisco consists of three approaches, a main ship channel, and a precautionary area with a separation zone in the center. The northern approach consists of north-westbound and south-eastbound traffic lanes and a separation zone. The southern approach consists of northbound and southbound traffic lanes and a separation zone. The western approach, consists of south-westbound and north-eastbound traffic lanes and a separation zone. The main ship channel consists of eastbound and westbound traffic lanes, and a precautionary area with a separation zone in the center.

The TSS in the Santa Barbara Channel consists of north-westbound and south-eastbound traffic lanes and a separation zone. The south-eastbound traffic lanes link the Santa Barbara Channel TSS to the western approach of the Los Angeles/Long Beach TSS.

The Los Angeles/Long Beach TSS consists of western and southern approaches and a precautionary area. The western approach consists of northbound and southbound traffic lanes and a separation zone. The southern approach consists of southbound and northbound traffic lanes and a separation zone. The two approaches converge into a precautionary area immediately offshore from the port complex.

A shipping safety fairway provides unobstructed vessel access to Port Hueneme.

Study Data

The Coast Guard reviewed studies and data collected both in-house and by other organizations on vessel traffic patterns and density. Coast Guard sources included: The Coast Guard's ''Evaluation of Oil Tanker Routing'' (Tanker Free Zone Study) report to Congress mandated by the Oil Pollution Act of 1990 (OPA 90); the draft report to Congress on ''Regulating Vessel Traffic in the Monterey Bay National Marine Sanctuary'' prepared by the Coast Guard and the National Oceanic Atmospheric Administration (NOAA); and the Eleventh Coast Guard District's collection of vessel position information during law enforcement patrols (''Operation Crystal Ball'').

The Coast Guard's Vessel Traffic Service (VTS) in San Francisco recorded the number of vessels transiting the three approaches to the TSS when entering and leaving the ports in San Francisco Bay in 1994.

In addition to Coast Guard efforts, the Western States Petroleum Association's (WSPA) 1992 report, ''Tanker and Barge Movements Along the California Coast'' provided general information regarding vessel transit routes. Crowley Marine Services, Inc. and Pacific Gas and Electric Company also provided information on their vessel transits.

Vessel density data were obtained from the U.S. Army Corps of Engineers' publications ''Waterborne Commerce of the United States,'' and ''Pacific Region Freight Traffic Tables'' for calendar years 1990–1992. Lastly, the California Coastal Commission made several local area reports available for review.

The Center for Marine Conservation's ''Safe Passage: Preventing Oil Spills in Our Marine Sanctuaries'' and ''Unsafe Havens: The Threat to California's Marine Sanctuaries From Vessel Traffic'' provided environmental information and recommendations for vessel traffic measures. CMC's recommendations were also addressed by the Council of American Master Mariners, San Francisco Chapter (CAMMSF) and WSPA. California's Office of Oil Spill Protection and Response (OSPR) completed a statewide coastal protection review which focused on the risk to California's coastline and the overall state of response preparedness.

Public Comments

Over 400 written comments were received in response to the notice of study. Of these comments, approximately one-third focused exclusively on sanctuary issues not related to vessel routing. These comments will be discussed in the report to Congress on ''Regulating Vessel Traffic in Monterey Bay National Marine Sanctuary''.

Several comments addressed user fees, increased fines for violations and spills, and increased regulation of vessels and vessel traffic. These comments did not address the specific routing of vessels between ports and are not discussed.

Public comments frequently recommended additional regulation of vessels and the routing of tankers, or all vessels, from 10 to 60 miles offshore. These comments expressed the belief

that keeping vessels further offshore would provide more time for response in the event of an oil spill. These comments also suggested that greater distances offshore naturally improved navigational safety. However, the comments contained no specific recommendations for increased navigational safety or spill prevention.

Vessel Regulation

There currently exists an extensive body of regulation governing the operation of tankers and other commercial vessels. These regulations include licensing of vessel operators and vessel crews, equipment carriage and training requirements, vessel response plans, and numerous operating requirements. The Coast Guard inspects vessels to ensure compliance and has initiated a Port State Control Program to target their inspection efforts on high risk vessels, often those under foreign flag.

In addition, the Coast Guard's Prevention Through People (PTP) program focuses on the human element, which has been found to be the cause of 80 percent of vessel casualties. In PTP, industry and the Coast Guard establish cooperative relationships to identify and implement effective human element programs which address: (1) management's commitment to safe operations; (2) external factors in the work environment that influence worker's capabilities, judgment, and effectiveness; (3) behavior influenced by factors such as stress, attitude, knowledge, awareness, health and experience; and, (4) the application of new technology with human capability and limitations in mind.

The existing regulations are adequate, and no additional regulations are needed at this time.

Offshore Routing

The coastwise transit between California ports is not navigationally difficult or hazardous. The areas that do involve significant navigational risk, the port approaches, have numerous effective waterways management measures, i.e. VTS, TSS, pilotage, and regulated navigation areas (RNA) in place. Simply defining an outer limit or minimum offshore distance that vessels must transit, as was often suggested by the comments, would increase collision risk by reducing the water area available for transit and artificially constricting the conventional coastwise traffic streams.

CMC Recommendations

Over fifty percent of the public comments supported the recommendations made by the Center for Marine Conservation (CMC) in its ''Safe Passage: Preventing Oil Spills in Our Marine Sanctuaries'' report. CMC's significant navigational recommendations include: (1) establishing an ATBA along the northern and central California coast; (2) reconfiguring the TSS in the approaches to San Francisco Bay to contain only one set of lanes approaching the bay from the southwest and extending seaward of the Farallon Islands; (3) making VTS San Francisco mandatory; (4) extending VTS authority and area of responsibility to include the entire area of the California national marine sanctuaries; and, (5) requiring transponders and automated dependent surveillance shipboard equipment (ADSSE) on all large commercial vessels.

Through advocating resource protection, the CMC report does not address the international, statutory, and economic ramifications of their comments, or the impact on navigation safety. These are discussed below.

(1) Coastal ATBA

An ATBA, encompassing the northern and central California coast, is inappropriate because transit through these areas is necessary to access ports between San Francisco and Port Hueneme. Such an ATBA would, in effect, shut off access to major ports such as San Francisco. It would also increase navigation risk by concentrating vessels along the outer boundary of an ATBA because vessels would not be expected to transit further off the coast than required by ATBA boundaries.

(2) Reducing traffic lanes in San Francisco TSS

Reconfiguring the San Francisco TSS from three approaches to one approach would also increase risk of collision. Such a reconfiguration would create a convergence zone approximately 50 miles offshore, in open ocean, and beyond VTS and shore station radar range. The existing scheme is within the coverage of VTS San Francisco, as well as the San Francisco Bar Pilots. This system provides several layers of monitoring and radar coverage, and forms a natural boundary before vessels make the more difficult transit into the bay. In addition, vessel speeds are controlled naturally in the precautionary area as vessels must slow to embark or disembark their pilot.

Vessel density data obtained by VTS San Francisco shows a relatively even distribution of vessel traffic between the three approaches. Reducing these three approaches to one would cause a convergence zone out of VTS and pilot coverage, increasing the risk of collision in the offshore area, as well as in the TSS itself because traffic from three approaches would be in one approach.

(3) Mandatory VTS Participation

The recommendation regarding mandatory participation in VTS San Francisco is no longer relevant as this requirement has been in place since 1994 (59 FR 36324).

(4) Expansion of VTS

The comments regarding expansion of VTS authority and area of responsibility to include the entire areas of the California national marine sanctuaries are not persuasive. VTS expansion into these open ocean areas will not significantly increase navigational safety due to lower traffic densities and the amount of sea room in which to navigate, when compared with port approaches.

One suggested alternative to expanded VTS coverage was for commercial vessels to record their positioning data during transit, which could then be inspected to ensure compliance with vessel routing measures. Another suggested alternative was the real-time reporting of vessel positioning information at strategically placed waypoints along common routes. These suggestions may have merit and the Coast Guard will continue to consider various vessel reporting systems.

(5) Transponder-Based Technology

Transponders and ADSSE are useful navigational tools and international performance standards for these technologies are currently under development by the International Maritime Organization (IMO). Once developed, we anticipate the transponders will be used, not only for reporting, but for collision avoidance as well. Absent the international performance standards applicable to all vessels, foreign and domestic, and absent a compelling navigation need to track vessels during the low risk coastwise transit, it is premature to mandate any transponder-based technology.

Summary

The public comments and recommendations illustrate an ever growing concern for the protection of the environment and the natural resources of the California coastline. There exists a wide divergence of opinion: public, industry, environmental, and government on

what, if any, additional action is necessary or warranted to mitigate both real and perceived risks to the California marine resources.

Findings

Offshore routing for Coastwise Transit

In light of the data, the existing body of operating requirements, the requirements imposed on tankers as a result of OPA 90, state of California initiatives such as the requirement for tug escorts, and the existing waterways management measures in the major port approaches, the Coast Guard finds that the coastwise transit does not present significant risk to navigation safety, and does not warrant new offshore vessel routing measures.

In 1992, nearly 9000 tanker, cargo and barge vessels called on California's major ports, with 90 percent of these vessels calling on the ports of San Francisco Bay and Los Angeles/Long Beach. It is important to note that VTS and VTIS systems are already in place in these two ports. Other commercial interests, such as fishing vessels and passenger carriers, were not included in the data.

Information collected from a variety of sources shows that the distances vessels transit offshore, especially between the major ports of Los Angeles/Long Beach and San Francisco Bay, are widely varied. Of the 2,837 crude oil tanker, petroleum product tanker, and barge trips along the California coast during 1992, over 82 percent occurred at least 25 miles off the coast.

The Western States Petroleum Association (WSPA) has coordinated an agreement between 10 shipping companies to remain at least 50 miles from shore when transiting from Alaska to California. Of the two major barge companies which operate off the coast, one operates 50 miles offshore, while the other remains 8–10 miles from shore.

San Francisco TSS

Vessel transit data gathered by the Vessel Traffic Service Center (VTS) in San Francisco in 1994, showed a fairly even distribution of traffic amongst the TSS approaches. The northern approach lanes accommodated 38 percent of the traffic, followed by the southern (35 percent) and western (27 percent) approaches, respectively. These data strongly support the need for three approaches to San Francisco Bay. However, the current configuration of the southern approach lanes of the San Francisco TSS does not make the best use of available water.

Rotating the southern approach seaward would increase transit distance from shore without crowding the western approach. Centering the southern approach between shore and the western approach would strike a reasonable balance between reducing the risk of grounding and the risk of collision.

In a typical coastwise transit inbound for the San Francisco Bay via the southern approach lanes, a vessel would pass within four nautical miles of Point Montara and within seven nautical miles of Pigeon Point. Shifting the southern approach lanes to the west would encourage vessels to transit further offshore when entering or departing San Francisco, increase the minimum transit distance off Point Montara by six nautical mile to ten nautical miles.

The northern and western TSS approaches to San Francisco meet the traffic routing needs between Pt. Reyes and Cordell Bank, and near the Farallones, respectively. Therefore, the Coast Guard is not recommending any changes to these two approaches.

Santa Barbara Channel TSS

The current configuration of the northwestern end of the TSS in the Santa Barbara Channel encourages vessels to transit close to the offshore platforms of Hidalgo, Harvest, and Hermosa, as they round Point Conception. In addition, west bound vessels leaving the scheme are put into crossing situations with vessels entering the lanes from the north.

Extending the TSS eighteen miles westward would increase the distance vessels transit from the platforms and Point Conception, and encourage greater offshore distances for coastwise transits, thereby decreasing the risk of allision and grounding.

Adding a precautionary area at the northwest end of the TSS would add order and predictability to the crossing traffic streams, thereby decreasing collision risk.

Los Angeles/Long Beach TSS

Vessel transit data gathered by the Vessel Traffic Information System (VTIS) in Los Angeles/Long Beach for 1994 also showed a fairly even distribution of traffic using the two approach lanes. Vessels transiting the north and west routes rely on the northern TSS (in the Santa Barbara Channel) and its exit at Point Conception. Comments did not suggest any changes to the TSS, nor did the study data suggest that changes were needed.

Conclusion and Recommendations

The transit data support the Coast Guard's decision not to implement additional routing measures along California's coastline. Traffic lanes are established to facilitate port access. Establishing traffic lanes parallel to the coast would not facilitate port access and would compress vessels of different types, sizes, and speeds into a confined area where the risk of collision would increase significantly. Present International Regulations for Prevention of Collisions at Sea are sufficient to regulate offshore vessel traffic and ensure safe passage between vessels.

The study data does, however, support the following recommended changes to existing routing measures.

San Francisco TSS

(1) That the southern approach lanes of the TSS off San Francisco be shifted seven miles seaward as follows:

Part II: Southern Approach

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
37°39.10′ N	122°40.40′ W
37°27.00′ N	122°40.40′ W
37°27.00′ N	122°43.00′ W
37°39.10′ N	122°43.00′ W

(b) A traffic lane for northbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
37°39.30′ N	122°39.10′ W
37°27.00′ N	122°39.10′ W

(c) A traffic lane for southbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
37°27.00′ N	122°44.30′ W
37°39.40′ N	122°44.30′ W

Santa Barbara Channel TSS

(1) That the TSS in the Santa Barbara Channel be extended from Point Conception to Point Arguello as follows:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
34°20.90′ N	120°30.10′ W
34°18.90′ N	120°30.90′ W
34°25.70′ N	120°51.75′ W

Latitude	Longitude
34°23.75′ N	120°52.45′ W

(b) A traffic lane for westbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
34°21.80′ N	120°29.90′ W
34°26.60′ N	120°51.45′ W

(c) A traffic lane for eastbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
34°18.00′ N	120°31.10′ W
34°22.80′ N	120°52.70′ W

(d) A precautionary area be established, bounded to the west by the arc of a circle of radius four miles centered upon the following geographical positions:

Latitude	Longitude
34°25.80′ N	120°56.50′ W
and connecting the following geographical position:	
34°22.80′ N	120°52.70′ W
34°26.60′ N	120°51.45′ W

The precautionary area be bounded to the east by a line connecting the following geographical positions:

Latitude	Longitude
34°22.80′ N	120°52.70′ W
34°26.60′ N	120°51.45′ W

In addition to the recommended changes to the San Francisco and Santa Barbara Channel TSS's, nautical charts depicting the San Francisco TSS should be amended to conform with approved IMO descriptions as follows:

(1) Rename the Main Approach TSS segment as the Western Approach;

(2) Redesignate the separation zone in the center of the circular precautionary area as an ATBA; and

(3) Define the eastern boundary of the precautionary area by a line connecting the following geographic positions:

Latitude	Longitude
37°42.70′ N	122°34.60′ W
37°45.90′ N	122°38.00′ W
37°50.30′ N	122°38.00′ W

Datum: NAD 83.

The Coast Guard will publish a notice of proposed rulemaking in the Federal Register to solicit public comment on the recommended changes to the existing routing measures, and take necessary action at IMO.

Dated: October 15, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Marine Safety and Environmental Protection.

[FR Doc. 96–27486 Filed 10–24–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–5640–6]

Definition of Solid Waste and Hazardous Waste Recycling; Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency (EPA) will hold a public meeting on November 19, 1996 to make information available on a project underway to revise the RCRA regulations governing hazardous waste recycling. Under the authority of the Resource Conservation and Recovery Act (RCRA), the Environmental Protection Agency (EPA) has promulgated regulations governing management of hazardous waste. Parts of these regulations govern hazardous waste recycling. Specifically, the portion of the regulations known as the Definition of Solid Waste (DSW) (40 CFR 261.2) specifies whether hazardous materials that are recycled are more ''waste-like'' (i.e., solid wastes) and thus subject to RCRA regulation, or whether such materials are more ''product-like'' and not subject to regulation. Other parts of the regulations set forth requirements for regulating hazardous waste recycling (40 CFR 261.6, Part 266). The current hazardous waste recycling regulations were first promulgated on January 4, 1985 (50 FR 614).

EPA is working on a rulemaking to modify the current federal hazardous waste recycling scheme to meet two goals: develop a clearer, simpler regulatory system for hazardous waste recycling that adequately protects human health and the environment; and to remove disincentives to the safe recycling of hazardous waste. The intended result of this project is a simpler RCRA program, where definitions and requirements more precisely capture the materials and practices Congress intended to regulate in passing the Act.

The purpose of this meeting is for EPA to present and explain the draft rulemaking options the Agency is currently considering. The intent is to allow parties outside the government to begin as early in the process as possible, to formulate its thoughts on the proposal in order to allow time for interested parties to fully develop comments to be completed during the comment period. The Agency believes that the issues involved in this project are complex and difficult enough that this early introduction to the Agency's direction will benefit the regulated community by allowing early discussion among interested parties and will benefit the Agency by resulting in more fully formulated reactions to the proposal in comments. EPA will answer clarifying questions. Time may be limited, however, depending on the number of participants and questions. EPA anticipates publishing the proposed rulemaking in Spring of 1997. Because the Agency believes that a full dialog among the members of the regulated community is critical to receiving the best comment possible, EPA plans to allow a 90 day comment period for proposal and to hold public meetings during the comment period to discuss the proposal in detail. Written materials will be handed out at the meeting. These materials will not be available prior to the meeting.

DATES: The Public meeting will be held on November 19, 1996 from 8:30 am to 12:30 pm.

ADDRESSES: The public meeting will be held at the Airport Hilton, 2399 Jefferson Davis Highway, Arlington Virginia, 22202, 703 418–6800.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323.

Dated: October 17, 1996.

Michael Shapiro,

Director, Office of Solid Waste.

[FR Doc. 96–27469 Filed 10–25–96; 8:45 am]

BILLING CODE 6560–50–P–M

40 CFR Parts 51 and 52

[AD-FRL–5641–2]

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking; Reopening of comment period.

SUMMARY: The EPA is hereby extending by 45 days, the closing date of the public comment period regarding EPA's proposed rulemaking, known as the NSR Reform Rulemaking, published on July 23, 1996 at 61 FR 38249. The original comment period was to close on October 21, 1996. The new closing date will be December 5, 1996. The NSR Reform rulemaking proposes to revise regulations for the approval and promulgation of implementation plans and the requirements for preparation, adoption, and submittal of implementation plans governing the NSR programs mandated by parts C and D of title I of the Clean Air Act. Industry groups, State and local permitting agencies, and others have asked for an extension due to the complex issues addressed by the proposed rulemaking and the number of revisions that were proposed. All comments received by the EPA on or prior to December 5, 1996 will be considered in the development of final regulations.

DATES: *Comments.* All public comments regarding EPA's proposed rulemaking on July 23, 1996 must be received by EPA on or before close of business December 5, 1996.

ADDRESSES: *Comments.* All comments should be addressed to the EPA Air Docket No. A–90–37, EPA Air Docket (6102), Room M–1500, 401 M Street, Southwest, Washington, DC 20460. Copies of comments on the information collection requirements should also be sent to the Director, Office of Policy, Planning, and Evaluation, Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M Street, Southwest, Washington, DC 20460; and a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, Northwest, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the Information Collection Request number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Dennis Crumpler, Information Transfer and Program Integration Division (MD–12), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–0871, telefax (919) 541–5509.

INSPECTION OF DOCUMENTS: Documents related to the NSR Reform Rulemaking, are available for public inspection in EPA Air Docket No. A–90–37. The docket is available for public inspection and copying between 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m., weekdays, at the EPA's Air Docket (6102), Room M–1500, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

Dated: October 18, 1996.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 96–27471 Filed 10–24–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[PA 088–4033; FRL–5640–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Disapproval of the Reasonable-Further-Progress Plan for the 1996–1999 Period for the Philadelphia Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania (for the Philadelphia ozone nonattainment area) to meet the rate-of-progress (ROP) requirements under the Clean Air Act (the Act). Under these requirements, states must demonstrate a 3% reduction of volatile organic compounds (VOCs) per year for a three year period between 1996 and 1999. EPA is proposing disapproval because the ROP plan submitted by Pennsylvania for the Philadelphia area projects emissions reductions only for control strategies to the 2005 time frame, rather than for the 1999 and 2002 interim milestone years, per the ROP requirements of the Act. Several of these measures have not been fully adopted or have been stayed or replaced by the Commonwealth. Additionally, the Commonwealth has not calculated emissions target level to be achieved in 1999 (or for 2002) to ensure attainment of reasonable-further-progress toward attainment by the statutory deadline. Finally, the 1990 emissions inventory estimates provided in the Commonwealth's plan for ROP for the period from 1996–1999 vary substantially from the inventory submitted as the Commonwealth's official 1990 base year inventory. That VOC base year inventory was formally revised in September of 1996. This inventory superseded all previous 1990 base year inventories submitted by the Commonwealth for Philadelphia—including the one contained in the ROP plan for the period from 1996 to 1999. This rulemaking action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before November 25, 1996.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day. Copies of the documents relevant to this action are also available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian K. Rehn, Ozone and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215) 566–2176. Questions may also be sent via e-mail, to: Rehn.Brian@epamail.epa.gov (Please note that only written comments can be accepted for inclusion in the docket.)

SUPPLEMENTARY INFORMATION:

Introduction—Clean Air Act Requirements

Reasonable-Further-Progress Requirements

Section 182(c)(2) of the Clean Air Act (the Act), as amended by Congress in 1990, requires each state having one or more ozone nonattainment areas classified as serious or worse to develop a plan (for each subject area) that provides for actual VOC reductions of at least 3 percent per year averaged over each consecutive 3-year period, beginning six years after enactment of the Act, until such time as these areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone. These plans are referred to hereafter as post-1996 rate-of-progress plans (or post-96 ROP plans). The first of these ROP plans, for the 3-year period from 1996–1999, was due to be submitted to EPA as a SIP revision by November 15, 1994.

The Act also mandates a 15 percent VOC emission reduction, net of growth, between 1990 and 1996. That SIP

revision was due to EPA by November 15, 1993. The plan for these reductions occurring between 1990–1996 is hereafter referred to as the ''15% percent rate-of-progress plan.''

The Clean Air Act limits the creditability of certain control measures toward the reasonable-further-progress requirement. Specifically, states cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (e.g., new car emissions standards) promulgated prior to 1990, or for reductions stemming from regulations promulgated prior to 1990 to lower the volatility (i.e., Reid Vapor Pressure) of gasoline. Furthermore, the Act does not allow credit toward reasonable-further-progress requirements for post-1990 corrections to existing motor vehicle inspection and maintenance (I/M) programs or corrections to reasonably available control technology (RACT) rules, since these programs were required to be in place prior to 1990.

Additionally, section 172(c)(9) of the Clean Air Act requires ''contingency measures'' to be included in the plan revision. These measures are required to be implemented immediately if reasonable-further-progress has not been achieved, or if the NAAQS standard is met by the deadline set forth in the Clean Air Act.

Attainment Demonstration Requirement

The attainment dates prescribed by the Act for areas classified as ''ozone nonattainment areas'' are as follows: November 15, 1999, for serious ozone nonattainment areas; November 15, 2005, for severe ozone nonattainment areas; November 15, 2007, for severe areas with 1986–1988 design values greater than 0.190 ppm; or November 15, 2010, for extreme ozone nonattainment areas.

The Act also requires that states required to submit post-1996 ROP plan SIPs for certain areas, due by November 15, 1994 for serious or worse ozone nonattainment areas, must also simultaneously submit for those areas an ''attainment demonstration'' to provide for achievement of the ozone NAAQS by the statutory deadline. This demonstration is to be based on photochemical grid modeling, such as the Urban Airshed Model (UAM), or an equivalent analytical method. However, in a March 2, 1995, memorandum from Mary Nichols, Assistant Administrator for EPA's Office of Air and Radiation, EPA set forth guidance for an alternative approach to satisfy the attainment demonstration requirements under section 182(c)(2)(A) of the Act. Under this alternative, states were provided the option to utilize a two-phased approach in order to satisfy the attainment demonstration requirements of the Act.

Background

In Pennsylvania, three nonattainment areas were required to submit 15% plans in 1993 under the Act. These include the Philadelphia severe nonattainment area, the Pittsburgh moderate nonattainment area, and the Reading moderate nonattainment area. Since Philadelphia is the only Pennsylvania nonattainment having a classification of serious or worse, it is the only area with an attainment deadline beyond 1996. Therefore, the Philadelphia area must continue to demonstrate reasonable-further-progress toward attainment until its 2005 attainment deadline—unless the Commonwealth can demonstrate attainment of the standard with fewer reductions sooner than the statutory deadline.

The Philadelphia metropolitan area includes counties in New Jersey, Delaware, and Maryland, as well as Pennsylvania, all of which must demonstrate reasonable-further-progress. However, Pennsylvania is only responsible for achieving RFP within its portion of that metropolitan area. The Commonwealth did not enter an agreement with the other states which comprise the metropolitan Philadelphia area to do a multi-state ROP plan, and submitted only a plan to reduce Pennsylvania's contribution by 15 percent.

On November 15, 1994, the Pennsylvania Department of Environmental Resources submitted a post-1996 ROP plan for the Pennsylvania portion of the Philadelphia ozone nonattainment area, which included an attainment demonstration for that area. The post-1996 ROP plan submitted by Pennsylvania is actually an attempt to demonstrate reasonable-further-progress for Philadelphia from 1990 to 2005—the area's prescribed attainment date under the Act. This plan depicts a 42% reduction (3% per year) from the 1990 baseline, net of emissions growth during that period. In a letter dated May 31, 1995, from James Seif, Secretary of Pennsylvania's Department of Environmental Resources, Pennsylvania expressed its intent to follow a phased approach to meeting the attainment demonstration requirements of the Clean Air Act, as set forth in a March 2, 1995, EPA guidance memorandum.

EPA is today taking action only upon Pennsylvania's post-1996 ROP plan submittal. However, EPA is not taking action upon the attainment demonstration portion of that plan. Based on Pennsylvania's commitment to pursue the phased attainment demonstration approach, EPA will act upon the attainment demonstration at a later date.

In a separate submittal from its post-1996 ROP plan for Philadelphia, Pennsylvania submitted a plan to achieve a 15% reduction in VOCs for the period from 1990 to 1996 for the Philadelphia area. Pennsylvania amended this plan in January of 1995. EPA proposed disapproval of that January 1995 plan in the July 10, 1996, edition of the Federal Register (61 FR 36320). Pennsylvania submitted an amended 15% plan for Philadelphia on September 18, 1996, which included both a revised 1990 base year emission inventory and a revised contingency measure plan for the Philadelphia area, as well. EPA will act upon this September 1996, 15% plan SIP submittal separately from today's rulemaking action.

However, Pennsylvania has not revised its post-1996 ROP plan since it was originally submitted, in November of 1994. EPA has reviewed this post-1996 ROP plan submittal and has identified several serious deficiencies that prohibit approval of this SIP under section 110 of the Clean Air Act. A detailed discussion of these deficiencies is included below, in the 'Analysis' portion of this rulemaking action. Due to these deficiencies, the post-1996 ROP plan will not achieve the total reductions required by the rate-of-progress requirements of the Act. EPA's review of this plan did not examine the individual control measures applied toward rate-of-progress in the post-1996 ROP plan. Many of these measures have been formally submitted as separate control measure SIP revisions, or are national rules adopted by the federal government.

Today's action focuses only the approvability of measures toward the reasonable-further-progress requirement of the Act, and does not address whether the control measures or inventories included in the post-1996 plan comply with other specific underlying requirements of the Act pertaining to those elements of the plan. A summary of the EPA's findings follows.

Analysis of the SIP Revision

Base Year Emission Inventory

The baseline from which states determine the required reductions for rate-of-progress planning is the 1990 base year emission inventory. The inventory is broken down into several

emissions source sectors: stationary, area, on-road mobile, and off-road mobile sources. Pennsylvania submitted a formal SIP revision containing their official 1990 base year emission inventory on November 12, 1992. Pennsylvania formally revised this base year inventory on September 12, 1996, to reflect recent, more accurate estimates of actual 1990 emissions. EPA has not yet taken rulemaking action on the base year inventory submittal. The post-1996 ROP plan submitted in November of 1994 projects both emissions reductions and emissions growth which are predicated upon an inventory which has since been revised. The inventory that forms the basis of Pennsylvania's present post-1996 ROP plan is no longer valid, and EPA cannot approve emissions reduction ''target levels'' derived from this outdated inventory. EPA intends to conduct separate rulemaking action on Pennsylvania's official 1990 base year inventory SIP submittal at a later date.

Growth in Emissions Between 1996 and 1999

EPA has interpreted the Clean Air Act to require that states must provide for sufficient control measures in their reasonable-further-progress plans to offset any emissions growth projected to occur after 1996. Therefore, to meet the ROP requirement, a state must provide for sufficient emissions reductions to offset projected growth in emissions, in addition to a 3 percent annual average reduction of VOC emissions. Thus, an estimate of emissions growth from 1996 to 1999 is necessary for demonstrating reasonable-further-progress by 1999. Growth is calculated by multiplying the 1990 base year inventory by acceptable forecasting indicators. Growth must be determined separately for each source, or by source category, since sources typically grow at different rates. EPA's inventory preparation guidance recommends the following indicators, in order of preference: product output, value added, earnings, and employment. Population can also serve as a surrogate indicator.

Pennsylvania's post-1996 plan projects total growth of 61 tons per day (tpd) for the period between 1990 and 2005. This includes all sectors, i.e., point, area, on-road motor vehicle, and non-road vehicle source categories. Growth for point and area sources is based upon estimates from the Bureau of Economic Analysis (BEA). Pennsylvania linearly extrapolated from several BEA reports representing past and future years to obtain its 2005 estimates for stationary, area, and non-road mobile source sectors' growth. Highway mobile source growth was determined through projections using the MOBILE computer model and local projections for vehicle miles of travel increases in Philadelphia.

No interim growth estimates have been included in Pennsylvania's plan, therefore, growth for the period from 1996 to 1999 cannot be determined. Pennsylvania must estimate interim growth levels to determine the level of emissions reduction control strategies needed to demonstrate reasonable-further-progress by 1999.

Calculation of Target Level Emissions

A ''target level'' of emissions represents the maximum level of emissions allowed in each post-1996 milestone year which will still provide the 3 percent per year rate-of-progress requirement mandated by the Act. EPA's guidance document entitled Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration, dated January 1995 (EPA 452–93–015), outlines the approach states must take to calculate the 1999 target level needed to satisfy the Act's post-1996 plan requirement.

The Commonwealth has not calculated a 1999 target level in its plan. Instead, the Commonwealth calculated a target level for ROP by 2005. Without an emissions target level for the 1999 milestone year, it is impossible to determine if the Commonwealth has achieved reasonable-further-progress for the 1996–1999 period. Therefore, EPA must disapprove the Commonwealth's ROP plan for failure to demonstrate a 3 percent per year (on average) reduction from 1996 to 1999, as required under section 182(c)(2)(B) of the Act.

Control Strategies in the Philadelphia Post-1996 ROP Plan

Federal and state adopted VOC control measures may be credited toward the ROP plan requirements of the Act (with the exception of measures promulgated prior to 1990 which were specifically discussed earlier). Per section 182(c)(2)(C) of the Act and EPA guidance, states also may substitute NO_X control strategies (with certain limitations) in the ROP plan, provided that these NO_X reductions will provide at least as much progress toward meeting the NAAQS as VOC controls would. In order to claim NO_X reductions, states must include a summary NO_X emissions inventory and NO_X growth projections as part of their ROP SIP. The Commonwealth has not provided this NO_X inventory and growth information in its post-1996 SIP submittal.

The Commonwealth has substituted NO_X reductions in its post-1996 plan, but has not calculated 1999 milestone target levels for the pollutant NO_X. Therefore, EPA must disapprove the Commonwealth's post-1996 ROP plan for failure to satisfy the requirements of section 182(c)(2)(C) of the Act and to applicable EPA guidance.

The specific measures adopted (either through state or federal rules) for the Philadelphia area are addressed, in detail, in the Commonwealth's post-1996 plan. A list of control measures for which Pennsylvania has claimed credit in its Philadelphia post-1996 ROP plan for Philadelphia follows, along with a brief description of each.

Description of Control Strategies in the Post-1996 Plan

Stage II Vapor Recovery

This state-adopted regulation requires the installation and operation of vapor recovery equipment on gasoline dispensing pumps to reduce vehicle refueling emissions. The state regulation for this program is codified in 25 PA Code § 129.75. EPA approved the Commonwealth's Stage II program on June 13, 1994 (59 FR 112).

Automobile Refinishing

EPA is in the process of adopting a national rule to control VOC emissions from solvent evaporation through reformulation of coatings used in auto body refinishing processes. These coatings are typically used by small businesses, or by vehicle owners. VOC emissions emanate from the evaporation of solvents used in the coating process. Pennsylvania's post-1996 plan claims reductions from EPA's national rule. Use of emissions reductions from EPA's expected national rule is creditable toward reasonable-further-progress.

Reformulated Gasoline

Section 211(k) of the Clean Air Act requires that, beginning January 1, 1995, only reformulated gasoline be sold or dispensed in ozone nonattainment areas classified as severe, or worse. This gasoline is reformulated to reduce combustion by-products and to produce fewer evaporative emissions. As a severe area, Philadelphia benefits from the emission reductions from this program. This measure is creditable toward ROP planning.

Transportation, Storage, and Disposal Facilities (TSDFs) Rule

TSDFs are private facilities that manage dilute wastewater, organic/inorganic sludges, and organic/inorganic solids. Waste disposal can be done by various means including:

incineration, treatment, or underground injection or landfilling. EPA promulgated a national rule on June 21, 1990 for the control of TSDF emissions. This measure is creditable toward ROP planning.

Industrial Rule Effectiveness (RE) Improvements

Rule effectiveness is a means of enhancing rule compliance or implementation by industrial sources, and is expressed as a percentage of total available reductions from a control measure. The default assumption level for rule effectiveness is 80%. Pennsylvania claims RE improvements from the 80% default level to a level of 90% in their ROP plan SIP revision for Philadelphia, based upon improvements to RACT regulations for specific facilities in the 5-county Philadelphia area. The applicable RACT rules pertain to surface coating operations (PA Code § 129.52) and offset printing operations (PA Code § 129.67).

Pennsylvania followed EPA policy to quantify emissions reductions from specific RE improvements for two categories, in the absence of quantifiable compliance or emissions data. The RE measures Pennsylvania claims toward the ROP plan include facility improvements, as well as improved state oversight. Facility measures include: Improved operator training, better operation and maintenance of process equipment, improved source monitoring/reporting. State oversight improvements include: more inspector training, stringent compliance inspections of all RE improvement facilities. RE improvements are creditable toward the ROP plan requirement of the Clean Air Act.

Permanent VOC/NO_X Source/Process Shutdowns

Several industrial VOC sources that were operational in 1990 (i.e., included in the base year inventory) have since shut down either processes or entire facilities. Pennsylvania has adopted a banking rule (25 Pa Code § 127.208), which requires that sources wishing to bank emission reduction credits, or ERCs, must do so within one year of initiation of the shutdown. If not, the Commonwealth can claim credit for the reductions as permanent and enforceable emissions reductions.

Pennsylvania's ROP plan claims partial credit for shutdowns for which the source ''banked'' emissions reductions, and the Commonwealth claimed the entire shutdown credit for sources that did not bank their emissions within the one year deadline set forth in Pennsylvania's banking rule. The ROP plan reflects shutdowns from twenty VOC sources in the Philadelphia nonattainment area. These credits are ineligible for use as future ERCs, or to offset emissions from new sources under the Commonwealth's new source review regulation. Use of permanent, enforceable shutdowns for ROP planning is acceptable, provided the reductions are not ''double-counted'' in the plan (e.g., industrial growth estimates do not account for the shutdowns).

Architectural and Industrial Maintenance Coatings (AIM) Rule

Emission reductions have been projected for AIM coatings due to the expected promulgation by the EPA of a national reformulation rule. These coatings include a host of field-applied surface coatings used for household, commercial, and industrial applications—including for example, paints, highway coatings, and architectural finishes.

Tier I Federal Motor Vehicle Control Program

EPA promulgated a national rule establishing ''new car'' standards for 1994 and newer model year light-duty vehicles and light-duty trucks on June 5, 1991 (56 FR 25724). Since the standards were adopted after the Clean Air Act was amended in 1990, the resulting emission reductions are creditable toward ROP plans. Due to the three-year phase-in period for this program, and the associated benefits stemming from fleet turnover, the reductions were not significant prior to 1996. FMVCP programs promulgated as a result of the Clean Air Act as amended in 1990 are creditable for ROP planning purposes.

Off-Road Use of Reformulated Gasoline

The use of reformulated gasoline will also result in reduced emissions (for both exhaust and evaporative emissions) from off-road engines such as outboard motors for boats and lawn mower engines. This measure is creditable toward the ROP requirements of the Act.

IM240 Enhanced Vehicle Inspection and Maintenance (I/M) Program

The I/M program described in the Commonwealth's ROP plan is a contractor-operated, centralized, IM240 inspection program. This program was conditionally approved by EPA in August of 1994. However, since that time, Pennsylvania suspended operation of this program, terminated the test inspector contract, and began the rule adoption process for a decentralized program as a replacement for the centralized program. Pennsylvania submitted a new I/M program SIP to EPA, under authority provided by the National Highway Systems Designation Act of 1995, on March 22, 1996, which EPA proposed to conditionally approve on October 3, 1996. Pennsylvania has not revised the ROP plan for Philadelphia to reflect the significant changes to the I/M program since the time the ROP plan was submitted to EPA. I/M program emissions reductions are creditable toward ROP planning.

VOC/NO_X Reasonably Available Control Technology (RACT) Rules

The Act requires states to adopt regulatory programs to control major sources of VOCs and NO_X located in ozone nonattainment areas—with the definition of ''major'' becoming increasingly stringent based upon the nonattainment area classification. RACT is a generic term referring to the variety of controls available to reduce emissions from a source or class of sources. EPA has issued guidelines (i.e., CTGs) for RACT for more than 30 VOC source categories, with plans to issue at least 15 more. Additionally, EPA has issued Alternative Control Techniques (ACTs) for specific classes of NO_X sources.

Pennsylvania has adopted a ''case-by-case'' regulatory approach to RACT, which applies to the Philadelphia area. Individual sources are reviewed independently to determine the level of RACT that source must enact. RACT improvements required by the Clean Air Act of 1990 are creditable toward ROP plans.

Employee Trip Reduction (ETR) Program

This program requires employers having 100 or more employees in a subject nonattainment area to develop and submit trip reduction plans and to reduce their employees trips, as measured by average passenger occupancy (APO) levels. A regulation implementing this Clean Air Act requirement was adopted by Pennsylvania, but was stayed by the Governor before it became effective. Congress eventually amended the Clean Air Act to change the nature of the ETR requirement to allow for its voluntary implementation. Mandatory ETR programs are creditable toward ROP planning.

Consumer Products National Rule

EPA is in the process of adopting regulations to control VOC emissions from consumer products, through manufacturer reformulation of these types of products. These products include household, personal, and automotive related-products which

contain VOCs. Pennsylvania has claimed credit toward the ROP plan for implementation of this national rule. The consumer products national rule is creditable toward ROP planning.

Traffic Line Painting Reformulation

This measure would require conversion from VOC to water based traffic line paints by the Pennsylvania Department of Transportation (PennDOT). This measure would take the form of a consent decree with PennDOT requiring continued use of these water-based coatings. Pennsylvania has taken credit for this measure in its post-1996 plan. Only through a mandatory enforcement mechanism (e.g., a binding consent decree) would this measure be creditable toward ROP planning.

Highway Vehicle Control NO_X Reductions

This measure includes total NO_X reductions associated with several mobile source programs. Several programs which would achieve NO_X reductions, in addition to any other benefits, include the enhanced I/M program, the Federal Motor Vehicle Control Program (FMVCP), and Phase II of the reformulated gasoline program. Pennsylvania has apparently taken credit for all NO_X reductions stemming from mobile source measures in place, which provide reductions in the Philadelphia area. However, it is unclear which specific measures are included in the Commonwealth's estimates.

Ozone Transport Region Industrial/ Utility Boiler Controls

The Ozone Transport Commission adopted a memorandum of understanding (MOU) for a control strategy to address industrial NO_X emissions, primarily those generated by electric utilities. The MOU recommends reductions (from 1990 levels) from 250 million Btu and larger fossil fuel fired indirect transfer units of NO_X. Additionally, 15 megawatt electric generating units would be capped at 1990 emissions levels. The reductions would take place through two phases, beginning in 1999. Pennsylvania has claimed these NO_X reductions in its post-1996 ROP.

Analysis of Control Measures:

EMISSION CONTROL MEASURES FOR THE PHILADELPHIA OZONE NON-ATTAINMENT AREA POST-1996 PLAN

VOC Control Strategies:

EMISSION CONTROL MEASURES FOR THE PHILADELPHIA OZONE NON-ATTAINMENT AREA POST-1996 PLAN—Continued

- IM240 Program
- Federal Reformulated Gasoline
- Federal Motor Vehicle Control Program (Tier I vehicle standards)
- Employer Trip Reduction Program
- Stage II Vapor Recovery at Gasoline Stations
- VOC/NO_X RACT
- Select Industrial Rule Effectiveness Improvements (80%‰90%)
- Federal Architectural Industrial and Maintenance Coatings Rule
- Industrial Facility/Process Shutdowns
- Federal Consumer Products Rule
- Federal Autobody Refinishing Rule
- Traffic Line Paint Reformulation
- Treatment, Storage, and Disposal Facility RCRA National Rule

NO_X Control Strategies:

- Total Highway Vehicle-related Reductions
- Industrial Facility/Process Shutdowns
- Industrial/Utility Boiler NO_X Controls

The Commonwealth's plan projects emissions reductions from each of the above control strategies for the year 2005 and, therefore reductions were estimated by the Commonwealth for the evaluation year 2005. However, for the post-1996 plan, the Commonwealth is required to project reductions expected in 1999 for any claimed control strategy, in order to demonstrate that the area will meet its 1999 target level, and therefore demonstrate reasonable-further-progress for the 1999 milestone date specified by the Act.

Without a 1999 milestone target level and a projection for 1999 emissions reductions associated with the control strategies claimed within the post-1996 ROP plan, it is impossible to determine if reasonable progress has been achieved for the period from 1996 to 1999.

Several of the control strategies contained in the post-1996 plan are not creditable toward ROP under the Act, since the state has not adopted rules for those programs, or the programs have been stayed and are not presently being implemented as stated by the post-1996 plan. One example is the enhanced IM240 program described in the Commonwealth's SIP, which has been subsequently replaced with a test-and-repair ASM enhanced I/M program. Another example, the ETR which was stayed, and is no longer being implemented as a mandatory control measure, as described in the post-1996 ROP plan.

Since EPA cannot determine if the measures contained in the Philadelphia post-1996 plan are sufficient to demonstrate reasonable-further-progress from 1996 to 1999 or from 1999 to 2002, EPA is not evaluating the creditability of specific measures or the levels of emissions reductions claimed by the Commonwealth for specific measures in the plan, at this time.

Contingency Measures

Per sections 172(c)(9) and 182(c)(9) of the Act, states must include contingency measures in their rate-of-progress plan submittals for ozone nonattainment areas classified as moderate or above. Contingency measures are measures which are to be immediately implemented if reasonable-further-progress is not achieved in a timely manner, or if the areas do not attain the NAAQS standard by the applicable date mandated by the Act. EPA's interpretation of this Clean Air Act requirement is set forth in The General Preamble to Title I (57 FR 13498), which requires that the contingency measures should, at a minimum, ensure that emissions reductions continue to be made if reasonable progress (or attainment) is not achieved in a timely manner. Contingency measures must be fully adopted rules or measures but do not need to be implemented until they are triggered by a failure to either meet a milestone or attain the NAAQS.

States must show that their contingency measures can be implemented with minimal further action on their part, and with no additional rulemaking action (e.g., public hearings, legislative review, etc.).

Analysis of the Commonwealth's Contingency Measures

The Commonwealth's post-1996 plan does not specify any contingency measures to be applied if reasonable-further-progress is not achieved by the 1999 milestone date. Pennsylvania's post-1996 plan indicates the state will have more control measures in place than is needed to demonstrate reasonable-further-progress by 2005, and that the ''surplus'' of emissions reductions generated by these control measures eliminates the necessity for contingency measures, since this surplus could be used toward any shortfall.

EPA disagrees with this rationale. The contingency measures must be available in 1999 if reasonable progress is not achieved by that milestone date, not 2005 as the Commonwealth's plan provides for. If EPA determines there is an emissions reduction shortfall in 1999, measures which have already been enacted by the Commonwealth or the federal government would not serve to alleviate the shortfall. Only through implementation of additional measures (i.e., contingency measures), or through

early implementation of measures slated for the future, could additional emissions reductions occur.

Therefore, the Commonwealth's plan is not approvable at this time, due to a lack of sufficient continency measures to offset sufficient ozone precursor emissions in the year after a shortfall, or failure to achieve ROP, has been identified.

However, the Commonwealth has submitted a contingency measure plan as part of its September 1996 15% plan submittal. EPA will act upon that submittal, including the contingency measures contained within, in a separate rulemaking from today's action.

Proposed Rulemaking Action

EPA has evaluated this submittal for consistency with the Clean Air Act, applicable EPA regulations, and EPA policy. Pennsylvania's post-1996 rate-of-progress plan for the Philadelphia nonattainment area will not achieve sufficient reductions to meet the rate-or-progress requirements of section 182(c)(2)(B) of the Act. Pennsylvania has not projected emissions growth for the period from 1996–1999, nor has the Commonwealth calculated an interim ''target level'' of emissions for 1999, by which to measure its rate-of-progress in attaining the ozone NAAQS. Instead, the Commonwealth's plan evaluates emissions reductions for the period from 1990 to 2005—ignoring any interim evaluation milestones. Several of the measures listed in the plan (to occur by 2005) have been halted or stricken from the Commonwealth's regulations, and are therefore invalid toward meeting the ROP requirement for the 1999 milestone year.

Additionally, the baseline 1990 emissions inventory contained in the Commonwealth's post-1996 plan has been superseded by a revised formal base year inventory which was submitted in September of 1996 as part of the Commonwealth's 15% RFP plan. The inventory from which many of the control measure emissions reductions for the Commonwealth's post-1996 plan (which contains projected emissions reductions from 1990 to 2005) were determined is therefore invalid. The post-1996 ROP plan control measure reductions must be recalculated based upon the Commonwealth's revised base year inventory.

Finally, the Commonwealth's plan does not contain contingency measures. Under sections 172(c)(9) and 182(c)(9) of the Act, the Commonwealth is required to adopt such backstop measures in the event an emissions shortfall occurs in the 1999 milestone year.

In light of the above deficiencies, EPA is proposing to disapprove this SIP revision, which was submitted November 12, 1994, under sections 110(k)(3) and 301(a) of the Act. The submittal does not satisfy the requirements of section 182(c)(2)(B) of the Act regarding the post-1996 rate-of-progress plan, nor the requirement of section 172(c)(9) of the Clean Air Act regarding contingency measures.

EPA is soliciting public comments on the issues discussed in this document, or on other matters relevant to the demonstration of reasonable-further-progress toward attainment of the ozone NAAQS for the period from 1996 to 1999. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

The Agency has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Clean Air Act, as enacted on November 15, 1990. The Agency has determined that this action does not conform with the statute and therefore must be disapproved.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

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

EPA's disapproval of the state request under Section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any preexisting federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

Unfunded Mandates

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

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

The Administrator's decision to approve or disapprove the Commonwealth's post-1996 rate-of-progress plan SIP revision will be based on whether it meets the requirements of section 110(a)(2)(a)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 15, 1996.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 96–27472 Filed 10–24–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 81

[WA 54–7127; FRL–5640–7]

Clean Air Act Reclassification; Spokane, Washington Carbon Monoxide Nonattainment Area: Reopening for Public Comment

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule; reopening for public comment.

SUMMARY: EPA is seeking additional public comment on a July 1, 1996 (61 FR 33879), proposal to find that the Spokane, Washington carbon monoxide (CO) nonattainment area has not attained the CO national ambient air quality standard (NAAQS) by December 31, 1995, as required by the Clean Air Act (CAA). The additional public comment solicited herein pertains only to an EPA memorandum, dated September 11, 1996, titled ''Region X (Spokane, Washington) Site Evaluation Trip.'' This document provides information on the siting of a CO monitoring site (identified as site #54–063–0044) located at 3rd Avenue and Washington Street in Spokane, Washington. The memorandum is available at the address listed below. EPA is reviewing the monitoring site in order to respond to comments on the July 1, 1996, proposed rule (61 FR 33879).

DATES: Comments concerning this action must be received by EPA on or before November 25, 1996.

ADDRESSES: Written comments should be sent to: Montel Livingston, SIP Manager, Office of Air Quality, M/S OAQ–107, EPA Region 10, Docket #WA 54–7127, 1200 Sixth Avenue, Seattle, Washington 98101. The proposed rule and the document entitled ''Region X (Spokane, Washington) Site Evaluation Trip'' will be available in the public docket.

FOR FURTHER INFORMATION CONTACT: William M. Hedgebeth of the EPA Region 10 Office of Air Quality, (206) 553–7369.

Dated: October 18, 1996.

Chuck Clarke,

Regional Administrator.

[FR Doc. 96–27477 Filed 10–24–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 153 and 159

[OPP–60010G; FRL–5571–6]

RIN 2070-AB50

Reporting Requirements for Risk/Benefit Information; Extension of Comment Period to Request Comments on Burden Estimates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal; extension of comment period.

SUMMARY: In the Federal Register of September 20, 1996, EPA extended the reopening of the comment period for a proposed rule that published in the Federal Register of September 24, 1992, which defined the specifics of reporting requirements under section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act. This document announces a further extension of the comment period for an additional 15 days.

DATES: Comments must be submitted on or before November 12, 1996.

ADDRESSES: Submit written comments identified by the docket control number OPP-60010G by mail to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments directly to the OPP docket which is located in Rm. 1132 of Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form or encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP-60010G.'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Roelofs, Policy and Special Projects Staff, Office of Pesticide Programs, Environmental Protection Agency, Mail Code (7501C), 401 M St., SW., Washington, DC 20460, Telephone: (703) 308-2964, e-mail: roelofs.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 12, 1996 (61 FR 41764) (FRL-5388-1), EPA announced the reopening of the comment period to a proposed rule published in the Federal Register of September 24, 1992 (57 FR 44290), which defined the specifics of reporting requirements under section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Comments were limited to the sole issue of the costs or burdens associated with the proposed rule and the latest draft of the final rule.

On August 29, 1996, a number of industry trade associations formally petitioned the Agency to extend the comment period for 60 days, and to initiate a broader reopening of the rulemaking record to take comment on a number of provisions in the June 14, 1996 ''draft final'' version of the rule.

In the Federal Register of September 20, 1996 (61 FR 49427) (FRL-5396-1), EPA extended the comment period for an additional 30 days, but denied the petitioners' request to reopen the rulemaking record on issues beyond the costs and burdens associated with the draft final rule. At a meeting on October 11, 1996, between representatives of EPA, a public interest group, and several pesticide industry trade associations, a request was made to allow more time for submitting comments, due to the difficulty of compiling information from numerous registrants on the current and projected burden of compliance with rule

requirements (For additional information on the meeting refer to the docket.). The Agency has decided to grant an additional 15 days for comments to be submitted.

List of Subjects in Part 153 and 159

Environmental protection, Information collection requests, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 17, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–27468 Filed 10–24–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5638–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Spence Farm Superfund Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA), Region II, announces its intent to delete the Spence Farm Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil & Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the New Jersey Department of Environmental Protection (NJDEP) have determined that all appropriate response/remedial actions have been completed and no further remedial action by the responsible party is appropriate under CERCLA. In addition, EPA and NJDEP have determined that remedial activities conducted to date at the Site have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the Site from the NPL may be submitted on or before November 25, 1996.

ADDRESSES: *Comments should be submitted to:* Joseph Gowers, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866.

Comprehensive information on the Site is contained in the NJDEP public docket and is available for viewing, by appointment only, at: NJDEP-Bureau of Community Relations, 401 East State Street, CN 413, Trenton, NJ 08625, *phone:* (609) 984–3081, 8:30 AM to 4:30 PM—Monday through Friday (excluding holidays), *contact:* Heather Swartz.

Information on the Site is also available for viewing at the Site Administrative Record Repository located at: New Egypt Library, 10 Evergreen Road, New Egypt, NJ 08533, *contact:* Barbara Rothlein, *phone:* (609) 758–7888. *Hours:* Monday (10 am to 5 pm and 7 to 9 pm), Tuesday (10 am to 5 pm), Wednesday (1 to 5 pm), Thursday (1 to 5 pm and 7 to 9 pm), Friday (10 am to 5 pm) and Saturday (10 am to 1 pm).

FOR FURTHER INFORMATION CONTACT: Jospeh Gowers, 212–637–4413.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

EPA Region II announces its intent to delete the Site from the NPL and requests public comment on this deletion. The NPL is Appendix B to the NCP, which EPA promulgated pursuant to section 105 of CERCLA, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (the Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at the site warrant such action.

EPA will accept comments concerning the deletion of the Site from the NPL for 30 days after publication of this notice in the Federal Register until November 25, 1996.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the NPL deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e)(1) (i)–(iii), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with NJDEP, will consider whether any of the following criteria has been met:

(i) Responsible or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for information purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete the site. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Site:

1. NJDEP, as the lead agency, has recommended deletion.

2. EPA Region II concurred with the deletion decision and has prepared the relevant documents.

3. Concurrent with the Notice of Intent to Delete, a notice has been published in a local newspaper and has been distributed to appropriate Federal, State and local officials, and other interested parties.

The comments received during the comment period will be evaluated before any final decision is made. EPA Region II will prepare a Responsiveness Summary, if necessary, which will address the comments received during the public comment period.

If after consideration of these comments, EPA decides to proceed with the deletion, the EPA Regional Administrator will place a Notice of Deletion in the Federal Register. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary, if any, will be made available to local residents by EPA Region II.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for recommending deletion of the Spence Farm Superfund Site, Ocean County, New Jersey, from the NPL.

The Site is an 83 acre site located in Plumsted Township, Ocean County, New Jersey. Approximately 20 acres of the Site is reported to have been used from 1961 to 1967 for disposal of drummed and bulk wastes. The majority of the disposal occurred in random areas along stream valleys and wooded areas within the property.

The NJDEP conducted an initial inspection of the Site in 1980. As a result of initial investigations, EPA proposed that the Site be added to the NPL in October 1981.

A Remedial Investigation (RI) was performed from December 1983 through May 1984. The RI identified several disposal areas. The disposal areas contained discarded polymers, laboratory glassware, lab packs, drums and stained soils. Soil samples collected as part of the RI yielded various organic compounds and metals.

A Record of Decision (ROD), which selected a remedy for the Site, was signed in September 1984. The selected remedy called for the off-site disposal of waste material, drums, lab packs and contaminated soil, and ground water monitoring for a five year period. In April 1985, Morton International Incorporated entered into an enforcement agreement with NJDEP for performance of the selected remedy.

Morton began implementation of the selected remedy in September 1985. The initial phases of the remedial program included the collection of soil samples and digging of test pits in the disposal areas to further define the extent of the disposal areas. Subsequent to the off-site disposal of the waste and contaminated soil, Morton conducted soil sampling to determine whether the NJDEP-established 1 milligram per kilogram (mg/kg) cleanup criterion for polychlorinated biphenyls (PCBs) had been achieved. PCBs were detected in soil at levels exceeding the 1 mg/kg criterion, prompting further remedial action.

Removal of PCB-contaminated ''hot spots'' was conducted in August and September 1989 and November 1990. Removal of remaining PCB-contaminated soil was completed during the final phase of the remedial action, which was performed in 1994. The cleanup of PCB-contaminated soil was confirmed through the collection and analysis of post-excavation soil samples. Furthermore, ground water monitoring which was conducted annually from 1989 through 1994 did not detect Site-related contaminants above criteria established for the protection of ground water.

NJDEP and EPA have determined that the remedy implemented at the Site is protective of human health and the environment and that no further cleanup by responsible parties is appropriate. Hazardous substances on Site were cleaned up to levels that would allow for unlimited use and unrestricted exposure, therefore the five-year review requirement of section 121(c) of CERCLA, as amended, is not applicable.

Dated: September 16, 1996.

William J. Musynski,

Acting Regional Administrator.

[FR Doc. 96–27048 Filed 10–24–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5638–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Pijak Farm Superfund Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA), Region II, announces its intent to delete the Pijak Farm Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil & Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the New Jersey Department of Environmental Protection (NJDEP) have determined that all appropriate response/remedial actions have been completed and no further remedial action by the responsible party is appropriate under CERCLA. In addition, EPA and NJDEP have determined that remedial activities conducted to date at the Site have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the Site from the NPL may be submitted on or before November 25, 1996.

ADDRESSES: *Comments should be submitted to:* Joseph Gowers, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866.

Comprehensive information on the Site is contained in the NJDEP public docket and is available for viewing, by appointment only, at: NJDEP-Bureau of Community Relations, 401 East State Street, CN 413, Trenton, NJ 08625, *phone:* (609) 984–3081, 8:30 am to 4:30 pm—Monday through Friday (excluding holidays), *contact:* Heather Swartz.

Information on the Site is also available for viewing at the Site Administrative Record Repository located at: New Egypt Library, 10 Evergreen Road, New Egypt, NJ 08533, *contact:* Barbara Rothlein, *phone:* (609) 758–7888, *hours:* Monday (10 am to 5 pm and 7 to 9 pm), Tuesday (10 am to 5 pm), Wednesday (1 to 5 pm), Thursday (1 to 5 pm and 7 to 9 pm), Friday (10 am to 5 pm) and Saturday (10 am to 1 pm).

FOR FURTHER INFORMATION CONTACT: Joseph Gowers 212–637–4413.

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I. Introduction
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III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

EPA Region II announces its intent to delete the Site from the NPL and requests public comment on this deletion. The NPL is Appendix B to the NCP, which EPA promulgated pursuant to section 105 of CERCLA, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (the Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at the site warrant such action.

EPA will accept comments concerning the deletion of the Site from the NPL for 30 days after publication of this notice in the Federal Register until November 25, 1996.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the NPL deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425 (e)(1)(i)–(iii), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with NJDEP, will consider whether any of the following criteria has been met:

(i) Responsible or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for information purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete the site. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Site:

1. NJDEP, as the lead agency, has recommended deletion.

2. EPA Region II concurred with the deletion decision and has prepared the relevant documents.

3. Concurrent with the Notice of Intent to Delete, a notice has been published in a local newspaper and has been distributed to appropriate Federal, State and local officials, and other interested parties.

The comments received during the comment period will be evaluated before any final decision is made. EPA Region II will prepare a Responsiveness Summary, if necessary, which will address the comments received during the public comment period.

If after consideration of these comments, EPA decides to proceed with the deletion, the EPA Regional Administrator will place a Notice of Deletion in the Federal Register. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary, if any, will be made available to local residents by EPA Region II.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for recommending deletion of the Pijak Farm Superfund Site, Ocean County, New Jersey, from the NPL.

The Site is an 87 acre site located in Plumsted Township, Ocean County, New Jersey. Approximately 20 acres of the Site is reported to have been used from 1963 to 1970 for disposal of drummed and bulk wastes. The majority of the disposal occurred in random areas along stream valleys and wooded areas within the property.

The NJDEP conducted an initial inspection of the Site in 1980. As a result of initial investigations, EPA proposed that the Site be added to the NPL in October 1981.

A Remedial Investigation (RI) was performed from December 1983 through May 1984. The RI identified several disposal areas. The disposal areas contained discarded polymers, laboratory glassware, lab packs, drums and stained soils. Soil samples collected as part of the RI yielded various organic compounds and metals.

A Record of Decision (ROD), which selected a remedy for the Site, was signed in September 1984. The selected remedy called for the off-site disposal of waste material, drums, lab packs and contaminated soil, and ground water monitoring for a five year period. In April 1985, Morton International Incorporated entered into an enforcement agreement with NJDEP for performance of the selected remedy.

Morton began implementation of the selected remedy in May 1985. The initial phases of the remedial program included the collection of soil samples and digging of test pits in the disposal areas to further define the extent of the disposal areas. Subsequent to the off-site disposal of the waste and contaminated soil, Morton conducted soil sampling to determine whether the NJDEP-established 1 milligram per kilogram (mg/kg) cleanup criterion for polychlorinated biphenyls (PCBs) had been achieved. PCBs were detected in soil at levels exceeding the 1 mg/kg criterion, prompting further remedial action.

Removal of PCB-contaminated ''hot spots'' was conducted in August and September 1989 and November 1990. Removal of remaining PCB-contaminated soil was completed during the final phase of the remedial action, which was performed in 1994. The cleanup of PCB-contaminated soil was confirmed through the collection and analysis of post-excavation soil samples. Furthermore, ground water monitoring which was conducted annually from 1989 through 1994 did not detect Site-related contaminants above criteria established for the protection of ground water.

NJDEP and EPA have determined that the remedy implemented at the Site is protective of human health and the environment and that no further cleanup by responsible parties is appropriate. Hazardous substances on Site were cleaned up to levels that would allow for unlimited use and unrestricted exposure, therefore the five-year review requirement of Section 121(c) of CERCLA, as amended, is not applicable.

Dated: September 16, 1996.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 96–27047 Filed 10–24–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC60

Disaster Assistance; Restoration of Damaged Facilities

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would require that eligible costs associated with State and local repair or replacement standards (building codes), which change the predisaster construction of a facility, be limited to the standards that are in place at the time of the disaster declaration date. The standards must be in writing and formally adopted by the applicant or State on or before the disaster declaration date. The proposed rule would become effective for disasters declared one (1) year or more after the publication of the final rule.

DATES: We invite comments on this proposed rule and will accept comments until December 24, 1996.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (facsimile) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Gregory Ormsby, Engineer, Federal Emergency Management Agency, room 713, 500 C Street SW., Washington, DC 20472, (202) 646–2726.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. 5121 *et seq*., authorizes the President to provide supplemental assistance to State and local governments and certain private nonprofit organizations after the President declares a major disaster. Section 406 of the Stafford Act, ''Repair, Restoration, and Replacement of Damaged Facilities,'' authorizes the President to fund the repair, restoration, reconstruction, or replacement of a damaged public facility or private nonprofit facility ''. . . on the basis of the design of the facility as it existed immediately prior to the major disaster and in conformity with current applicable codes, specifications, and standards.'' Under authority delegated by the President to FEMA, we have interpreted the phrase, ''. . . in conformity with *current* codes, specifications, and standards . . .'' to mean those codes, specifications, and standards that are officially adopted and implemented before project approval, that is, the date FEMA approves the repair estimate for a specific facility. This interpretation is codified at 44 CFR 206.226(b)(3).

44 CFR 206.226(b)(3) allows applicants to incorporate new codes and standards in the eligible repair of damaged facilities as well as the construction of new facilities. Damage mitigation achieved by the new codes would lessen the impact of future disasters and reduce future Federal disaster expenditures. This change was made from pre-Stafford Act regulations to encourage adoption of codes at a time when there is a heightened awareness of the need for improved codes.

Recently, FEMA has experienced several unintended consequences of this interpretation of the law, which have had negative impacts on the program. We have experienced protracted delays in repairing eligible projects as applicants debate the adoption of codes and standards that will affect eligible damaged facilities and the amount of Federal assistance they will receive. After adopting new codes and standards, there have been protracted discussions with FEMA regarding the applicability of the new codes and standards to the damaged facilities. These actions have resulted in extensive delays in repairing damaged facilities and subsequently in closing out disasters.

After review of the statute and a General Accounting Office (GAO) report entitled ''Disaster Assistance: Improvements Needed in Determining Eligibility for Public Assistance'' (GAO/RCED–96–113), which commented on this provision in the regulations, FEMA determined that its *current* interpretation is not fully consistent with Congressional intent. FEMA believes that the word ''current'' means *at the time of the disaster* and not at the time of project approval. This is consistent with Congressional intent.

Accordingly, FEMA proposes to revise 44 CFR 206.226 (b)(3) to reflect this revised interpretation. The proposed rule would become effective for disasters declared one year or more after publication of the final rule. During this period, applicants will be encouraged to adopt improved building codes before their next disaster. In this way, all those structures built between the adoption of a code and the next disaster will benefit from better construction and have less damage. All other provisions of 44 CFR 206.226(b) would remain unchanged.

National Environmental Policy Act. This proposed rule would be categorically excluded from the preparation of environmental impact statements and environmental assessments as an administrative action in support of normal day-to-day grant activities. No environmental assessment or environmental impact statement has been prepared.

Regulatory Flexibility Act. A regulatory impact analysis is in process to determine the effect of this rule on small communities.

Paperwork Reduction Act. This rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism. In promulgating this rule, FEMA has considered the President's Executive Order 12612 on Federalism. This rule makes no changes in the division of governmental responsibilities between the Federal government and the States. Grant administration procedures in accordance with 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, remain the same. No Federalism assessment has been prepared.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform, dated October 25, 1991, 3 CFR, 1991 Comp., p. 359.

List of Subjects in 44 CFR Part 206

Disaster assistance, Public assistance.

Accordingly, 44 CFR part 206 is proposed to be amended as follows:

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

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Section 206.226 (b)(3) is proposed to be revised to read as follows:

§ 206.226 Restoration of damaged facilities.

* * * * *

(b)(1) * * *

(2) * * *

(3) Be in writing and formally adopted by the applicant or State prior to the disaster declaration date or be a legal Federal requirement applicable to the type of restoration;

* * * * *

Dated: October 16, 1996.

James L. Witt,

Director.

[FR Doc. 96–27430 Filed 10–24–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

46 CFR Part 552

[Docket No. 95–15]

Availability of the Annual Financial and Operating Statements Filed by Domestic Offshore Carriers

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Maritime Commission (''FMC'' or ''Commission'') is withdrawing the proposed rule amending its regulations governing the availability of the annual financial and operating statements filed by vessel-operating common carriers by water providing port-to-port services in the domestic offshore trades, because jurisdiction over such services has been transferred to the Surface Transportation Board.

FOR FURTHER INFORMATION CONTACT:

Austin L. Schmitt, Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001, 202–523–5787.

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W.,

Washington, D.C. 20573–0001, 202–523–5740.

SUPPLEMENTARY INFORMATION:

The Commission previously published a Notice of Proposed Rulemaking (60 FR 53572) in this proceeding seeking comments on allowing limited access to the annual financial and operating statements filed by ocean common carriers providing port-to-port services in the domestic offshore trades. The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (''ICC Termination Act''), has since transferred jurisdiction over such services, which had formerly been regulated by the FMC under the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843–848 (''1933 Act''), to the Surface Transportation Board (''Board''), and provides that such services are subject to rate regulation by the Board. Accordingly, no further Commission action in this proceeding is appropriate and the proposed rule is withdrawn.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–27417 Filed 10–24–96; 8:45 am]

BILLING CODE 6730–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1842 and 1852

Revision to NASA FAR Supplement Coverage on Contractor Financial Management Reporting

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Notice of Proposed rulemaking.

SUMMARY: Changes are proposed to update the NASA FAR Supplement (NFS) coverage on contractor financial management reporting to make it compatible with current NASA reporting policy, including accounting requirements imposed by the Chief Financial Officers Act of 1990, the need for complete, timely and accurate project cost information and reassessment of the appropriate level of responsibility and authority in accordance with Government downsizing initiatives.

The revised NFS coverage eliminates requirements for use of the Monthly Contractor Financial Management Performance Analysis Report, NASA Form 533P, and the clause included in 1852.242–74. NASA no longer uses the NF 533P format and is revising its approach to performance measurement reporting as a result of discussions with other Government agencies and industry. Revisions to the NASA performance measurement requirements will be published at a later date. The revised coverage gives regulatory effect to the publication of revised guidance on NASA Contractor Financial Management Reporting in NASA Procedures and Guidelines (NPG) 9501.2; provides for approval of exceptions from the standard reporting requirements set forth in the NPG at NASA Centers, rather than at Headquarters; permits waiver of NF 533Q reporting for certain contracts where NF 533M reporting provides adequate information; encourages the submission of reports earlier than the required due dates whenever feasible; and permits the use of alternative due dates, but only when data will be received in time for use in NASA's monthly cost accrual process. The time period for submission of the initial report is extended from 10 to 30 days after authorization to proceed has been granted. Contracting officers are given additional options to direct the contractor to report only when actual cost changes occur or suspend reporting altogether when the contract effort is completed and NASA has accepted all contract line items. Prime contractors are no longer required to use NASA Forms 533 for subcontractor reporting, but must ensure that their NF 533 reports include accurate and timely subcontractor cost data. The revised procedures will be required to be used on all new contracts issued after the proposed regulations are adopted as a final rule. Existing contracts at that time will not require modification to incorporate the changes unless: requested by the contractor; there is a demonstrated cost savings; or there will be no cost for implementation.

DATES: Comments must be received on or before November 25, 1996.

ADDRESSES: Submit comments to Larry G. Pendleton, Contract Management Division (Code HK), Office of Procurement, NASA Headquarters, Washington, DC 20546. Comments on the paperwork burden should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NASA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Larry G. Pendleton, NASA Headquarters, Code HK, (202) 358–0487.

SUPPLEMENTARY INFORMATION:

Background

NASA is updating its requirements for contractor financial management reporting in order to comply with the Chief Financial Officers Act of 1990, obtain complete, timely and accurate project cost information, and implement changes in the responsibilities and authorities of both NASA Headquarters and subordinate organizational elements.

The Chief Financial Officers Act of 1990 requires that NASA publish audited annual financial statements. This requirement has placed additional emphasis on the need for timely and accurate contract cost data to ensure the accuracy of NASA accounting information.

NASA's guidance for contractor financial management reporting, NPG 9501.2, has been revised to clarify reporting requirements, address problems and questions that have arisen over time, and reassign responsibilities and authorities to permit more effective operations in today's environment. Training on NASA's expectations for contractor financial management reporting has been presented to all NASA contractors holding cost-reimbursement contracts over the past two years, and contractors have informally reviewed and commented upon the revised guidance. These changes to the NFS recognize the modified NPG 9501.2 and provide complimentary coverage.

Based upon discussions with other Government agencies and industry representatives, NASA has eliminated the Monthly Contractor Financial Management Performance Report, NF 533P, from the NASA Contractor Financial Management Reporting system. The agency is revising its approach to performance measurement, or earned value, reporting to make it more consistent with Department of Defense requirements and existing contractor systems.

Change Highlights

The following revisions eliminate the use of the Monthly Contractor Financial Management Performance Analysis Report, NASA Form 533P. The contract clause at 1852.242–74 which required use of NF 533P is deleted. Exceptions from the standard reporting requirements are authorized to be approved at NASA Centers rather than at NASA Headquarters. The time period for submission of the initial report is extended from 10 to 30 days after contract authorization to proceed has been granted. Prime contractors are no

longer required to use NASA Forms 533 for subcontractor reporting, but must ensure that their NF 533 reports include accurate and timely subcontractor cost data.

Regulatory Flexibility Act

NASA certifies that these regulation changes will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

This rule proposes to eliminate the following report that was approved by the Office of Management and Budget (OMB) and assigned OMB Control Number 2700–0003.

Title: Monthly Contractor Financial Management Performance Analysis Report.

Summary: This report provided NASA project management with a timely and comprehensive assessment of the contractor's performance over the reporting period, including cost, technical and schedule status.

Notice: Comments on the elimination of this report may be submitted to the OMB address shown under **ADDRESSEES**.

List of Subjects in 48 CFR Parts 1842 and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR 1842 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1842 and 1852 continues to read as follows:

Authority: U.S.C. 2473(c)(1).

PART 1842—CONTRACT ADMINISTRATION

Subpart 1842.72—NASA Contractor Financial Management Reporting

1842.7201 [Amended]

2. In paragraph (b)(1) to section 1842.7201, the graphics box containing reporting criteria and report format is revised to read as follows:

Criteria		Report Format	
Contract Value/Scope	Period of Performance	533M	533Q
$500K to $999K	1 Year or More	Required	Optional.
$1,000,000 and Over	1 Less than 1 Year	Required	Optional.
$1,000,000 and Over	1 Year or More	Required	Required.

3. In paragraph (b)(2) to section 1842.7201, the phrase ''as initially awarded.'' is revised to read '', based on the estimated final contract value at the time of award.''

4. In section 1842.7201, paragraph (b)(3) is revised and a new paragraph (b)(4) is added to read as follows:

1842.7201 General.

(a) * * *

(b) * * *

(3) NF 533Q reporting may be waived by the Contracting Officer, with the concurrence of the Center Chief Financial Officer and cognizant Project Manager, for support service or task order contracts, when NF 533M reports and other data are sufficient to ensure accurate monthly cost accruals, evaluate the contractor's cost performance and forecast resource requirements.

(4) Where a specific contractual requirement differs from the standard system set forth in NPG 9501.2, *NASA Contractor Financial Management Reporting,* but is determined to be in the best interests of the Government and does not eliminate any of the data elements required by the standard NF 533 formats, it may be approved by the Contracting Officer with the concurrence of the Center Chief Financial Officer and cognizant Project Manager. Such approval shall be documented and retained, with the supporting rationale, in the contract file.

* * * * *

5. In section 1842.7201, the existing paragraph (c) is redesignated as a new paragraph (b)(5), and paragraphs (d) and (e) are redesignated as paragraphs (c) and (d) and are revised to read as follows:

(c) *Contract requirements.* (1) Reporting requirements, including a description of reporting categories, shall be detailed in the procurement request, and reports shall be required by inclusion of the clause in 1842.7202. the contract schedule shall include report addressees and numbers of copies. Reporting categories shall be coordinated with the Center Financial Management Office to ensure that data required for agency cost accounting will be provided by the reports. Reporting dates shall be in accordance with NPG 9501.2, except that earlier submission is encouraged wherever feasible. No due date shall be permitted which is later than the date by which the Center Financial Management Office needs the data to enter an accurate monthly cost accrual in the accounting system.

(2) The contractor shall be required to submit an initial report in the NF 533Q format, time phased for the expected life of the contract, within 30 days after authorization to proceed has been granted. NF 533M reporting will begin no later than 30 days after incurrence of cost. NF 533Q reporting begins with the initial report.

(d) *Deviations.* Deviations from the financial management reporting clause require approval in accordance with 1801.471, and the concurrence of the Director, Financial Management Division and the official-in-charge of the cognizant Headquarters Program Office.

6. Section 1842.7202 is revised to read as follows:

1842.7202 Contract clauses.

The clause at 1852.242–73, NASA Contractor Financial Management Reporting, shall be used when any of the NASA Form 533 reports are required from the contractor.

1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Section 1852.242–73 is revised to read as follows:

1852.242–73 NASA Contractor Financial Management Reporting.

As prescribed in 1842.7202, insert the following clause in contracts that require submission of NASA Form 533M or 533Q reports.

NASA Contractor Financial Management Reporting

August 1996.

(a) The Contractor shall submit NASA Contractor Financial Management Reports on NASA Forms 533 in accordance with the instructions in *NASA Contractor Financial Management Reporting* (NPG 9501.2) and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall correlate with technical

and schedule reporting, shall be set forth in the Schedule. Contractor implementation of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category and give due regard to the Contractor's established financial management information system.

(b) Lower level detail used by the Contractor for its own management purposes to validate information provided to NASA shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the Schedule or as directed in writing by the Contracting Officer. Upon completion and acceptance by NASA of all contract line items, the Contracting Officer may direct the Contractor to submit Form 533 reports on a quarterly basis only, report only when changes in actual cost occur, or suspend reporting altogether.

(d) The Contractor shall ensure that its NF 533 reports include accurate subcontractor cost data, in the proper reporting categories, for the reporting period.

(e) If, during the performance of this contract, NASA requires a change in the information or reporting requirements specified in the Schedule, or as provided for in paragraph (a) or (c) of this clause, the Contracting Officer shall effect that change in accordance with the Changes clause of this contract.

(End of clause)

1852.242–74 [Removed]

8. Section 1852.242–74 is removed.

[FR Doc. 96–26336 Filed 10–24–96; 8:45 am]

BILLING CODE 7510–01–M

Notices

Federal Register
Vol. 61, No. 208
Friday, October 25, 1996

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

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting:

NAME: Grain Inspection Advisory Committee.

DATES: November 19–20, 1996.

PLACE: Holiday Inn, Kansas City Airport, 11832 Plaza Circle, Kansas City, MO.

TIME: 8:30 a.m. November 19–20.

PURPOSE: To provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA) with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda includes: (1) GIPSA Financial Status, (2) Test Weight Conversion Project Report, (3) Implementation of the New Fees for Inspection and Weighing Services, (4) Networking Official Agencies, (5) Automation of Grain Inspection Functions, (6) Adoption of New Official Moisture Meter, and (7) SRW Research Needs.

The meeting will be open to the public. Public participation will be limited to written statements, unless permission is received from the Committee Chairman to address the Committee orally. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact the Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 3601, Washington, D.C. 20250–3601, telephone (202) 720–0219 or FAX (202) 205–9237.

Dated: October 21, 1996.

David R. Shipman,

Acting Administrator.

[FR Doc. 96–27461 Filed 10–24–96; 8:45 am]

BILLING CODE 3410–EN–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 25, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On May 31 and September 6, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 FR 27339 and 47113) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Kit, Pre-Inked Stamps
- 7520–00–NIB–1099 (.375″ x 1″)
- 7520–00–NIB–1105 (1.25″ x 2″)
- 7520–00–NIB–1107 (16 piece holder)
- 7520–00–NIB–1090 (16 piece basic or personal)

(Requirements for the U.S. Postal Service)

Stamp, Custom, Pre-inked
- 7520–01–381–8057
- 7520–01–381–8075
- 7520–01–381–8054
- 7520–01–381–8037
- 7520–01–381–8074
- 7520–01–381–8063
- 7520–01–352–7312
- 7520–01–368–7774
- 7520–01–381–8012
- 7520–01–381–8027
- 7520–01–419–6746
- 7520–01–419–6743
- 7520–01–419–6744
- 7520–01–381–7995
- 7520–01–381–7993
- 7520–01–381–8017
- 7520–01–357–6847
- 7520–01–357–6846
- 7520–01–419–6744
- 7510–01–381–8070
- 7510–01–381–8072
- 7510–01–381–8041
- 7510–01–381–8032
- 7510–01–368–3504
- 7510–01–381–8062

(Requirements for the U.S. Postal Service)

Service

Disposal Support Services
Gunter Air Force Base and Fort Rucker, Alabama

This action does not affect current contracts awarded prior to the effective

date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–27438 Filed 10–24–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 25, 1996.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Cord, Nylon
4020–00–240–2146
NPA: East Texas Lighthouse for the Blind, Tyler, Texas

Cap, Garrison
8410–01–381–5481
8410–01–381–5559
8410–01–381–5544
8410–01–381–5566
8410–01–381–5521
8410–01–381–5536
8410–01–381–5507
8410–01–381–5612
8410–01–381–5627
8410–01–381–5647
8410–01–381–5504
NPA: Goodwill Industries of South Florida, Inc., Miami, Florida

Services

Administrative Services
General Services Administration, PBS, Northwest/Arctic Region
NPA: Portland Habilitation Center, Portland, Oregon

Janitorial/Custodial
Buildings 1017, 1018, 1019, 1020, 37506, 37507 and 37508 Kirtland Air Force Base, New Mexico
NPA: Adelante Development Center, Inc., Albuquerque, New Mexico

Janitorial/Custodial
Naval Reserve Readiness Center, Seattle, Washington
NPA: Community Psychiatric Clinic, Seattle, Washington

Laundry Service
Yakima Training Center, Yakima, Washington
NPA: Yakima Specialties, Inc., Yakima, Washington

Mailroom Operation
Department of Health and Human Services, Gateway Building, Philadelphia, Pennsylvania
NPA: A.C.E. Industries, Inc., Exton, Pennsylvania

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–27439 Filed 10–24–96; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[DOCKET 32–96]

Foreign-Trade Zone 31—Granite City, Illinois; Application for Subzone, Shell Oil Company (Oil Refinery Complex), Madison County, Illinois

Notice is hereby given that the application of the Tri-City Port District, grantee of FTZ 31, requesting special-purpose subzone status for the oil refinery complex of Shell Oil Company, in Madison County, Illinois (Doc. 32–96, 61 FR 18379, 4/25/96) has been amended to include two additional sites.

The original application indicated that the refinery complex consisted of 3 sites and related pipelines in Madison County, Illinois, some 25 miles east of St. Louis, Missouri. The amendment includes two additional sites (Proposed Sites 4 and 5) that were inadvertantly omitted from the application: *Site 4* (60 acres)—docking facility located one mile east of the main refinery complex on the Mississippi River; and *Site 5* (270,000 barrel capacity)—LPG terminal and storage facility leased from Amoco Chemicals Corporation, located on Illinois Highway 111 adjacent to the refinery.

A copy of the application and the amendment and accompanying exhibits are available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, Suite 303, 8182 Maryland Avenue, St. Louis, Missouri 63105.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: October 16, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–27359 Filed 10–24–96; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 76–96]

Foreign-Trade Zone 176—Rockford, IL; Application for Subzone Status, Nissan Industrial Engine Manufacturing USA, Inc., Plant (Spark Ignition Industrial Engines), Marengo, IL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Rockford Airport Authority, grantee of FTZ 176, requesting special-purpose subzone status for the spark ignition industrial

engine manufacturing plant of Nissan Industrial Engine Manufacturing USA, Inc. (NIEM) (a Nissan Kohki Co., Ltd./ Nissan Forklift Corporation, North America joint venture), located in Marengo, Illinois. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 16, 1996.

The NIEM plant (11 acres/66,000 sq.ft.) is located at 19720 East Grant Highway (U.S. 20) in Marengo (McHenry County), some 66 miles west of Chicago, Illinois. The plant (28 employees) is used to produce spark ignition industrial engines (ranging from 40 to 70 hp) used in forklift trucks, construction equipment, generators, welders, and irrigation equipment (HTS# 8407.90.1010) for export and the domestic market. Most of the finished engines are shipped to U.S. forklift truck manufacturers. The production process involves assembly, testing, and warehousing. Components purchased from abroad (about 72% of total, by value) include: crankcases (blocks), cylinder heads, intake/exhaust manifolds, balancer shafts, connecting rods, piston sets, crankshafts, rocker arms, intake/exhaust valves, bearings, housings, flywheels, pulleys, gaskets, camshafts, timing chains, water pumps, magnetos, fasteners, spark plugs, gauges, electrical components, thermostats, oil filters, hoses and plastic molded parts (duty rate range: 0.4–9.1%). The application indicates that U.S.-sourced components will comprise some 29 percent of the finished engines' value within three years.

Zone procedures would exempt NIEM from Customs duty payments on the foreign components used in export production. On its domestic sales, the company would be able to choose the duty rate that applies to finished industrial engines (duty free) for the foreign inputs noted above. The application indicates that subzone status would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 24, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 8, 1997).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Export Assistance Center—Branch Office, P.O. Box 1747, 515 North Court Street, Rockford, IL 61110.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230–0002.

Dated: October 17, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–27360 Filed 10–24–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–845, A–570–846]

Preliminary Determinations of Critical Circumstances: Brake Drums and Brake Rotors from the People's Republic of China

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

EFFECTIVE DATE: October 25, 1996.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or Michelle A. Frederick, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–0186, respectively.

SUPPLEMENTARY INFORATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act.

Preliminary Determinations of Critical Circumstances

On October 3, 1996, the Department of Commerce (the Department) preliminarily determined, pursuant to section 733 of the Act, that brake drums and brake rotors from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (61 FR 53190 (October 10, 1996)). On September 18, 1996, the petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of brake drums and brake rotors. In accordance with 19 CFR 353.16(b)(2)(ii), since these allegations were filed later than 20 days before the scheduled date of the preliminary determinations, we must issue our preliminary critical circumstances determinations not later than 30 days after the allegations were submitted.

Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

Brake Drums

History of Dumping and Importer Knowledge

(a) Selected respondents. To determine whether there is a history of dumping of the merchandise under investigation, the Department normally considers evidence of an existing antidumping order on brake drums in the United States or elsewhere to be sufficient. Currently, there are no antidumping orders on brake drums from the PRC. Therefore, there is no history of dumped imports of brake drums from the PRC. In determining whether an importer knew or should have known that the exporter was selling the brake drums at less than fair value and thereby causing material injury, the Department normally considers margins of 15 percent or more sufficient to impute knowledge of dumping and of resultant material injury for constructed export price (CEP) sales, and margins of 25 percent or more for export price (EP) sales. *See, e.g., Final Preliminary Critical Circumstances Determination: Honey from the People's Republic of China (PRC)*, 60 FR 29824 (June 6, 1995) (*Honey*).

Since the company-specific margins for EP sales in our preliminary determination for brake drums are below 25 percent for China National Machinery Import & Export Corporation; Yantai Import & Export Corporation; Qingdao Metals & Machinery Import &

Export Corporation (Qingdao); and Beijing Xinchangyuan Automobile Fittings Corporation, Ltd., we have not imputed knowledge of dumping and injury with respect to these four selected respondents. Therefore, we have not analyzed the shipment data for these companies and find that critical circumstances do not exist with respect to these four companies.

(b) Non-selected respondents. The Department is not analyzing data for certain cooperative respondents due to the Department's own administrative constraints. Therefore, we do not believe it is appropriate to find critical circumstances with regard to these companies not selected for analysis. This is the approach we took in *Honey*, 60 FR at 29826.

(c) China-wide companies. For companies subject to the China-wide rate, we are imputing knowledge of dumping based on the China-wide rate (which is above 25 percent). *See id*.

Massive Imports

For cooperating selected respondents and cooperating non-selected respondents, it is not necessary to consider whether there have been massive imports since we found there was no history of dumping or importer knowledge. For companies subject to the China-wide rate (*i.e.*, companies which did not respond to the Department's questionnaire and companies which responded but were preliminarily denied separate rates), we determine, based on the facts available in accordance with section 776(a) of the Act, that there were massive imports of brake drums. *See id*. Therefore, we preliminarily determine that critical circumstances exist with regard to these companies.

Conclusion

We find that critical circumstances do not exist for brake drum sales by the following PRC firms:

China National Machinery Import & Export Corporation
Yantai Import & Export Corporation
Qingdao Metals & Machinery Import & Export Corporation
Beijing Xinchangyuan Automobile Fittings Corporation, Ltd.
China National Automotive Industry Import & Export Corporation, Shandong Laizhou CAPCO Machinery Co., Ltd., and CAPCO International USA (collectively CAIEC/CAPCO)
Jiuyang Enterprise Corporation
Hebei Metals and Machinery Import & Export Corporation
Longjing Walking Tractor Works Foreign Trade Import & Export Corporation
Shanxi Machinery and Equipment Import & Export Corporation

For all firms not named above, we find that critical circumstances do exist with respect to brake drums from the PRC.

Brake Rotors

History of Dumping and Importer Knowledge

(a) Selected respondents. To determine whether there is a history of dumping of the merchandise under investigation, the Department normally considers evidence of an existing antidumping order on brake drums in the United States or elsewhere to be sufficient. Currently, there are no antidumping orders on brake rotors from the PRC. Therefore, there is no history of dumped imports of brake rotors from the PRC. In determining whether an importer knew or should have known that the exporter was selling the brake rotors at less than fair value and thereby causing material injury, the Department normally considers margins of 15 percent or more sufficient to impute knowledge of dumping and of resultant material injury for constructed export price (CEP) sales, and margins of 25 percent or more for export price (EP) sales.

Since the company-specific margins in the preliminary determination for brake rotors are below 15 percent for CAIEC/CAPCO's CEP sales and 25 percent for CAIEC/CAPCO's EP sales, and below 25 percent for EP sales of Yantai Import & Export Corporation and China National Machinery and Equipment Import & Export (Xinjiang) Corporation, Ltd., we have not imputed knowledge of dumping and injury with respect to these three selected respondents. Therefore, we have not analyzed the shipment data for these companies, and find that critical circumstances do not exist for their sales of brake rotors.

Since the company-specific margins in our preliminary determination for brake rotors are above 15 percent for the CEP sales of Shenyang Honbase Machinery Corporation, Ltd., Laizhou Luyuan Automobile Fittings Corporation, Ltd. (collectively Shenyang/Laizhou) and Southwest Technical Import & Export Corporation, Yangtze Machinery Corporation, and MMB International, Inc. (collectively Southwest), and above 25 percent for EP sales of Southwest, we have determined that there is knowledge of dumping and of material injury with respect to these two selected firms.

(b) Non-selected respondents. As stated above with respect to brake drums, the Department is not analyzing data for certain cooperative respondents due to the Department's own administrative constraints. Therefore, we do not believe it is appropriate to find critical circumstances with regard to these companies not selected for analysis. This is the approach we took in *Honey*. *See* 60 FR at 29826.

(c) China-wide companies. For companies subject to the China-wide rate, we are imputing knowledge of dumping based on the China-wide rate (which is above 25 percent). *See id*.

Massive Imports

For the cooperating selected respondents (except for Shenyang/Laizhou and Southwest) and cooperating non-selected respondents, it is not necessary to consider whether there have been massive imports since we found there was no history of dumping or importer knowledge. However, for Shenyang/Laizhou and Southwest, because there is importer knowledge of dumping and resultant injury, we have examined whether there were massive imports of brake rotors by these two companies.

When examining the volume and value data, the Department typically compares the export volume for equal periods immediately preceding (*i.e.*, the pre-filing period) and following (*i.e.*, the post-filing period) the filing of the petition. Under 19 CFR 353.16(f)(2), unless the imports in the post-filing period have increased by at least 15 percent over the imports during the pre-filing period, we will not consider the imports to have been ''massive.'' In order to determine whether there have been massive imports of brake rotors for the companies for which we have determined that there is knowledge of dumping and material injury, we compared shipments from August 1995 to February 1996 (the pre-filing period) to shipments from March 1996 to September 1996 (the post-filing period). The data we received indicates that the increase in Southwest's shipment of brake rotors to the United States during the post-filing period did not increase by more than 15 percent. Therefore, we preliminarily find that critical circumstances do not exist with respect to sales of brake rotors by Southwest. However, Shenyang/Laizhou's shipment of brake rotors to the United States during the post-filing period did increase by more than 15 percent.

For companies subject to the China-wide rate (*i.e.*, companies which did not respond to the Department's questionnaire and companies which responded but were preliminarily denied separate rates), we determine, based on the facts available in accordance with section 776(a) of the

Act, that there were massive imports of brake rotors. *See id.* Therefore, we preliminarily determine that critical circumstances exist with regard to these companies.

Other Factors

Selected respondents. Our analysis pursuant to 19 CFR 353.16(f)(1)(ii) indicates no evidence that seasonal trends were a significant factor leading to the increase in Shenyang/Laizhou's shipments. We were unable to consider the share of U.S. consumption represented by Shenyang/Laizhou, because we have insufficient information with regard to the Shenyang/Laizhou's market share of U.S. domestic consumption. Because we have determined that Shenyang/Laizhou's purchasers knew or should have known that Shenyang/Laizhou was dumping brake rotors and thereby causing injury, and because Shenyang/Laizhou had massive imports over a relatively short period of time, we preliminarily determine that critical circumstances exist with respect to Shenyang/Laizhou's sales of brake rotors to the United States.

Conclusion

We find that critical circumstances do not exist for the following PRC brake rotors firms:

China National Automotive Industry Import & Export Corporation, Shandong Laizhou CAPCO Machinery Co., Ltd., and CAPCO International USA (collectively CAIEC/CAPCO)
Yantai Import & Export Corporation
Southwest Technical Import & Export Corporation, Yangtze Machinery Corporation, and MMB International, Inc. (collectively Southwest)
China National Machinery and Equipment Import & Export (Xinjiang) Corporation, Ltd.
Qingdao Metals & Machinery Import & Export Corporation
Xianghe Zichen Casting Corporation
Jiuyang Enterprise Corporation
Hebei Metals and Machinery Import & Export Corporation
Yenhere Corporation
Longjing Walking Tractor Works Foreign Trade Import & Export Corporation
Jilin Provincial Machinery & Equipment Import & Export Corporation
Shanxi Machinery and Equipment Import & Export Corporation

We find that critical circumstances exist for Shenyang/Laizhou. In addition, for companies subject to the China-wide rate, we are imputing knowledge based on the China-wide rate (which is above 25 percent), and determine, based on the facts available, that there were massive imports of brake rotors by companies which did not respond to the Department's questionnaire (*see Honey*, 60 FR at 29826). Therefore, we preliminarily determine that critical circumstances exist with regard to these companies.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, we are directing the Customs Service to suspend liquidation of all entries of brake drums from PRC firms found to have critical circumstances that are entered, or withdrawn from warehouse, for consumption on or after July 12, 1996 (*i.e.*, 90 days prior to the date of publication of our preliminary determination in the Federal Register).

For brake rotors, we are directing the Customs Service to suspend liquidation of all entries of brake rotors from Shenyang/Laizhou and all other PRC firms found to have critical circumstances that are entered, or withdrawn from warehouse, for consumption on or after July 12, 1996 (*i.e.*, 90 days prior to the date of publication of our preliminary determination in the Federal Register).

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determinations which were published in the Federal Register. This suspension of liquidation will remain in effect until further notice.

Final Critical Circumstances Determinations

We will make final determinations concerning critical circumstances when we make our final determinations of sales at less than fair value in these investigations, which will be by February 24, 1997.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations.

These determinations are published pursuant to section 733(f) of the Act.

Dated: October 18, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–27357 Filed 10–24–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–609]

Color Picture Tubes from Japan; Extension of Time Limit of Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for preliminary results in the administrative review of the antidumping duty order on color picture tubes (CPTs) from Japan, covering the period January 1, 1995, through December 31, 1995, because it is not practicable to complete the review within the time limits mandated by the Tariff Act of 1930 (the Act), as amended, 19 U.S.C. 1675(a)(3)(A).

EFFECTIVE DATE: October 25, 1996.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Kris Campbell, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreement Act.

SUPPLEMENTARY INFORMATION:

Background

On February 20, 1996, the Department initiated an administrative review of the antidumping duty order on CPTs from Japan covering the period January 1, 1995, through December 31, 1995 (61 FR 6347). In our notice of initiation we stated that we intended to issue the final results of this review not later than January 31, 1997.

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to issue preliminary results within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to issue the preliminary results in 245 days, section 751(a)(3)(A) allows the Department to extend this time period to 365 days.

We determine that it is not practicable to issue the preliminary results of this review within 245 days because the review involves collecting and analyzing data for a large volume of U.S. sales during the period of review. Given the volume of this data, we must address complicated issues related to further manufacturing and to our model match methodology. See Memorandum from Office Director for AD/CVD

Enforcement to Deputy Assistant Secretary for Import Administration, on file on Room B–099 at the Department.

Accordingly, the deadline for issuing the preliminary results of this review is now not later than January 30, 1997. The deadline for issuing the final results will be 120 days after publication of the preliminary results. This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: August 30, 1996.

Barbara Stafford,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–27463 Filed 10–24–96; 8:45 am]

BILLING CODE 3510–DS–M

[C–557–806]

Extruded Rubber Thread From Malaysia; Final Results of Countervailing Duty Administrative Review

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

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On June 11, 1996, the Department of Commerce (''the Department'' published in the Federal Register its preliminary results of administrative review of the countervailing duty order on extruded rubber thread from Malaysia for the period January 1, 1994 through December 31, 1994 (61 FR 29534). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: October 25, 1996.

FOR FURTHER INFORMATION CONTACT: Judy Kornfeld, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 355.22(a) of the Department's Interim Regulations, this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. *See Antidumping and Countervailing Duties: Interim Regulations; request for comments,* 60 FR 25130, 25139 (May 11, 1995) (''*Interim Regulations*''). Accordingly, this review covers Heveafil Sdn. Bhd., Filmax Sdn. Bhd., Rubberflex Sdn. Bhd., Filati Elastofibre Sdn. Bhd. (Filati), and Rubfil Sdn. Bhd. Heveafil and Filmax are affiliated companies. This review also covers the period from January 1, 1994 to December 31, 1994 and 13 programs.

Since the publication of the preliminary results on June 11, 1996 (61 FR 29534), the following events have occurred: We invited interested parties to comment on the preliminary results. On July 11, 1996, case briefs were submitted by the Government of Malaysia (GOM) and Heveafil, Filmax, Rubberflex, Filati and Rubfil, producers of the subject merchandise which exported extruded rubber thread to the United States during the review period (respondents).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (''the Act''). References to the *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366 (May 31, 1989) (''*Proposed Regulations*''), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the URAA. *See Advance Notice of Proposed Rulemaking and Request for Public Comments,* 60 FR 80 (January 3, 1995).

Scope of the Review

Imports covered by this review are shipments of extruded rubber thread from Malaysia. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural latex of any cross sectional shape; measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Such merchandise is classifiable under item number 4007.00.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description is dispositive.

Affiliated Parties or Trading Companies

Heveafil owns and controls Filmax and both companies produce subject merchandise. Therefore, we determine them to be affiliated companies under section 771(33) of the Act. As such, and consistent with prior reviews of this order, we have calculated only one rate for both of these companies. *See Extruded Rubber Thread From Malaysia; Preliminary Results of Countervailing Duty Administrative Review,* 59 FR 46392 (September 8, 1994). For further information, *see Memorandum to File from Judy Kornfeld Regarding Status as Affiliated Parties* dated May 22, 1996, on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce.

Verification

As provided in section 782(i) of the Act, we verified information provided by the Government of Malaysia, and Heveafil, Filmax, Rubberflex, Filati and Rubfil, producers/exporters of the subject merchandise. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting and original source documents. Our verification results are outlined in the public versions of the *Verification Reports*, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Analysis of Programs

Based upon the responses to our questionnaires, the results of verification, and written comments from interested parties we determine the following:

I. Programs Conferring Subsidies

Programs Previously Determined to Confer Subsidies

A. Export Credit Refinancing (ECR)

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings in the preliminary results for this program. Accordingly, the net subsidies from pre-shipment loans are as follows:

Manufacturer/exporter	Rate (percent)
Heveafil/Filmax	0.21

Manufacturer/exporter	Rate (percent)
Rubberflex	0.19
Filati	0.00
Rubfil	0.15

The net subsidies from post-shipment loans are as follows:

Manufacturer/exporter	Rate (percent)
Heveafil/Filmax	0.00
Rubberflex	0.00
Filati	1.39
Rubfil	0.08

B. Pioneer Status

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program are as follows:

Manufacturer/exporter	Rate (percent)
Heveafil/Filmax	0.00
Rubberflex	0.00
Filati	0.00
Rubfil	0.15

C. Industrial Building Allowance

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties. Accordingly, the net subsidies for this program are as follows:

Manufacturer/exporter	Rate (percent)
Heveafil/Filmax	<0.005
Rubberflex	0.00
Filati	0.00
Rubfil	0.00

D. Double Deduction for Export Promotion Expenses

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties. Accordingly, the net subsidies for this program are as follows:

Manufacturer/exporter	Rate (percent)
Heveafil/Filmax	0.02
Rubberflex	0.00
Filati	0.00
Rubfil	0.00

II. Programs Found to be Not Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

- Investment Tax Allowance,
- Abatement of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales,
- Abatement of Five Percent of Taxable Income Due to Location in a Promoted Industrial Area,
- Abatement of Taxable Income of Five Percent of Adjusted Income of Companies due to Capital Participation and Employment Policy Adherence,
- Double Deduction of Export Credit Insurance Payments,
- Abatement of Taxable Income of Five Percent of Adjusted Income of Companies Due to Capital Participation and Employment Policy Adherence, and
- Preferential Financing for Bumiputras.

Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1: Respondents allege that the Department initiated the original investigation pursuant to Section 303(a)(2) of the Act, and, therefore, the Department can impose countervailing duties under this section only if there is an injury determination by the International Trade Commission (ITC). (The ITC discontinued its injury determination under Section 303(a)(2) because the duty-free status of rubber thread from Malaysia was terminated.) Respondents contend that without an injury determination, the Department had no authority to issue a countervailing duty order and to require the payment of cash deposits. Respondents further maintain that the Department cannot simply transfer the jurisdiction for an investigation from Section 303(a)(2) to Section 303(a)(1) without issuing a public notice that it intends to proceed with the investigation under a different statutory provision. *See, Certain Textile Mill Products and Apparel from Turkey* (50 FR 9817; March 12, 1987); *Certain Textile Mill Products and Apparel from the Philippines* (50 FR 1195; March 26, 1985) and *Certain Textile Mill Products and Apparel from Indonesia* (50 FR 9861; March 12, 1985). Furthermore, because there was no initiation notice or a preliminary determination under Section 303(a)(1), a final determination under that section was not appropriate. If the Department wanted to proceed with the investigation, it was required to reinitiate under the appropriate provision.

In addition, respondents argue that the Department's untimeliness theory in previous reviews is misplaced. They state that the Department has the power to modify its judgements or correct its errors and that *Ceramica Regiomontana* v. *United States,* 64 F.3d 1579 (Fed. Cir. 1995) (*Ceramica 1995*) confirmed the right to challenge the continuing validity of an order during a review proceeding.

Department's Position: As the Department pointed out in the previous reviews, respondents' challenge to the Department's authority to issue the order is untimely. Challenges to the issuance of an order must be filed within 30 days of the date the order is published. See 19 U.S.C. § 1516a(a)(2). The countervailing duty order on extruded rubber thread from Malaysia was published on August 25, 1992. Respondents voluntarily withdrew a timely-filed complaint challenging the order on these same grounds. Respondents' attempt to revive that challenge in this proceeding is untimely.

Contrary to respondents' assertions, there was no requirement that the Department reinitiate its investigation as a result of the decision by the United States to terminate the duty-free status of Malaysian rubber thread. Indeed, respondents' interpretation could create an impermissible gap in statutory coverage, which Congress did not intend. *See Techsnabexport, Ltd.* v. *United States,* 802 F. Supp. 469, 472 (CIT 1992). Nor do the administrative cases relied upon by respondents support their position. In those cases, the Department published notice that authority to continue the particular investigations was transferred from section 303 of the Tariff Act of 1930 to Title VII of the Act.

In the course of administrative reviews conducted under this order, respondents have misconstrued judicial precedent regarding the correction of ''jurisdictional defects.'' *Gilmore Steel Corp.* v. *United States,* 585 F. Supp. 670, 674 (CIT 1984) (*Gilmore*), involved a challenge to the termination of a pending investigation based upon information obtained in the course of that investigation. In particular, the petitioner contended that the

Department lacked the authority to rescind the investigation based upon insufficient industry support for the petition after the 20-day initiation period had elapsed. 585 F. Supp. at 673. In upholding the Department's determination, the court recognized that administrative officers have the authority to correct errors, such as ''jurisdictional defects,'' at anytime during the proceeding. *Id.* at 674–75. The court did not state or imply that the Department may reverse a decision to issue an antidumping duty order in the context of an administrative review under section 751 of the Act. Indeed, the case did not even involve an administrative review. The court simply held that the administering authority may, in the context of the original investigation, rescind an ongoing proceeding after expiration of the 20-day initiation period. In short, *Gilmore* says nothing to excuse respondents' failure to timely challenge the issuance of the order in this case.

Similarly, we disagree with respondents' reliance on *Ceramica 1995*. *Ceramica 1995* challenged the continued imposition of countervailing duties following Mexico's change in status to a ''country under the Agreement'' which entitled it to an injury test. Unlike respondents, *Ceramica 1995* did not challenge the validity of the original countervailing duty order, nor did the Federal Circuit determine that the issuance of the order was invalid. Consequently, *Ceramica 1995* is a similarly inappropriate basis to excuse respondents' failure to timely challenge the issuance of the order.

Comment 2: Respondents argue that the Department must liquidate entries during 1994 without regard to countervailing duties because the URAA does not provide an injury test for 1994 entries as required under the Agreement on Subsidies and Countervailing Measures (Subsidies Agreement). Citing Article 32.3 of the Subsidies Agreement, respondents argue that the Subsidies Agreement is applicable to all reviews, including the instant review, initiated pursuant to requests made after January 1, 1995. Respondents argue that the requirements of the Agreement include the application of an injury test to entries covered by such a review. According to respondents, however, the URAA did not provide a mechanism to implement this obligation; rather, the URAA only provides an injury test for merchandise entered on or after January 1, 1995. Therefore, respondents assert that assessment of countervailing duties on 1994 entries would violate U.S. obligations under the Subsidies Agreement.

Department's Position: Respondents have misinterpreted both U.S. law and the Subsidies Agreement. There is no legal basis under U.S. law for respondents' claim. Because Malaysia became a Subsidies Agreement country on January 1, 1995, only entries made on or after January 1, 1995 are entitled to the injury test. *See* section 753 of the Act; 19 U.S.C. § 1675b. Section 753(a)(4) makes this clear by suspending liquidation of entries of subject merchandise made ''on or after * * * the date on which the country * * * becomes a Subsidies Agreement country * * *'' *See, also, Ceramica Regiomontana, S.A.* v. *United States,* 64 F3d 1579 (Fed. Cir. 1995) (the right to an injury test is conferred at the time of importation (entry) in the United States). Therefore, countervailing duties may be assessed on Malaysian imports entered before January 1, 1995, without regard to an injury test.

Moreover, Article 32.3 of the Subsidies Agreement does not require an injury determination for merchandise entered prior to January 1, 1995. (*See, also, Footwear from Brazil* GATT Panel Decision confirming that liability for countervailing duties attaches at the time of importation, not assessment.) In sum, given that the subject merchandise was not entitled to an injury determination when it was entered in 1994, liability for countervailing duties attached at the time of entry. Therefore, there is no obligation under the Subsidies Agreement to supply an injury test to these 1994 entries.

Comment 3: Respondents argue that the Department improperly assigned company-specific rates without first determining whether the overall country-wide subsidy rate was above *de minimis*. They contend that the Department acted contrary to its established practice of applying its two-part test in measuring levels of subsidization. According to respondents, the Department should first calculate the net subsidy on a country-wide basis to determine whether the country-wide rate was above *de minimis,* in accordance with *Ceramica Regiomontana, S.A.* v. *United States,* 853 Supp. 431,439 (Ct. Int'l Trade 1994) (*Ceramica 1994*). If the country-wide benefit is *de minimis*, the overall subsidy level would be zero. Only if the country-wide rate was above *de minimis* would the Department proceed to the second step of its test to determine if individual rates would apply. Respondents cite *Certain Iron Metal Castings from India, Preliminary Results of Countervailing duty Administrative Review* (61 FR 25623; May 22, 1996); *Carbon Steel Butt-Welde Pipe Fittings from Thailand; Final Results of Countervailing Administrative Review* (61 FR 4959; Feb. 9, 1996); *Extruded Rubber Thread from Malaysia, Final Results of Countervailing Duty Administrative Review* (60 FR 51982, 51983; October 4, 1995), in which the Department applied its two-step test.

According to respondents, as a precondition to imposing countervailing duties, the statute requires subsidization to occur with respect to imports of the subject merchandise on an overall or aggregated basis. In addition, respondents contend that the URAA altered the assessment provision but not the requirement to determine whether subsidies were being provided on a country-wide basis.

Department's Position: There is no legal basis to support respondents' argument. Pursuant to the URAA, there is no longer a preference for calculating a single country-wide subsidy rate in countervailing duty proceedings. The URAA replaced the former practice of calculating subsidies on a country-wide basis in favor of individual rates for reviewed companies. The procedures for countervailing duty cases are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. *See also* section 355.22 of the *Interim Regulations* (60 FR 25130; May 11, 1995). Section 777A(e) requires the calculation of an individual countervailable subsidy rate for each known producer/exporter of the subject merchandise, except where it is not practicable to determine individual countervailable subsidy rates because of the large number of exporters or producers involved in the investigation or review. This exception was inapplicable in this review as there were only five known producers/exporters.

As a result, the judicial and administrative precedents relied upon by respondents are inappropriate as they refer to the requirements as they existed prior to the URAA. All of the reviews cited by respondents were requested and initiated prior to January 1, 1995, the effective date of the URAA. More pertinent citations would be to reviews conducted under the URAA. *See, e.g., Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Countervailing Duty Administrative Review* (61 FR 20,238, 20,242; May 6, 1996), since that review was initiated pursuant to requests for administrative reviews filed after January 1, 1995.

Comment 4: Respondents argue that the Department cannot countervail

benefits under the ECR loan program or the Pioneer Industries program because neither involves a financial contribution by the GOM. The WTO Subsidies Agreement defined the term ''subsidy'' as one involving a ''financial contribution,'' therefore adding a new requirement to the pre-existing notion of a subsidy. Accordingly, a program cannot be a countervailable subsidy unless it involves a ''financial contribution.'' In the case of the ECR loans, they argue that there is no financial contribution because the funds that the GOM lends to exporters generate a profit—the funds are lent on a short-term basis at an interest rate higher than the cost of those funds. And in the case of the Pioneer Industries program, they argue that because the only company claiming the tax exemption would have paid the same amount of taxes without the exemption, the GOM did not forgo or fail to collect any revenues as a result of the program. Respondents believe that the Department's preliminary determination overlooks this new requirement.

Department's Position: We disagree with respondents that the Department overlooked the requirement of financial contribution. Under section 771(5)(D)(i) and (ii) of the Act, a financial contribution is defined as ''the direct transfer of funds, such as grants, loans, and equity infusions, or the potential direct transfer of funds or liabilities, such as loan guarantees,'' or ''foregoing or not collecting revenue that is otherwise due, such as granting tax credits or deductions from taxable income.'' The ECR loan and Pioneer Industries tax programs clearly fall within these definitions. We also note that under Article 1.1(a)(1)(i) and (ii) of the Subsidies Agreement, a financial contribution is defined as ''where government practice involves a direct transfer of funds (e.g., grants, loans, and equity infusions), potential direct transfers of funds or liabilities (e.g., loan guarantees)'' or ''government revenue that is otherwise due, is foregone or not collected (e.g., fiscal incentives such as tax credits).''

Respondents mistakenly focus on the ''financial contribution'' concept in terms of the cost to the Malaysian government. As explained in the previous reviews, the Department has a longstanding practice of valuing the benefit to the recipient rather than the cost to the government for the purpose of calculating countervailing duty rates. This practice is now reflected in section 771(5)(E) of the Act, which states that the subsidy benefit ''shall normally be treated as conferred where there is a benefit to the recipient.'' In addition, Article 14 of the Subsidies Agreement defines the method for calculating the amount of a subsidy in terms of the benefit to the recipient.

In the case of ECR loans, the funds that the GOM lends to the exporters are lent on a short-term basis at an interest rate below the commercial benchmark rate. In the case of the Pioneer Industries program, a company that has received pioneer status is allowed not to pay taxes otherwise due to the government. (Also, *see* Department's Position to Comment 10 on Pioneer Status.) Therefore, under both programs, financial contributions are provided to the recipients (the respondents) and the Department properly treated those benefits as countervailable subsidies.

Comment 5: Respondents contend that the Department overstated the benefit received under the ECR program in its administrative review because it used an inappropriate benchmark. They argue that the Department should rely on its past practice of using the bankers' acceptances (BA) rates because they are identical to ECR financing in terms of risk, maturity and purpose. Respondents further contend that the Department's use of the ''predominant source'' of financing as a benchmark is no longer authorized. Instead, the URAA requires that the calculation of any benefits be based upon ''the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan'' (citing 19 U.S.C. § 1677(E)(ii)). They assert that it makes no sense to compare trade financing to other financing such as short-term loans and overdrafts and that BAs are the most comparable form of financing.

Department's Position: We first note that the respondents are incorrect when they state that the Department should rely on its past practice of using BA rates as the benchmark. In each of the prior administrative reviews of this order, the Department has used the Base Lending Rate (BLR) as the commercial benchmark rather than the BA rate. However, we do agree with respondents that the benchmark should be comparable to the government loan in question. To the extent that the predominant source of financing is not comparable to the loans in question or could not actually be obtained by the exporter, then we agree that the predominant source of financing cannot be used as a benchmark under the new statute.

In Malaysia, ECR financing was provided in two different forms: it was provided as a line of credit based on the company's previous 12 months' export performance, and it was also provided based on the financing of the invoice, with the interest discounted. The maximum period for a loan based on invoice financing is 180 days. However, if the exporter receives early payment on the sale from its customer, then the exporter is required to repay the loan at that time rather than at the end of 180 days. The exporter also assumes the risk for late-payment or non-payment. With financing under the line of credit, the exporter is charged interest based on the outstanding balance and that interest must be paid on a monthly basis.

Based upon the information on the record, we have determined that BAs are a comparable form of alternative short-term financing available to respondents for post-shipment loans under the ECR program. Both BAs and post-shipment loans are short-term borrowing instruments used in trade financing of exports. Therefore, we have used the 1994 BA rates and commissions provided at verification (*see, Verification Report* for the Government of Malaysia, Exhibit 10) as the benchmark for ECR post-shipment loans and have recalculated the benefit conferred by these loans using this revised benchmark. However, we disagree that BAs are comparable to ECR pre-shipment loans. This is because pre-shipment financing used by the respondents is based on a line of credit, much like a general short-term loan in the Malaysian market. We are using the BLR because we have verified, based on meetings with commercial banks in Malaysia, that the BLR serves as the basis for determining the interest rates charged by commercial banks in Malaysia on short-term loans, which would include short-term borrowing using a line of credit.

Comment 6: Respondents argue that, if the Department does not use the BA benchmark, it should use the Average Lending Rate (ALR) provided in the *Bank Negara Statistical Bulletin* rather than the BLR plus an estimated spread. If the Department, nevertheless, uses this method, then the spread should be calculated by deducting the average BLR rate calculated by the Department from the ALR published in the *Bank Negara Statistical Bulletin.*

Department's Position: We disagree with respondents. The most appropriate benchmark for pre-shipment financing under the ECR program is based upon the BLR. During verification of the 1992 and 1994 administrative reviews, we found that ALR rates published in the *Bank Negara Statistical Bulletin* included both short-term and long-term rates, while the BLR rates are strictly based on short-term loans. (*See Memorandum to the File from Judy*

Kornfeld and Lorenza Olivas Regarding Extruded Rubber Thread from Malaysia; Benchmark Information (Public Document) dated August 15, 1995, on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce). Therefore, we disagree with respondents that we should use the ALR rate because it would improperly include long-term rates. Finally, we disagree with respondents' argument that we should calculate the spread by deducting the average BLR rate from the average of the ALR rates because this would again improperly include long-term rates in the benchmark calculation and it does not reflect the spread that the commercial banks charge above the BLR rate on short-term loans. During verification, commercial banking officials stated that the BLR serves as the basis for determining the short-term interest rates charged by commercial banks in Malaysia. The commercial bank officials also stated that banks add a 1.00 to 2.00 percent spread to the BLR. (*See, Verification Report* of Commercial Bank.) Accordingly, we have determined that it is appropriate to continue to use the average of the commercial BLR rates published in *Bank Negara Statistical Bulletin,* plus an average 1.5 percent spread, as a benchmark.

Comment 7: Respondents contend that the Department should not have used a single annual average benchmark interest rate because it distorts the analysis in a year characterized by steadily decreasing interest rates. The Department previously used a semi-annual average benchmark interest rate in the 1987 and 1988 reviews of *Oil Country Tubular Goods from Argentina; Final Results of Countervailing Duty Administrative Reviews,* 56 FR 38118 (August 12, 1991) (*OCTG*). Respondents claim that because the loans in this review had a normal maturity of 180 days and the rates were fixed at the time of the loan initiation, they fit the same conditions as in *OCTG.*

Department's Position: We disagree with respondents. Our practice, as reflected in section 355.44(b)(3)(ii) of the *Proposed Regulations,* is that ''unless short-term interest rates in the country in question have fluctuated significantly during the year in question, the Secretary will calculate a single, annual average benchmark interest rate.'' In the *OCTG* case relied upon by respondents, there was significant hyperinflation and an average annual rate would therefore have been distorted by the compounding of very high monthly interest rates which varied widely from the first to the second half of the year of review. See *OCTG* at 38118. Respondents have not shown any comparable circumstances in Malaysia to warrant the use of semi-annual average rates.

Comment 8: Respondents argue that the Department overstated the net subsidy for the review period and for duty deposit purposes because in calculating eligibility for the pre-shipment export financing, the Department failed to take account of the exclusion by Heveafil and Filmax of U.S. exports from the calculation of eligibility for the pre-shipment export financing. In addition, respondents claim that the two companies did not use funds from exports to the United States to repay any of the pre-shipment loans. They claim that in a similar situation, the Department concluded that exports to the United States did not receive benefits from short-term financing. *See, Suspension of Countervailing Duty Investigation; Certain Forged Steel Crankshafts from Brazil* (52 FR 28177, 28179; July 28, 1987) (*Brazilian Crankshafts Suspension Agreement*). Although in the first administrative review, the Department rejected this method of eliminating the effect of a subsidy, respondents maintain that Heveafil and Filmax received no benefit with regard to U.S. shipments.

Respondents further assert that the Department found a subsidy in this case in part because there was no strict segregation of U.S. exports and the materials used in their manufacture from materials and exports to other markets financed with ECR loans. However, according to the respondents, the Department was presented with exactly the same issue in *Crankshafts from Brazil* and in that case the Department did not require that the exporters segregate raw materials purchased with export financing.

Department's Position: The GOM provides ECR financing based on export performance. The explicit purpose of this program is to promote the export of manufactured and approved agricultural products. Two types of ECR financing are available: pre-shipment and post-shipment financing. There is no evidence that the GOM limits these ECR loans to increase exports only to markets other than the United States, nor is there evidence of a provision that prevents exporters from receiving ECR loans for exports to the United States.

During the review period, both Heveafil and Filmax applied for and used pre-shipment financing based on certificates of performance (CP). Pre-shipment financing based on CPs is a line of credit based on previous exports and, when received, cannot be tied to specific sales in specific markets. Where a benefit is not tied to a particular product or market, it is the Department's practice to allocate the benefit to all products exported by a firm where the benefit is received pursuant to an export program. *See* 19 C.F.R. § 355.47(c) of the *Proposed Regulations* (54 FR 23375, May 31, 1989). Because pre-shipment loans were not shipment-specific, we included all loans in calculating the company-specific duty rate.

By excluding exports to the United States from their application for export financing, the companies merely reduced the amount of financing they received. Reducing the pool of funds available for total export financing does not eliminate financing to any particular market or for any particular product. Tying occurs in the provision of the subsidy, usually through government mandate requirements or in certain limited situations where the application for the subsidy can be isolated to specific shipments, e.g. post-shipment loans provided on a shipment-by-shipment basis where the company can demonstrate through source documentation that it did not apply for or receive loans on shipments to the U.S. *See Certain Iron Metal Castings from India; Preliminary Results of Countervailing Duty Administrative Review* (61 FR 25623; May, 22 1996). Hence, the companies did not eliminate financing for U.S. exports.

We disagree with respondents that in similar circumstances the Department has concluded that the exclusion of U.S. exports from applications in the manner described by respondents eliminates any countervailable subsidy that would otherwise be present. As stated in the last review, respondents' reliance on the *Crankshafts from Brazil* suspension agreement is misplaced. Suspension agreements are unusual, negotiated arrangements in which parties to a proceeding agree to renounce countervailable subsidies. As such, unlike final determinations, they do not serve as administrative precedent. Moreover, the *Crankshafts from Brazil* suspension agreement is consistent with our allocation practice, as described in the *Proposed Regulations.*

Comment 9: Respondents argue that the Department previously found the Pioneer Status Program not countervailable. *See, Carbon Steel Wire Rod from Malaysia; Final Results of Countervailing Duty Administrative Review;* 56 FR 14927 (April 12, 1991) (*Wire Rod*). Respondents assert that it is not countervailable because tax benefits under this program are not limited to

any sector or region of the Malaysian economy, nor is the program exclusively available to exporting companies. They contend that the Department confirmed in the first administrative review, both the *de jure* and *de facto* availability of this program to the entire Malaysian economy, and that the pioneer status tax benefits are not targeted to specific industries or companies in a discriminatory manner. Furthermore, the Department verified in the original investigation that the internal guidelines used to grant pioneer status are characterized by neutral criteria unrelated to exports, location or any other factors that could require a determination that the program is countervailable.

Respondents further argue that the Department verified in the first administrative review that the GOM does not require export commitments, or view them as preponderant, in evaluating applications; that export potential is merely one of 12 factors considered in granting status; and that a product will not be accepted based on export potential alone. Furthermore, respondents argue that the Department verified in the first administrative review that the GOM commonly approves companies that do not make export commitments as well as some that do make them. Therefore, export performance is not viewed as a preponderant factor, but as one of many neutral criteria.

Department's Position: We addressed this identical argument in the previous review. In *Wire Rod*, we concluded that benefits were not used by a specific industry or group of industries and that no industry or group of industries used the program disproportionately and found the program not to be countervailable. That determination, however, did not specifically address situations where companies had a specific export condition attached to their pioneer status approval. In the *Wire Rod* investigation, petitioner raised the issue of an export requirement. Although the requirement per se is not new, it was not at issue with the companies investigated in *Wire Rod*.

In this case, recipients of the tax benefits conferred by Pioneer Status can be divided into two categories: industries and activities that will find market opportunities in Malaysia and elsewhere, and those that face a saturated domestic market. At verification of the first administrative review, we established that an export requirement may sometimes be applied to certain industries after it is determined that the domestic market will no longer support additional producers. The extruded rubber thread industry is among these industries.

The combination of the necessary export orientation of the industry due to lack of domestic market opportunities and the explicit export condition attached to pioneer status approval in the rubber thread industry lead us to conclude that the Pioneer Status program constitutes an export subsidy to the rubber thread industry. Whether or not the commitment was voluntary, as respondents suggest, the company has obligated itself to export a very large portion of its production, and that commitment was a condition for approval of benefits.

Comment 10: Respondents argue that the Department overstated the benefit from the Pioneer Status program because it failed to deduct the normal capital allowances that would have been allowed if the program had not been used. Respondents claim that Rubfil, in fact, received no cash benefits from this program. Furthermore, they claim, the Department incorrectly allocated pioneer status tax benefits over only export sales even though pioneer status tax benefits are also applicable to profits on domestic sales. According to the respondents, this is inconsistent with the Department's practice to allocate benefits over total sales to which they are ''tied.''

Department's Position: We disagree with respondents. When a company receives pioneer status, it is allowed to accumulate the normal capital allowances for use in future years. Rubfil did not pay income taxes during the period of review because of its pioneer status. Therefore, a benefit has been conferred upon the company because it used its pioneer status to offset income. Rubfil is also able to accumulate capital allowances which can be used to offset taxable income in the future, after its pioneer status expires. Moreover, export sales should form the denominator because receipt of pioneer status tax benefits for the companies under review is contingent upon exportation. Accordingly, we have not overstated the benefit from the Pioneer Status Program. *See* section 355.47(a)(2) of the *Proposed Rules. See also Final Affirmative Countervailing Duty Determination; Certain Agricultural Tillage Tools From Brazil* (50 FR 34525; August 26, 1985) and *Certain Iron-Metal Castings From India; Preliminary Results of Countervailing Duty Administrative Review* (60 FR 44839; August 29, 1995).

Comment 11: In calculating the benefit involving the industrial building allowance and double deduction for export promotion expenses, respondents claim that the Department used a different ''total export'' figure for Heveafil and Filmax than was used for calculating the benefit involving ECR financing. The second ''total export'' figure appears to be the result of a clerical error.

Department's Position: We agree with respondents. The second ''total export'' figure has been corrected in the final calculation.

Final Results of Review

In accordance with section 355.22(c)(4)(ii) of the Department's *Interim Regulations,* we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1994 through December 31, 1994, we determine the *ad valorem* net subsidies to be:

Net subsidies—producer/exporter	Net subsidy rate (percent)
Heveafil/Filmax	0.23
Rubberflex	0.19
Filati	1.39
Rubfil	0.38

We will instruct the U.S. Customs Service (''Customs'') to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. As provided for in the Act, any rate less than 0.5 percent *ad valorem* in an administrative review is *de minimis.* Accordingly, for those producers/exporters no countervailing duties will be assessed or cash deposits required.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* section 355.22(a) of the *Interim Regulations.* Pursuant to 19 C.F.R. § 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate

previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 C.F.R. § 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 C.F.R. § 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding. *See Extruded Rubber Thread From Malaysia; Final Results of Countervailing Duty Administrative Review*, 60 FR 51982 (October 4, 1995). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1994 through December 31, 1994, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This countervailing duty order was determined to be subject to section 753 of the Act (as amended by the Uruguay Round Agreements Act of 1994). *Countervailing Duty Order; Opportunity to Request a Section 753 Injury Investigation*, 60 FR 27,963 (May 26, 1995), amended 60 FR 32,942 (June 26, 1995). In accordance with section 753(a), domestic interested parties have requested an injury investigation with respect to this order with the International Trade Commission (ITC). Pursuant to section 753(a)(4), liquidation of entries of subject merchandise made on or after January 1, 1995, the date Malaysia joined the World Trade Organization, is suspended until the ITC issues a final injury determination. We will not issue assessment instructions for any entries made after January 1, 1995; however, we will instruct Customs to collect cash deposits in accordance with the final results of this administrative review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. § 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: October 9, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–27358 Filed 10–24–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 101896B]

North Pacific Fishery Management Council; Crab Team Teleconference

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of teleconference.

SUMMARY: The North Pacific Fishery Management Council's (Council) Crab Fishery Management Plan Team will meet by teleconference on November 12, 1996, beginning at 11:00 a.m., Alaska Time.

ADDRESSES: The teleconference will be held at the Council office, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Dave Witherell, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include the following subjects.

1. Crab prohibited species catch management for groundfish pot fisheries.
2. Observer collection of crab bycatch data.
3. Crab Fishery Management Plan update.
4. Other crab-related issues which might arise.

Special Accommodations

This meeting will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: October 18, 1996.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–27464 Filed 10–24–96; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Citizens Band Base Station Antennas

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed reinstatement of approval of a collection of information from manufacturers and importers of citizens band base station antennas. The collection of information is in regulations implementing the Safety Standard for Omnidirectional Citizens Band Base Station Antennas (16 CFR Part 1204). These regulations establish testing and recordkeeping requirements for manufacturers and importers of antennas subject to the standard. The Commission will consider all comments received in response to this notice before requesting a reinstatement of approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than December 24, 1996.

ADDRESSES: Written comments should be captioned ''Citizens Band Base Station Antennas'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For information about the proposed reinstatement of approval of the collection of information, or to obtain a copy of 16 CFR Part 1204, call or write Carl Blechschmidt, Action Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0416, extension 2243.

SUPPLEMENTARY INFORMATION:

A. Background

In 1982, the Commission issued the Safety Standard for Omnidirectional

Citizens Band Antennas (16 CFR Part 1204) to reduce risks of death and serious injury that may result if an omnidirectional antenna contacts an overhead power line while being erected or removed from its site. The standard contains performance tests to demonstrate that an antenna will not transmit a harmful electric current if it contacts an electric power line with a voltage of 14,500 volts phase-to-ground. Certification regulations implementing the standard require manufacturers, importers, and private labelers of antennas subject to the standard to perform tests to demonstrate that those products meet the requirements of the standard, and to maintain records of those tests. The certification regulations are codified at 16 CFR Part 1204, Subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of antennas subject to the standard to help protect the public from risks of injury or death associated with omnidirectional citizens band base station antennas. More specifically, this information helps the Commission determine that antennas subject to the standard comply with all applicable requirements. The Commission also uses this information to obtain corrective actions if omnidirectional citizens band base station antennas fail to comply with the standard in a manner which creates a substantial risk of injury to the public.

The Office of Management and Budget (OMB) approved the collection of information in the certification regulations under control number 3041–0006. OMB's most recent extension of approval expired on August 18, 1985. The Commission now proposes to request a reinstatement of approval without change for the collection of information in the certification regulations.

B. Estimated Burden

The Commission staff estimates that about 7 firms manufacture or import citizens band base station antennas subject to the standard. The Commission staff estimates that the certification regulations will impose an average annual burden of about 220 hours on each of those firms. That burden will result from conducting the testing required by the regulations and maintaining records of the results of that testing. The total annual burden imposed by the regulations on manufacturers and importers of citizens band base station antennas is approximately 1,540 hours.

The hourly wage for the testing and recordkeeping required to conduct the testing and maintain records required by the regulations is about $55, for an estimated annual cost to the industry of $84,700.

The Commission will expend approximately one week of professional staff time each year reviewing and evaluating the records maintained by manufacturers and importers of citizens band base station antennas. The annual cost to the Federal government of the collection of information in these regulations is estimated to be $1,400.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed extension of approval of the collection of information in the certification regulations implementing the Safety Standard for Omnidirectional Citizens Band Base Station Antennas. The Commission specifically solicits information about the hourly burden and monetary costs imposed by the collection of information on firms subject to this collection of information. The Commission also seeks information relevant to the following topics:

- Whether the collection of information is necessary for the proper performance of the Commission's functions;
- Whether the information will have practical utility for the Commission;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other form of information technology.

Dated: October 17, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–27193 Filed 10–24–96; 8:45 am]

BILLING CODE 6355–01–P

Submission for OMB Review; Comment Request—Safety Standard for Automatic Residential Garage Door Operators

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the Federal Register of February 12, 1996 (61 FR 5537), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek approval of the collection of information in the Safety Standard for Automatic Residential Garage Door Operators (16 CFR Part 1211). By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget a request for approval of that collection of information without change through December 31, 1999.

The Consumer Product Safety Improvement Act of 1990 (Pub. L. 101–608, 104 Stat. 3110) contains provisions requiring that all automatic residential garage door openers manufactured after January 1, 1993, must comply with the entrapment protection requirements of UL Standard 325 that were in effect on January 1, 1992. In 1992, the Commission codified the entrapment protection provisions of UL Standard 325 in effect on January 1, 1992, as the Safety Standard for Automatic Residential Garage Door Operators, 16 CFR Part 1211, Subpart A. Certification regulations implementing the standard require manufacturers, importers and private labelers of garage door openers subject to the standard to test their products for compliance with the standard, and to maintain records of that testing. Those regulations are codified at 16 CFR Part 1211, Subparts B and C.

The Commission uses the records of testing and other information required by the certification regulations to determine that automatic residential garage door openers subject to the standard comply with its requirements. The Commission also uses this information to obtain corrective actions if garage door openers fail to comply with the standard in a manner which creates a substantial risk of injury to the public.

Additional Information About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Safety Standard for Automatic Residential Garage Door Operators, 16 CFR Part 1211.

Type of request: Approval of a collection of information.

General description of respondents: Manufacturers, importers, and private labelers of automatic residential garage door openers.

Estimated number of respondents: 14.

Estimated average cost of testing and recordkeeping per respondent: $1,200 per year.

Estimated total cost for all respondents: $16,800 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be sent within 30 days of publication of this notice to Victoria Wassmer, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for reinstatement of information collection requirements and supporting documentation are available from Carl Blechschmidt, Acting Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2243.

Dated: October 22, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–27483 Filed 10–24–96; 8:45 am]

BILLING CODE 6355–01–P

[CPSC Docket No. 97–C0002]

Hartman Products, a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 C.F.R. Section 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Hartman Products, a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by November 9, 1996.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 97–C0001, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Traci J. Williams, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: October 21, 1996.

Sadye E. Dunn,

Secretary.

[FR Doc. 96–27484 Filed 10–24–96; 8:45 am]

BILLING CODE 6355–01–M

[CPSC Docket No. 97–C0002]

Settlement Agreement and Order

In the Matter of Hartman Products, a corporation.

1. Hartman Products, a corporation, enters into this Settlement Agreement and Order with the staff of the Consumer Product Safety Commission (''Commission'' or ''CPSC'') pursuant to the procedures set forth in 16 C.F.R. § 1118.20 of the Commission's Procedures for Consent Order Agreements under the Consumer Product Safety Act (''CPSA''), 15 U.S.C. §§ 2051–2084.

I. The Parties

2. The ''staff'' is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. § 2053.

3. Hartman Products is a corporation organized and existing under the laws of the State of California, with its principal corporate offices located at 4949 W. 147th Street, Hawthorne, California 90250.

II. Allegations of the Staff

4. Between August 1992 and December 1992, Hartman Products assembled and distributed approximately 8,000 affected units of the Hartman Pro 1600 (''Pro 1600'') hair dryer. Hartman Products is, therefore, a ''manufacturer'' as that term is defined in section 3(a)(4) of the CPSA, 15 U.S.C. § 2052(a)(4).

5. The Pro 1600 is a portable household appliance that consumers use to dry their hair. The Pro 1600 is a ''consumer product'' which was ''distributed in commerce'' as those terms are defined in sections 3(a)(1) and (11) of the CPSA, 15 U.S.C. §§ 2052(a)(1) and (11).

6. In some instances, the switch unit on the affected units could start a unit's heater without turning on its fan. In this situation, the heater could ignite the motor mounts made of a plastic material called Acrylonitrile-Butadiene-Styrene, ultimately igniting the entire unit, exposing surrounding objects to the flames.

Hartman Products received information from Underwriters Laboratories, Inc. notifying the firm about the fire hazard the affected units presented. The firm also received a complaint from a consumer alleging that her Pro 1600 caught fire.

7. Hartman Products obtained information which reasonably supported the conclusion that the affected units contained defects which could create a substantial product hazard, but failed to report that information to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

III. Response of Hartman Products

8. Hartman Products denies the allegations of the staff that the affected units contained any defect which could create a substantial product hazard pursuant to section 15(a) of the CPSA, 15 U.S.C. § 2064(a), and further denies that it violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

9. In December 1992, in cooperation with Underwriters Laboratories, Inc., Hartman Products recalled the affected units. To date, it has not received any claims or allegations of injury from the affected units covered by this settlement.

IV. Agreement of the Parties

10. The Commission has jurisdiction over this matter under the CPSA, 15 U.S.C. § 2051–2084.

11. Hartman Products, knowingly, voluntarily, and completely waives any rights it may have to an administrative or judicial hearing with respect to the staff allegations cited herein, judicial review or other challenge or contest of the validity of the Commission's Order, a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. § 2064(b), has occurred, and a statement of findings of fact and conclusions of law with regard to the staff allegations.

12. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the Federal Register in accordance with 16 C.F.R. § 1118.20(e).

13. The Settlement Agreement and Order take effect upon final acceptance by the Commission and their service upon Hartman Products.

14. Upon final acceptance of this Settlement Agreement by the Commission, the Commission will issue a press release to advise the public of the civil penalty Settlement Agreement and Order.

15. Hartman Products agrees to entry of the attached Order, which is incorporated herein by reference, and agrees to be bound by its terms.

16. This Settlement Agreement and Order are binding upon Hartman Products and its assigns and successors.

17. Agreements, understandings, representations, or interpretations made outside this Settlement Agreement and Order may not be used to vary or contradict its terms.

Hartman Products.

Dated: September 11, 1996.

Ronald Weinhart,

Hartman Products.

The Consumer Product Safety Commission.

David Schmeltzer,

Assistant Executive Director, Office of Compliance.

Eric L. Stone,

Acting Director, Division of Administrative Litigation, Office of Compliance.

Dated: September 20, 1996.

Traci J. Williams,

Trial Attorney.

William J. Moore, Jr.,

Trial Attorney, Division of Administrative Litigation, Office of Compliance.

[CPSC Docket No. 97–C0002]

Order

In the Matter of Hartman Products, a corporation.

Upon consideration of the Settlement Agreement entered into between Respondent, Hartman Products, a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Hartman Products; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted; and it is

Further Ordered, that upon final acceptance of the Settlement Agreement and Order, Hartman Products shall pay the Commission a civil penalty in the amount of SIXTY THOUSAND AND 00/100 DOLLARS ($60,000.00), payable as follows: $15,000 twenty days after the Order is accepted finally, $20,000 by January 1, 1997, and $25,000 by July 15, 1997.

Provisionally accepted and Provisional Order issued on the 21st day of October, 1996.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–27485 Filed 10–24–96; 8:45 am]

BILLING CODE 6355–01–M

THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection Request Submitted to the Office of Management and Budget for Review

AGENCY: Corporation for National and Community Service (CNCS).

ACTION: Notice of Information Collection Emergency Request Submitted to the Office of Management and Budget (OMB) for OMB Review of the National Service Enrollment Form and the National Service Member Exit Form.

SUMMARY: This notice provides information about an information collection request by the Corporation for National and Community Service, currently under review by OMB.

FOR FURTHER INFORMATION CONTACT:

Lance Potter, (202) 606–5000, Extension 448.

SUPPLEMENTARY INFORMATION:

Title of Forms: National Service Enrollment Form and National Service Member Exit Form.

Need and Use: The National and Community Service Act of 1993 requires the Corporation for National and Community Service to provide education awards to individuals who complete a term of service in an approved national service position. By providing awards to individuals CNCS assists in expanding educational opportunity and rewards individual responsibility.

Type of Request: Revised submission for a previously approved collection.

Respondent's Obligation to Reply: Required to obtain benefit.

Frequency of Collection: One time only.

Estimated Number of Responses: 21,000.

Average Burden Hours Per Response:

Enrollment Form: .07 hrs.

Exit Form: .12 hrs.

Estimated Annual Reporting or Disclosure Burden:

Enrollment Form: 2975 hours.

Exit Form: 4200 hours.

Regulatory Authority: 42 U.S.C. 5066(a).

Dated: October 21, 1996.

Lance Potter,

Director, Office of Evaluation.

[FR Doc. 96–27416 Filed 10–24–96; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Prospectively Grant Exclusive or Partially Exclusive License(s) to Precision Quincy Corporation and Shields Environmental Corporation

SUMMARY: Precision Quincy Corporation has applied for an exclusive license to practice the Government owned invention described in U.S. Patent No. 5,511,908 entitled ''Mobile Safety Structure for Containment and Handling of Hazardous Material'' issued April 30, 1996 and Shields Environmental Corporation has also applied for an exclusive license to practice the same invention. The Department of the Navy is considering granting to either one or both entities, a revocable, nonassignable, exclusive or partially exclusive license(s) to practice this invention in the United States.

Anyone wishing to object to the granting of licenses to either or both prospective licensees has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: October 10, 1996.

D.E. Koenig, Jr.,

Federal Register Liaison Officer.

[FR Doc. 96–27421 Filed 10–24–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX95–4–001]

American Municipal Power Ohio, Inc. v. Ohio Edison Company; Notice of Filing

October 21, 1996.

Take notice that on September 30, 1996, Ohio Edison Company tendered in compliance with the Commission's September 13, 1996, Final Order in this docket, an Agreement for Construction, Operating and Compensation of Second Delivery Points with American Municipal Power-Ohio, Inc. and various Ohio Municipalities.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 31, 1996. 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. 96–27374 Filed 10–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–30–000]

Equitrans, L.P.; Notice of Request Under Blanket Authorization

October 21, 1996.

Take notice that on October 15, 1996, Equitrans, L.P. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP97–30–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install one delivery tap under Equitrans's blanket certificate issued in Docket No. CP83–508–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans proposes to install one delivery tap on Equitrans field gathering pipeline No. W–5037 in Marion County, West Virginia. The tap will be instituted to provide transportation deliveries to Equitable Gas for ultimate distribution to one residential customer. Equitrans projects that the quantity of gas to be delivered through the proposed delivery tap will be approximately 1 Mcf on a peak day.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27381 Filed 10–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–221–070]

Frontier Gas Storage Company; Notice of Sale Pursuant to Settlement Agreement

October 21, 1996.

Take notice that on October 17, 1996, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., NW., Suite 800, Washington, DC 20004, in compliance with 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 a daily quantity of 6,000 MMBtu, not to exceed 700,000 MMBtu of Frontier's gas storage inventory on an ''as metered'' basis to Conoco, Inc., for term ending February 28, 1997.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985, Order, Frontier is ''authorized to commence the sale of its inventory under such an executed service agreement fourteen days after filing 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 filing should, within 10 days of the publication of such notice in the Federal Register, file with the Federal Energy Regulatory Commission (888 1st Street NE., Washington, DC 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 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. 96–27385 Filed 10–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER96–2628–000 and ER96–2766–000]

Kentucky Utilities Company; Notice of Filing

October 21, 1996.

Take notice that on September 27, 1996, Kentucky Utilities Company tendered for filing an Amendment to its filing to reflect a revision to its Power Services (PS) Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 1, 1996. 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. 96–27378 Filed 10–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–41–000]

Natural Gas Pipeline Company of America; Notice of Request Under Blanket Authorization

October 21, 1996.

Take notice that on October 17, 1996, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP97–41–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate an existing receipt/delivery point in Ford County, Kansas, and to construct and operate approximately 400 feet of twelve-inch lateral to connect the existing point to a twelve-inch bi-directional meter to be constructed by the end-user, under Natural's blanket certificate issued in Docket No. CP82–

402–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically Natural proposes to operate an existing point to both deliver and receive gas from MidContinent Market Center, Inc., (MCMC), a Hinshaw pipeline, and to construct and operate the 400-feet lateral to a new twelve-inch bi-directional meter to be constructed by MCMC, for the purpose of providing Part 284 transportation service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene of notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27380 Filed 10–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2627–000]

New Jersey Natural Energy Company; Notice of Issuance of Order

October 21, 1996.

New Jersey Natural Energy Company (New Jersey Energy) submitted for filing a rate schedule under which New Jersey Energy will engage in wholesale electric power and energy transactions as a marketer. New Jersey Energy also requested waiver of various Commission regulations. In particular, New Jersey Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by New Jersey Energy.

On October 2, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by New Jersey Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, New Jersey Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of New Jersey Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 1, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27387 Filed 10–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2921–000]

PanEnergy Trading and Market Services, L.L.C.; Notice of Issuance of Order

October 21, 1996.

PanEnergy Trading and Market Services, L.L.C. (PanEnergy) submitted for filing a rate schedule under which PanEnergy will engage in wholesale electric power and energy transactions as a marketer. PanEnergy also requested waiver of various Commission regulations. In particular, PanEnergy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by PanEnergy.

On October 2, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by PanEnergy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, PanEnergy is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of PanEnergy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 1, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27388 Filed 10–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–338–000]

Texas Eastern Transmission Corporation; Notice Granting Late Intervention

October 21, 1996.

On October 16, 1996, the Pennsylvania Office of Consumer Advocate (Pa.OCA) filed a motion to intervene out-of-time in the above-docketed proceeding. No party filed an answer in opposition to the motion.

The petitioner appears to have a legitimate interest under the law that is not adequately represented by other parties. Granting the intervention will not cause a delay or prejudice any other party. It is in the public interest to allow the petitioner to appear in this proceeding. Accordingly, good cause exists for granting the late intervention.

Pursuant to Section 375.302 of the Commission's Regulations (18 CFR 375.303), the petitional is permitted to intervene in this proceeding subject to the Commission's rules and regulations

under the Natural Gas Act, 15 U.S.C. §§ 717–717(W). Participation of the late intervenor shall be limited to matter set out in the motion to intervene. The admission of the late intervenor shall not be construed as recognition by the Commission that the intervenor might be aggrieved by any order entered in this proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27375 Filed 10–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–3–004]

The United Illuminating Company; Notice of Filing

October 21, 1996.

Take notice that on August 28, 1996, The United Illuminating Company (UI) tendered for filing an Updated Market Power Analysis in compliance with the Commission's orders in Docket Nos. ER93–3–000 and ER93–3–001, dated May 19, 1993, and August 17, 1993, respectively, and in compliance with UI's Wholesale Electric Sales Tariff, FERC Electric Tariff, Original Volume No. 2, which authorizes UI to sell capacity and associated energy to non-affiliates at market-based rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 29, 1996. 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. 96–27379 Filed 10–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–28–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

October 21, 1996.

Take notice that on October 16, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP97–28–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to utilize an existing tap under Williston Basin's blanket certificate issued in Docket No. CP83–1–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin proposes to utilize an existing tap to effectuate natural gas transportation deliveries to Montana-Dakota Utilities Co. for ultimate use by additional residential customers in Butte County, South Dakota.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27382 Filed 10–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–105–000, et al.]

IES Utilities Inc., et al.; Electric Rate and Corporate Regulation Filings

October 18, 1996.

Take notice that the following filings have been made with the Commission:

1. IES Utilities Inc.

[Docket No. ER97–105–000]

Take notice that on October 10, 1996, IES Utilities Inc. (IES), tendered for filing Appendix 13 and its Amendment to the IES and Central Iowa Power Cooperative (CIPCO) Operating and Transmission Agreement.

Copies of the filing were served upon CIPCO and the Iowa Utilities Board.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Cinergy Services, Inc.

[Docket No. ER97–106–000]

Take notice that on October 10, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and AYP Energy, Inc.

Cinergy and AYP Energy, Inc. are requesting an effective date of October 15, 1996.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Services, Inc.

[Docket No. ER97–107–000]

Take notice that on October 10, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Sonat Power Marketing L.P.

Cinergy and Sonat Power Marketing L.P. are requesting an effective date of October 1, 1996.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. System Energy Resources, Inc.

[Docket No. ER97–108–000]

Take notice that on October 10, 1996, System Energy Resources, Inc. (SERI), tendered for filing an unexecuted Fourth Amendment to the Master Nuclear Decommissioning Trust Fund Agreement (Trust Agreement) by and between SERI and Mellon Bank, N.A., the trustee. The Fourth Amendment amends the Trust Agreement to comply with Section 1,468A–5(a)(4) of the Internal Revenue Service Fund Regulations. 36 CFR 1,468A–5(a)(4). The Trust Agreement is designated as SERI Rate Schedule FERC No. 2. SERI states that the Fourth Amendment will have no impact on any rate component.

SERI requests that the Fourth Amendment be made effective on the earliest date possible, although no later than December 31, 1996.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. The Dayton Power and Light Company

[Docket No. ER97–109–000]

Take notice that on October 10, 1996, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Ohio Edison (OE), Morgan Stanley Capital Group Inc. (MSCG), AYP Energy (AYP), Intercoast Power Marketing Company (IPM), Carolina Power & Light (CP&L), Citizens Lehman

Power Sales (CLPS) and Williams Energy Services Company (WESC) as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon OE, MSCG, AYP, IPM, CP&L, CLPS and WESC, and the Public Utilities Commission of Ohio.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER97–110–000]

Take notice that on October 10, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Morgan Stanley Capital Group, Inc.

Cinergy and Morgan Stanley Capital Group, Inc. are requesting an effective date of September 15, 1996.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Central Illinois Public Service Company

[Docket No. ER97–111–000]

Take notice that on October 10, 1996, Central Illinois Public Service Company (CIPS), submitted for filing a service agreement, dated September 11, 1996, establishing PacifiCorp Power Marketing, Inc. (PacifiCorp) as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of September 11, 1996 for the service agreement. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon PacifiCorp and The Illinois Commerce Commission.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania Power & Light Company

[Docket No. ER97–112–000]

Take notice that on October 10, 1996, Pennsylvania Power & Light Company (PP&L) filed a Service Agreement, dated September 18, 1996, with AIG Trading Corporation (AIG) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff (Tariff). The Service Agreement adds AIG as an eligible customer under the Tariff.

PP&L requests an effective date of October 10, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to AIG and to the Pennsylvania Public Utility Commission.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Pennsylvania Power & Light Company

[Docket No. ER97–113–000]

Take notice that on October 10, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement, dated October 3, 1996, with CNG Power Services Corp. (CNG) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff (Tariff). The Service Agreement adds CNG as an eligible customer under the Tariff.

PP&L requests an effective date of October 10, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to CNG and to the Pennsylvania Public Utility Commission.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Pennsylvania Power & Light Company

[Docket No. ER97–114–000]

Take notice that on October 10, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement, dated September 13, 1996, with PECO Energy Company—Power Team (PECO) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds PECO as an eligible customer under the Tariff.

PP&L requests an effective date of July 17, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to PECO and to the Pennsylvania Public Utility Commission.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. PECO Energy Company

[Docket No. ER97–115–000]

Take notice that on October 11, 1996, PECO Energy Company (PECO), filed a Service Agreement dated September 16, 1996 with AYP Energy, Inc. (AYP) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds AYP as a customer under the Tariff.

PECO requests an effective date of September 16, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to AYP and to the Pennsylvania Public Utility Commission.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER97–116–000]

Take notice that on October 11, 1996, PECO Energy Company (PECO), filed a Service Agreement dated September 17, 1996 with Florida Power & Light Company (FP&L) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds FP&L as a customer under the Tariff.

PECO requests an effective date of September 17, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to FP&L and to the Pennsylvania Public Utility Commission.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER97–117–000]

Take notice that on October 11, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service to Virginia Electric and Power Company under the NU System Companies Open Access Transmission Service Tariff No. 8.

NUSCO states that a copy of this filing has been mailed to Virginia Electric and Power Company.

NUSCO requests that the Service Agreement become effective October 11, 1996.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Power Company

[Docket No. ER97–118–000]

Take notice that on October 11, 1996, Duke Power Company (Duke), tendered for filing a Market Rate Service Agreement between Duke and TransCanada Power Corporation (TCPC). Duke requests that the Agreement be made effective as of September 30, 1996.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Alabama Power Company

[Docket No. ER97–119–000]

Take notice that on October 11, 1996, Alabama Power Company, tendered for filing Amendment No. 1 to the Amended and Restated Agreement for Partial Requirements Service and Complementary Services with the Alabama Municipal Electric Authority (FERC Rate Schedule No. 168). Under this amendment, the parties have revised the applicable rates and charges so as to produce a decrease in the total revenues paid by AMEA for PR service. The Amendment also reflects the parties' agreement concerning other issues, such as the application of certain notice provisions under the contract.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. PacifiCorp

[Docket No. ER97–120–000]

Take notice that on October 11, 1996, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Service Agreement with Public Utility District No. 1 of Okanogan County under, PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 3, Service Schedule PPL–3.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER97–121–000]

Take notice that on October 11, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating company, PSI Energy, Inc. (PSI), a Power Coordination Agreement, dated March 1, 1996, between PSI, Cinergy Services, Inc. and Wabash Valley Power Association, Inc. (Wabash Valley).

The Power Coordination Agreement provides for the following service between PSI and Wabash Valley:

1. Service Schedule A—Gibson Unit No. 5 Reserve Capacity and Energy
2. Service Schedule B—Gibson Unit No. 5 Replacement Energy
3. Service Schedule C—Firm Capacity and Energy
4. Service Schedule D—Peaking Capacity and Energy
5. Service Schedule E—Emergency Service
6. Service Schedule F—Power Sales by Wabash Valley
7. Service Schedule G—Power Sales by PSI
8. Service Schedule H—Load Following Service
9. Service Schedule I—Supplemental Operating Reserves
10. Service Schedule J—Unscheduled Energy Delivery Service

Also, PSI and Wabash Valley have agreed to terminate the present agreement between the parties, Rate Schedule FERC No. 233—Power Coordination Agreement between PSI Energy, Inc. and Wabash Valley Power Association, Inc.

PSI and Wabash Valley have requested a waiver of the commission's Rules and Regulations to permit the proposed agreement to become effective November 1, 1996.

Copies of the filing were served on Wabash Valley Power Association, Inc., and the Indiana Utility Regulatory Commission.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. United Power Technologies, Inc.

[Docket No. ER97–122–000]

Take notice that on October 11, 1996, United Power Technologies, Inc. (UPT) applied to the Commission for (1) acceptance of UPT's Rate Schedule FERC No. 1; (2) a disclaimer of jurisdiction over UPT's power brokering activities; (3) blanket authorization to sell electricity at market-based rates; (4) waiver of certain Commission Regulations; and (5) such other waivers and authorizations as have been granted to other power marketers.

UPT intends to engage in electric power and energy transactions as a marketer and broker. UPT is not in the business of generating, transmitting, or distributing electric power. UPT has no affiliates and is not a subsidiary or otherwise under the control of any other business entity.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. MidAmerican Energy Company

[Docket No. ER97–123–000]

Take notice that on October 11, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, filed with the Commission Firm Transmission Service Agreements with PSI Energy, Inc. (PSI) dated October 2, 1996, and The Cincinnati Gas & Electric Company (Cincinnati), dated October 2, 1996, and Non-Firm Transmission Service Agreements with PSI dated October 1, 1996, and Cincinnati dated October 2, 1996, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of October 2, 1996, for the Agreements with PSI and Cincinnati, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on PSI, Cincinnati, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Duke Power Company

[Docket No. ER97–124–000]

Take notice that on October 15, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Sonat Power Marketing, L.P. (Sonat). Duke states that the TSA sets out the transmission arrangements under which Duke will provide Sonat non-firm point-to-point transmission service under its Pro Forma Open Access Transmission Tariff.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before 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. 96–27386 Filed 10–24–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–687–000]

Iroquois Gas Transmission System, L.P.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Athens Compressor Station Project and Request for Comments on Environmental Issues

October 21, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Athens Compressor Station Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Iroquois Gas Transmission System, L.P. (Iroquois) wants to expand the capacity of its facilities in New York and Connecticut to transport an additional 30 million cubic feet per day of natural gas for two shippers. Iroquois seeks authority to construct and operate 9,500 horsepower of natural gas compression at the proposed Athens compressor Station in Greene County, New York.

The specific location of the facility is shown on the map in appendix 1.[2] The compressor facilities would be located about 2,700 feet south of the Athens-Leeds Turnpike, which forms the northern boundary of the proposed site.

Land Requirements for Construction

Construction of the proposed facility would require about 25.7 acres of land. Following construction, about 15.3 acres would be maintained as a new aboveground facility site. The remaining 10.4 acres of land would be restored and allowed to revert to open space. The closest residence is about 2,400 feet west of the proposed compressor building.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facility and the environmental information provided by Iroquois. This preliminary list of issues may be changed based on your comments and our analysis.

- Conversion of the Athens Airport to industrial use.
- Effect the proposed compressor station would have on air quality in the vicinity.
- Alternative siting feasibility.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP96–687–000;
- Send a copy of your letter to: Mr. Mark Jensen, EA Project Manager, Federal Energy Regulatory Commission, 888 First St., N.E., PR–11.2, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before November 22, 1996.

If you wish to receive a copy of the EA, you should request one from Mr. Jensen at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for later intervention.

You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr.

[1] Iroquois Gas Transmission System, L.P.'s application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's Regulations.

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Mark Jensen, EA Project Manager, at (202) 208–0828.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27383 Filed 10–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–16–000]

Transcontinental Gas Pipe Line Corporation; Notice of Availability of the Environmental Assessment for the Proposed Sunbelt Expansion Project

October 21, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Transcontinental Gas Pipe Line Corporation (Transco) in the above-referenced docket. For both the new Compressor Station 105 in Coosa County, Alabama and the new Compressor Station 125 in Walton County, Georgia, the staff is requesting specific comments regarding the siting of these new compressor stations. We request comments on a potential reasonable alternative for each station, the effect of relocating a compressor station on the proposed in-service date, the cost of relocating the compressor stations and what additional mitigation would be necessary at the proposed sites.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA addresses the potential environmental effects of the construction and operation of the following facilities:

- 14.9 miles of 42-inch-diameter pipeline loop (Loop D) from milepost (MP) 1222.66 to MP 1237.58 in Cherokee County, South Carolina;
- 15,000 horsepower (hp) of compression (gas turbine) at a new station, to be known as Compressor Station 105 in Coosa County, Alabama;
- 15,000 hp of compression (gas turbine) at a new station to be known as Compressor Station 125 in Walton County, Georgia; and
- 15,000 hp of compression (gas turbine) at the existing Compressor Station 80 in Jones and Jasper Counties, Mississippi.

Transco also seeks to uprate:

- A compressor (gas turbine) from 14,100 hp to 15,000 hp at Compressor Station 100 in Chilton County, Alabama; and
- One compressor (gas turbine) from 12,600 hp to 15,000 hp at each of three stations: Compressor Station 110 in Randolph County, Alabama; Compressor Station 130 in Madison County, Georgia; and Compressor Station 140 in Spartanburg County, South Carolina.

The purpose of the proposed facilities is to provide additional firm transportation capacity of up to 145,666 thousand cubic feet per day of natural gas to nine local distribution companies and one electric cogeneration plant.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Mr. Mark Jensen, Environmental Project Manager, Environmental Review and Compliance Branch II, Office of Pipeline Regulation, 888 First Street, N.E., PR 11.2, Washington, DC 20426, (202) 208–0828.

Any person wishing to comment on the EA may do so. Written comments must reference Docket No. CP96–16–000 and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

In order to have your comments considered, we request that they be filed as soon as possible. Comments must be received no later than November 20, 1996, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Mr. Mark Jensen, Environmental Project Manager, at the above address.

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about this project is available from Mr. Mark Jensen, Environmental Project Manager.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27384 Filed 10–24–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Amendment of License Applications

October 21, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Amendment of License Applications.

b. Projects Nos.: P–11132–001, P–11472–001, P–11482–001, and P–11566–001.

c. Date Filed: September 25, 1996.

d. Applicants: Consolidated Hydro Maine, Inc., and Ridgewood Maine Hydro Partners, L.P.

e. Name of Projects and Locations:

(1) Eustis Dam Hydro Project No. 11132, on the Dead River, in Franklin County, Maine;

(2) Burnham Hydro Project No. 11472, on the Sebasticook River, in Somerset and Waldo Counties, Maine;

(3) Mechanic Falls Hydro Project No. 11482, on the Little Androscoggin River, in Androscoggin County, Maine; and

(4) Damariscotta Mills Hydro Project No. 11566, on the Damariscotta River, in Lincoln County, Maine.

f. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791–825(r).

g. Applicants Contact:

Stephen E. Champagne, Esq., Curtis Thaxter Stevens Broder & Micoleau, LLC, One Canal Plaza, P.O. Box 7320, Portland, ME 04112, (207) 775–2361

Edward M. Stern, Esq., Consolidated Hydro, Inc., 680 Washington Blvd., Stamford, CT 06901, (203) 425–8850.

h. FERC Contact: Ed Lee (202) 219–2809.

i. Comment Date: November 18, 1996.

j. Description of Request: Consolidated Hydro Maine, Inc. (Consolidated), applicant for the pending license applications for the proposed projects above, and Ridgewood Maine Hydro Partner, L.P. (Ridgewood) request that the license applications for the before-mentioned projects each be amended to change the name of the applicant from Consolidated to Ridgewood. Consolidated is being merged into Ridgewood to facilitate a change in the beneficial interest in the projects. There

is no debt associated with these mergers.

k. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27376 Filed 10–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2663–004 Minnesota]

Minnesota Power & Light Company; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

October 21, 1996.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission is consulting with the Minnesota Historical Society (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR Part 800, implementing Section 106 of the National Historic Preservation Act, *as amended* (16 U.S.C. Section 470f), to prepare a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project No. 2663–004.

The programmatic agreement, when executed by the Commission, the SHPO, and the Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to Section 106 for the above project would be fulfilled through one programmatic agreement for comments under Section 106. The executed programmatic agreement would be incorporated into any order issuing license.

Minnesota Power & Light Company, as prospective licensee for Project No. 2663–004, is invited to participate in consultation to develop the programmatic agreement and to sign as a concurring party to the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for Project No. 2663–004 as follows:

[1] 18 CFR 385.2010.

Ms. Nina Archabal, Director, Minnesota Historical Society, 345 Kellogg Blvd. West, St. Paul, MN 55102

Dr. Robert D. Bush, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 809, 1100 Pennsylvania Ave., NW., Washington, D.C. 20004

Mr. Christopher D. Anderson, Attorney, Minnesota Power & Light Company, 30 West Superior Street, Duluth, MN 55802

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date.

An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, N.E., Washington, D.C. 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27377 Filed 10–24–96; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of September 9 Through September 13, 1996

During the week of September 9 through September 13, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management*: *Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: October 17, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 989

Appeals

Cindy David, 9/12/96, VFA–0204

Cindy David filed an Appeal from a partial denial by the Western Area Power Administration (WAPA) of a Request for Information which Ms. David had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that material which WAPA withheld by claiming the protection of Exemption 4, overhead expense and general and administrative expense data, was indeed exempt from disclosure as proprietary commercial information. The DOE concluded that release of the withheld material would cause competitive harm to the submitter, Salazar Associates International. Accordingly, the Appeal was denied.

Dennis J. McQuade, 9/9/96, VFA–0200

Dennis J. McQuade filed an Appeal from a determination by the DOE's Oak Ridge Operations Office (OR), which denied a request for information he had filed under the Freedom of Information Act (FOIA). OR stated that it conducted a search of its files which included the Office of Assistant Manager for Defense Programs, the Quality and Reliability Division, the Safeguards and Security Division, and the Office of Chief Counsel. OR stated that the only record which could be located was a record which responded to item 2 of Mr. McQuade's request. OR provided that record to Mr. McQuade, but stated that no documents could be located in response to item 1 and item 3 of his request. The Appeal challenged the adequacy of the search conducted by OR. In considering the Appeal, the DOE found that OR conducted an adequate search which was reasonably calculated to discover documents responsive to Mr. McQuade's Request. Accordingly, the Appeal was denied.

Diane C. Larson, 9/9/96, VFA–0199

Diane C. Larson filed an Appeal of a determination issued to her in response to a request under the Freedom of Information Act (FOIA) and the Privacy Act. In the determination, the DOE's Richland Operations Office (DOE/RL) stated that most of the requested documents were the property of Westinghouse Hanford Company (WHC) and were not agency records, not subject to the FOIA under 10 C.F.R. § 1004.3(e), and not subject to the Privacy Act. DOE/RL also released some documents which were under the control of the DOE, but redacted the names and lengths of service of WHC employees, under Exemption 6 of the FOIA. In considering the Appeal, the DOE first determined that WHC was not an agency and therefore not subject to the Privacy Act. The DOE also found that the requested documents were not agency records, and that those documents belonged under contract to WHC. The DOE then concluded that Exemption 6 did not protect the material withheld by DOE/RL. Neither length of service nor general age are the type of personal information usually protected by Exemption 6. Accordingly, the DOE granted the Appeal in part and remanded the matter to DOE/RL for further action.

Mary Towles Taylor, 9/9/96, VFA–0201

Mary Towles Taylor filed an Appeal from a determination by the DOE's Freedom of Information Office that no records exist which would indicate whether her father had been exposed to radiation during his employment at the Oak Ridge Operations Office. After considering the Appeal, the DOE remanded the matter so that an additional search for responsive documents could be conducted. Accordingly, the Appeal was granted in part.

National Security Archive, 9/13/96, VFA–0033

The National Security Archive filed an Appeal from a denial by the DOE's Oakland Operations Office of a request for information that it filed under the Freedom of Information Act (FOIA). In considering the information that was withheld, pursuant to a review by the Director of Security Affairs, as National Security Information and Restricted Data under Exemptions 1 and 3 of the FOIA, the DOE determined that all of the material previously identified as withholdable must continue to be withheld. However, more precise deletions now permit additional portions of the requested information to be released. Accordingly, the Appeal was granted in part.

US Solar Roof, 9/12/96, VFA–0203

US Solar Roof (USSR) filed an Appeal from a determination by the DOE's Golden Field Office GFO (Manager). In that determination, the GFO denied a request for information filed by USSR under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE confirmed that the GFO followed procedures reasonably calculated to uncover the requested information. Accordingly, the Appeal was denied.

William Donnelly, 9/11/96, VFA–0202

The DOE issued a Decision and Order denying a Freedom of Information Act Appeal that was filed by William Donnelly. In his Appeal, Mr. Donnelly contested the adequacy of the search for responsive documents performed by the DOE's Pittsburgh Energy Technology Center. In the Decision, the DOE found that the search for responsive documents was adequate.

Personnel Security Hearing

Oak Ridge Operations Office, 9/11/96, VSO–0096

An Office of Hearings and Appeals Hearing Officer issued an opinion under 10 C.F.R. Part 710 concerning the eligibility of an individual for access authorization. After considering the testimony at the hearing convened at the request of the individual and all other information in the record, the Hearing Officer found that the individual (i) deliberately omitted significant information from his Questionnaire for Sensitive Positions, which is derogatory information under 10 C.F.R. § 710.8(f), (ii) been diagnosed by a board-certified psychiatrist as suffering from alcohol abuse, which is derogatory information under 10 C.F.R. § 710.8(j), and (iii) been arrested on a variety of charges, including three recent arrests for driving while under the influence of alcohol, and had a number of longstanding delinquent financial obligations, all of which tend to show that the individual is not reliable, and thus constitute derogatory information under 10 C.F.R. § 710.8(l). The Hearing Officer further found that the individual failed to present sufficient evidence to mitigate the derogatory information. Accordingly, the Hearing Officer recommended that the individual not receive access authorization.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

BUCKEYE COOP ELEVATOR CO., ET AL	RG272–4	09/12/96
CITY OF ST. PAUL	RJ272–00021	09/09/96
CLIFFORD COHEN, ET AL	RF272–85021	09/11/96

CRUDE OIL SUPPLE REF DIST	RB272–00086	09/12/96
GENERAL MOTOR LINES, INC.	RF272–97362	09/12/96
GULF OIL CORPORATION/LEO & GLEN COMBS, INC.	RF300–21834	09/09/96
S.T. WOOTEN CONSTRUCTION CO.	RR272–238	09/11/96
SPIVEY, INC.	RC272–350	09/09/96
SPIVEY, INC.	RC272–351	

Dismissals

The following submissions were dismissed:

Name	Case No.
BLUE RIDGE TRUSS & SUPPLY, INC.	RG272–736
E.D. FEE TRANSFER, INC.	RF272–95260
KEWAUNEE COOPERATIVE	RG272–695
MIKE HILL FARMS, INC.	RK272–820
NATIONAL ENTERPRISES	RK272–854

[FR Doc. 96–27419 Filed 10–24–96; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of August 19 Through August 23, 1996

During the week of August 19 through August 23, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe. gov.

Dated: October 17, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 986

Appeals

Barton J. Bernstein, 8/23/96, LFA–0108

Professor Barton J. Bernstein of Stanford University filed an Appeal of a determination issued to him by the Albuquerque Operations Office of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act (FOIA). Professor Bernstein had requested information related to the creation of the ''super'' (also known as the ''hydrogen'' or ''thermonuclear'') bomb and the creation of the ''second lab'' (Lawrence-Livermore National Laboratory). After review by the DOE Office of Classification, the Albuquerque Operations Office withheld all or part of forty-seven responsive documents under Exemption 3 as containing nuclear weapons design or stockpile information that qualified as ''Restricted Data'' or ''Formerly Restricted Data'' within the meaning of the withholding statute, the Atomic Energy Act of 1954. Professor Bernstein appealed the withholdings in eight documents. After considering the matter, the DOE determined that some additional material now could be declassified in six documents. The DOE found the deletions in two of the documents were proper. Accordingly, the Appeal was denied in part and granted in part, and properly declassified information was released to Professor Bernstein.

Cincinnati Gas & Electric Co., 8/19/96, VEA–0002

Cincinnati Gas & Electric Co. filed an Appeal from a determination issued by the Department of Energy's (DOE) Office of Environmental Management (OEM). CG&E claimed that: (i) the OEM erroneously determined its liability for payment into the Uranium Enrichment Decontamination and Decommissioning Fund (the D&D Fund) established under the Energy Policy Act of 1992; (ii) Ohio state law would prohibit CG&E from passing through its assessment to its ratepayers; (iii) the assessment of utilities for payment into the D&D Fund was an unconstitutional taking of property. The DOE found that: (i) the firm was properly assessed for uranium enrichment services that it purchased from the DOE and did not sell in the secondary market; (ii) Ohio state law would be preempted by the federal Energy Policy Act; and (iii) while the DOE will ultimately defer to the rulings of the federal courts, the collection of assessments will continue while the courts are considering the constitutionality of the relevant provisions of the Energy Policy Act. Accordingly, CG&E's Appeal was denied.

David L. Anderson, 8/20/96, VFA–0197

David L. Anderson filed an Appeal from a denial by the Department of Energy's Bonneville Power Administration (BPA) of a request for information which he had submitted under the Freedom of Information Act (FOIA). Anderson sought copies of officially written statements, complaints and depositions made by certain individuals. BPA identified as responsive a report of an investigation conducted on behalf of the BPA Office of General Counsel by an outside investigator between September 14, 1995, and November 20, 1995. BPA withheld the report in its entirety, including the exhibits to the report, pursuant to the attorney work product privilege of FOIA Exemption 5. In considering the Appeal, the DOE found that: (i) The report in question is precisely the type of document meant to be protected by the work product privilege; (ii) the existence of tangible risks to the interests protected by the work product privilege satisfies the reasonably foreseeable harm standard set forth by the Attorney General in 1993; but (iii) to identify and, if not otherwise exempt, release certain intra-agency documents responsive to the request without indicating which of those documents became exhibits to the report will not violate the work product privilege. Accordingly, the matter was remanded in part to BPA to conduct a search for concerning the appellant and authored by the individuals named in his request, and to issue a new

determination either releasing the documents located or explaining the reasons for withholding the information. The Appeal was denied in all other respects.

Southwest Research and Information Center, 8/19/96, VFA–0195

The Southwest Research and Information Center (SRIC) filed an Appeal from a determination issued to it by the Department of Energy (DOE) Headquarters' Office of the Executive Secretary (ES). In its Appeal, SRIC asserted that ES improperly failed to provide it with documents regarding several specified meetings it had requested pursuant to the FOIA. During the pendency of the Appeal, several potentially responsive documents were discovered by ES. Consequently, the DOE remanded the matter back to ES so that it could issue a determination regarding the documents.

Personnel Security Hearing

Albuquerque Operations Office, 8/23/96, VSO–0084

A OHA Hearing Officer issued an opinion regarding the continued eligibility of an individual for access authorization under the provisions of 10 C.F.R. Part 710. After considering the record of the proceeding, the Hearing Officer found that: (i) the individual has two related mental conditions—exhibitionism and voyeurism—that, in the opinion of a board-certified psychiatrist, cause him to have a significant defect in his judgment and reliability; (ii) the individual had a ten-year history of arrests for sex offenses; (iii) the individual failed to show that he was rehabilitated to such an extent that he would be unlikely to engage in exhibitionism and voyeurism again; and (iv) in view of his mental condition and his lengthy history of arrests for sex offenses, the individual presented an unacceptably high risk of vulnerability of pressure, exploitation and coercion that might lead him to act contrary to the best interests of the national security. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Request for Exception

Lee Oil Company, 8/20/96, VEE–0030

Lee Oil Company (Lee) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' The Secretary/Treasurer of Lee requested relief from the EIA reporting requirement because he believed the requirement was unduly burdensome to the company. In considering this request, the DOE found that the burden placed upon Lee, due to the temporary unavailability of personnel to complete the form, was greater than that encountered by other firms required to complete Form EIA–782B. Accordingly, Lee was granted temporary relief from its obligation to file Form EIA–782B.

Supplemental Order

META, Inc., 8/22/96, VWZ-0006

A Hearing Officer from the Office of Hearings and Appeals denied a Motion to Dismiss filed by Maria Elena Torano Associates, Inc. (META). In its Motion, META sought the dismissal of a complaint filed by C. Lawrence Cornett under the DOE's Contractor Employee Protection Program, 10 C.F.R. Part 708. META alleged that it did not perform work at DOE sites as defined by Section 708.4 and thus it was not subject to Part 708 jurisdiction. After conducting a hearing on the Motion and considering all of the evidence, the Hearing Officer determined that despite the relatively limited amount of time META employees spent on DOE sites, the employees performed work activities on the DOE sites which were directly related the primary purposes of the META-DOE contract at issue. Further, the Hearing Officer found that because META's work concerned waste management and environmental restoration, META was the type of contractor which the DOE intended to cover under the part 708 regulations. Therefore, the Hearing Officer determined that META employees had performed work at DOE sites as defined by Part 708 and thus denied META's Motion.

Refund Application

Eason Oil Co./ Farmland Industries, Inc., 8/21/96, RF352–1

The DOE issued a Decision and Order concerning a refund application that Farmland Industries, Inc. (Farmland) had submitted in the Eason Oil Company (Eason) special refund proceeding. The DOE found that Farmland is a regional cooperative operating for the benefit of its agricultural cooperative members and their common shareholder/patrons. Farmland claimed a refund for volumes of Eason products that it resold to its member cooperatives. The DOE determined that 96% of Eason products that Farmland sold to its member cooperatives ultimately were sold to and used by member farmers and ranchers. Accordingly, the DOE granted Farmland a refund of $791,853 based on the 96% of its total purchases from Eason that were resold to cooperative farmers and ranchers, and required Farmland to pass through this refund to its member cooperatives on a dollar for dollar basis.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

ARMELLINI EXPRESS LINES, INC	RG272–00937	08/20/96
BURNHAM SERVICE COMPANY	RG272–00955	08/20/96
ELECTROLUX CORPORATION	RG272–00975	08/22/96
HUB TRANSPORTATION SERVICES CORP./HUB TRUCK RENTAL CORP	RG272–00953	08/20/96
KENTILE, INC	RK272–2203	08/19/96
MRS. G.E. KING, JR. ET AL	RK272–00361	08/21/96
PELHAM COUNTRY CLUB ET AL	RG272–00505	08/23/96
RAYBURN, INC. ET AL	RF272–97809	08/21/96
SAFETY BUS SERVICE	RG272–00867	08/20/96
SAMUEL CABOT, INC. ET AL	RF272–95105	08/21/96
SPECIALIZED TRUCKING SERVICE	RG272–00931	08/20/96
TRI-STATE FARMERS COOP ET AL	RF272–99000	08/23/96

Dismissals

The following submissions were dismissed:

Name	Case No.
BELLAIR INC	RF272–97986
FARMERS UNION OIL CO	RG272–0005
GEORGIA-PACIFIC CORPORATION	VFA–0198
GERALD KELLY	VWA–0011
K & H COOPERATIVE OIL COMPANY	RF272–89391
SWEETHEART CUP COMPANY, INC	RG272–980

[FR Doc. 96–27420 Filed 10–24–96; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5641–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; Collection of Compliance Information From Automotive Service and Repair Shops

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 EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Automotive Service and Repair Environmental Compliance Checklist, EPA ICR Number 1793.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 24, 1996.

ADDRESSES: Interested persons may obtain a copy of the draft compliance checklist without charge by contacting, United States Environmental Protection Agency, Office of Compliance, Energy and Transportation Branch, Mail Code 2223A, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Everett Bishop, Phone: (202) 564–7032, Facsimile (202) 564–0050 or e-mail: Bishop.Everett@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those automotive repair shops that routinely maintain automobiles. Such businesses may include, new car dealerships, franchise repair shops, independent owner/operators or gasoline stations.

Title: Automotive Service and Repair Environmental Compliance Checklist, A Survey.

Abstract: The Office of Compliance within the Office of Enforcement and Compliance Assurance has developed a general multi-media checklist to quickly review the compliance of an automotive service and repair shop. The information on the two page checklist will be gathered by students from four community colleges in different parts of the United States. The completed checklists will be forwarded to the Coordinating Committee for Automotive Repair (CCAR) for tabulation. The information is being requested by the Agency to get a better handle on the overall compliance within the automotive service and repair sector. Current efforts by the Agency to determine overall compliance with applicable environmental regulations have been difficult. Additionally, this survey will be repeated twenty four months after this initial collection to determine if compliance outreach programs developed by the Agency have had any impact on improving the compliance rate within the industry.

Information being requested by the community college students will be voluntary. The information will be treated with confidentiality. The Agency will have no knowledge of which shops were visited.

This survey is being performed as part of a grant awarded by the Agency to the Coordinating Committee for Automotive Repair (CCAR). CCAR is an umbrella organization representing 40 affiliates within the automotive service and repair industry.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. This information request approval is for one period of three years

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The Agency projects a burden to the shop owner or operator as follows: Two and one-half hours for the survey. Thirty minutes for introduction and purpose of collection, thirty minutes for gathering any paperwork, one hour to answer the questions on the checklist and thirty minutes for review and discussion. The cost of completing this survey is estimated at $62.50 for the two and one-half hours hours. This is based upon a shop owner's average salary of $25 per hour. There is no additional burden being place upon the shop owner for recordkeeping or retention of information since these requirements are already accounted for in other ICRs. The frequency of the survey will be two collections. The first survey is to be conducted approximately January/February, 1997 and then a follow-up survey in January/February, 1999. The number of respondents for this survey will be no more than 500 shop owners or operators, nationwide. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the

existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: October 15, 1996.

John B. Rasnic,

Director, Office of Manufacturing, Energy and Transportation.

[FR Doc. 96–27476 Filed 10–24–96; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5474–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed October 14, 1996 Through October 18, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960495, DRAFT EIS, AFS, TN, Upper Ocoee River Corridor Recreational Development, Implementation, Cherokee National Forest, Ocoee Ranger District, Polk County, TN, Due: December 09, 1996, Contact: Dave Carroll (423) 339–8620.

EIS No. 960496, DRAFT EIS, FHW, WA, US 101 Highway Aberdeen-Hoquian Corridor Project, Improvements, US Coast Guard and COE Section 404 Permit, Grays Harbor County, WA, Due: December 30, 1996, Contact: Gene Fong (360) 753–9413.

EIS No. 960497, DRAFT EIS, CGD, IL, MI, OH, NY, IN, MN, WI, PA, Great Lakes Icebreaking Operation, Implementation, Ninth District, IL, IN, MI, MN, OH, WI, NY and PA, Due: December 09, 1996, Contact: Gary Nelson (216) 522–3934.

EIS No. 960498, FINAL EIS, FHW, MA, I–495 Interchange Project, Construction between Route 9 and Route 20 Interchange to provide access to Crane Meadow Road, Funding, Right-of-Way, NPDES and COE Section 404 Permits, in the city of Marlborough and the town of Southborough, Middlesex and Worcester Counties, MA, Due: November 25, 1996, Contact: Thomas Hession (617) 973–7498.

EIS No. 960499, FINAL EIS, AFS, WA, North Sherman and Fritz Timber Sales, Implementation, Colville National Forest, Kettle Falls Ranger District, Ferry County, WA, Due: November 25, 1996, Contact: Meredith Webster (509) 738–6111.

EIS No. 960500, FINAL EIS, BOP, VA, Lee County, Virginia Federal Correctional Institution, Construction and Operation, Site Selection near the Town of Pennington Gap, Lee County, VA, Due: November 25, 1996, Contact: David J. Dorworth (202) 514–6470.

EIS No. 960501, FINAL EIS, NPS, CA, Manzanar National Historic Site (NHS), General Management Plan, Implementation, Inyo County, CA, Due: December 24, 1996, Contact: Dan Olson (415) 744–3968.

EIS No. 960502, FINAL EIS, FHW, WI, US–151 Transportation Improvement, Belmont to Dodgeville Road, Funding and COE Section 404 Permit, Iowa and Lafayette Counties, WI, Due: November 25, 1996, Contact: Richard C. Madrzak (608) 829–7510.

EIS No. 960503, DRAFT EIS, FTA, TX, North Central Corridor Light Rail Transit (LRT) Extension, Transportation Improvements, Funding, NPDES Permit and COE Section 404 Permit, Dallas and Collin Counties, TX, Due: December 09, 1996, Contact: Jesse Balleza (214) 749–2543.

Amended Notices

EIS No. 960364, DRAFT EIS, AFS, MT, Lewis and Clark National Forest Plan, Implementation, Oil and Gas Leasing Analysis, Upper Missouri River Basin, several counties, MT, Due: December 11, 1996, Contact: Robin Strathy (406) 791–7726. Published FR 08–09–96—Review Period Extended.

EIS No. 960403, DRAFT EIS, NPS, MA, Cape Cod National Seashore General Management Plan, Implementation, Barnstable County, MA, Due: November 30, 1996, Contact: Maria Burks (508) 349–3785. Published FR 09–06–96—Review Period extended.

Dated: October 22, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–27474 Filed 10–24–96; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5474–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 7, 1996 through October 11, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1996 (61 FR 15251).

Draft EISs

ERP No. D–AFS–K65186–NV Rating EC2, Spring Mountains National Recreation Area General Management Plan, Toiyabe National Forest Land and Resource Management Plan, Amendment, Implementation, Clark and Nye Counties, NV.

Summary: EPA requested that these issues be further addressed in the Final document.

ERP No. D–AFS–L65269–OR Rating EC2, Augusta Timber Sale, Implementation, Willamette National Forest, Blue River Ranger District, Willamette Meridian, Blue River, Lane County, OR.

Summary: EPA expressed environmental concerns based on water quality and air quality aspects of the project area.

ERP No. D–COE–E30037–FL Rating EC2, Brevard County Shore Protection Study, Implementation, Beach Restoration Project, Brevard County, FL.

Summary: EPA expressed environmental concerns regarding the long-term consequences of inundating hard-bottom habitat as well as how this action meshes with other, similar anticipated beach nourishment projects. The additional information derived from the mitigation and subsequent monitoring plan will be necessary to determine how this project fits into the larger issue of the environmental consequences of proposed shoreline protection.

ERP No. D–COE–K81024–CA Rating EC2, US Food and Drug Administration Laboratory, Land Acquisition, Construction and Operation on the North Campus Area at the University of California, Irvine, Orange County, CA.

Summary: EPA expressed environmental concerns regarding energy efficency, water conservation and pollution prevention. EPA also requested addition information regarding air quality and applicable federal hazardous waste requirements.

ERP No. D–FHW–L40199–WA Rating EC2, WA–509 Extension/South Access Road Corridor Project, Construction, Funding and Possible COE Section 404 Permit, the Cities of SeaTac, Des Moines, Kent and Federal Way, King County, WA.

Summary: EPA expressed environmental concerns regarding air

quality, water quality, wetlands and noise issues.

ERP No. D–NOA–G39030–TX Rating LO, Texas Combined Coastal Management Program, Implementation, Federal Approval, Gulf of Mexico, TX.

Summary: EPA had no objection to the selection of the preferred alternative described in the draft EIS.

ERP No. DS–VAD–G99005–OK Rating LO, Oklahoma City Area National Cemetery Construction and Operation, Updated Information on a New Potential Site, Fort Sill, Comache County, OK.

Summary: EPA had no objection to the selection of the preferred alternative.

Final EISs

ERP No. F–AFS–G65060–TX Texas National Forests and Grasslands Revised Land and Resource Management Plan, Implementation, several counties, TX.

Summary: EPA had no objection to the selection of the preferred alternative described in the Final EIS.

ERP No. F–AFS–L60101–ID Secesh River Subdivision Access Roads, Implementation, Special-Use-Permit, Idaho County, ID.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory.

ERP No. F–AFS–L65257–ID Beaver/Cedar Land Change Project, Implementation, Clearwater National Forest, North Fork and Palause Ranger Districts, Clearwater and Latah Counties, ID.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–COE–E32076–NC Cape Fear-Northeast Cape Fear Rivers Comprehensive Study for Deepening of the Wilmington Harbor Ship Channel, Navigation Improvement, New Hanover and Brunswick Counties, NC.

Summary: EPA's previous concerns have been lessened to an acceptable level due to the mitigation measures, therefore EPA has no objection to the action as proposed.

ERP No. F–FHW–K40213–NV Tier 1—FEIS Northern and Western Las Vegas Beltway Establishment, Need for and Location of a Transportation Corridor, Clark County, NV.

Summary: Federal Highway Administration's addressed all of EPA's previous concerns, therefore EPA has no objection to the project as proposed.

ERP No. F–FRC–E05047–GA North Georgia Hydroelectric Project, (FERC. No. 2354–018) Issuance of Relicensing, Savannah River Basin, Tallulah, Tugalo and Chattooga Rivers, GA and SC.

Summary: EPA's review found that most project impacts were adequately described. Additional information on sewage/water quality impacts associated with increased recreational activities would have been desirable.

ERP No. F–NPS–K60100–AZ Programmatic EIS—Juan Bautista de Anza National Historic Trail Comprehensive Management Plan, Implementation, several counties, AZ and CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FS–SCS–G36081–TX Attoyac Bayou Watershed, Flood Prevention and Watershed Protection, New Information concerning Installation of a Multiple-purpose Reservoir on the Naconiche Creek Watershed for Flood Prevention and Recreational Storage, Funding, Nacogdoches, Shelby, Rusk and San Augustine Counties, TX.

Summary: EPA had no objection to the selection of the preferred alternative as described in the Final EIS.

Dated: October 22, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–27475 Filed 10–24–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–30342A; FRL–5394–5]

Buckman Laboratories, Inc.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Buckman Laboratories, Inc., to conditionally register the pesticide product Busan 1104 containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Marion Johnson, Product Manager (PM) 31, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 250, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–5675).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of September 2, 1992 (57 FR 40186; FRL–4081–5), which announced that Buckman Laboratories, Inc., 1256 N. McLean Blvd. Memphis, TN 38108, had submitted an application to register the pesticide product Busan 1104 (EPA File Symbol 1448–GLR) containing the active ingredient 1H-pyrazole-1-methanol 3,5-dimethyl at 93 percent, an active ingredient not included in any previously registered product.

The application was approved on August 19, 1996, as Busan 1104, a preservative in manufacturing emulsion paints, adhesives, latex emulsions, polishes, waxes, papermaking chemicals, coatings, detergents, inks, textiles, and construction materials (EPA Registration Number 1448–351).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking because a period reasonably sufficient for generation of the data has not elapsed since the Administrator first imposed the data requirements, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects on the environment; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of 1H-pyrazole-1-methanol 3,5-dimethyl, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of 1H-pyrazole-1-methanol 3,5-dimethyl during the period of conditional registration is not expected to cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not

result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in the EPA Pesticide Fact Sheet on 1H-pyrazole-1-methanol 3,5-dimethyl.

A copy of the fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: October 1, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–27466 Filed 10–24–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30348B; FRL–5377–8]

Johnson and Johnson Inc.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Johnson and Johnson Medical Inc., to conditionally register the pesticide product Cidex O.P.A. Antimicrobial containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Marion Johnson, Product Manager (PM) 31, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 250, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–305–5675; e-mail: johnson.marion@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of February 18, 1993 (58 FR 8945; FRL–4188–8), which announced that Johnson and Johnson Medical Inc., P.O. Box 90130, Arlington, TX 76004, had submitted an application to conditionally register the pesticide product Cidex O.P.A. Antimicrobial (EPA File Symbol 7078–RT), containing the active ingredient 1,2-benzenedicarboxaldehyde at 99 percent, an active ingredient not included in any previously registered product.

The application was approved on May 10, 1996, for use in the formulation of sterilant and disinfectant products (EPA Registration Number 7078–17).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of 1,2-benzenedicarboxaldehyde, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of 1,2-benzenedicarboxaldehyde during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

This conditional registration requires an Avian Dietary Study and Hydrolysis Study, especially for formulating and manufacturing use products. If the conditions are not complied with the registrations will be subject to cancellation in accordance with FIFRA section 6(e).

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in an EPA Pesticide Fact Sheet on 1,2-benzenedicarboxaldehyde.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 27, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–27467 Filed 10–24–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30420; FRL–5392–8]

Zeneca Inc.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to conditionally register the pesticide product Promexal X50 Preservative containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Marion Johnson, Product Manager (PM 31) Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 250, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–305–5675; e-mail: johnson.marion@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received from Zeneca Inc., Biocides Division, 1800 Concord Pike, Wilmington, DE 19897, an application to register the pesticide product Promexal X50 Preservative (EPA File Symol 10182–GIL) containing the active ingredient 2-methyl-4,5-trimethylene-4-isothiazolin-3-one at 5 percent a new active ingredient not included in any previously registered product. However, since the notice of receipt did not publish in the Federal Register as required by FIFRA, as amended, interested parties may submit written or electronic comments within 30 days after date of publication for this product.

The application was approved as a conditional registration on July 23, 1996, for aqueous compositions such as; oil in water emulsions, latices, emulsion paints, water-based adhesives, casein and rosin dispersions, aqeous slurries, and tape joint compounds (EPA Registration Number 10182–385).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on the condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and, that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of 2-methyl-4,5-trimethylene-4-isothiazolin-3-one, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of 2-methyl-4,5-trimethylene-4-isothiazolin-3-one during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of the pesticide is of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticide will not result in unreasonable adverse effects to man and/or the environment.

More detailed information on this conditional registration is contained in a Pesticide Fact Sheet on 2-methyl-4,5-trimethylene-4-isothiazolin-3-one.

A copy of the Fact Sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved labels and the list of data references used to support registration are available for public inspection in the office of the Product Manager (PM). The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202, (703)–305–5805. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A101), 401 M St., SW, Washington, D.C. 20460. Such requests should: (1) identify the product name and registration number, and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 27, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–27465 Filed 10–24–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5641–1]

State Revolving Fund Funding Framework Policy and Guidance

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency is announcing the availability of the final State Revolving Fund (SRF) Funding Framework and Policy and Guidance document. In an innovative partnership approach, the Agency has engaged in a policy dialog with state representatives to clarify the use of SRF funds for ''non-traditional'' projects where the connection to water quality is less clear and, therefore, needs to be established. The resulting policy makes no regulatory changes and imposes minimal newrequirements on the states. The Framework document establishes voluntary guidelines for funding traditional SRF projects (where the primary purpose is water quality) and sets national policy for states wanting to make innovative uses of their SRFs to fund non-traditional projects. A state wanting to fund non-traditional projects must use an integrated priority setting system, such as the two described in the Framework, to establish for the public that these projects are a priority within the context of the state's water quality problems as a whole. This policy becomes effective when a state prepares its 1998 SRF Intended Use Plan.

FOR FURTHER INFORMATION CONTACT: Members of the public can obtain a copy of the SRF Funding Framework by calling (202) 260–2268 and leaving a name and address. The document may be accessed electronically through the Internet at http://www.epa.gov/WhatsNew.html.

Dated: October 18, 1996.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 96–27478 Filed 10–24–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5638–7]

Revised Guidance on Procedures for Submitting CERCLA Section 106(b) Reimbursement Petitions and on EPA Review of Those Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Issuance of revised guidance document.

SUMMARY: During June 1994, EPA's Environmental Appeals Board (Board) issued guidance regarding the procedures for submission and review of petitions for reimbursement under section 106(b)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9606(b)(2), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). Section 106(b)(2) allows any person who has complied with an administrative order issued under section 106(a) of CERCLA to petition for reimbursement of the reasonable costs incurred in complying with the order, plus interest. To establish a claim for reimbursement, a petitioner must demonstrate that it was not liable for response costs under CERCLA section 107(a), or that EPA's selection of the ordered response action was arbitrary and capricious or was otherwise not in accordance with law.

Based on its experience with such petitions since June 1994, the Board issued a revised version of its procedural guidance on October 9, 1996. This notice sets forth the full text of the Board's revised guidance for the convenience of interested members of the public.

FOR FURTHER INFORMATION CONTACT: For further information or for copies of the revised guidance document, contact the Environmental Appeals Board (Mail Code 1103B), 401 M Street, SW, Washington, DC 20460, (202) 501–7060.

Dated: October 10, 1996.

Edward E. Reich,

Environmental Appeals Judge.

Revised Guidance on Procedures for Submitting CERCLA Section 106(b) Reimbursement Petitions and on EPA Review of Those Petitions

Note: This document is intended solely as guidance. It does not establish a binding norm and is not finally determinative of the issues addressed. This document is not intended to be a synopsis of principles of law. The policies and procedures in this guidance do not constitute a rulemaking by the Agency, and may not be relied on to create a substantive or procedural right or benefit enforceable at law by any person. The Agency may take action at variance with this guidance.

I. Introduction

This document sets forth guidance regarding petitions for reimbursement submitted under section 106(b)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9606(b)(2), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). This guidance describes the contents of reimbursement petitions and the procedures that EPA uses in responding to reimbursement petitions. The full text of section 106(b)(2) is set forth as an appendix to this guidance.

Section 106(b)(2) allows any person who has complied with an administrative order issued under section 106(a) of CERCLA to petition for reimbursement of the reasonable costs incurred in complying with the order, plus interest. To establish a claim for reimbursement, a petitioner must demonstrate that it was not liable for response costs under CERCLA section 107(a), or that EPA's selection of the ordered response action was arbitrary and capricious or was otherwise not in accordance with law.

Section 106(b)(2) is organized in four parts, roughly as follows. Subparagraph 106(b)(2)(A) requires that a petition be submitted to EPA ''within 60 days after completion of the required action.'' Subparagraphs 106(b)(2)(C) and 106(b)(2)(D) describe the substantive grounds for reimbursement. Subparagraph 106(b)(2)(B) authorizes a petitioner to pursue its claim for reimbursement in the appropriate U.S. District Court if EPA denies the claim in whole or in part.

This guidance supersedes the Environmental Appeals Board's June 9, 1994 ''Guidance on Procedures for Submitting CERCLA Section 106(b) Reimbursement Petitions and on EPA Review of Those Petitions,'' and is effective immediately. The procedures described in this guidance will be applied to all petitions submitted on or after the date of its issuance. The Board will also apply these procedures, to the extent the Board determines it to be practicable, to petitions that were submitted before the date of issuance of this guidance and that have not yet been decided by the Board.

II. Filing Procedures and Deadlines

Petitions for reimbursement should be submitted to EPA's Environmental Appeals Board [1] by certified mail, return receipt requested, at the following address: Clerk, Environmental Appeals Board (Mail Code 1103B), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Alternatively, petitions and supporting materials may be hand-delivered to the Clerk of the Environmental Appeals Board between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (excluding federal holidays), at the following address: Suite 500, 607 Fourteenth Street, NW, Washington, DC 20005. The petitioner should also send a copy of its petition, including attachments, to the EPA Regional program office that issued the underlying administrative order.

Section 106(b)(2) requires that a petition be submitted to EPA ''within 60 days after completion of the required action.'' For the purpose of determining a petitioner's compliance with the statutory 60-day deadline, EPA will look to the postmark date if the petition is sent to the Environmental Appeals Board by certified mail, or the date of receipt by the Environmental Appeals Board if the petition is sent by any other means. In other words, petitions sent to the Board by certified mail must be postmarked not later than the 60th day after the date of completion of the required action. Petitions sent to the Board by any means other than certified mail must actually be *received* by the Environmental Appeals Board not later than the 60th day after the date of completion of the required action. It is recommended that petitions be submitted to the Board only by certified mail or by hand delivery; to minimize the risk of disputes over timeliness, filing by regular first-class mail is discouraged. If the 60-day time period for filing the petition with EPA expires on a Saturday, Sunday, or federal legal holiday, the period will be extended to include the next business day.

III. Contents of the Petition

A. Background Information

A petition must include the following background information:

- the petitioner's full name, title, and address;
- the name, title, address, telephone number and fax number of any agent or attorney authorized to represent the

[1] The President's authority to implement CERCLA section 106(b) was delegated to the EPA Administrator by Executive Order 12580 (January 23, 1987). The authority to receive, evaluate, and make determinations regarding petitions for reimbursement submitted pursuant to section 106(b) has been delegated to the Environmental Appeals Board. *See* Delegation of Authority 14–27 (''Petitions for Reimbursement'').

petitioner (or, if the petitioner is not represented, the petitioner's own telephone number and fax number);

- the name and address of the facility at which the response action was implemented; and
- the U.S. EPA docket number for the section 106(a) order (a complete copy of the order must also accompany the petition as an attachment).

The petition must be signed by the petitioner or by an attorney representing the petitioner. If the petitioner is not a natural person (*e.g.*, if the petitioner is a corporation), the petition must be signed by the petitioner's attorney or by an agent or officer of the petitioner who is qualified to act as a signatory; for purposes of this requirement, a ''qualified'' agent or officer means one who satisfies the definition provided in 40 C.F.R. § 270.11(a). The Environmental Appeals Board may at any time require any factual assertion contained in a petition to be substantiated by an affidavit based on the affiant's personal knowledge of the matter asserted.

B. Threshold Matters (Required Assertions Re: Petitioner's Eligibility To File)

The Board's first priority, in acting on a petition for reimbursement, is to evaluate the petitioner's eligibility to have its claim addressed on the merits. The petition must therefore present information concerning the following threshold eligibility matters:

(1) Compliance With the Order: The recipient of a section 106(a) administrative order may seek reimbursement of its costs only if it ''complies'' with the order. A petition for reimbursement must therefore include a statement indicating that the petitioner has complied with the order, and evidence supporting that statement must accompany the petition. If the EPA Regional office that issued the order disputes the petitioner's assertion regarding compliance (under the procedures described in Section IV.A, *infra*), the Board may undertake to resolve that dispute before proceeding to the merits of the petitioner's claim.

(2) Completion of the Required Action: A petitioner may only present a reimbursement claim for consideration on the merits after completion of the action required by the section 106(a) administrative order. The petition must therefore include a statement indicating that the action has been completed, and evidence supporting that statement must accompany the petition. If the EPA Regional office that issued the order disputes the petitioner's assertion regarding completion (under the procedures described in Section IV.A, *infra*), the Board may undertake to resolve that dispute before proceeding to the merits of the petitioner's claim.

(3) Timeliness of the Petition: The petition must also indicate the date on which the action required by the section 106(a) order was completed, so that the Board can determine whether the petition is timely. Very important information regarding compliance with the statutory 60-day filing deadline appears *supra* in Section II of this guidance, titled ''Filing Procedures and Deadlines.''

(4) Incurrence of Costs: The statute requires a demonstration that the costs for which reimbursement is sought are ''reasonable.'' However, there is no need for a petitioner to undertake a full-scale demonstration of the ''reasonableness'' of the costs being claimed until and unless the Board concludes that reimbursement in some amount is appropriate. Therefore, when initially filing a petition, the only cost information that the petitioner must include is (1) a statement asserting that the petitioner incurred costs in complying with EPA's section 106(a) order, and (2) an estimate of the total costs being claimed by the petitioner. Any dispute concerning the reasonableness of the costs incurred will ordinarily be addressed only after the Board decides that reimbursement of some amount should be awarded. The Board, however, reserves the right to request cost information at an earlier date if it deems such information useful in determining either threshold eligibility issues or a petitioner's entitlement to reimbursement on the merits.

C. Statement of Grounds for Reimbursement

The petition must articulate *all* legal arguments and all factual contentions (including contentions, if any, regarding technical or scientific matters) on which the petitioner relies in support of its claim for reimbursement.[2] Except as may be permitted by the Board for good cause shown, and except as specifically provided in Sections III.B(4) and IV.F of this guidance (describing procedures for identifying and submitting cost-related information), no issues may be raised by a petitioner during the petition review process that were not identified in the petition, and no evidence or information may be submitted during the petition review process that was not identified in the petition, unless the petitioner demonstrates: (1) for new issues, that such issues were not reasonably ascertainable as of the date the petition was filed; or (2) for new evidence or information, that the petitioner could not reasonably have known of its existence, or could not reasonably have anticipated its relevance or materiality, as of the date the petition was filed.

The petition must explicitly state, as to each claim set forth therein, whether the claim arises under CERCLA § 106(b)(2)(C) or under CERCLA § 106(b)(2)(D).[3] Both subparagraph 106(b)(2)(C) and subparagraph 106(b)(2)(D) expressly place the burden of proof on the petitioner.

D. Required Attachments

A complete copy of the administrative order on which the petitioner's claim is based must accompany the petition as an attachment. In addition, *all* other documents on which the petitioner relies in support of its claim must also be submitted as attachments to the petition, except for documents to be relied on solely as evidence of the costs incurred or as evidence of their reasonableness.[4] Each of the attachments must be separately identified, and the relevance of each attachment to the petitioner's claim briefly explained, in the body of the petition.

IV. Agency Procedures for Processing Section 106(b) Petitions

The Environmental Appeals Board will generally evaluate petitions for reimbursement using the following procedures. The Board may, however, exercise its discretion to stay further action on a petition at any time. The Board may, for example, defer consideration of a petition while related settlement discussions or judicial actions are proceeding, or for other good cause. In addition, a petitioner may elect to withdraw its petition, or to withdraw its own claim (*e.g.*, for settlement purposes) from a petition

[2] A petitioner may seek leave of the Environmental Appeals Board to amend a petition in order to present information, or to identify evidence, that was not available at the time of the initial filing. A petition *must* be promptly amended as appropriate to correct or clarify any statements therein that are no longer true, or that are determined not to have been true when made.

[3] Any petitioner challenging EPA's decision in selecting an ordered response action should also note that, in the event of a successful challenge, section 106(b)(2)(D) calls for reimbursement of ''reasonable response costs incurred by the petitioner pursuant to the *portions* of the order found to be arbitrary and capricious or otherwise not in accordance with law'' (emphasis added). Therefore, when making a claim under section 106(b)(2)(D), the petitioner must be specific in identifying the *portions* of EPA's order that it seeks to challenge.

[4] Copies of such cost-related documents need only be submitted after the Board issues an Order Granting Reimbursement. *See* Section IV.F, *infra.*

submitted jointly with other petitioners. Whenever a petitioner withdraws or voluntarily dismisses a claim for reimbursement, the petitioner will be permitted to reinstate that claim *only* if the 60-day statutory deadline (measured from the date of completion of the required action) has not yet expired.

A. Regional Office Response to the Petition

Upon receiving a petition for reimbursement, the Environmental Appeals Board will send a letter to the appropriate EPA Regional office (with a copy to the petitioner) soliciting a response to the petition. The Region must respond in one of two ways:

If the Region contends that one or more of the threshold eligibility requirements discussed Section III.B of this guidance have not been met—*i.e.*, that the petitioner has failed to comply with EPA's section 106(a) order, that the required action has not been completed, that the petition was not timely filed, and/or that the petitioner has not incurred *any* costs in complying with a section 106(a) order—the Region must raise those contentions by submitting a limited responsive pleading in the nature of a motion to dismiss the petition. Such a pleading would address only the petitioner's alleged failure to meet the threshold requirements described in Section III.B, and would be treated by the Board as a request to reject the petition without reaching the merits of the petitioner's claims. Because a pleading of this nature would not include a response to the merits of the petitioner's claims, the Region would be expected to file it expeditiously, within *thirty* days after the date of the Board's letter soliciting a response to the petition.[5] The petitioner would then be invited to respond to the Region's threshold objections. Once the threshold eligibility issues are fully briefed, the Board will either rule on those issues separately or defer ruling on them until the merits have also been briefed (pursuant to a further order of the Board). The Region would not, by initially filing a responsive pleading in the nature of a motion to dismiss, be deemed to have waived any of its arguments with respect to the merits of the petitioner's claims.

If the Region does not contend that one or more of the threshold eligibility requirements discussed in Section III.B of this guidance have not been met, the Region must submit a response addressing the merits of the petitioner's claims. A response addressing the merits would be due from the Region within *sixty* days after the date of the Board's letter soliciting a response to the petition. The Region's submission of a response addressing the merits of the petitioner's claims (either on its own initiative or as directed by the Board) in no way limits the Board's authority to reject the petition for failure to satisfy the threshold eligibility requirements described in Section III.B of this guidance.

When the Region submits its first responsive pleading to the Board, addressing either the petitioner's eligibility to seek reimbursement or the merits of the petitioner's claims, the Region must also submit a certified index to the administrative record that the Region compiled in connection with the issuance of the underlying CERCLA § 106(a) order. In addition, the Region must provide the Board with copies of all documents that are relied on in the responsive pleading and that have not already been submitted by the petitioner.

B. Additional Briefing

The Board may at any time require or invite the petitioner and/or the Region to provide such supplemental briefing as the Board may deem necessary for an informed resolution of the issues presented. Briefs other than those expressly required or invited by the Board may be submitted only with leave of the Board.

C. Evidentiary Hearings and Oral Arguments

In its sole discretion, the Board may choose to designate a hearing officer (who shall be an EPA employee without prior involvement in the matter under review) to conduct an evidentiary proceeding with respect to any issue of fact that the Board may consider material to the resolution of a reimbursement petition.[6] Similarly in its sole discretion, the Board may direct the parties to appear before it to present oral argument with respect to one or more specified issues of law. The Board may take either of those actions either in response to a request by a party or on its own initiative.

If the Board determines that an evidentiary hearing or oral argument shall take place, both the petitioner and the Region will be notified in writing of the issues to be addressed and the hearing date and location. Both the Region and the petitioner will be expected to participate in such proceedings; a party's failure to participate may cause adverse inferences or conclusions to be drawn against that party with respect to any matter addressed at the proceedings.

D. Preliminary Decision

The Board's proposed disposition of a petition for reimbursement, whether on the merits or otherwise, will first be issued to the parties in the form of a ''Preliminary Decision'' on which comments will be solicited (*see* Section IV.E, *infra*). If any materials cited in the Preliminary Decision were not furnished by the parties themselves and are not generally available, such materials will either be sent by the Board to all parties along with the Preliminary Decision or be made available for inspection by the parties at the Regional office upon issuance of the Preliminary Decision, as the Board deems appropriate. In addition, if an evidentiary hearing was conducted in connection with the evaluation of a petition, the Board will provide a copy of the hearing officer's recommended decision to the parties along with its own Preliminary Decision.

E. Comments on the Preliminary Decision

When the Board issues its Preliminary Decision, it will also establish a schedule providing both parties with an opportunity to comment on the decision. The Board expects that it will generally invite such comments according to the following sequence:

If the Preliminary Decision proposes to award reimbursement to the petitioner, the Board will direct the Regional office to submit its comments first. The Board will specify a later date for submission of the petitioner's comments, which may include a response to the Region's comments.

If, however, the Preliminary Decision proposes to deny the petitioner's claim in full, the Board will direct the petitioner to submit its comments first. The Board will specify a later date for submission of the Region's comments, which may include a response to the petitioner's comments.

The comment period following issuance of the Board's Preliminary Decision represents the final opportunity for each party to present its views in relation to the substance of the petitioner's claim for reimbursement under section 106(b)(2). Comments should focus with particularity on the analysis in the Preliminary Decision rather than merely repeating general

[5] The Regional office may request a limited extension of time if necessary to verify whether a petitioner has completed the response action.

[6] If the Board designates a hearing officer to conduct an evidentiary hearing, he or she will be asked to issue a recommended decision to the Board with respect to the issues addressed at the hearing.

arguments previously made. To the extent that a party wishes only to reaffirm its reliance on arguments already made to the Board, such arguments need not be repeated at length. Instead, comments of that nature may be submitted in summary form referencing the commenting party's prior submissions.

Before finalizing its determination to grant or deny reimbursement, the Board will review and consider comments relating to any issue previously identified by either party; but the Board will, except in extraordinary circumstances, decline to consider any new claims or new issues sought to be raised during the comment period. Absent extraordinary circumstances, comments should therefore relate only to the issues raised in the petition or in the Region's response to the petition, or to any other matter discussed in the Preliminary Decision.

F. Further Proceedings

After reviewing comments (and responses to comments) submitted by the parties, and making such changes as it deems appropriate in light of those submissions, the Board will issue either an Order Granting Reimbursement or a Final Order Denying Reimbursement. An Order Granting Reimbursement will be issued if the Board determines that a petitioner is entitled to reimbursement of all or any portion of the costs claimed in the petition. A Final Order Denying Reimbursement will be issued only if the Board determines that *no* portion of the costs claimed by the petitioner will be reimbursed.

(1) Final Order Denying Reimbursement: A Final Order Denying Reimbursement represents the Agency's final decision with respect to the petitioner's claim. A petitioner who wishes to file an action in Federal district court under CERCLA section 106(b)(2)(B) must do so within thirty days of receipt of a Final Order Denying Reimbursement. To eliminate any uncertainty as to the date of receipt, a Final Order Denying Reimbursement will be served on the petitioner by certified mail, return receipt requested.

(2A) Order Granting Reimbursement; Proof of Costs: An Order Granting Reimbursement, in contrast, does not constitute the Agency's final decision with respect to the petitioner's claim, because the amount of reimbursement to be awarded must still be determined. When issuing an Order Granting Reimbursement, therefore, the Board will also direct the petitioner to furnish documentation of all costs that it seeks to recover and that would be recoverable according to the analysis in the Board's Order Granting Reimbursement. According to a briefing schedule established by the Board, the Regional office will then be afforded an opportunity to challenge particular cost items (as unreasonable or otherwise not recoverable), and the petitioner will be permitted to respond to those challenges.[7]

(2B) Final Order Granting Reimbursement: After the cost issues have been briefed, the Board will issue a Final Order Granting Reimbursement. A Final Order Granting Reimbursement represents the Agency's final decision with respect to the petitioner's claim. A petitioner who wishes to file an action in Federal district court under CERCLA § 106(b)(2)(B) must do so within thirty days of receipt of a Final Order Granting Reimbursement. To eliminate any uncertainty as to the date of receipt, a Final Order Granting Reimbursement will be served on the petitioner by certified mail, return receipt requested.

The Board's final decisions under CERCLA § 106(b)(2) are available on a current basis on LEXIS, WESTLAW, and the World Wide Web (http://www.epa.gov/eab). The Board's decisions are also published periodically in a series of bound volumes titled *Environmental Administrative Decisions*, available for purchase from the Superintendent of Documents, U.S. Government Printing Office (telephone: 202–512–1800).[8] For the convenience of litigants and the Board, the Board encourages the citation of Board decisions to the appropriate volume of the *Environmental Administrative Decisions*, if the cited decision appears therein.

V. Further Information

For further information concerning the matters addressed in this guidance, contact Stuart Cane, Environmental Appeals Board (1103B), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 501–7060.

Appendix

CERCLA Section 106(b)(2) provides:

(A) Any person who receives and complies with the terms of any order issued under subsection (a) of this section may, within 60 days after completion of the required action, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate as specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of Title 26.

(B) If the President refuses to grant all or part of a petition made under this paragraph, the petitioner may within 30 days of receipt of such refusal file an action against the President in the appropriate United States district court seeking reimbursement from the Fund.

(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 9607(a) of this title and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

(D) A petitioner who is liable for response costs under section 9607(a) of this title may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the President's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with

[7] Because the statute expressly limits reimbursement from the Fund to ''reasonable'' costs (plus interest), the Board may require a petitioner to submit not only evidence of the costs actually incurred—which evidence would include, at a minimum, itemized invoices and proof of their payment in full—but also evidence demonstrating that those costs are reasonable. Proof of ''reasonableness'' of costs would become particularly important if the Regional office, after receiving the petitioner's initial itemization of the costs being claimed, offers specific reasons for concluding that certain cost items are not reasonable. Although the Board cannot anticipate all possible permutations of these issues, factors relevant to the reasonableness of a petitioner's costs might include: bidding procedures used for a particular project and the number of bids received; reasons for selecting a contractor other than the lowest bidder; cost estimates provided by prospective contractors and the circumstances surrounding any later deviations from those estimates; and the reasons for any unforeseen expansion of a particular project or unforeseen delay in its completion, to the extent that such expansion or delay resulted in additional costs. Petitioners should take care to retain documents and other evidence bearing on such matters, and should be prepared to submit such evidence to the Board upon request.

[8] When contacting GPO regarding Volumes 1 through 4 of the *Environmental Administrative Decisions*, please refer to GPO Order No. 055–000–00538–8. When inquiring as to Volume 5, please refer to GPO Order No. 055–000–00545–1. Volume 6 will be published during 1997.

subsections (a) and (d) of section 2412 of Title 28.

[FR Doc. 96–27156 Filed 10–24–96; 8:25 am]

BILLING CODE 6560–50–P

[FRL–5639–9]

Proposed Administrative Settlement; Denver Radium Site (OU 6), 1271 West Bayaud, Denver, CO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed administrative settlement.

SUMMARY: In accordance with the requirements of section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), notice is hereby given of a proposed administrative settlement under section 122(h) concerning the portion of Operable Unit (OU) 6 of the Denver Radium Site located at 1271 West Bayaud, in Denver, Colorado (Site). The proposed administrative settlement requires two potentially responsible parties (PRPs) to together pay $177,112.71 to resolve their civil liability to the United States under section 107(e) of CERCLA for reimbursement of Past Response Costs relating to the Site.

DATES: Comments must be submitted on or before November 25, 1996.

ADDRESSES: Comments should be addressed to Rebecca Thomas (8EPR–SR), Remedial Project Manager, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, and should refer to: In the Matter of: Denver Radium Site (OU 6), Docket No. CERCLA VIII–96–12.

FOR FURTHER INFORMATION CONTACT: Jessie Goldfarb (8ENF–L), Enforcement Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, (303) 312–6926.

SUPPLEMENTARY INFORMATION: Notice of section 122(h) Cost Recovery Settlement: In accordance with section 122(i)(1) of CERCLA, notice is hereby given that the terms of an Administrative Settlement Agreement have been agreed to by AlliedSignal, Inc., (AlliedSignal) and General Chemical Corporation (General Chemical). By the terms of the proposed administrative settlement, the PRPs will together pay $177,112.71 to EPA to resolve any and all civil liability to the United States under section 107(a) of CERCLA for reimbursement of ''Past Response Costs'' as defined in the Agreement. ''Past Response Costs'' are defined as all costs, including, but not limited to, direct and indirect costs that EPA has incurred and paid through the effective date of the Agreement, at or in connection with the Site, plus accrued ''Interest'' on all such costs through the effective date of the Agreement. ''Interest'' is defined as interest at the rate specified for interest on investments of the Hazardous Substance Superfund, compounded on an annual basis.

The settlement amount to be paid by the PRPs represents 99.6% of the total costs expended by EPA in connection with response activities at the Site.

EPA will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed administrative settlement.

A copy of the proposed Administrative Settlement Agreement may be obtained in person or by mail from Jessie Goldfarb (8ENF–L), Enforcement Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466. Additional background information relating to the proposed administrative settlement is available for review at that address.

Dated: October 15, 1996.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 96–27310 Filed 10–24–96; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: New collection.

Title: Outside Counsel Budget and Invoicing Forms.

Form Number: None.

OMB Number: N/A.

Expiration Date of OMB Clearance: N/A.

OMB Reviewer: Alex Hunt, (202) 395–7316, Office of Management and Budget, OIRA, Paperwork Reduction Project, Washington, D.C. 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before November 25, 1996.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: This collection of information facilitates the planning and controlling of the FDIC's outside counsel costs through the use of budgeting and invoicing methods designed to take into account the complexity, size, and anticipated duration of legal actions.

Dated: October 21, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–27407 Filed 10–24–96; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1139–DR]

Maryland; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maryland, (FEMA–1139–DR), dated September 17, 1996, and related determinations.

EFFECTIVE DATE: October 7, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Maryland, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 17, 1996:

Allegany County for Public Assistance (already designated for Individual Assistance and Hazard Mitigation).

Garrett County for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 96–27426 Filed 10–24–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1140–DR]

South Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina, (FEMA–1140–DR), dated September 30, 1996, and related determinations.

EFFECTIVE DATE: October 16, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of South Carolina, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 30, 1996:

Georgetown County for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–27427 Filed 10–24–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1140–DR]

South Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina (FEMA–1140–DR), dated September 30, 1996, and related determinations.

EFFECTIVE DATE: October 16, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 15, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 96–27428 Filed 10–24–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1135–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia (FEMA–1135–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 23, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 96–27425 Filed 10–24–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 96–18]

Notice of Filing of Complaint and Assignment

In the matter of Red Hot Transport v. Navajo Shipping Agency, Incorporated; Africa Mideast Line.

Notice is given that a complaint filed by Red Hot Transport (''Complainant'') against Navajo Shipping Agency, Incorporated and Africa Mideast Line (''Respondents'') was served October 22, 1996. Complainant alleges that Respondents have violated section 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(d)(1), by misrepresenting its service and providing an inferior service to that booked and paid for, falsifying documents by issuing Bills of Lading showing cargo moved on the vessel Cape May, when in fact the cargo moved on the California Pegasus, failing to provide various services and other practices.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by October 22, 1997, and the final decision of the Commission shall be issued by February 19, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 96–27488 Filed 10–24–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 8, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. John D. Hunter and William C. Brown, both of Des Moines, Iowa; to acquire an additional 50.54 percent, for a total of 92.56 percent, of the voting shares of Whitmore Company, Inc., Corning, Iowa, and thereby indirectly acquire Okey-Vernon First National Bank, Corning, Iowa, Page County State Bank, Clarinda, Iowa, and First Federal Savings Bank of Creston, Creston, Iowa.

Board of Governors of the Federal Reserve System, October 21, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–27400 Filed 10-24-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are 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 standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking 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). Any request for a hearing 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, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 18, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. City Holding Company, Charleston, West Virginia; to acquire 100 percent of the voting shares of The Old National Bank of Huntington, Huntington, West Virginia. Comments regarding this application must be received by November 8, 1996.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Arrowhead Capital Corporation, West Palm Beach, Florida; to become a bank holding company by acquiring 52 percent of the voting shares of Sunniland Bank, Fort Lauderdale, Florida.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. FBOP Corporation, Oak Park, Illinois; to acquire 100 percent of the voting shares of SDNB Financial Corp., San Diego, California, and thereby indirectly acquire San Diego National Bank, San Diego, California.

Board of Governors of the Federal Reserve System, October 21, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–27401 Filed 10-24-96; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 11:00 a.m., Wednesday, October 30, 1996, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding software contracts within the Federal Reserve System.
2. Proposal regarding a maintenance contract within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–27555 Filed 10–23–96; 10:36 am]

BILLING CODE 6210–01–P

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, October 30, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of their routine nature, no discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that the items be moved to the discussion agenda.

1. Proposals to (1) rescind Regulation R (Relationships with Dealers in Securities Under Section 32 of the Banking Act of 1933) and (2) remove a Board interpretation regarding the application of section 32 prohibitions to bank holding companies (proposed earlier for public comment; Docket No. R–0931).
2. Proposed 1997 Private Sector Adjustment Factor.
3. Proposals to (1) announce the effective date of the expanded operating hours for the Fedwire funds transfer service and (2) modify the daylight overdraft posting rules to clarify the posting times for certain transactions (proposed earlier for public comment; Docket No. R–0778).

Discussion Agenda:

4. Proposal to eliminate three of the prudential limitations (firewalls) imposed on the operations of section 20 subsidiaries of bank holding companies (proposed earlier for public comment; Docket No. R–0701).
5. Proposed 1997 fee schedules for priced services.

6. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: October 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–27556 Filed 10–23–96; 10:36 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the Federal Register.

The Secretary of the Treasury has certified a rate of 13⅜% for the quarter ended September 30, 1996. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: October 18, 1996.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 96–27367 Filed 10–24–96; 8:45 am]

BILLING CODE 4150–04–M

Administration for Children and Families

Notice of Proposed Change in Data Source Used To Determine Tribal Child Counts; Request for Comments on Proposed Approach and Process

AGENCY: Administration on Children Youth and Families, ACF, DHHS.

ACTION: Notice of proposed change in data source used to determine tribal child counts; request for comments on proposed approach and process.

SUMMARY: This Notice announces the Proposed Self-Certification Process for Tribal Child Counts Used to Calculate Tribal Allotments Under the Child Care and Development Block Grant. The purpose of utilizing a self-certification process for tribal grantees is to assist the Agency in fulfilling its Congressional mandate to serve low-income children under the Child Care and Development Block Grant (CCDBG). To ensure accuracy in determining tribal allotments under the CCDBG, ACF is proposing a new strategy of self-reporting, instead of continuing its current practice of using data reported in the Bureau of Indian Affairs (BIA) ''Indian Service Population and Labor Force Estimates Report.''

DATES: The Department invites comments on this proposed data collection method, particularly on whether a self-certification process will result in accurate and timely information reflecting current child count data. Written comments must be submitted on or before November 25, 1996.

ADDRESSES: Direct all written comments to: Administration on Children and Families, Child Care Bureau, Room 320–F, 200 Independence Avenue, S.W.,Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Ginny Gorman, Administration on Children and Families, Child Care Bureau, Room 320–F, 200 Independence Avenue, S.W.,Washington, D.C. 20201.

SUPPLEMENTARY INFORMATION:

Introduction and Purpose

The Child Care and Development Block Grant (CCDBG) provides funding to States, Territories and Federally-recognized Tribes to provide services to children from low-income families who need child care either because a parent is working or attending a training or educational program or because the family is receiving or needs to receive protective services.

The CCDBG statute requires the Secretary to obtain the most recent data and information necessary, from each appropriate Federal agency, to determine state funding allotments. There is no similar statutory requirement for determining tribal allotments.

The Final Rule implementing the CCDBG program stated that the BIA Indian Service Population and Labor Force Estimates Report, published biennially, was determined to be the most suitable, available data source for CCDBG purposes. However, problems have developed in its use. Due to cutbacks in BIA personnel, this Report has not been published on schedule. The fiscal year (FY) 1996 CCDBG tribal allotments will be based on 1993 data since the scheduled 1995 Report has not yet been published.

In addition, the BIA Report is limited because it does not include Alaska-specific data. Consequently, ACF uses Census data to determine CCDBG allotments for Alaskan grantees. Thus, for purposes of CCDBG allocations, child count data are currently collected from two separate data sources which do not match in the timing of available data or types of information collected.

In order to continue to provide for the best available data source to determine the number of children eligible to receive CCDBG funds in each tribe or tribal consortia, ACF has again reviewed potential data sources.

After a thorough review of the available data options, ACF has determined that it would be in the best interest of the tribes, as well as ACF, to utilize a self-certification process since it would afford tribes the opportunity to select a data source, or utilize a method for counting tribal children, which most accurately reflects its child population.

Further, through a tribal self-certification process, the child count data will be available with minimal lag time and will more accurately reflect the natural fluctuations in child population. With current sources, it can take 2 to 3 years for changes in population (such as reaching a child population of 50) to be reflected in the data source.

This approach supports the President's April 29, 1994, mandate to Federal agencies which reaffirms the government-to-government relationship and directs agencies to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

Proposed Process for Self-Certification

ACF intends to include a new section in the FY 1997 Program Instruction for tribal CCDBG applicants which describes the process for tribes to follow

in submitting their self-certified child counts. Each tribal grantee and each tribe participating in a consortium will be required to submit a declaration signed by the governing body of the tribe or an individual authorized to act for the applicant tribe or organization. The declaration must certify the number of Indian children, as defined in section 3.7(#10) of the CCDBG plan preprint, in the tribe's most recent count, under age 16, who reside on or near the reservation or other tribal service area.

The declaration must be submitted as part of the grantee's application. Each tribe, participating in a consortium, must submit such a declaration to the consortium, who in turn must submit all such declarations as an attachment to the consortium's application.

Tribes are not obligated to conduct a special count to obtain this number for FY 1997 funding. Tribes may submit their most recent child count of such children. A tribe may choose to conduct a special count; however, it must be completed by July 1 of the funding year, and the child count submitted with the CCDBG application on July 1.

It must be noted that CCDBG continues to serve children under age 13. However, for the FY 1997 allocation of funds, ACF intends to allow children under age 16 to be counted in order to give flexibility in the type of data sources tribes may utilize (e.g., the most recent BIA Report). This will allow tribes who do not choose to conduct a separate count to use existing data sources. If an application is submitted without a child count declaration, ACF will calculate the grantee's FY 1997 grant award using the same number of children used to determine the FY 1996 grant award. Beginning in FY 1998, Tribal child counts declarations will include children under age 13, in conformance with the CCDBG statute.

Dated: October 22, 1996.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 96–27462 Filed 10–24–96; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Dermatologic and Ophthalmic Drugs Advisory Committee

Date, time, and place. November 7 and 8, 1996, 8:30 a.m., Quality Suites, Main Ballroom, Three Research Ct., Rockville, MD.

Type of meeting and contact person. Closed presentation of data, November 7, 1996, 8:30 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 1 p.m.; open committee discussion, 1 p.m. to 5 p.m.; open public hearing, November 8, 1996, 8:30 a.m. to 11:30 a.m., unless public participation does not last that long; open committee discussion, 11:30 a.m. to 5 p.m.; Tracy K. Riley or Danyiel A. D'Antonio, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Dermatologic and Ophthalmic Drugs Advisory Committee, code 12534. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of dermatologic and ophthalmic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 1, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Closed presentation of data. On November 7, 1996, the committee will hear trade secret and/or confidential commercial information relevant to pending investigational new drug applications (IND's) and/or new drug applications (NDA's). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. On November 7, 1996, the committee will review trade secret and/or confidential commercial information relevant to pending IND's and/or NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Open committee discussion. On November 7, 1996, the committee will hear presentations and discuss the potential for neurotoxicity of thalidomide raised by the investigational use and possible eventual approval of thalidomide for dermatologic and other indications. On November 8, 1996, the committee will hear presentations and discuss the teratogenicity of thalidomide and issues of pregnancy prevention raised by the investigational use and possible eventual approval of thalidomide for dermatologic and other indications.

FDA regrets that it was unable to publish this notice 15 days prior to the Dermatologic and Ophthalmic Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Dermatologic and Ophthalmic Drugs Advisory Committee were available at this time, the Commissioner of Food and Drugs (the Commissioner) concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Allergenic Products Advisory Committee

Date, time, and place. November 15, 1996, 2 p.m., Food and Drug Administration, Bldg. 29, conference room 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open public hearing, 2 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 3:30 p.m.; closed committee deliberations, 3:30 p.m. to 5:30 p.m.; William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Bethesda, MD 20852, 301–827–0314, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Allergenic Products Advisory Committee, code 12388. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of allergenic biological products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 12, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and the indication of the approximate time to make their comments.

Open committee discussion. The committee will discuss the intramural research program for the Laboratory of Immunoregulation in the Division of Allergenic Products.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relevant to pending IND's in the Center for Biologics Evaluation and Research. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)). The committee will also discuss the intramural scientific program. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Anti-Infective Drugs Advisory Committee

Date, time, and place. November 20, 1996, 8 a.m., Holiday Inn—Gaithersburg, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; closed committee deliberations, 9 a.m. to 12 m.; Ermona B. McGoodwin or Danyiel A. D'Antonio, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Anti-Infective Drugs Advisory Committee, code 12530. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 15, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Closed committee deliberations. The committee will hear trade secret and/or confidential commercial information relevant to pending IND's and NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above 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. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) 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 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

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 addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: October 21, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–27489 Filed 10–24–96; 8:45 am]

BILLING CODE 4160–01–F

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 committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Science Board to the Food and Drug Administration

Date, time, and place. November 7, 1996, 8:30 a.m., Sheraton National Hotel, North Ballrooms 1 and 2, 900 South Orme St. (Columbia Pike and Washington Blvd.), Arlington, VA.

Type of meeting and contact person. Closed board deliberations, 8:30 a.m. to 11 a.m.; open board discussion, 11 a.m. to 3 p.m.; open public hearing, 3 p.m. to 4 p.m., unless public participation does not last that long; open board discussion, 4 p.m. to 4:30 p.m.; Susan K. Meadows, Office of Science (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3340, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Science Board to the Food and Drug Administration, code 12603. Please call the hotline for information concerning any possible changes.

General function of the board. The board shall provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency-sponsored intramural and extramural scientific research programs.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Those desiring to make formal presentations must notify the contact person before October 31, 1996, 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. Each presenter will be limited in time and not all requests to speak may be able to be accommodated. All written statements submitted in a timely fashion will be provided to the board.

Open board discussion. The board will receive an update on the FDA Information Retrieval System developed within FDA's Office of Science, and an update on the creation of a Biomaterials Forum designed to foster information exchange on issues related to safety testing of biomaterials and new developments in biomaterials science. Additionally, the board will discuss the formation of a subcommittee on toxicology, which will address issues related to the research and development of toxicological methods and mechanisms that better predict adverse health effects. A complete agenda will be available in advance of the meeting.

Closed board deliberations. The board will discuss information concerning nominations for the FDA award for scientific achievement; if these nominations are discussed in public, information of a personal nature would be disclosed which would constitute a clearly unwarranted invasion of

personal privacy (5 U.S.C. 552b(c)(6)). The board will also hear an interim status report from its subcommittee on FDA research. FDA believes that premature disclosure of the subcommittee's work is likely to significantly impede discussion of the issues being reviewed by the subcommittee and potential agency action on future recommendations (5 U.S.C. 552b(c)(9)(B)). Thus, the interim status report from the subcommittee will be presented in a closed session. However, the issues related to FDA science and research being reviewed by the subcommittee will be presented to the board for public discussion at a later date.

FDA regrets that it was unable to publish this notice 15 days prior to the Science Board to the Food and Drug Administration meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Science Board to the Food and Drug Administration were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Each public advisory committee meeting listed above 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. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) 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 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

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 addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: October 21, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–27490 Filed 10–24–96; 8:45 am]

BILLING CODE 4160–01–F

Indian Health Service

[0917–ZA___]

Notice of Redesignation of Contract Health Service Delivery Area; Jamestown S'Klallam Tribe

AGENCY: Indian Health Service, HHS.

ACTION: Final notice.

SUMMARY: This notice advises the public that the Indian Health Service (IHS) is redesignating the geographic boundaries of the Contract Health Service Delivery Area (CHSDA) for the Jamestown S'Klallam Tribe (''The Tribe''). The Jamestown S'Klallam CHSDA has been comprised of Clallam County in the State of Washington. This county was designated as the Tribe's CHSDA in the Federal Register of January 10, 1984 (49 FR 1291). Jefferson County, Washington, is being added to the existing CHSDA. This notice is issued under authority of 43 FR 34654, August 4, 1978.

EFFECTIVE DATE: October 25, 1996.

FOR FURTHER INFORMATION CONTACT: Leslie M. Morris, Acting Director, Division of Legislation and Regulations, Office of Planning, Evaluation and Legislation, Indian Health Service, Suite 450, 12300 Twinbrook Parkway, Rockville, MD 20852, telephone 301/443–1116. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Secretary of the Interior acknowledged the Tribe as an Indian tribe, effective February 10, 1981 (45 FR 81890). The Tribe has entered into a self-governance compact with the IHS under Title III of the Indian Self-Determination Act (Pub. L. 93–638, as amended) to provide direct services at a clinic facility and also to provide, for eligible Indians, services purchased from private sector health care providers. Such purchased services are called ''contract health services.''

On August 4, 1978, the IHS published regulations establishing eligibility criteria for receipt of contract health services and for the designation of CHSDAs (43 FR 34654, codified at 42 CFR 36.22, last published in the 1986 version of the Code of Federal Regulations). On September 16, 1987, the IHS published new regulations governing eligibility for IHS services. Congress has repeatedly delayed implementation of the new regulations by imposing annual moratoriums. Section 719(a) of the Indian Health Care Amendments of 1988, Pub. L. 100–713, explicitly provides that during the period of the moratorium placed on implementation of the new eligibility regulations, the IHS will provide services pursuant to the criteria in effect on September 15, 1987. Thus, the IHS contract health services program continues to be governed by the regulations contained in the 1986 edition of the Code of Federal Regulations in effect on September 15, 1987. See 42 CFR 36.21 *et seq.* (1986).

As applicable to the Tribe, these regulations provide that, unless otherwise designated, a CHSDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation (42 CFR 36.22(a)(6) (1986)). The regulations also provide that after consultation with the tribal governing body or bodies of those reservations included in the CHSDA, the Secretary may, from time to time, redesignate areas within the United States for inclusion in or exclusion from a CHSDA. The regulations require that certain criteria must be considered before any redesignation is made. The criteria are as follows:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the tribe;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of contract health services.

Additionally, the regulations require that any redesignation of a CHSDA must be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553). In compliance with this requirement, we published the proposal to redesignate the Tribe's CHSDA in the Federal Register of August 3, 1995, requesting public comment (60 FR 39761). One comment was received. A tribal government official commented that the Jefferson County trust land should not be designated as eligible for contract health services if the residents of that county are located in an urban setting. However, the map of Jefferson County, Washington, shows that it is a rural county with no urban areas. Consequently, redesignation of the Tribe's CHSDA to include Jefferson County does not conflict with the comment.

Since approximately 1984, the Tribe has been providing contract health services to 20 of its tribal members residing in Jefferson County, Washington. Under existing regulations, the CHSDA for the Tribes consists of only Clallam County. On December 21, 1992, the Tribe most recently requested the Secretary to redesignate its CHSDA as Clallam County and Jefferson County in the State of Washington. The Tribe based its request on the fact that S'Klallam tribal members are indigenous to Jefferson County, Washington, yet are still ineligible to receive contract health services because they do not reside within the Tribe's existing CHSDA. In addition, the Tribe has developed a land consolidation plan, which has been approved by the Department of the Interior, through the Bureau of Indian Affairs, and which includes tribal trust land in Jefferson County. However, the Jefferson County tribal trust land has not yet been added to the reservation by proclamation of the Secretary of the Interior, but that action is reportedly pending.

In applying the aforementioned CHSDA redesignation criteria required by operative regulations (43 FR 35654), the following findings are made:

(1) There are 112 Indians residing in Jefferson County, of which 59 are members of the Tribe or have close socioeconomic ties to the Tribe. Of these 59, 20 are already receiving services due to a previous administrative decision. The remaining 53 individuals are not covered by this request as they do not have close social and economic ties to the Tribe and are, therefore, not eligible for contract health services under existing law.

(2) The Tribe has determined that contract health services would be available to all of its members and to all federally recognized Indians in Jefferson County having social and economic affiliation with the Tribe.

(3) Although the Tribe's reservation is in Clallam County, the Tribe has trust land in Jefferson County that is included in an approved land consolidation plan and is pending proclamation to add it to the Tribe's reservation. This tribal trust land is contiguous to the existing reservation and extends into Jefferson County.

(4) It is estimated that the current eligible contract health service population will be increased by 39 individuals, changing the active patient population from 192 to 231, assuming 100 percent utilization for Jefferson County eligibles. Based upon data from the fiscal year 1994 application of the health services priority system and the modified resource requirements methodology, the total clinical work units (CWUs) generated by the user population of 192 was 998.4, or 5.2 per individual. Assuming the same utilization, the 39 new users will generate an additional 202.8 CWUs. The calculated cost per CWU in the inpatient and ambulatory care category, which includes contract health care costs, was $139.22 for the Tribe. Therefore, potential added costs for contract health services resulting from new users is approximated at $139.22×202.8 CWUs=$28,233.82. Total resources available to the program in fiscal year 1994 were $139.000. The

addition of new usage would not be expected to result in an increase in funding for the Tribe. The impact on existing contract health services will not be substantial. The current level of funding will allow sufficient flexibility to assure that there will be no significant reduction in the level of contract health services to current CHSDA residents, so the designation of the two-county CHSDA is within available resources.

Accordingly, after considering the Tribe's request in light of the criteria specified in the regulations, the IHS is redesignating the CHSDA of the Tribe to consist of Clallam and Jefferson Counties of the State of Washington.

This notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Dated: September 24, 1996.

Michael H. Trujillo,

Assistant Surgeon General Director.

[FR Doc. 96–27411 Filed 10–24–96; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4124–N–09]

Office of the Assistant Secretary for Community Planning and Development; Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 25, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 18, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 96–27180 Filed 10–24–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of an Application, and Availability of an Environmental Assessment and Finding of No Significant Impact for an Incidental Take Permit by Plantation Palms, L.L.C., for Construction of a Residential Project on the Fort Morgan Peninsula, Alabama; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice—correction.

SUMMARY: On Thursday, September 18, 1996, the Fish and Wildlife Service announced in the Federal Register (61 FR 49151–49152), a Notice of Receipt of an Application, and availability of an Environmental Assessment and Finding of No Significant Impact for an Incidental Take Permit by Plantation Palms, L.L.C., for construction of a residential project on the Fort Morgan Peninsula, Alabama. In the Summary of the Federal Register Notice, the description of the Applicant's project was incorrect. The Applicant's Project is described as an 84-unit condominium complex and its associated landscaped grounds and parking areas and recreational amenities. Public comments must still be received by October 19, 1996 to be considered on the above-referenced application.

Dated: October 17, 1996.

Noreen K. Clough,

Regional Director.

[FR Doc. 96–27408 Filed 10–24–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Indian Affairs

Notice of Availability of a Supplemental Final Environmental Impact Statement for the Proposed Swinomish Marina, LaConner, Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Supplemental Final Environmental Impact Statement (SFEIS) for the proposed Swinomish Marina at LaConner, Washington, is now available for public review.

DATES: A Record of Decision will be issued after November 24, 1996. Public comments will be accepted by the U.S. Army Corps of Engineers and the Swinomish Indian Tribal Community, pursuant to the Section 10/404 and Swinomish Tribal Coastal Zone Management Permit applications, until November 18, 1996.

ADDRESSES: Comments on the Section 10/404 Permit application may be addressed to Mr. Jack Gossett, Project Manager, Regulatory Branch, U.S. Army Corps of Engineers, P.O. Box C–3755, Seattle, Washington 98124–2255. Comments on the Swinomish Tribal Coastal Zone Management Permit application may be sent to the Natural Resources Manager, Planning Department, Swinomish Tribal Community, P.O. Box 817, LaConner, Washington 98257.

Copies of the SFEIS are available for review at (1) the Office of the Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, Oregon 97232–4169; (2) the Puget Sound Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Everett, Washington 98201; and (3) the Swinomish Office of Planning and Community Development, Swinomish Indian Tribal Community, 950 Moorage Way, LaConner, Washington 98257. A limited number of individual copies of the SFEIS may also be obtained from this last address, or by calling that office at (503) 466–3163.

FOR FURTHER INFORMATION CONTACT: Mr. Jim LeBret, Team Leader, Resources, Environmental and Regulatory Compliance, Portland Area Office, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, Oregon 97232–4169, telephone (503) 231–6749, FAX (503) 231–2275.

SUPPLEMENTARY INFORMATION: The Swinomish Indian Tribal Community is proposing to develop a 1200 slip salt water marina and related upland support facilities on the Swinomish Indian Reservation in Skagit County,

Washington. The purpose of the project is to establish an economic base for the Swinomish Indian Tribe, meet regional demands for boat moorage, and restore historic intertidal habitat conditions. The proposed development is situated along the western shore of the Swinomish Channel, immediately south of State Route 20. The 239.8 acre project site is comprised of three elements: (1) the marina basin (57.8 acres); (2) the wetland mitigation site (62.8 acres); and (3) the upland commercial site (119.2 acres).

The project involves the excavation of approximately 1,800,000 cubic yards of silty sandy material from existing agricultural fields and from 4.9 acres of palustrine wetlands. The excavated material will be disposed on site and used to develop the upland commercial site. The project will include the dredging of 4.92 acres and filling of 4.67 acres of palustrine wetland. Mitigation will include the creation of 22.2 acres of new intertidal wetland and the enhancement, by reintroducing tidal conditions, of another 40.6 acres.

This document is supplemental to both a Draft Environmental Impact Statement (DEIS) prepared in 1987, and a supplement to the 1987 DEIS, prepared in 1992 (SDEIS). These two previous documents examined a preferred alternative of developing a marina within a tidal flat on tribal land, a second alternative to develop a marina on the site described in the 1996 document, and a third, no action alternative. The conclusion reached in the 1992 SDEIS was to pursue as ''preferred'' the second alternative, and abandon the plan to develop the tidal flat as described in the original, 1987 DEIS. The net effect of the change in alternatives will produce approximately 62.8 acres of restored wetland, tidal flat and inter-tidal habitat.

This notice is published pursuant to 1501.7 of the Council on Environmental Quality Regulations, 40 CFR parts 1500–1508, implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 USC 4371 *et. seq.*), Department of the Interior Manual (516 DM 106), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: October 18, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–27399 Filed 10–24–96; 8:45 am]

BILLING CODE 4310–02–P

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Interim Agreement between the Blackfeet Indian Tribe of the Blackfeet Reservation and the State of Montana, which was executed on June 24, 1996.

DATES: This action is effective October 25, 1996.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: October 10, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–27424 Filed 10–24–96; 8:45 am]

BILLING CODE 4310–4N–P

Bureau of Land Management

[NV–020–1990–01]

Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability, Record of Decision for Santa Fe Pacific Gold Corporation's Lone Tree Mine Expansion Project.

DATES: The Record of Decision will be distributed and made available to the public on October 18, 1996. Anyone wishing to appeal the Record of Decision has 30 days following the date of publication of this notice in the Federal Register.

ADDRESSES: A copy of the Record of Decision can be obtained from: Bureau of Land Management, Winnemucca District Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445.

FOR FURTHER INFORMATION CONTACT: Gerald L. Moritz, Project Manager, at the above Winnemucca District address or telephone (702) 623–1500.

SUPPLEMENTARY INFORMATION: The Record of Decision consists of the action proposed in the Plan of Operation and analyzed in the Draft and Final Environmental Impact Statements. The agency Preferred Alternative includes all components of the Proposed Action and is the environmentally preferred alternative incorporating mitigation and monitoring measures. The Proposed Action consists of expanding mining and ore processing activities at the Lone Tree Mine.

Dated: October 16, 1996.

Colin P. Christensen,

Acting Winnemucca District Manager.

[FR Doc. 96–27363 Filed 10–24–96; 8:45 am]

BILLING CODE 4310–HC–M

[CA–010–1220–00]

Meeting of the Bakersfield Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Meeting of the Bakersfield Resource Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bureau of Land Management Bakersfield District Resource Advisory Council will meet in Three Rivers, California.

DATES: November 14–15, 1996.

ADDRESSES: Gateway Lodge, 45978 Sierra Drive, Three Rivers (300 yards from the entrance to Sequoia National Park).

SUPPLEMENTARY INFORMATION: The 12 member Bakersfield Resource Advisory Council is appointed by the Secretary of the Interior to advise the Bakersfield District Manager on public land issues. The Council will meet on Thursday and Friday, November 14 and 15, 1996, beginning at 8:30 a.m. both days to discuss the feasibility of charging fees for the use of BLM recreation areas. There will be a field trip to nearby public lands on Thursday afternoon, and a public comment period beginning at 1 p.m. on Friday. Anyone may discuss any public land issue during the public comment period, and written comments will be accepted during the meeting.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, Bakersfield District, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 805–391–6010.

Dated: October 17, 1996.

Ron Fellows,

District Manager.

[FR Doc. 96–27361 Filed 10–24–96; 8:45 am]

BILLING CODE 4310–40–M

[NV–943–1430; N–61025]

Non-Competitive Sale of Public Lands in Nye County, NV

AGENCY: Bureau of Land Management.

The Notice of Realty Action published on September 24, 1996, in the Federal Register on page 50050, is hereby amended to include the NE¼SE¼, NE¼NW¼NW¼SE¼, NE¼SE¼NW¼SE¼, N½NE¼SW¼NW¼, and N½SE¼SE¼NW¼ of section 33, T. 20 S., R. 54 E., MDM. The acreage described is increased to 325, more or less. However, State Route 160 will continue to be the southern boundary of the sale.

Dated: October 3, 1996.

Ted S. Milesnick,

Acting District Manager, Las Vegas, NV.

[FR Doc. 96–27362 Filed 10–24–96; 8:45 am]

BILLING CODE 4310–HC–M

[AZ–050–96–1610]

Notice of Availability of a Proposed Yuma District Resource Management Plan Amendment, Finding of No Significant Impact, and Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability, notice of comment period, notice of protest period.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Bureau of Land Management, Yuma District, Havasu Field Office, has prepared a Yuma District proposed plan amendment and environmental assessment (EA) that assesses the impacts of a proposed transmission line between Kingman, Arizona and Lake Havasu City, Arizona. The 230 kV transmission line has been proposed to go through the Crossman Peak Natural Scenic Area. This EA describes and analyzes the proposed project and project alternatives, including the no action option. Furthermore, the route through the Crossman Peak Natural Scenic area, if approved, will involve amending the Yuma District Resource Management Plan. This notice is intended to invite the public to comment on the analysis of impacts presented in the proposed plan amendment and EA.

DATES: Written comments will be accepted for up to 30 days following the publication of this notice. Any comments received by the close of the comment period will be evaluated and those letters that identify issues, where clarification or discussion is required, will be addressed in the Decision Record (DR). Copies of this DR will be provided to any person or agency commenting, or to other interested parties, upon written request. Furthermore, the resource management planning process includes an opportunity for administrative review through a plan protest to the BLM Director. Only those persons or organizations who participated in the planning process leading to this proposed plan amendment may protest. The subject of the proposed plan amendment is the route through the Crossman Peak Natural Scenic Area, therefore, this is the only route that may be protested. The protest period extends for 30 days from the date of publication of this notice. Protest must be made in accordance with the provisions of 43 CFR 1610.5–2. Comments on the overall project should be sent to the Havasu Resource Area office at the address listed below. Protest letters concerning the route across the Crossman Peak Natural Scenic area should be sent to the Director of the BLM, Department of the Interior, Bureau of Land Management, 1849 C Street N.W., Washington D.C. 20240.

ADDRESSES: Send comments on the overall project to: Bureau of Land Management, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona, 86401.

FOR FURTHER INFORMATION CONTACT: Bill Wadsworth Realty Specialist, Kingman Field Office. Telephone: (520) 757–3161.

SUPPLEMENTARY INFORMATION: The planning area is located in northwestern Arizona. The proposed plan amendment is part of an overall project which proposes construction of a transmission line between Kingman and Lake Havasu City. Based on the issues and concerns identified during scoping, the EA focuses on impacts to wildlife management, visual quality, unique vegetation, Native American religious concerns, access, and urban planning. The proposed plan amendment is needed because one alternative route goes through the Crossman Peak Natural Scenic Area. A portion of another alternative route is within the city limits of Lake Havasu City, Arizona. The primary concerns for the route through the Scenic Area are the impacts on visual quality and the potential impact to Native American religious concerns. The issues for the other alternative deal mostly with the proximity of the route to Lake Havasu City, Arizona. For all routes it is anticipated that a Finding of No Significant Impact (FONSI) will be issued. The rationale for issuing a FONSI will be based on the analysis and mitigation measures described in the Proposed Plan Amendment and Environmental Assessment.

Dated: October 17, 1996.

Michael A. Ferguson,

Acting State Director, Arizona.

[FR Doc. 96–27271 Filed 10–24–96; 8:45 am]

BILLING CODE 4310–32–P

National Park Service

Submission of Study Package for Office of Management and Budget Review Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, Big Cypress National Preserve.

ACTION: Notice and request for comments.

ABSTRACT: The National Park Service (NPS) and Virginia Polytechnic Institute and State University propose to conduct a survey of the current amount and distribution of Off-Road Vehicle (ORV) use within the Big Cypress National Preserve. The goal is to learn about this use with respect to vehicle type, recreation activity type, and management unit location of use. Results will be used by park planners, park managers, and members of the public in considering alternative ORV management options. The study package including two proposed survey questionnaires has been submitted to the Office of Management and Budget for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the NPS invites public comment on a proposed information collection request (ICR). Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The primary purpose of the proposed ICR is to document the current amount and distribution of ORV use, by vehicle type, recreation activity type, and management unit, within the Preserve. Existing use patterns are inadequately documented. Data gathered will be summarized and incorporated into the

ORV Plan and used by park planners, park managers, and members of the public in planning and management decision making activities. This information will be used to characterize existing ORV use and form the basis for consideration of alternative management options.

There were no public comments received or submitted to OMB for review as a result of publishing a 60 day notice of intention to request clearance of information collection for this survey at Big Cypress National Preserve.

The NPS is requesting OMB to process this ICR under the emergency processing provision with a decision date of two weeks after OMB receives the request but no later than November 15, 1996.

DATES: Public comments will be accepted for thirty days from the date listed at the top of this page in the Federal Register.

SEND COMMENTS TO: Jeffrey L. Marion, Ph.D., Unit Leader, Cooperative Park Studies Unit, Department of Forestry, Virginia Tech, Blacksburg, VA 24061–0324; or to: Office of Information and Regulatory Affairs for OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION OR A COPY OF THE QUESTIONNAIRE SUBMITTED FOR OMB REVIEW, CONTACT: Jeff Marion, 540–231–6603.

SUPPLEMENTARY INFORMATION:

Title: Big Cypress National Preserve Off-Road Vehicle Permit Holder Survey.

Form: Not applicable.

OMB Number: To be assigned.

Expiration Date: To be assigned.

Type of Request: Request for new clearance.

Description of Need: The National Park Service needs information about the amount and distribution of ORV use within the Preserve to support development of an ORV Vehicle Management Plan. The proposed information to be collected is not available from existing records, sources, or observations.

Description of Respondents: Individuals who currently hold NPS-issued ORV permits.

Estimated Average Number of Respondents: 1,500.

Estimated Average Number of Responses: 1,050.

Estimated Average Burden Hours Per Response: 30 minutes.

Estimated Annual Reporting Burden: 525 hours.

Estimated Frequency of Response: One time in a one month period once during the year's duration of the study.

Dated: October 22, 1996.

Terry N. Tesar,

Information Collection Clearance Officer, Audits and Accountability Team, National Park Service.

[FR Doc. 96–27482: Filed 10–24–96: 8:45 am]

BILLING CODE 4310–70–M

Mississippi River Coordinating Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE, TIME, AND ADDRESSES: Wednesday, December 4, 1996, 6:30 p.m. to 9:30 p.m.; Metropolitan Council Chambers, 230 East Fifth Street, St. Paul, Minnesota.

AGENDA: An agenda for the meeting will be available by November 27, 1996. Contact the Superintendent of the Mississippi National River and Recreation Area (MNRRA) at the address listed below. Public statements about matters related to the MNRRA will be taken.

FOR FURTHER INFORMATION CONTACT: Superintendent JoAnn Kyral, Mississippi National River and Recreation Area, 175 East Fifth Street, Suite 418, St. Paul, Minnesota 55101 (612–290–4160).

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100–696, dated November 18, 1988.

Dated: October 11, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–27481 Filed 10–24–96; 8:45 am]

BILLING CODE 4310–70–P

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for 30 CFR part 783.

DATES: Comments on the proposed information collection must be received by December 24, 1996, to be assured of consideration.

ADDRESSES: Comments may be mailed to Nancy Broderick, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 120—SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR part 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSM's submissions of the information collection requests to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, 30 CFR 783.

OMB Control Number: 1029–0038.

Summary: Applicants for underground coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed underground coal mining activities.

Bureau Form Number: None.

Frequency of Collection: On Occasion.

Description of Respondents: Underground coal mining and reclamation applicants.

Total Annual Responses: 134.

Total Annual Burden Hours: 11,757 hours.

Dated: October 21, 1996.

Sarah E. Donnelly,

Acting Chief, Division of Regulatory Support.

[FR Doc. 96–27405 Filed 10–24–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances Notice of Withdrawal of Application

As set forth in the Federal Register (FR Doc. 96–17337) Vol. 61, No. 132 at page 36082, dated July 9, 1996, Med-Pharmex, Inc., 2727 Thompson Creek Road, Pamona, California 91767, made application to the Drug Enforcement Administration (DEA) for registration as an importer for pentobarbital (2270).

By letter dated September 4, 1996, Med-Pharmex, Inc. requested that their application to import pentobarbital be withdrawn. Therefore, Med-Pharmex, Inc.'s application to import pentobarbital is hereby withdrawn.

Dated: September 25, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–27354 Filed 10–24–96; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Notice of Withdrawal of Application

As set forth in the Federal Register (FR Doc. 96–13563) Vol. 61, No. 105 at page 27099, dated May 30, 1996, Sanofi Winthrop Inc., 200 East Oakton Street, Des Plaines, Illinois 60018, made application to the Drug Enforcement Administration (DEA) to import the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Hydromorphone (9150)	II
Meperidine (9230)	II
Morphine (9300)	II
Fentanyl (9801)	II

By letter dated July 18, 1996, Sanofi Winthrop, Inc. has requested that its application to import the above listed controlled substances be withdrawn. Therefore, Sanofi Winthrop, Inc's application to import the above listed controlled substances is hereby withdrawn.

Dated: September 25, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–27355 Filed 10–24–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 21, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Vehicle Mechanical Inspection Report for Transportation Subject to Department of Transportation Requirements, Wh–514; and Vehicle Mechanical Inspection Report for Transportation Subject to Department of Labor Safety Standards, WH–514a.

OMB Number: 1215–0036.

Agency Number: WH–514, WH–514a.

Frequency: As needed.

Affected Public: Individuals or households; Business or other for-profit; Farms.

Number of Respondents: 1,200.

Estimated Time Per Respondent: 45 minutes.

Total Burden Hours: 2,700.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Department of Labor seeks to revise this information collection to implement the minimum transportation liability insurance requirement for migrant workers published as a final rule on May 16, 1996. The information collected on Forms WH–514 and WH–514a specifically identifies the vehicles for which authorization to transport migrant and seasonal agricultural workers is requested and notes the applicable safety standards met by each vehicle. The form is completed by the mechanic making the safety inspection of the vehicle. Without this information, it would be impossible for the Wage and Hour Division to verify that vehicles used to transport migrant and seasonal agricultural workers meet the safety standards required by the Migrant and Seasonal Agricultural Worker Protection Act.

Agency: Bureau of Labor Statistics.

Title: Cognitive and Psychological Research.

OMB Number: 1220–0141.

Frequency: One Time.

Affected Public: Individuals or households.

Number of Respondents: 3,000.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 3,000.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The proposed laboratory research will be conducted from FY97 to FY99 to enhance data quality in the Bureau of Labor Statistics' (BLS) surveys. Improvements will be made by examining psychological and cognitive aspects of BLS's data collection procedures, including questionnaire design, interviewing procedures, and administration technology.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–27453 Filed 10–24–96; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than November 4, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than November 4, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 23rd day of September, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 09/23/96

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,755	Gordon Garment (Wkrs)	Bristol, VA	09/05/96	Ladies' & Girls' Swimwear.
32,756	Mountain Bag Mfg (Comp)	Kalispell, MT	09/06/96	Buck Containers.
32,757	Lockheed Martin (Wkrs)	Syracuse, NY	08/25/96	Ocean Radar and Sensor Systems.
32,758	Moen, Inc (UAW)	Elyria, OH	08/30/96	Plumbing Products.
32,759	Guardian Life Ins Co (Wkrs)	Portland, OR	09/05/96	Provides Life Insurance.
32,760	Victoria Royal (UNITE)	New York, NY	09/05/96	Samples for Ladies' Dresses.
32,761	TASUS Corp (Wkrs)	Bloomington, IN	08/30/96	Decals for Auto and Marine Industries.
32,762	Austin Apparel Mfg, Inc (USWA)	Louisa, KY	08/19/96	Jeans.
32,763	Future Knits, Inc (Wkrs)	Charlotte, NC	09/05/96	Tee Shirts.
32,764	Schreiber Foods, Inc (Wkrs)	Green Bay, WI	08/27/96	Processed Cheese & Cut & Wrap Cheese.
32,765	Ryder Scott Co (Comp)	Denver, CO	08/15/96	Petroleum Engineering Studies.
32,766	Garden State Tanning (Wkrs)	Williamsport, MD	08/18/96	Leather Upholstery.
32,767	Nowsco Well Service (Wkrs)	Woodward, OK	09/04/96	Oil and Gas Exploration.
32,768	Burlington Menswear Div. (Comp)	Forest City, NC	09/13/96	Men's & Women's Wear.
32,769	Seaboard Oil Co (Wkrs)	Midland, TX	08/06/96	Crude Oil and Natural Gas.
32,770	Total Petroleum (Wkrs)	Arkansas City, KS	09/09/96	Gasoline.
32,771	Hollingsworth and Vose Co (Comp)	Floyd, VA	09/10/96	Apparel Interlining.
32,772	Wan-Pat, Inc. (Wkrs)	Newport, PA	09/10/96	Girls' Dresses & Childrens' Sets.
32,773	Viersen and Cochran (Wkrs)	Oklahoma City, OK	09/07/96	Exploration & Prod. of Oil, Gas.
32,774	Motor Wheel Corp (UAW)	Lansing, MI	08/22/96	Office Workers.
32,775	Jet Sew Technologies, Inc (Wkrs)	Barneveld, NY	09/11/96	Heavy-Duty Machinery for Industrial Mfg.
32,776	Union Special Corp (Wkrs)	Huntley, IL	07/23/96	Industrial Sewing Machines.
32,777	P. Clayman and Sons, Inc (Wkrs)	St. Louis, MO	09/13/96	Shoe Insole Strips & Board.
32,778	Lance, Inc (Wkrs)	Greenville, TX	09/10/96	Assorted Snack Food Products.
32,779	AUX Tantalum Corp (Wkrs)	Biddeford, ME	08/20/96	Miniature Tantalum Capacitors.
32,780	SKF Industries (USWA)	King of Prussia, PA	09/11/96	Bearings.
32,781	Western Atlas Logging (Wkrs)	Prudhoe Bay, AK	08/29/96	Oil and Gas Exploration.

[FR Doc. 96–27448 Filed 10–24–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,759]

The Guardian Life Insurance Company; Portland, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 23, 1996 in response to a worker petition which was filed on behalf of workers and former workers at The Guardian Life Insurance Company, located in Portland, Oregon (TA–W–32,759).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 7th day of October 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–27447 Filed 10–24–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other person showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than November 4, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than November 4, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 30th day of September, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 9/30/96

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,782	Hydro-Fit, Inc. (Co.)	Eugene, OR	9/13/96	Webbed gloves for water fitness.
32,783	Hudson RCI (Co.)	Temecula, CA	9/11/96	Disposable medical devices.
32,784	A.P. Green Refractories (Wkrs.)	Rockdale, IL	9/12/96	Soft gaskets.
32,785	Midas International (Wkrs.)	North Brunswick, NJ	8/25/96	Mufflers, exhaust, brakes, shocks.
32,786	Miller Automation, Inc. (Wkrs.)	Troy, OH	8/21/96	Peripheral welding equipment.
32,787	Hoskins Manufacturing (UNITE)	New Paris, IN	9/11/96	Spark plugs, thermocouple, resistance.
32,788	Tyrone Apparel Mfg. (Wkrs.)	Tyrone, PA	9/13/96	Ladies', mens' and children's pants.
32,789	Stanly Knitting Mills (Co.)	Mountain City, TN	9/19/96	Sports caps.
32,790	Walker Information, Inc. (Co.)	Indianapolis, IN	9/16/96	Market research.
32,791	River Heights, Inc. (Wkrs.)	Crump, TN	9/18/96	Knit sport shirts.
32,792	Lansdale Semiconductor (Co.)	Tempe, AZ	9/24/96	Silicon bipolar integrated circuit wafer.

[FR Doc. 96–27449 Filed 10–24–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,685; TA–W–31,685A]

Lee Apparel Company, Seymour, Missouri; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on December 4, 1995, applicable to all workers of Lee Apparel Company located in St. Joseph, Missouri. The notice was published in the Federal Register on January 26, 1996 (61 FR 2537).

At the request of the union representative, the Department reviewed the certification for workers of the subject firm. The workers produce jeans. The Lee Company's Seymour, Missouri production facility is scheduled to close in November 1996.

The intent of the Department's certification is to include all workers of Lee Apparel Company who were adversely affected by imports. Accordingly, the Department is amending the certification to cover the workers separated from Lee Apparel Company, Seymour, Missouri.

The amended notice applicable to TA–W–31,685 is hereby issued as follows:

All workers of Lee Apparel Company, St. Joseph, Missouri (TA–W–31,685), and Seymour, Missouri (TA–W–31,685A) engaged in employment related to the production of jeans who became totally or partially separated from employment on or after November 6, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of October 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–27446 Filed 10–24–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,471]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 22, 1996, applicable to all workers of Lee Thomas, Incorporated, Los Angeles, California. The notice was published in the Federal Register on August 6, 1996 (61 FR 40852).

At the request of the State Trade Coordinator, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that in May 1993, all of the employees of Lee Thomas, Incorporated became employees of Your Staff, Incorporated, Los Angeles, California. The workers were engaged in the production of apparel.

The intent of the Department's certification is to include all workers of Lee Thomas, Incorporated who were adversely affected by imports. Accordingly, the Department is amending the certification to include all workers of Lee Thomas, Incorporated, as known as Your Staff, Incorporated at the Los Angeles, California location.

The amended notice applicable to TA–W–32,471 is hereby issued as follows:

''All workers of Lee Thomas, Incorporated, A/K/A Your Staff, Incorporated, Los Angeles, California, became totally or partially separated from employment on or after May 29, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 9th day of October, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–27451 Filed 10–24–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,240; TA–W–31,240B]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; National Garment Company, Fayette, Missouri and Chandler, Oklahoma

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 12, 1995, applicable to all workers of National Garment Company located in Fayette, Missouri. The notice was published in the Federal Register on September 26, 1995 (60 FR 49634).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at the subject firms' production facility in Chandler, Oklahoma. The workers are engaged in the production of children's apparel.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of apparel. Accordingly, the Department is amending the certification to cover the workers of National Garment Company, Chandler, Oklahoma.

The amended notice applicable to TA–W–31,240 is hereby issued as follows:

''All workers of National Garment Company, Fayette, Missouri (TA–W–31,240) and Chandler, Oklahoma (TA–W–31,240B) who became totally or partially separated from employment on or after July 3, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 7th day of October 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–27444 Filed 10–24–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,578]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of SCI Systems Inc., (formerly Digital Equipment Corporation), Augusta, Maine; including leased workers of: Kelly Temporary Services, Olsten Staffing Services, Manpower Temporary Services, Tech Aid, Augusta, Maine; TAD Resources International Inc., Westbrook, Maine; Interstate Technical Services, Nashua, New Hampshire; The Computer Merchant, Norwell, Massachusetts; and Manpower Technical, Portland, Maine.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 1, 1995, applicable to all workers of SCI Systems, Inc., formerly Digital Equipment Corporation, located in Augusta, Maine. The notice was published in the Federal Register on January 26, 1996 (61 FR 2537).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The State agency reports that employees of several temporary agencies were directly involved in the manufacturing of the computer modules and box assemblies produced by SCI Systems in Augusta, Maine. Based on these findings, the Department is amending the certification to include leased workers from Kelly Temporary Services, Olsten Staffing Services, Manpower Temporary Services all located in Augusta, Maine; TAD Resources International Inc., Westbrook, Maine; Interstate Technical Services, Nashua, New Hampshire; The Computer Merchant, Norwell, Massachusetts; and Manpower Technical, Portland, Maine.

The intent of the Department's certification is to include all workers of Digital SCI Systems, Inc. adversely affected by imports.

The amended notice applicable to TA–W–31,578 is hereby issued as follows:

''All workers engaged in the production of computer modules and box assemblies at SCI Systems, Inc., formerly Digital Equipment Corporation, located in Augusta, Maine, including leased workers from Kelly Temporary Services, Olsten Staffing Services, Manpower Temporary Services all located in Augusta, Maine; TAD Resources International Inc., Westbrook, Maine; Interstate Technical Services, Nashua, New Hampshire; The Computer Merchant, Norwell, Massachusetts; and Manpower Technical, Portland, Maine, engaged in the production of computer modules and box assemblies at SCI Systems, Inc. in Augusta, Maine who became totally or partially separated from employment on or after October 12, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 7th day of October 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–27445 Filed 10–24–96; 8:45 am]

BILLING CODE 4501–30–M

[NAFTA–01085]

Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on July 22, 1996, applicable to workers of Lee Thomas Incorporated located in Los Angeles, California. The notice was

published in the Federal Register on August 6, 1996 (61 FR 40853).

At the request of the State Trade Coordinator, the Department reviewed the certification for workers of the subject firm. New Information provided by the company shows that in May 1993, all of the employees of Lee Thomas, Incorporated became employees of Your Staff, Incorporated, Los Angeles, California. The workers were engaged in the production of apparel. Accordingly, the Department is amending the certification to cover all of the workers of Lee Thomas, Incorporated also known as Your Staff, Incorporated, Los Angeles, California.

The intent of the Department's certification is to include those workers of Lee Thomas, Incorporated also known as Your Staff Incorporated who were adversely affected by the shift in production to Mexico.

The amended notice applicable to NAFTA—01085 is hereby issued as follows:

''Workers of Lee Thomas, Incorporated A/K/A Your Staff, Incorporated, Los Angeles, California, who became totally or partially separated from employment on or after May 29, 1995, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, D.C. this 9th day of October 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–27450 Filed 10–24–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00984; NAFTA–00984A]

Owens-Illinois, Incorporated Owens Brockway Glass Containers, Plants #18 and #19 Brockway, Pennsylvania, and Notice of Negative Determination Regarding Application for Reconsideration

By an application dated August 29, 1996, counsel to Glass, Molders, Pottery, Plastics & Allied Workers International Union and its Local Union, GMP Local 110, requested administrative reconsideration of the Department's negative determination regarding the eligibility for workers of the subject firm to apply for NAFTA-Transitional Adjustment Assistance. The notice of negative determination was issued on July 3, 1996 and published in the Federal Register on August 2, 1996 (61 FR 40454).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers produce glass containers. Bottles represent the predominant portion of sales at Plants #18 and #19 in Brockway.

Counsel for Local 110 asserts that the Brockway workers should be certified for TAA because the Department made favorable determinations for workers at other glass container production facilities. In those cases, the Department found import impact. Those firm(s) were either importing glass containers or their customers increased reliance on imports.

Counsel for Local 110 also believes that employees lost production opportunities at Brockway's Plants #18 and #19 because of the saturation of the market from Mexican and Canadian imports. Findings of the investigation showed that major declining customers of Owens-Brockway, Plants #18 and #19, reported no imports from Mexico or Canada of glass containers competitive with the articles produced at the subject firm. These customers also reported that they were switching from glass to plastic containers.

Counsel for Local 110 claims that the jobs formerly done at the Brockway plants were sent out of the country. Counsel for Local 110 presented evidence that molds, one of the most important components in the glass container production process, were being shipped from the plants in Brockway to foreign countries. Certification under Section 250 of the Trade Act is premised upon a shift in production from the workers' firm to Mexico or Canada, or increased company or customer imports of the product produced at the workers' firm from Mexico or Canada. Owens-Brockway produced glass containers, and although molds are used to produce glass containers, molds cannot be considered like or directly competitive with glass containers.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 8th day of October, 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–27452 Filed 10–24–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00651]

Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In the matter of SCI Systems Inc., (formerly Digital Equipment Corporation; Augusta, Maine; including leased workers of: Kelly Temporary Services, Olsten Staffing Services, Manpower Temporary Services, Tech Aid, Augusta, Maine; TAD Resources International Inc., Westbrook, Maine; Interstate Technical Services; Nashua, New Hampshire; The Computer Merchant, Norwell, Massachusetts; and Manpower Technical, Portland, Maine.

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on December 1, 1995, applicable to all workers of SCI Systems, Inc., formerly Digital Equipment Corporation, located in Augusta, Maine. The notice was published in the Federal Register on January 26, 1996 (61 FR 2538).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The State agency reports that employees of several temporary agencies were directly involved in the manufacturing of the computer modules and box assemblies produced by SCI Systems in Augusta, Maine. Based on these findings, the Department is amending the certification to include leased workers from Kelly Temporary Services, Olsten Staffing Services, Manpower Temporary Services all located in Augusta, Maine; TAD Resources International Inc., Westbrook, Maine; Interstate Technical Services, Nashua, New Hampshire; The Computer Merchant, Norwell, Massachusetts; and Manpower Technical, Portland, Maine.

The intent of the Department's certification is to include all workers of Digital SCI Systems, Inc. adversely affected by imports from Canada.

The amended notice applicable to NAFTA–00651 is hereby issued as follows:

All workers engaged in the production of computer modules and box assemblies at SCI

Systems, Inc., formerly Digital Equipment Corporation, located in Augusta, Maine, including leased workers from Kelly Temporary Services, Olsten Staffing Services, Manpower Temporary Services all located in Augusta, Maine; TAD Resources International Inc., Westbrook, Maine; Interstate Technical Services, Nashua, New Hampshire; The Computer Merchant, Norwell, Massachusetts; and Manpower Technical, Portland, Maine, engaged in the production of computer modules and box assemblies at SCI Systems, Inc. in August, Maine who became totally or partially separated from employment on or after October 12, 1994, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of October 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–27443 Filed 10–24–96; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor has withdrawn, General Wage Determination No. NE960057 dated March 15, 1996.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize the project determination procedure by submitting a SF–308. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall not be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Maine
- ME960006 (March 15, 1996)
- ME960007 (March 15, 1996)
- ME960008 (March 15, 1996)
- ME960010 (March 15, 1996)
- ME960018 (March 15, 1996)
- ME960026 (March 15, 1996)
- ME960030 (March 15, 1996)

New Jersey
- NJ960002 (March 15, 1996)

New York
- NY960002 (March 15, 1996)
- NY960003 (March 15, 1996)
- NY960004 (March 15, 1996)
- NY960007 (March 15, 1996)
- NY960008 (March 15, 1996)
- NY960011 (March 15, 1996)
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- NY960045 (March 15, 1996)
- NY960048 (March 15, 1996)
- NY960049 (March 15, 1996)
- NY960050 (March 15, 1996)
- NY960060 (March 15, 1996)
- NY960072 (March 15, 1996)
- NY960073 (March 15, 1996)

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West Virginia
- WV960002 (March 15, 1996)
- WV960003 (March 15, 1996)

WV960006 (March 15, 1996)

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FL960015 (March 15, 1996)
FL960017 (March 15, 1996)
FL960049 (March 15, 1996)
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FL960055 (March 15, 1996)

Volume IV

Illinois
IL960001 (March 15, 1996)
IL960002 (March 15, 1996)
IL960016 (March 15, 1996)
Indiana
IN960001 (May 17, 1996)
IN960002 (March 15, 1996)
IN960003 (March 15, 1996)
IN960004 (March 15, 1996)
IN960005 (March 15, 1996)
IN960006 (March 15, 1996)
IN960016 (March 15, 1996)
IN960017 (March 15, 1996)
IN960020 (March 15, 1996)
IN960039 (March 15, 1996)
IN960059 (May 24, 1996)
IN960060 (August 2, 1996)
IN960061 (August 2, 1996)

Volume V

Iowa
IA960003 (March 15, 1996)
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Kansas
KS960008 (March 15, 1996)
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KS960016 (March 15, 1996)
KS960018 (March 15, 1996)
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KS960020 (March 15, 1996)
KS960021 (March 15, 1996)
KS960022 (March 15, 1996)
KS960023 (March 15, 1996)

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California
CA960035 (March 15, 1996)
Nevada
NV960001 (March 15, 1996)
NV960005 (March 15, 1996)
Washington
WA960002 (March 15, 1996)
Wyoming
WY960004 (March 15, 1996)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 18th day of October 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–27153 Filed 10–24–96; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Application No. D–10240, et al.]

Proposed Exemptions; Beall Corporation

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Beall Corporation 401(k) Profit Sharing Plan (the Plan) Located in Portland, OR

[Application No. D–10240]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) by the Plan of four acres of unimproved real property (the Land) to the Diamond Beall Development Corporation, an Oregon general partnership and party in interest with respect to the Plan, provided that the following conditions are satisfied: (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no losses nor incurs any expenses as a result of the Sale; (3) the Plan receives in cash the greater of $479,160, or the fair market value of the Land as determined at the time of the Sale; and (4) the terms of the Sale are no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan which is intended to satisfy the qualification requirements of sections 401(a) and 401(k) of the Code. The Employer may make discretionary matching contributions and/or profit sharing contributions. The Plan has approximately 136 participants and beneficiaries who would be affected by the transaction. As of October 31, 1995, the fair market value of the net assets of the Plan was $6,457,677.

2. St. Johns Corporation (SJC) is a holding company and the sole owner of Beall Corporation (the Employer), employer of a portion of Plan participants. Beall Corporation is the sole owner of several subsidiaries that employ the balance of Plan participants.

The applicant is Jerry E. Beall, acting as General Partner of the Diamond Beall Development Company. Mr. Beall is the principal owner of SJC, which owns property adjacent to the Land. Mr. Beall is also a trustee of the Plan.

3. On February 10, 1975, the Land was purchased for the Plan as a long-term real estate investment for $92,000 from the Port of Portland, an unrelated third party.[1] The property is located in the Rivergate Industrial District in Portland, Oregon. The Land consists of 4 acres of vacant land and is located adjacent to property where SJC conducts its operations. Mr. Beall represents that the Land has not been leased or used by any parties since the time of the purchase.

The aggregate real estate taxes and maintenance fees for 1975 through 1996 were $90,284.09. The applicant further represents that these were the only costs incurred by the Plan in carrying the property.

4. The Land was appraised as of January 1, 1996 (the Appraisal) by Karl L. Lucke (Mr. Lucke), an independent real estate appraiser certified in the State of Oregon. Mr. Lucke relied on the Direct Sales Comparison (Market) Approach exclusively and estimated that as of January 1, 1996, the fair market value of the Land was $2.50 per square foot, for a total of $436,000. The Appraisal includes the following description of the Land and its surrounding neighborhood: ''* * * the streets and railroad system are being expanded and construction activity has increased lately. The Rivergate Industrial District is a growing industrial area * * * the location and available land make this a desirable place for industrial development and demand is growing for sites * * * the subject property lies in the path of growth.'' The Appraisal also states that the Rivergate District has experienced significant recent activity, and that prices for Rivergate sites have increased over the last few years.

Because the Land is located on the lot adjacent to SJC's business facilities, Mr. Lucke was asked to determine whether there should be any premium value associated with the Land. In this regard, Mr. Lucke states that there was insufficient market data to support a premium for an adjacent landowner or related company with respect to the proposed transaction.

5. The applicant provided information received from the Port of Portland in August, 1996, regarding the Port's recent list prices for the remainder of the undeveloped Rivergate Industrial District. Current list prices, and the prices of sales closing subsequent to the January 1996 Appraisal, reflect that prices for parcels similar to the Land have increased 20 to 25% within the past year, after several years of nominal appreciation.

In addition, the Port's information shows that the three sales of comparable parcels that have closed subsequent to the Appraisal were for $2.75 to $2.86 per square foot. Accordingly, the applicant proposes to pay $2.75 per square foot for the Land, for a total of $479,160.

The applicant represents that the Land will be revalued at the time of the proposed transaction, in order to establish its fair market value.

7. Mr. Beall, as General Partner of Diamond Beall Development Corporation, proposes to purchase the Land from the Plan in a one-time cash transaction. The Plan will pay no real estate commissions or other costs associated with the sale of the Land. As of October 31, 1995, the Land represented 6.7% of the Plan's total assets. The applicant represents that considering the cost basis of the property, the investment has not performed well in that the Plan has received an annual return of approximately 4.3%, based on its initial purchase price, subsequent annual cash outlays, and appraised value of $436,000. Carrying costs have recently totalled $5,000 to $7,000 per year. The Plan has actively attempted to lease the property in the past but has been unable to do so.

It is represented by the applicant that the proposed transaction is in the best interest and protective of the Plan because it will allow the Plan to increase its liquidity and diversify its assets.

8. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act because: (1) the proposed sale will be a one-time cash transaction; (2) the Plan will experience no losses nor incur any expenses from the Sale; (3) the Plan will receive in cash as consideration for the Sale the greater of $479,160, or the fair market value of the Land as determined at the time of the Sale; and (4) the terms of the Sale are no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's-length with unrelated third parties.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Wayne Obstetrical Group, P.A. Money Purchase Retirement Plan (the Wayne Plan); Pediatric Professional Associates, P.A. Profit Sharing Plan (the Pediatric Plan); Physicians for Women, P.A. Profit-Sharing Plan and Trust (the Physicians Plan; collectively, the Plans) Located in Wayne, New Jersey

[Application Nos. D–10262, D–10263, and D–10264]

[1] The Department expresses no opinion as to whether the Plan's acquisition and holding of the Land violated any relevant provision of Part 4, Subtitle B, of Title 1 of the Act, and no exemption from such provisions is proposed herein.

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loans totalling $530,000 by the Plans to S & D Associates (S & D), provided that the following conditions are satisfied:

(a) The terms and conditions of the loans are at least as favorable to the Plans as those the Plans could obtain in comparable arm's length transactions with unrelated parties;

(b) At all times, the loans are secured by a first mortgage on certain real property (the Property), which is duly recorded under New Jersey State law;

(c) At all times, the fair market value of the Property, as established by a qualified, independent appraiser, equals at least 150% of the total outstanding balances of the loans;

(d) At all times, no more than 25% of the assets of each lending Plan are invested in the loans;

(e) A qualified, independent fiduciary has determined that the loans are in the best interests of the Plans; and

(f) At all times, the independent fiduciary enforces compliance with the terms and conditions of the loans and of the exemption, including foreclosure on the Property in the event of default.

Summary of Facts and Representations

1. Wayne Obstetrical Group, P.A. is a New Jersey corporation owned by Seymour Eisner, Bernard Simon, Barry Cohen, and Steven Domnitz (each a 25% shareholder). As of December 31, 1994, the Wayne Plan, a money purchase pension plan, had approximately nine participants and total assets of $2,975,100. The trustees of the Wayne Plan are Seymour Eisner, Bernard Simon, and Barry Cohen.

Pediatric Professional Associates, P.A. is a New Jersey corporation owned by Alvin Edelstein, Abraham H. Topchik, Herbert L. Cole, Israel I. Rayman, and Geraldine Nelson (each a 20% shareholder). As of July 31, 1995, the Pediatric Plan, a profit sharing plan, had approximately 18 participants and total assets of $4,934,064. The trustees of the Pediatric Plan are the five owners, above.

Physicians for Women, P.A. is a New Jersey corporation owned by Les A. Burns, Kenneth Garrett, Leonard T. Nicosia, and Arthur Suffin (each a 25% shareholder). As of December 31, 1994, the Physicians Plan, a profit sharing plan, had approximately 15 participants and total assets of § 3,384,784. The trustees of the Pediatric Plan are the four owners, above, and Edwin J. Pear.

2. An administrative exemption is requested to permit the Plans to make loans totalling $530,000 to S & D, a New Jersey partnership. The partners of S & D are as follows: Bernard Simon (a 19% partner), Seymour J. Eisner (19%), Barry Cohen (19%), Robert Natusch (12.5%), Lawrence May (12.5%) and a partnership known as 7 Oak Ridge Partners (18%). The partners of 7 Oak Ridge Partners are as follows: Les Burns, Kenneth Garrett, Leonard Nicosia, Edward Pear, Alvin Edelstein, Herbert Cole, Geraldine Nelson, Ian Rayman, and Abraham Topchik (all equal partners).

Specifically, the Wayne Plan will lend $230,000, the Pediatric Plan will lend $100,000, and the Physicians Plan will lend $200,000. At all times, no more than 25% of the assets of each lending Plan may be invested in the loans. It is intended that S & D use the proceeds of the proposed loans to retire an outstanding first mortgage held by Lakeland State Bank (Lakeland) on the Property, which S & D owns and which S & D currently leases to the sponsors of the aforementioned Plans, among other tenants. As of November 30, 1995, the outstanding balance on this mortgage was approximately $536,000, which amount becomes due and payable on January 1, 1997.

3. The loans will be secured by a first mortgage on the Property, to be duly recorded under New Jersey State law. The Property, which consists of a two-story mixed-use building of 9936 sq. ft. on 1.34 acres, is located at 7 Oak Ridge Road, West Milford, New Jersey. The Property has office space on the first floor that is currently being leased to the Plans' sponsors and to other professionals, as well as eight one-bedroom residential apartments on the second floor. S & D will assign these leases and the excess net rentals collectible thereunder to the Plans as additional collateral for the loans.

The Property was appraised by Mr. Robert D. Clifford, MAI, RM of Value Analysis Incorporated, an independent general real estate appraiser certified in the State of New Jersey. Relying on the income approach to valuation, Mr. Clifford concluded that the fair market value of the leased fee interest of the Property was $800,000, as of December 11, 1995. Thus the fair market value of the Property equals at least 150% of the total outstanding balances of the loans, which will be a continuing requirement for the duration of the loans. The Property will also be insured against casualty loss in an amount not less than the total principal amounts of the loans (plus accrued but unpaid interest), with the Plans as the named beneficiaries of the policy.

4. The loans will each provide for an interest rate of 11% per annum and a term of 10 years, as evidenced by a promissory note. The notes will require S & D to make monthly payments of principal and interest on the loans, to be fully amortized over the 10-year term. The Plans will pay no fees nor other expenses relating to the loans.

Lakeland, an unrelated lender, has held the current mortgage on the Property for almost 10 years. The mortgage has a balloon every five years, which requires renegotiation. The last mortgage extension and modification agreement will expire on January 1, 1997. In keeping with the commercial practices of other area banks, Lakeland will not grant a ''permanent mortgage'' on such commercial property. In a letter dated November 30, 1995, Lakeland states that if it were their policy to grant S & D a permanent mortgage, they would, under the then current financial conditions, seek an interest rate of 11%.

5. Naskret, Selzer & Associates, P.A., Certified Public Accountants (Naskret, Selzer) represents in a letter from Harold S. Selzer dated August 14, 1996 that they will serve as an independent fiduciary to represent the interests of the Plans with respect to the proposed loans. Naskret, Selzerit represents that it is unrelated to and independent of S & D and the Plans' sponsors and derives less than 1% of its annual income from S & D. Naskret, Selzer represents that it has extensive experience as a fiduciary under the Act, that it is knowledgeable as to the subject loan transactions, and that it acknowledges and accepts its duties, responsibilities, and liabilities in acting as a fiduciary with respect to the Plans.

6. Naskret, Selzer has reviewed the terms and conditions of the loans and determined that such terms and conditions are at least as favorable to the Plans as those the Plans could obtain in comparable arm's length transactions with unrelated parties, as evidenced by the terms required by Lakeland in their letter dated November 30, 1995. The loans will be secured by a first mortgage on the Property, which has been independently appraised to insure that its fair market value equals at least 150% of the total outstanding balances of the loans. The leases of office and apartment units in the Property and the

excess net rentals collectible thereunder will serve as additional collateral for the loans.

Naskret, Selzer represents that it believes the proposed loans are in the best interest of the Plans and their respective participants and beneficiaries. Naskret, Selzer has determined that the proposed loans are appropriate for the Plans in light of the Plans' overall investment portfolios because the loans will add a degree of stability and liquidity to the Plans. Naskret, Selzer has also examined the financial viability of S & D, based upon S & D's tax returns for years 1994 and 1995, and concluded that S & D has the ability to repay the loans. S & D has timely made all monthly payments during the approximately 10 years Lakeland has held the current mortgage on the Property.

Finally, Naskret, Selzer will, at all times, monitor and enforce S & D's compliance with the terms and conditions of the loans and of the exemption, including foreclosure on the Property in the event of default.

7. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) the terms and conditions of the loans will be at least as favorable to the Plans as those the Plans could obtain in comparable arm's length transactions with unrelated parties; (b) at all times, the loans will be secured by a first mortgage on the Property, which is duly recorded under New Jersey State law; (c) at all times, the fair market value of the Property, as established by a qualified, independent appraiser, will equal at least 150% of the total outstanding balances of the loans; (d) at all times, no more than 25% of the assets of each lending Plan will be invested in the loans; (e) Naskret, Selzer, acting as an independent fiduciary for the Plans, has determined that the loans are in the best interests of the Plans; and (f) at all times, the independent fiduciary will enforce compliance with the terms and conditions of the loans and of the exemption, including foreclosure on the Property in the event of default.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons by personal delivery or first-class mail within 10 days of the date of publication of the notice of pendency in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and/or to request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 40 days of the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

National Baptist Publishing Board Pension Plan (the Plan) Located in Nashville, TN

[Application No. D–10283]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) of common stock of Citizens Savings Bank and Trust Company (the Stock) located in Nashville, Tennessee, by the Plan to AmeriStar Investments and Trust, a division of First American National Bank (AmeriStar Investments), Trustee of the Plan and party in interest with respect to the Plan; provided that: (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expenses from the Sale; and (3) the Plan receives as consideration from the Sale the greater of the following amounts: (a) the fair market value of the Stock as of the date of the Sale plus interest at 6% for the period March 31, 1993 through the date the Stock is sold by the Plan; or (b) the total cost of the investment, $100,000, plus interest at 6% for the period March 31, 1993 through the date the Stock is sold by the Plan.

Summary of Facts and Representations

1. The Plan is a defined benefit plan sponsored by the National Baptist Publishing Board (the Sponsor). As of March 31, 1996, the estimated number of Plan participants and beneficiaries was 93. As of July 31, 1995, total assets of the Plan equaled $1,387,496, with approximately .35% of total Plan assets as of that date invested in the Stock, based on the fair market value conclusion of an appraisal conducted as of July 21, 1994.

2. On or about May 27, 1986, Dr. T.B. Boyd III, President and CEO of the Sponsor, used his authority to act on behalf of the Sponsor and directed AmeriStar Investments, a division of First American National Bank (the Bank), to purchase a seven year, six percent convertible subordinated debenture issued by Citizens Bank for $100,000 (the Debenture). At the time Dr. Boyd was also the Chairman of the Board of Citizens Bank. AmeriStar Investments, as applicant for this exemption, represents that at that time, Dr. Boyd owned approximately 42 percent of the outstanding common stock of Citizens Bank. Various family members owned an additional 11 percent of Citizens Bank's outstanding common stock.

The applicant further represents that a representative of the Bank initially advised against the investment, but indicated that the Sponsor could direct the Bank in writing to make the investment on behalf of the Plan.

Pursuant to Dr. Boyd's written instructions, AmeriStar Investments purchased the Debenture on behalf of the Plan in June of 1986. In 1991, the Bank discovered that Dr. Boyd had a significant ownership interest in Citizens Bank at the time of the Plan's purchase of the Debenture, and consequently that the purchase of the Debenture may have been a prohibited transaction.[2] As of 1991, the Debenture's market value was approximately $37,000, and AmeriStar Investments determined it was in the Plan's best interest to hold the Debenture until its value increased, rather than sell the Debenture immediately for a loss.

The Debenture paid interest at six percent in accordance with its terms until March 31, 1993 when it was converted into Citizens Bank common stock. Under its original terms, the Debenture was to be converted into 1,100 shares of stock in June, 1993. Citizens Bank offered to convert the Debenture earlier than June, with a conversion bonus of 110 shares. Accordingly, as of March 31, 1993, the Debenture was converted into 1,210 shares of Stock.

3. The applicant represents that an active market does not currently exist for the Stock and no dividends have been paid on the Stock. According to a valuation as of December 31, 1993, prepared on July 21, 1994, by Mercer Capital, an independent valuation firm,

[2] The Department notes that the decision to purchase the Debenture is governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. The Department is not proposing relief herein for any violations of Part 4 of Title I of the Act which may have arisen as a result of the acquisition and holding by the Plan of the Debenture, and subsequently, the Stock.

the fair market value of the Stock was $5.60 per share. Based on that valuation, the Plan's total investment in the Stock was worth $6,776.

4. The Bank desires to enter into the proposed transaction in order to protect the participants in the Plan from the risks of investment loss associated with the Stock. The applicant represents that the best interest of the plan and its participants and beneficiaries are protected by disposing of the Stock for a sales price in excess of its fair market value and by restoring certain lost earnings to the Plan. In this regard, AmeriStar proposes to purchase the Stock [3] for the greater of the following amounts: (a) the fair market value of the Stock as of the date of the Sale, plus interest at 6% for the period March 31, 1993 through the date the Stock is sold by the Plan; or (b) the total cost of the investment, $100,000, plus interest at 6% for the period March 31, 1993 through the date the Stock is sold by the Plan.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act for the following reasons: (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expenses from the Sale; and (3) the Plan receives as consideration from the Sale the greater of the fair market value of the Stock as of the date of the Sale, plus interest at 6% for the period March 31, 1993 through the date the Stock is sold by the Plan; or the total cost of the investment, $100,000, plus interest at 6% for the period March 31, 1993 through the date the Stock is sold by the Plan.

NOTICE TO INTERESTED PERSONS: Notice will be distributed to interested persons within 30 days of the date of publication of this Notice in the Federal Register. Comments and requests for a hearing are due within 60 days of the publication date of this Notice.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of October, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 96–27441 Filed 10–24–96; 8:45 am]

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[3] AmeriStar is also attempting to sell the Stock to an unrelated third party. If the sales price is less than $100,000 plus interest at 6% from March 31, 1993 to the date of the Sale, AmeriStar will make up the difference to the Plan.

[Prohibited Transaction Exemption 96–80; Exemption Application No. D–10255, et al.]

Grant of Individual Exemptions; Lehman Brothers, Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Lehman Brothers, Inc. (Lehman) Located in New York, New York

[Prohibited Transaction Exemption 96–80; Exemption Application No. D–10255]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A)

through (D) of the Code, shall not apply to the sales of collateralized guaranteed investment contracts (CGICs) by Lehman to employee benefit plans (the Plans), provided the following conditions are satisfied: (a) The decision to purchase a CGIC will be made by a fiduciary of a Plan who is independent of Lehman; (b) Lehman will provide the independent fiduciary with audited and unaudited statements of its financial condition at the time of the purchase of the CGIC and subsequently as issued; (c) Lehman will transfer to a tri-party custodial account, under the exclusive direction of a Plan's trustees, securities selected by the Plan with a market value equal to at least 102% of the CGIC's purchase price; (d) such securities will be marked to market on a daily basis, and Lehman will be required to maintain the market value of the securities at the agreed-upon level of at least 102% of the CGIC's purchase price; (e) a Plan will receive daily reports describing the securities on deposit and their market value, and monthly reports describing all activity with respect to the CGIC, including accrued interest; (f) a Plan will have full recourse against Lehman for all obligations and expenses owed to it by Lehman; (g) Lehman will be responsible for all legal fees and expenses associated with any failure to fulfill its obligations under a CGIC; (h) a Plan will have an unqualified right to the return of its principal and accrued interest no later than the conclusion of the stated term of the CGIC; (i) if a Plan requires a termination of a CGIC prior to maturity to pay benefit responsive payments, no market value adjustment will be imposed; and (j) Lehman will market CGICs only to Plans with assets having an aggregate market value of at least $50 million.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 27, 1996 at 61 FR 44087.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Rexam Retirement Savings Plan (the Plan) Located In Charlotte, North Carolina

[Prohibited Transaction Exemption 96–81; Exemption Application No. D–10294]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan of $1,620,246.56 (the Loan) to the Plan from Rexam, Inc. (the Employer) with respect to the Guaranteed Investment Contract No. 63217 (the GIC) issued by Confederation Life Insurance Company (Confederation) and the Plan's potential repayment of the Loan upon the receipt by the Plan of payments under the GIC; provided the following conditions are satisfied:

(A) All terms and conditions of the transactions are no less favorable to the Plan than those that the Plan could obtain in arm's-length transactions with unrelated parties;

(B) No interest payments or other expenses are paid by the Plan in connection with the Loan and its repayment;

(C) The Loan will be repaid only from proceeds paid to the Plan by Confederation, its successors, or by any other third-party;

(D) Repayment of the Loan will be waived to the extent that the Loan exceeds the proceeds from the GIC;

(E) If total proceeds received by the Plan with respect to the GIC exceed the amount of the Loan, the excess will be credited to the respective accounts of the participants in proportion to the relative investment of each account in the GIC on June 25, 1996; and

(F) A qualified, independent fiduciary represented the Plan at the execution of the Loan and will continue to represent the interests of the Plan throughout the duration and repayment of the Loan.

EFFECTIVE DATE: The exemption is effective as of June 25, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions do not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 22nd day of October, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–27442 Filed 10–24–96; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–132]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces NASA's intention to request an extension of the current NASA Safety Reporting System (NSRS) forms. The NSRS was established in response to the Report of the Presidential Commission on the Space Shuttle Challenger Accident. The NSRS forms provide NASA and contractor personnel confidential, responsive means of reporting safety concerns/hazards to upper management for resolution. The form is the best means of ensuring reporter confidentiality.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before December 24, 1996.

ADDRESSES: All comments should be addressed to Bill Comer, Code QS, National Aeronautics and Space Administration, Washington, DC 20546–0001. All comments will become a matter of public record and will be

summarized in NASA's request for Office of Management and Budget (OMB) approval.

FOR FURTHER INFORMATION CONTACT: Bessie B. Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: NASA Safety Reporting System (NSRS).

OMB Number: 2700–0063.

Type of Review: Extension.

Need and Uses: Forms will be used by NASA employees and NASA contractor employees to voluntarily and confidentially report to an independent agent any safety concerns or hazards pertaining to any NASA program or project.

Affected Public: Individuals or households, Business or other for-profit, Federal Government.

Estimated Number of Respondents: 75.

Responses Per Respondent: 1.

Estimated Annual Responses: 19.

Estimated Hours Per Request: .25.

Estimated Annual Burden Hours: 19.

Frequency of Report: As required.

Dated: October 18, 1996.

Russell S. Rice,

Director, IRM Division.

[FR Doc. 96–27369 Filed 10–24–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Nuclear Safety Research Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The Nuclear Safety Research Review Committee (NSRRC) will hold its next meeting on November 14–15, 1996. The location of the meeting will be in Room T–10A1, Two White Flint North (TWFN) Building, 11545 Rockville Pike, Rockville, MD and will be held from 1:00 p.m. to 5:00 p.m. on the 14th and from 9:30 a.m. to 5:30 p.m. on the 15th.

The meeting will be held in accordance with the requirements of the Federal Advisory Committee Act (FACA) and will be open to public attendance. The NSRRC provides advice to the Director of the Office of Nuclear Regulatory Research (RES) on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The main purpose of this meeting will be: (1) to evaluate the value and contributions of the NSRRC in carrying out the NRC's mission and to develop a set of criteria under which the performance of the NSRRC could be evaluated in the future; (2) to discuss the roles of the NSRRC and the Advisory Committee for Reactor Safeguards (ACRS) to determine the areas of common interest of the two Committees; and (3) to discuss potential overlap of on-going activities of the ACRS and NSRRC Committee and coordinate these activities to ensure that areas of joint interest are supportive and complimentary and not duplicative. As time permits, a discussion will be initiated on the core technical competence to be maintained by the NRC's Office of Research staff.

Participants in parts of the discussion will include senior NRC staff and other RES technical staff as necessary.

Members of the public may file written statements regarding any matter to be discussed at the meeting. Members of the public may also make requests to speak at the meeting, but permission to speak will be determined by the Committee chairperson in accordance with procedures established by the Committee. A verbatim transcription will be made of the NSRRC meeting and a copy of the transcript will be placed in the NRC's Public Document Room in Washington, DC.

Any inquiries regarding this notice or any subsequent changes in the status and schedule of the meeting, may be made to the Designated Federal Officer, Dr. Jose Luis M. Cortez (telephone: 301–415–6596), between 8:15 am and 5:00 pm.

Dated at Rockville, Maryland this 21st day of October, 1996.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Federal Advisory Committee Management Officer.

[FR Doc. 96–27412 Filed 10–24–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on November 7–9, 1996, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the Federal Register on Monday, November 27, 1995 (60 FR 58393).

Thursday, November 7, 1996

8:30 a.m.–8:45 a.m.: Opening Remarks by the ACRS Chairman

(Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–10:45 a.m.: Proposed Rule on Steam Generator Integrity

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, Nuclear Energy Institute (NEI), and Electric Power Research Institute (EPRI) regarding the proposed rule on steam generator integrity and an associated regulatory guide.

Other interested parties will participate, as appropriate.

11:00 a.m.–12:15 p.m.: Risk-Based Analysis of Reactor Operating Experience

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff activities associated with risk-based analysis of reactor operating experience, accident sequence precursor program, development of risk-based performance indicators, and related matters.

Representatives of the nuclear industry will participate, as appropriate.

1:15 p.m.–3:15 p.m.: Revised Source Term for Operating Reactors

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, NEI, and Entergy Operations, Inc., regarding the use of revised source term for operating plants and the NRC staff's proposed approach for reviewing applications for license amendments.

Other interested parties will participate, as appropriate.

3:30 p.m.–4:30 p.m.: Emergency Planning for Advanced Reactors

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding a simplified approach to emergency planning for advanced reactors.

Representatives of the nuclear industry will participate, as appropriate.

4:30 p.m.–7:00 p.m.: Preparation of ACRS Reports

(Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting as well

as a proposed report on plant-specific application of Safety Goals.

Friday, November 8, 1996

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman

(Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–9:00 a.m.: Future ACRS Activities

(Open)—The Committee will discuss recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

9:00 a.m.–9:15 a.m.: Reconciliation of ACRS Comments and Recommendations

(Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports. The EDO responses are expected to be provided in writing to the ACRS prior to the meeting.

9:15 a.m.–9:45 a.m.: Report of the Planning and Procedures Subcommittee

(Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to ACRS.

A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

10:00 a.m.–11:00 a.m.: Nitrogen Bubble in the Reactor Coolant System at the Haddam Neck Nuclear Power Plant

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the findings and recommendations of the Augmented Inspection Team which investigated the August 28, 1996 event at the Haddam Neck Nuclear Power Plant that involved creation of a nitrogen bubble in the reactor coolant system.

Representatives of the licensee will participate, as appropriate.

11:00 a.m.–12:30 p.m.: Annual ACRS Report to Congress

(Open)—The Committee will discuss the format and content of the annual ACRS report to Congress on the NRC Safety Research Program.

1:30 p.m.–7:00 p.m.: Preparation of ACRS Reports

(Open)—The Committee will continue its discussion of the proposed ACRS reports on matters considered during this meeting as well as a proposed report on plant-specific application of Safety Goals.

Saturday, November 9, 1996

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports

(Open)—The Committee will continue discussion of proposed ACRS reports on matters considered during this meeting as well as a proposed report on plant-specific application of Safety Goals.

12:30 p.m.–1:30 p.m.: Strategic Planning

(Open)—The Committee will continue its discussion of items of significant importance to NRC, including rebaselining of the Committee activities for FY 97.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 1, 1996 (61 FR 51310). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss matters the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m. EDT.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672 or ftp.fedworld. These documents and the meeting agenda are also available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: October 22, 1996.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 96–27413 Filed 10–24–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22291; 812–10218]

First Trust Special Situations Trust and Nike Securities L.P.; Notice of Application

October 21, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: First Trust Special Situations Trust and Nike Securities L.P.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 12(d)(1)(F)(ii) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit series of the Trust (each a ''Series'' or ''Trust Series''), to offer units to the public with a sales load that exceeds the 1.5% sales load limitation of section 12(d)(1)(F)(ii) of the Act.

FILING DATE: The application was filed on June 24, 1996 and amended on September 5, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a

copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 1001 Warrenville Road, Lisle, Illinois 60532.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Alison E. Baur, Branch chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a registered unit investment trust. Each Trust Series also will be a unit investment trust, and will be similar but separate and designated by a different Series number. Applicants request relief of behalf of the Trust and certain subsequent Trust Series. Nike Securities L.P. is the sponsor for each Trust Series (the ''Sponsor''). Each Series will be created under state law pursuant to a trust agreement which will contain information specific to that Series and which will incorporate by reference a master trust agreement between the Sponsor and a financial institution that satisfies the criteria in section 26(a) of the Act (the ''Trustee''). The trust agreement and the master trust agreement are referred to collectively as the ''Trust Agreement.''

2. Each Series will contain a portfolio of shares of investment companies or series thereof (the ''Funds'') that are not affiliated with any of the applicants. Each Series may invest either in only one type of investment company or in a combination of the various types of investment companies. The shares of the underlying Funds will be deposited in each Trust Series at net asset value, or if the Fund shares are listed on a national securities exchange or traded on the Nasdaq National Market System (''Nasdaq-NMS''), at ''market value.'' Market value will be determined by an evaluator, and generally will be based on the closing sale prices of the securities or, if unavailable, the closing asking prices of the securities.

3. Each underlying Fund may be registered as an open-end investment company, a closed-end investment company, or a unit investment company, or a unit investment trust. In addition, an underlying Fund may be an ''Exchange Fund.'' An exchange Fund may be registered as an open-end investment company or a unit investment trust, but it has received exemptive relief to sell its shares at ''negotiated prices'' on an exchange in the same manner as other equity securities.[1]

4. Simultaneously with the deposit of Fund shares into a Trust Series, the Trustee will deliver to the Sponsor registered certificates for units (''Units'') that represent ownership of the Trust Series. During the initial public offering, the Units will be offered at prices based on the aggregate underlying value of the securities deposited in a Trust Series, plus a sales charge. The sales charge (either a front end, deferred sales load,[2] or a combination thereof) shall not, when aggregated with any sales charge or service fees paid by the Trust Series with respect to securities of the underlying Funds, exceed the limits set forth in Rule 2830(d) of the NASD's Conduct Rules. Applicants state that the Trust Series may incur customary brokerage commissions associated with purchasing securities on the secondary market. No Trust Series will invest in an underlying Fund with a rule 12b–1 plan unless the Fund's rule 12b–1 fees do not exceed a maximum annual rate of .25% of the respective Fund's average daily net assets.

Applicant's Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities issued by another investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the value of the total assets of the acquiring company, or if securities issued by the acquired company and all other investment companies have an aggregate value in excess of 10% of the value of the total assets of the acquiring company.

2. Section 12(d)(1)(F) provides that section 12(d)(1) shall not apply to securities purchased or otherwise acquired by a registered investment company if immediately after the purchase or acquisition not more than 3% of the total outstanding stock of the acquired company is owned by the acquiring company and the acquiring company does not offer or sell any security issued by it which includes a sales load of more than 1.5%. In addition, no issuer of any security purchased or acquired by the acquiring company shall be obligated to redeem such security in an amount exceeding 1% of such issuer's total outstanding securities during any period of less than 30 days. Applicants request relief under section 6(c) of the Act from the 1.5% sales load limitation of section 12(d)(1)(F)(ii) so that a Trust Series can offer Units subject to a sales load of greater than 1.5% of the public offering price.

3. Section 6(c) provides that the SEC may exempt any person or transaction from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested order satisfies this standard.

4. Applicants argue that section 12(d)(1) is intended to mitigate or eliminate abuses that might arise when one investment company acquires shares of another investment company. These abuses include: (a) the layering of sales charges, advisory fees, and administrative costs; (b) the imposition of undue influence by the acquiring fund over the acquired funds through the threat of large scale redemptions; (c) the acquisition by the acquiring fund of voting control of the acquired company; and (d) the creation of a complex pyramidal structure that may be confusing to investors. Applicants do not believe that these abuses are present in their proposed trust of funds structure.

5. Applicants state that the structure of the Trust Series will not result in excessive fees. Each Trust Series, as a unit investment trust, has an unmanaged portfolio and, therefore, does not assess advisory fees. Unitholders would bear their portion of advisory fees changed by the underlying Funds for services rendered by each Fund's respective investment adviser. Applicants contend that there will be no overlapping of sales charges or distribution fees. While each Trust Series will charge a sales load, the Sponsor will deposit the Fund shares in

[1] *See, e.g.,* Foreign Fund Inc., Investment Company Act Release Nos. 21737 (Feb. 6, 1996) (notice) and 21803 (Mar. 5, 1996) (order); and SPDR Trust, Investment Company Act Release Nos. 18959 (Sept. 17, 1992) (notice) and 19055 (Oct. 26, 1992) (order).

[2] The Trust received exemptive relief to assess a deferred sales load. *See Nike Securities L.P., et al.,* Investment Company Act Release Nos. 21008 (Apr. 14, 1995) (notice) and 21059 (May 10, 1995) (order).

the Trust Series at net asset value, or if shares of the Funds are traded on an exchange or Nasdaq-NMS, at their market value. In addition, each Trust Series, as a unit investment trust, does not charge a rule 12b–1 fee, and no Trust Series would invest in a Fund with a rule 12b–1 plan unless the Fund limits its rule 12b–1 fee to a maximum annual rate of .25% of the Fund's average daily net assets. Applicants also have agreed as a condition to relief that any sales charge assessed with respect to the Units of a Trust Series, when aggregated with any sales charges and service fees paid by the Trust Series with respect to securities of the underlying Funds, shall not exceed the limits set forth in Rules 2830(d) of the Conduct Rules of the NASD. As a result, the aggregate sales charges will not exceed the limit that otherwise lawfully could be charged at any single level.

6. Administrative fees may be charged at both the Trust Series and underlying Fund levels. However, applicants believe that certain Trust expenses may be reduced under the proposed arrangement. When the Trust Series invest in shares of open-end investment companies, applicants anticipate that the evaluator would charge a lower fee, if any at all. A Trust Series may incur a customary brokerage commission in connection with Fund shares purchased on an exchange or Nasdaq-NMS, but applicants represent that the Sponsor will purchase the Fund shares in the secondary market, thereby avoiding the payment of any underwriting spreads common during an initial offering.

7. Applicants argue that the concerns of large-scale redemptions is not applicable with regard to underlying closed-end Funds because they do not issue redeemable securities. For redeemable securities, section 12(d)(1)(F) provides that an underlying Fund will not be obligated to redeem its securities in an amount exceeding 1% of the issuer's total outstanding securities during any period of less than 30 days, and applicants will comply with this provision. Applicants also believe that the unmanaged nature of the Trust limits large scale redemptions because each Trust Series is limited as to when it may sell portfolio securities.

8. Applicants believe that the concern of pyramiding of voting control by a Trust Series over the underlying Funds does not arise in its proposal because section 12(d)(1)(F) requires the Trust Series to exercise the voting rights with respect to any securities acquired in the manner prescribed by section 12(d)(1)(E). Section 12(d)(1)(E) requires the acquiring investment company either to seek instructions from its security holders with regard to the voting of all proxies with respect to such security and to vote such proxies only in accordance with such instructions, or to vote the shares held by it in the same proportion as the vote of all other holders of the security.

9. Applicants believe that the concern about undue complexity in its arrangement is addressed by its condition that each Trust Series will not invest in an underlying Fund that, at the time of acquisition, owns securities of any other investment company in excess of the limits in section 12(d)(1)(A). If subsequent to a Trust Series' acquisition of Fund shares, the Fund acquires securities of other investment companies in excess of section 12(d)(1)'s limits, the Trust Series will not be required to divest itself of its holdings. Applicants argue that because the underlying Funds are not affiliated with the Trust, a Trust Series cannot bind or control the Funds.

10. Applicants also believe that the proposed trust of funds structure will be adequately disclosed and explained to investors in each Series' prospectus. Applicants represent that they will disclose all loads, fees, expenses, and charges incurred with an investment in the respective Trust Series in the prospectus. The prospectus also will include disclosure that investors will pay indirectly a portion of the expenses of the underlying Funds. In addition, each Series will include the table required by item 2 of Form N–1A (modified as appropriate to reflect the differences between unit investment trusts and open-end investment companies) to set forth the Series' operating expenses and Unitholders' transaction costs.

11. Applicants believe that it is appropriate to apply the NASD's rules to the proposed arrangement instead of the sales load limitation in section 12(d)(1)(F)(ii). Applicants argue that the NASD's specific sales charge rules, which were recently amended to limit asset-based sales charges and service fees, more accurately reflect the current methods used by funds to finance sales expenses, while section 12(d)(1)(F), adopted more than 25 years ago, does not reflect the changes in the industry's pricing practices.

12. Applicants believe that, given the number and variety of funds now available for investment, a Trust Series provides a simple means through which investors can obtain a professionally selected and maintained mix of investment company shares for a relatively small initial investment. Applicants also believe that the Trust Series provides investors an opportunity to participate in a diversified portfolio of investment company shares in one package and at one sales load.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each Trust Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges or service fees charged with respect to Units of a Trust Series, when aggregated with any sales charges or service fees paid by the Trust Series with respect to securities of the underlying Funds, shall not exceed the limits set forth in Rule 2830(d) of the NASD's Conduct Rules.

3. No Trust Series will acquire securities of an underlying Fund which, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–27433 Filed 10–24–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22292; 811–2712]

John Hancock Tax-Exempt Income Fund; Notice of Application

October 21, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: John Hancock Tax-Exempt Income Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on July 9, 1996 and amended on October 1, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1996, and should be accompanied by proof of service on

applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549. Applicant, 101 Huntington Avenue, Boston, MA 02199–7603.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Alison E. Baur, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch

Applicant's Representations

1. Applicant, a registered open-end investment company, was organized as a Massachusetts business trust. On December 1, 1976, applicant registered under section 8(a) of the Act and filed a registration statement on Form N–1A pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement was declared effective on January 28, 1977 and applicant commenced its public offering of shares soon thereafter

2. At a meeting held on December 11, 1995, applicant's Board of Trustees (the ''Board'') approved unanimously the agreement and plan of reorganization (the ''Agreement'') (the transactions contemplated by the Agreement are referred to as the ''Reorganization'') and recommended that applicant's shareholders approve the Agreement. The Agreement provided that applicant would transfer all of its assets and liabilities to John Hancock Tax-Free Bond Fund (''Tax-Free Bond Fund'') in exchange for shares of beneficial interest of the Tax-Free Bond Fund with an aggregate net asset value equal to the net asset value of applicant's assets transferred pursuant to the Reorganization. The Board considered the following reasons, among others, in determining that the Reorganization would benefit applicant and its shareholders: that both funds' investment objectives and policies are substantially similar and that simultaneous offerings of both impedes both funds' growth; and that the larger asset base may give opportunities for economies of scale.

3. Applicant and the Tax-Free Bond Fund may be deemed to be affiliated persons of each other solely by reason of having a common investment adviser, common directors and/or common officers. In order to comply with rule 17a–8, which governs mergers of certain affiliated investment companies, the Board determined that the reorganization was in the best interests of applicant and applicant's shareholders.[1] In compliance with rule 17a–8, the Board found that (1) participation in the Reorganization was in the best interests of applicant and that (2) the interests of the existing shareholders of applicant would not be diluted.

4. A proxy statement was filed with the Commission and mailed to shareholders in connection with the solicitation by the Board of proxies for the purpose of voting on the Reorganization. At a meeting held on May 2, 1996, the shareholders approved the agreement and the transactions contemplated thereby.

5. On May 3, 1996, applicant transferred all of its assets and liabilities to Tax-Free Bond Fund in exchange for shares of beneficial interest of Tax-Free Bond Fund with an aggregate net asset value equal to the net asset value of the assets transferred by applicant. Immediately thereafter, applicant distributed to its shareholders the shares of Tax-Free Bond Fund received. Upon completion of the Reorganization, each shareholder of applicant owned shares of Tax-Free Bond with the same aggregate net asset value as the shares of applicant owned by the shareholder immediately prior to the Reorganization.

6. Applicant and Tax-Free Bond Fund each assumed its own expenses in connection with the Reorganization. Legal, accounting and other expenses in the approximate amount of $82,500 relating to the Reorganization were borne by applicant. Reorganization expenses (legal, printing and mailing and registration fees) of $39,000 were incurred by Tax-Free Bond Fund.

7. Applicant has no assets, liabilities, outstanding debts or shareholders as of the time of filing the application, and is not a party to any litigation or administrative proceeding application. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant was terminated as a Massachusetts business trust on May 3, 1996 pursuant to the termination of trust filed with the Secretary of State of the Commonwealth of Massachusetts.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–27437 Filed 10–24–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

[Release No. 35–26594]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

October 18, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 12, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

EUA Energy Investment Corporation (70–8617)

EUA Energy Investment Corporation (''EEIC''), P.O. Box 2333, Boston, Massachusetts 02107, a wholly-owned nonutility subsidiary of Eastern Utilities Associates, a registered holding company, has filed a post-effective amendment, under sections 9(a) and 10 of the Act and rule 54 thereunder, to its application-declaration, under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and

rules 43(a) and 45(a) thereunder, in the above file.

By order dated June 21, 1995 (HCAR No. 26314), among other things, EEIC was authorized to form a wholly-owned nonutility subsidiary to participate as one of two general partners in a joint venture, BIOTEN Partnership (''Partnership''), formed to develop and commercialize biomass-fired combustion turbine power generation facilities and products and/or services offered in connection with such facilities; to make capital contributions to the Partnership in an aggregate amount of up to $1.907 million to be disbursed in connection with the testing and development of a commercial prototype plant and possibly, an additional $2 million (''Additional Contribution'') through December 31, 1998; and to provide the Partnership with a working capital line of credit in an aggregate total amount of up to $3 million through December 31, 1998.

EEIC now requests authorization to increase the working capital line of credit from up to $3 million to up to $6 million through December 31, 1998. Advances made under the increased working capital line of credit will bear interest at an annual rate equal to the prime lending rate announced from time to time by The First National Bank of Boston, N.A., plus (a) 6% at any time the Additional Contribution has been made but not yet repaid to EEIC and (b) 2% after the Additional Contribution made to the Partnership has been repaid, but in no event to exceed 16% per annum.

All advances made under the increased working capital line of credit will become due and payable three years after the later of (a) the date of the partnership agreement establishing the Partnership and (b) the date such line of credit is first drawn upon. All advances under the increased working capital line of credit will be evidenced by a promissory note and the Partnership's obligations under the note will be secured by a first priority security interest in the assets of the Partnership.

EEIC states that additional funding is needed for working capital purposes due to unavoidable technical delays in developing the prototype plant, scheduled for acceptance testing in November 1996. EEIC believes that the long-term profitability of its investment in the Partnership would not be adversely affected by the requested increase.

Houston Industries, Inc., et al. (70–8907)

Houston Industries Incorporated (''HI''), an exempt public utility holding company, and its electric public utility subsidiary company, Houston Lighting & Power Company (''HL&P''), both of 1111 Louisiana, Houston, Texas, 77002, have filed an application under section 3(a)(2) of the Act.

HI and HL&P propose to merge and then to merge a new subsidiary company with NorAm Energy Corp. (''NorAm''). The application requests an order from the Commission under section 3(a)(2) of the Act that exempts the public utility holding company to be formed, and all subsidiary companies thereof, from all provisions of the Act except section 9(a)(2).

HI owns two principal public utility subsidiary companies.[1] HL&P is engaged in the generation, transmission, distribution and sale of electric power to 1.5 million customers in a 5,000 square-mile area of the Texas Gulf Coast, which area includes Houston. HI also owns Houston Industries Energy, Inc. (''HI Energy''), which participates in domestic and foreign power generation projects and invests in foreign electric utilities.[2]

HI is exempt from the provisions of the Act, other than section 9(a)(2), pursuant to section 3(a)(1) because both HI and HL&P ''are predominantly intrastate in character and carry on their business substantially in'' Texas.

NorAm is a public utility company that provides retail natural gas service to 2.75 million customers in 1,300 municipalities. NorAm also owns several non-utility subsidiary companies. Its natural gas distribution business operates through three divisions—(i) Entex, the local gas distribution company in Houston and in other areas in Texas, Louisiana and Mississippi; (ii) Arkla, which distributes retail natural gas in Arkansas, Louisiana, Oklahoma and Texas; and (iii) Minnegasco, which distributes natural gas in Minnesota.

NorAm also operates interstate gas pipeline facilities through two subsidiary companies, NorAm Gas Transmission Company and Mississippi River Transmission Corporation, and operates natural gas acquisition assets in Oklahoma, Louisiana, Arkansas and Texas through NorAm Field Services Corp. Another subsidiary company, NorAm Energy Services, Inc., with certain affiliates, markets wholesale natural gas and provides risk management services.

In addition, NorAm provides retail energy services to industrial and large commercial concerns through NorAm Energy Management. Finally, NorAm plans to form one or more subsidiary companies to invest in certain gas distribution systems in Latin America.[3] In 1995, the natural gas business of NorAm accounted for 58% of its consolidated revenues.

On August 11, 1996, HI, HL&P and a new HI subsidiary company, HI Merger, Inc. (''HI Merger''), entered into an Agreement and Plan of Merger (''Merger Agreement'') with NorAm. Under the Merger Agreement, HI will merge with HL&P and the outstanding common stock of HI will become the common stock of HL&P, which will be renamed Houston Industries, Inc. (''Houston''). Thereafter, NorAm will merge with HI Merger, which will be renamed NorAm Energy Corp. The new NorAm Energy Corp. will be a wholly owned subsidiary company of Houston after these two mergers (''Basic Mergers''). After the Basic Mergers, the electric power business of HL&P will be conducted by Houston under the name of HL&P.[4]

Under the Merger Agreement, the shareholders of NorAm common stock will receive (i) cash in the amount of $16.00 per share or (ii) Houston common stock.[5] If the closing occurs after May 11, 1997, the cash (but not stock) consideration increases thereafter by two percent (simple interest) per quarter until closing.

The total value of the cash and stock consideration to be issued in exchange for all NorAm common stock and common stock equivalents is expected to be about $2.5 billion.

The Boards of Directors of all parties have approved the Merger Agreement. Consummation of the Basic Mergers is subject to usual closing conditions and approval by HI and NorAm

[1] HI also owns several other non-utility subsidiary companies. HL&P, however, accounts for substantially all of the consolidated income and common stock equity of HI.

[2] Foreign electric utilities in which HI Energy has invested are exempt foreign utility companies under section 33(a) of the Act.

[3] See SEC File No. 70–8811.

[4] The application states that, if the order is not granted, and if HL&P determines that, upon consummation of the Basic Mergers, Houston would not be an exempt public utility holding company, then NorAm and HI will both be merged with and into HL&P. HL&P would be the surviving corporation and would be renamed Houston Industries Incorporated. The application also states that, if, when all conditions for consummation of the transaction have been satisfied or waived, the Act does not constrain the structure of the transaction, then (i) HI will not merge with and into HL&P and (ii) NorAm will merge with and into HI Merger. HI Merger would be the surviving corporation and would be renamed NorAm Energy Corp. In that event, both NorAm and HL&P would be wholly owned subsidiaries of HI.

[5] The market value of the stock component will be equal to about $16.00 per share if the average New York Stock Exchange closing sales price of HI common stock is within a specified price range in a twenty-day period prior to the closing date of the Basic Mergers.

shareholders. The parties contemplate shareholder meetings to approve the transactions prior to the end of 1996. The application states that consummation of the Basic Mergers is also subject to regulatory approvals, including those from state regulatory agencies,[6] and the submission of the notifications under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

The Merger Agreement provides for termination upon the occurrence of certain events, to include failure to consummate the Basic Mergers by August 11, 1997. The Merger Agreement provides for a termination fee to be paid in certain circumstances, which fee ranges from $10 million to $75 million.

The application states that, on a gross-to-gross basis, the gross operating revenues of NorAm ($1.72 billion) in 1995 were approximately 47% of those of HL&P ($3.68 billion).

The application requests an order from the Commission under section 3(a)(2) of the Act, which exempts a public utility holding company if ''such holding company is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto.''

Entergy Gulf States, Inc. (70–8911)

Entergy Gulf States, Inc. (''Gulf States''), 350 Pine Street, Beaumont, Texas 77701, a wholly owned public-utility subsidiary of Entergy Corporation (''Entergy''), a registered holding company, has filed an application-declaration under sections 9(a), 10 and 12(d) of the Act and rule 44 thereunder.

Gulf States provides steam and associated byproduct electrical energy to Exxon Corporation (''Exxon'') at its petrochemical manufacturing facilities that surround and are contiguous to Gulf States' cogeneration facility, Louisiana Station No. 1, located in East Baton Rouge Parish, Louisiana (''Louisiana Station''). Louisiana Station was originally constructed to serve the steam and electrical requirements of the Exxon facility and has been primarily dedicated to that purpose since its construction.

Pursuant to an arrangement between Exxon and Gulf States, Exxon supplies fuel to Louisiana Station that is converted into steam and byproduct electricity which is then delivered to the Exxon facility. The amount of electricity produced from this process is not normally sufficient to met Exxon's requirements and Exxon purchases additional electricity from Gulf States pursuant to an electric service contract.

Gulf States and Exxon propose to enter into an agreement that would allow for the modernization of the Louisiana Station to improve its reliability and efficiency and potentially increase its capacity for the continued production of steam and electric energy produced from fuel supplied by Exxon. To facilitate the above-mentioned transaction, Gulf States now proposes to enter into an Agreement for Lease of Generating Facilities (''Lease''), a Base Facility Sublease and Lease of Additions and Betterments (''Sublease'') and other related agreements.

Pursuant to the Lease, Gulf States will lease to Exxon its generating facilities and certain property located within and surrounding the Louisiana Station upon which Exxon proposes to construct a new gas-fired turbine and associated facilities. All capital and other costs to effect such modernization will be borne by Exxon. Gulf States has certain termination rights should Exxon fail to commence the modernization of Louisiana Station by appropriating funds within one (1) year of the date of the grant of all necessary regulatory approvals.

The Lease has an initial term in excess of twenty (20) years with two (2) optional term extensions of ten (10) years. The initial term is divided into two (2) stages, Phases 1 and 2. Generally, Phase 1 is the period during which Exxon is to complete modernization of Louisiana Station, which should not exceed thirty (30) months from the date Gulf States secures all necessary regulatory approvals. Phase 2 is the twenty (20) year period thereafter.

During Phase 1 of the Lease, the Sublease will be in effect in order that Gulf States may continue to use the facilities to fulfill its obligations to Exxon under an existing steam contract. Pursuant to the Sublease, Gulf States will pay the same monthly rent that Exxon is obligated to pay under the Lease. Steam and electric service rendered by Gulf States to Exxon during the same period will be paid for at the rates as set forth in an Amended and Restated Steam Contract (''Steam Contract''), and any additional electricity shall be provided to Exxon pursuant to the existing Electric Agreement.

By structuring the transaction to include both the Lease and the Sublease, Exxon may immediately commence modernization of Louisiana Station and Gulf States may continue to fulfill its contractual obligations to the Steam Contract.

Phase 2 of the Lease will commence once improvements and modernization to Louisiana Station are complete, and Exxon shall begin to pay Gulf States a monthly fixed rent and a monthly variable rent up to a stated maximum amount depending upon the quantity of steam generated by Louisiana Station. The Sublease will no longer be in effect.

Also during Phase 2, Gulf States will provide equipment, personnel and services required for operation and maintenance of the facility pursuant to an operating and maintenance service agreement (''Operating Agreement''). Gulf States will be compensated for its services under this Operating Agreement by a fee structure that includes, in addition to reimbursement of its expenses, the payment of an overhead fee and an incentive fee. The overhead fee is fixed initially at a stated minimum per year and will not be subject to renegotiation more than every two (2) years. The incentive fee is fixed at a stated maximum per year based upon Gulf States attainment of certain performance goals, and the company has the opportunity to earn other incentives based on cost savings.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–27391 Filed 10–24–96; 8:45 am]

BILLING CODE 8010–01–M

[6] The application states that the Basic Mergers are subject to review by regulatory commissions in each state other than Texas in which NorAm conducts utility operations. HI and NorAm will request prior approval of the Basic Mergers from the Minnesota Public Utilities Commission, the Arkansas Public Service Commission, the Oklahoma Corporation Commission, the Louisiana Public Service Commission, and the Mississippi Public Service Commission. Each of those agencies regulates rates and services provided by a NorAm division and is expected to review the transaction to assure that it is not inconsistent with the public interest. Texas statutes do not require HI and NorAm to obtain approval of the transaction from the Texas Railroad Commission (''Railroad Commission'') or the Texas Public Utility Commission (''TPUC''). However, the Basic Mergers will not affect the authority of the Railroad Commission over operations of NorAm or the authority of the TPUC over the operations of HL&P. In addition, NorAm and HI are currently engaged in informal discussions with the Railroad Commission and the TPUC on the Basic Mergers.

[Investment Company Act Rel. No. 22293; 812–10256]

Van Kampen American Capital Equity Opportunity Trust, et al.; Notice of Application

October 21, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''Act'').

APPLICANTS: Van Kampen American Capital Equity Opportunity Trust (the ''Trust''), on behalf of itself and certain subsequent series (each a ''Series''), and Van Kampen American Capital Distributors, Inc. (the ''Sponsor'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 12(d)(1)(F)(ii) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order that would permit each Series of the Trust to offer units (''Units'') with a sales load in excess of the 1.5% limit contained in section 12(d)(1)(F)(ii) of the Act.

FILING DATES: The application was filed on July 22, 1996, and amended on September 5, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942–0583, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management; Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a unit investment trust (''UIT'') registered under the Act. Each Series also will be a UIT, and will be similar but separate and designated by a different Series number. The Sponsor, a registered broker-dealer and member of the National Association of Securities Dealers, Inc. (''NASD''), is the sponsor for each Series. Each Series will be created under state law pursuant to a trust agreement that will contain information specific to that Series, and will incorporate by reference a master trust agreement between the Sponsor and a financial institution that satisfies the criteria in section 26(a) of the Act (the ''Trustee''). The trust agreement and the master trust agreement are referred to collectively as the ''Trust Agreement.''

2. Each Series will contain a portfolio of shares of investment companies or series thereof (the ''Funds'') that are not affiliated with any of the applicants. Each Series may invest either in only one type of investment company or in a combination of the various types of investment companies. The shares of the Funds will be deposited in each Series at net asset value, or, if the Fund shares are listed on a national securities exchange or traded on the Nasdaq National Market System (''Nasdaq-NMS''), at their ''market value.'' Market value will be determined by an evaluator, and generally will be based on the closing sale prices (or, if unavailable, the closing ask prices) for the securities traded on an exchange, and on the closing ask prices for the securities traded on the Nasdaq-NMS.

3. Each of the Funds will be registered as a closed-end investment company (''Closed-End Funds''), an open-end investment company (''Open-End Funds''), or a UIT. In addition, certain of the Funds may be either an Open-End Fund or a UIT that has received exemptive relief to sell its shares at ''negotiated prices'' on an exchange in the same manner as other equity securities.[1]

4. Simultaneously with the deposit of Fund shares into a Series, the Trustee will deliver to the Sponsor registered certificates for Units that represent the entire ownership of the Series. During the initial public offering, these Units will be offered at prices based on the aggregate underlying value of the Fund shares, plus a sales charge. The sales charge (either a front end or a deferred sales load, or a combination thereof) shall not, when aggregated with any sales charge or service fees paid by the Series with respect to shares of the Funds, exceed the limits set forth in Rule 2830(d) of the NASD's Conduct Rules. No Series will invest in a Fund with a rule 12b–1 plan, unless the Fund limits the plan fees to a maximum annual rate of .25% of the Fund's average daily net assets.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities issued by another investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the value of the total assets of the acquiring company, or if securities issued by the acquired company and all other investment companies have an aggregate value in excess of 10% of the value of the total assets of the acquiring company.

2. Section 12(d)(1)(F) provides that section 12(d)(1) shall not apply to securities purchased or otherwise acquired by a registered investment company if, immediately after the purchase or acquisition, not more than 3% of the total outstanding stock of the acquired company is owned by the acquiring company, and the acquiring company does not offer or sell any security issued by it at a price that includes a sales load of more than 1.5%. In addition, no issuer of any security purchased or acquired by such registered investment company shall be obligated to redeem such security in an amount exceeding 1% of such issuer's total outstanding securities during any period of less than 30 days.

3. Section 6(c) provides that the SEC may exempt any series of transactions from any provision of the Act or any rule or regulation thereunder if and to the extent that such exemption is necessary of appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants therefore request an exemption under section 6(c) to permit a Series to offer Units with a sales load in excess of the 1.5% limitation, subject to the conditions set forth herein. Applicants believe the requested relief meets the standards for an exemption set forth in section 6(c).

4. Applicants argue that section 12(d)(1) is intended to mitigate or eliminate actual or potential abuses that might arise when one investment company acquires shares of another investment company. These abuses include: (a) the layering of sales charges, advisory fees, and administrative costs; (b) the imposition of undue influence by the acquiring fund over the management of the acquired funds through threat of large scale redemptions; (c) the acquisition by the acquiring company of voting control of the acquired company;

[1] *See, e.g.*, Foreign Fund Inc., Investment Company Act Release Nos. 21737 (Feb. 6, 1996) (notice) and 21803 (Mar. 5, 1996) (order), and SPDR Trust, Investment Company Act Release Nos. 18959 (Sept. 17, 1992) (notice) and 19055 (Oct. 26, 1992) (order).

and (d) the creation of a complex pyramidal structure that may be confusing to investors. Applicants do not believe that any of these potential or actual abuses are present in their proposed trust of funds structure.

5. Applicants assert that the structure of the Series will not result in excessive fees. Each Series, as a UIT, has an unmanaged portfolio and, therefore, does not assess advisory fees. Unitholders of a Series, however, would bear their portion of the advisory fees charged the underlying Funds, if any, for services rendered by the Fund's respective investment adviser. Applicants also contend that there will be no overlapping of sales charges or distribution fees. While each Series will charge a sales load, the Sponsor will deposit the Fund shares in the Series at net asset value (*i.e.*, without any sales charge), or, if the shares of the Funds are traded on an exchange or Nasdaq-NMS, at their market value. In addition, each Series, as a UIT, does not charge a rule 12b–1 fee, and no Series would invest in a Fund with a rule 12b–1 plan unless the Fund limits its rule 12b–1 fee to a maximum annual rate of .25% of the Fund's average daily net assets. Finally, applicants have agreed as a condition to the relief that any sales charge assessed with respect to the Units of a Series, when aggregated with any sales charges and service fees paid by the Series with respect to securities of the underlying Funds, shall not exceed the limits set forth in Rule 2830(d) of the Conduct Rules of the NASD. As a result, the aggregate sales charges will not exceed the limit that otherwise lawfully could be charged at any single level.

6. Administrative fees may be charged at both the Series and underlying Fund levels. However, applicants believe that certain Trust expenses may be reduced under the proposed arrangement. For example, when a Series invests in shares of Open-End Funds, whose net asset value is readily available, applicants anticipate that the evaluator would charge a lower fee, if any at all. A Series may incur customary brokerage commissions with respect to the purchase of Fund shares traded on an exchange or Nasdaq-NMS, but applicants represent that the Sponsor will purchase these shares in the secondary market and thus avoid payment of any underwriting spreads common during the initial offering of such shares.

7. Applicants argue that the concern of large-scale redemptions is not applicable with respect to a Fund that is a Closed-End Fund, because such Funds do not issue redeemable securities. Section 12(d)(1)(F) addresses this concern with respect to Funds issuing redeemable securities by providing that the Fund will not be obligated to redeem its securities in an amount exceeding 1% of its total outstanding securities during any period of less than 30 days, and applicants will comply with this provision. Applicants believe that the unmanaged nature of UITs precludes the concern of large scale redemptions or sales during the life of a Series because each Series is limited as to when it may sell its portfolio securities.

8. Applicants do not believe that pyramiding of control is a concern with respect to the proposed trust of funds structure because each Series will comply with section 12(d)(1)(F) (other than the sales load limitation therein), which requires the Series to exercise the voting rights with respect to any acquired securities in the manner prescribed by section 12(d)(1)(E). Section 12(d)(1)(E) requires the acquiring investment company either to seek instructions from its security holders with regard to the voting of all proxies with respect to any acquired security and to vote such proxies only in accordance with such instructions, or to vote the shares held by it in the same proportion as the vote of all other holders of such security.

9. Applicants represent that the proposed trust of funds structure is unlikely to give rise to concerns of undue complexity because they have agreed that no Series will invest in any Fund that, at the time of acquisition, owns securities in excess of the limits contained in section 12(d)(1)(A). However, if a Fund subsequently acquires securities of other investment companies in excess of the limits in section 12(d)(1), the Series will not be required to divest itself of its holdings. Applicants argue that, because the Funds are not affiliated with the Trust, the Series cannot bind or control the Funds.

10. Applicants believe that the proposed trust of funds structure will be adequately disclosed and explained to investors in each Series' prospectus. Applicants state that they will fully disclose in each prospectus all loads, fees, expenses, and charges incurred with an investment in the respective Series. The prospectus also will include disclosure that investors will pay indirectly a portion of the expenses of the underlying Funds. In addition, the prospectus for each Series will include the table required by item 2 of Form N-1A (modified to reflect the differences between UITs and Open-End Funds) to set forth the Series' operating expenses and unitholders' transaction costs.

11. Applicants believe that it is appropriate to apply the NASD's rules to the proposed arrangement instead of the sales load limitation in section 12(d)(1)(F)(ii). Applicants argue that the NASD's specific sales charge rules, which recently were amended to limit asset-based sales charges and service fees, more accurately reflect the current methods used by funds to finance sales expenses, while section 12(d)(1)(F), adopted more than 25 years ago, does not reflect the changes in the industry's pricing practices.

12. Applicants assert that the trust of funds proposal will benefit potential unitholders as well as shareholders of the Funds. Applicants believe that, given the number and variety of funds now available for investment, a Series provides a simple means through which investors can obtain a professionally selected and maintained mix of investment company shares for a relatively small initial investment. Applicants also believe that each Series will provide potential investors with the opportunity to participate in a diversified portfolio of investment company shares in one package and at one sales load. Applicants anticipate that purchasing shares in large quantities will enable a Series to obtain certain economies of scale, and will benefit certain Funds by permitting them to carry a Series on their books as a single shareholder account, even though there are numerous unitholders, and by providing them with a stable asset base.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges or service fees charged with respect to Units of Series, when aggregated with any sales charges or services paid by the Series with respect to securities of the underlying Funds, shall not exceed the limits set forth in rule 2830(d) of the NASD's Conduct Rules.

3. No Series will acquire securities of an underlying Fund that, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–27436 Filed 10–24–96; 8:45am]

BILLING CODE 8010–01–M

[Rel. No. IC–22290; No. 812–10190]

Variable Investment Trust, et al.

October 18, 1996.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an exemption pursuant to the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Variable Investment Trust (the ''Trust''), GE Investment Management Incorporated (''GEIM'') and certain life insurance companies and their separate accounts investing now or in the future in the Trust.

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemption from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary to permit shares of the Trust and any other investment company that is offered to fund variable insurance products and for which GEIM, or any of its affiliates, may serve as investment adviser, administrator, manager, principal underwriter, or sponsor (collectively, ''Investment Companies'') to be sold to and held by the separate accounts (''Separate Accounts'') funding variable annuity and variable life insurance contracts (''Variable Contracts'') issued by affiliated or unaffiliated life insurance companies (''Participating Insurance Companies'') or qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans'').

FILING DATE: The application was filed on June 5, 1996, and amended and restated on October 11, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 12, 1996, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Matthew J. Simpson, Esq., GE Investment Management Incorporated, 3003 Summer Street, Stamford, Connecticut 06905.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the 1940 Act as an open-end management investment company. The Trust currently consists of five separate investment portfolio (''Portfolios''), and may establish additional portfolios.

2. GEIM, a wholly-owned subsidiary of General Electric Company, serves as investment adviser to each Portfolio of the Trust.

3. The Investment Companies will serve as investment vehicles for various types of Variable Contracts. Shares of the Investment Companies will be offered to Separate Accounts of Participating Insurance Companies which enter into participation agreements with the Trust. These Separate Accounts may be registered with the Commission under the 1940 Act or exempt from registration under Section 3(c)(1) thereof.

4. Each participating Insurance Company will have the legal obligation of satisfying all applicable requirements under state law and the federal securities laws in connection with any Variable Contract issued by such company. The role of the Investment Companies under this arrangement will consist of offering shares to the Separate Accounts and fulfilling any conditions the Commission may impose upon granting the order requested in this application.

5. The Trust desires to avail itself of the opportunity to increase its asset base through the sale of its shares to Qualified Plans, consistent with applicable tax law. The Qualified Plans may choose any of the Investment Companies as the sole investment option under the Qualified Plan or as one or several investment options. Participants in Qualified Plans may or may not be given an investment choice among available alternatives, depending on the Qualified Plan itself. Shares of any Investment Company sold to Qualified Plans would be held by the trustee(s) of such Qualified Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act (''ERISA''). To the extent permitted under applicable law, GEIM may act as investment adviser to any of the Qualified Plans that will purchase shares of the Trust. Applicants note that pass-through voting is not required to be provided to participants in Qualified Plans under ERISA.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act exempting them from Sections 9(a), 13(a), 15(a), and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit ''mixed'' and ''shared'' funding, as defined below.

2. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Rule 6e–2(b)(15) provides partial exemptive relief from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act to separate accounts registered under the 1940 Act as unit investment trusts to the extent necessary to offer and sell scheduled premium variable life insurance contracts. The relief provided by the rule also extends to the investment adviser, principal underwriter, and sponsor or depositor of a separate account.

4. The exemptions granted by Rule 6e–2(b)(15) are available only to a management investment company underlying a separate account (''Underlying Fund'') that offers its shares exclusively to variable life insurance separate accounts of a life insurer, or of any other affiliated life insurance company, issuing scheduled premium variable life insurance contracts. The relief granted by Rule 6e–2(b)(15) is not available to a separate account issuing scheduled premium variable life insurance contracts if the Underlying Fund also offers its shares to a separate account issuing variable annuity or flexible premium variable life insurance contracts. The use of a common Underlying Fund as an investment vehicle for both variable

annuity contracts and scheduled or flexible premium variable life insurance contracts is referred to herein as ''mixed funding.''

5. Additionally, the relief granted by Rule 6e–2(b)(15) is not available to separate accounts issuing scheduled premium variable life insurance contracts if the Underlying Fund also offers its shares to unaffiliated life insurance company separate accounts funding variable contracts. The use of a common fund as an underlying investment vehicle for separate accounts of unaffiliated insurance companies is referred to herein as ''shared funding.'' Moreover, because the relief granted by Rule 6e–2(b)(15) is available only where shares of the Underlying Fund are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if the shares of the Trust also are to be sold to Qualified Plans.

6. Regarding the funding of flexible variable life insurance contracts issued through a separate account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. This exemptive relief extends to the investment adviser, principal underwriter, and sponsor or depositor of a separate account. These exemptions are available only where the Underlying Funds of the separate account offers its shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both, or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company * * * .'' Rule 6e–3(T), therefore, permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts of unaffiliated life insurance companies. Moreover, because the relief afforded by Rule 6e–3(T) is available only where shares of the Underlying Fund are offered exclusively to separate accounts of insurance companies, additional relief is necessary if shares of the Trust also are to be sold to Qualified Plans.

7. Applicants state that changes in the tax law have created the opportunity for the Portfolios to increase their asset base through the sale of Portfolio shares to Qualified Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the assets underlying variable contracts, such as those in each Portfolio of the Trust. These diversification requirements are applied by taking into account the assets of the Underlying Fund if all the beneficial interests in the Underlying Fund are held by certain designated persons. On March 2, 1989, the Treasury Department issued regulations that adopted diversification requirements for Underlying Funds. Treas. Reg. § 1.817–5 (1989). These regulations provide that, in order to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations, however, contain certain exceptions to this requirement, one of which permits the trustee(s) of a qualified pension or retirement plan to hold shares of an investment company, the shares of which also are held by separate accounts of insurance companies, without adversely affecting the status of the investment company as an adequately diversified underlying investment vehicle for variable contracts issued through such segregated asset accounts. Treas. Reg. § 1.817–5(f)(3)(iii).

8. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of regulations of the Treasury Department which made it possible for shares of an investment company to be held by the trustee(s) of qualified plans without adversely affecting the ability of shares in the same investment company also to be held by separate accounts of insurance companies in connection with their variable contracts. Thus, the sale of shares of the same investment company to separate accounts and qualified plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) given the current tax law.

9. Moreover, Applicants assert that if the Trust were to sell its share only to Qualified Plans, no exemptive relief would be necessary. Applicants state that none of the relief provided for in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to qualified pension or retirement plans or to the ability of an Underlying Fund to sell its shares to such plans. It is only because the Separate Accounts investing in the Trust are themselves investment companies which are relying upon Rules 6e–2 and 6e–3(T) and do not wish to be denied such relief if the Investment Companies sell shares to Qualified Plans that Applicants are applying for the requested relief.

10. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as an investment adviser to, or principal underwriter of, any registered open-end investment company if an affiliated person of that company is subject to any disqualification specified in Sections 9(a)(1) or 9(a)(2). Subparagraphs (b)(15)(i) and (ii) of Rules 6e–2 and 6e–3(T) provide exemptions from Section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by subparagraphs (b)(15)(i) of Rules 6e–2 and 6e–3(T) permits a person disqualified under Section 9(a) to serve as an office, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the Underlying Fund. The relief provided by subparagraph (b)(15)(ii) of Rules 6e–2 and 6e–3(T) permits the life insurer to serve as the investment adviser or principal underwriter of an Underlying Fund, provided that none of the personnel of the insurer who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund.

11. Applicants state that the partial relief granted under subparagraphs (b)(15) of Rules 6e–2 and 6e–3(T) from the requirements of Section 9(a), in effect, limits the monitoring of the personnel of an insurer that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants submit that Rules 6e–2 and 6e–3(T) reflect a recognition that it is not necessary for the protection of investors or for the purposes of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to an investment company. The Participating Insurance Companies are not expected to play any role in the management or administration of the Investment Companies. Applicants, therefore, submit that there is no regulatory reason to apply the provisions of Section 9(a) to the many individuals in various Participating Insurance Companies.

12. Subparagraphs (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provide partial exemptions from Sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to management investment company

shares held by a separate account, to permit the insurance company to disregard the voting instructions of it variable contract owners in certain limited circumstances.

13. Voting instructions may be disregarded under subparagraphs (b)(15)(iii)(A) of Rules 6e–2 and 6e–3(T) if they would cause the Underlying Fund to make, or refrain from making, certain investments which would result in changes to the subclassification or investment objectives of the Underlying Fund, or to approve or disapprove any contract between a fund and its investment advisers, when required to do so by an insurance regulatory authority, subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of each Rule.

14. Under subparagraph (b)(15)(iii)(B) of Rule 6e–2 and subparagraph (b)(15)(iii)(A)(2) of Rule 6e–3(T), an insurance company may disregard the voting instructions of variable contract owners if such owners initiate any change in the investment objectives, principal underwriter, or investment adviser of the Underlying Fund, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of each Rule.

15. Applicants assert that the proposed sale of shares of the Trust to Qualified Plans does not affect the relief requested. As previously noted, Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) permit an insurer to disregard variable contract owner voting instructions in certain circumstances. Offering shares of the Trust to Qualified Plans would not affect the circumstances and conditions under which any veto right would be exercised by a Participating Insurance Company. Furthermore, as stated above, shares of the Trust sold to Qualified Plans would be held by the trustee(s) of such Plans as mandated by Section 403(a) of ERISA. Section 403(a) provides that the trustee(s) must have exclusive authority and discretion to manage and control the qualified plan with two exceptions: (a) when the qualified plan expressly provides that the trustee(s) is/are subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is/are subject to proper directions of such fiduciary made in accordance with the terms of the qualified plan and not contrary to ERISA; and (b) when the authority to manage, acquire, or dispose of assets of the qualified plan is delegated to one or more investment managers under Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, the trustee(s) of the Qualified Plan has/have the exclusive authority and responsibility for voting proxies. When a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustee(s) or the named fiduciary. In any event, Applicants assert that pass-through voting by the participants in such Qualified Plans is not required. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans.

16. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants submit that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicants assert that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its variable contracts. Accordingly, Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

17. Applicants state further that, under paragraph (b)(15) of Rules 6e–2 and 6e–3(T), the right of an insurance company to disregard the voting instructions of Variable Contract owners does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts, and that affiliation does not eliminate the potential, if any, for divergent judgements as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser. Applicants state that the potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the disregard of voting instructions by an insurance company be reasonable and based on specific good faith determinations. If a decision of a Participating Insurance Company to disregard the instructions of Variable Contract owners represents a minority position or would preclude a majority vote approving a particular change, however, such Participating Insurance Company may be required, at the election of the relevant Investment Company, to withdraw the investment of its Separate Account in such Investment Company. No charge or penalty will be imposed as a result of such withdrawal.

18. Applicants state that there is no reason why the investment policies of the Investment Companies with mixed funding would or should be materially different from what they would or should be if the Investment Companies funded only variable annuity contracts or variable life insurance policies. Each type of insurance product is designed as a long-term investment program. Moreover, Applicants assert that the Investment Companies will continue to be managed in an attempt to achieve their investment objectives, and not to favor any particular Participating Insurance Company or type of insurance product. Applicants, therefore, argue that there is no reason to believe that conflicts of interest would result from mixed funding.

19. In addition, Applicants assert that the sale of shares of the Trust to Qualified Plans will not increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Section 817 is the only section in the Code in which separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity and variable life insurance contracts. Treasury Regulation § 1.817–5(f)(iii) specifically permits ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Applicants, therefore, have concluded that neither the Code, nor the Treasury regulations or revenue rulings thereunder, present any inherent conflicts of interest between or among qualified pension or retirement plan participants and variable contract owners if qualified pension and retirement plans and variable annuity and variable life separate accounts invest in the same management investment company.

20. Applicants assert that while there are differences in the manner in which distributions are taxed for variable annuity and variable life insurance contracts and Qualified Plans, these tax consequences do not raise any conflicts of interest. When distributions are made, and the Separate Account or the Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account or the Qualified Plan will redeem shares of the Investment Companies at their respective net asset value. The Qualified Plan then will make distributions in accordance with the terms of the Plan, and a Participating Insurance Company will surrender values from the Separate Account into the general account to

make distributions in accordance with the terms of the Variable Contract.

21. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving rights to Variable Contract owners and participants in the Qualified Plans. In connection with any meeting of shareholders, the Trust will inform each shareholder, including each Separate Account and Qualified Plan, of the information necessary for the meeting, including their respective share of ownership in the Investment Companies. A Participating Insurance Company will solicit voting instructions in accordance with the ''pass-through'' voting requirement. Qualified Plans and Separate Accounts each will have the opportunity to exercise voting rights with respect to their shares in the Investment Companies, although only the Separate Accounts are required to pass through their vote to contract owners. The voting rights provided to Qualified Plans with respect to shares of the Trust would be no different from the voting rights that are provided to Qualified Plans with respect to shares of mutual funds sold to the general public.

22. Applicants argue that the ability of the Investment Companies to sell their shares directly to Qualified Plans does not create a ''senior security'' as defined by Section 18(g) of the 1940 Act. As noted above, regardless of the rights and benefits of participants under Qualified Plans, or Variable Contract owners under Variable Contracts, the Qualified Plans and the Separate Accounts have rights only with respect to their respective shares of the Investment Companies. They can redeem such shares only at their net asset value. No shareholder of the Investment Companies has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

23. Applicants have determined that no conflicts of interest exist between the Variable Contract owners of the Separate Accounts and Qualified Plan participants with respect to the veto powers over investment objectives of state insurance commissioners. The basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. State insurance commissioners have been given veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one Underlying Fund and invest in another. Generally, time-consuming complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustee(s) of Qualified Plans or the participants in participant directed Qualified Plans could make the decision quickly and could implement the redemption of their shares from the Investment Companies and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

24. Applicants state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under the Qualified Plans and owners of Variable Contracts funded through Separate Accounts from possible future changes in the federal tax laws than that which already exists between Variable Contract owners.

25. Applicants assert that the requested relief is appropriate and in the public interest because the relief will promote competitiveness in the variable life insurance market. Various factors have limited the number of insurance companies that offer variable insurance contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management, and the lack of name recognition by the public of certain insurers as investment experts to whom the public feels comfortable entrusting their investments. Applicants argue that use of Investment Companies as common investment vehicles for Variable Contracts helps to alleviate these concerns because Participating Insurance Companies benefit not only from the investment and administrative expertise of the investment adviser of the Trust, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Making the Portfolios available for mixed and shared funding may encourage more insurance companies to offer variable insurance contracts and, accordingly, could result in increased competition with respect to both variable insurance contract design and pricing, which can be expected to result in more product variation and lower charges. Mixed and shared funding also would benefit variable insurance contract owners by eliminating a significant portion of the costs of establishing and administering separate mutual funds. Furthermore, Applicants assert that the sale of shares of the Investment Companies to Qualified Plans, in addition to Separate Accounts of Participating Insurance Companies, would result in an increased amount of assets available for investment by the Investment Companies. This may benefit Variable Contract owners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new portfolios more feasible.

26. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account, and Applicants believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

The Applicants have consented to the following conditions:

1. A majority of the Board of Trustees or Directors of each Investment Company (''Board'') shall consist of persons who are not ''interested persons'' of such investment company, as defined by Section 2(a)(19) of the 1940 Act and rules thereunder, and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) for a period of 45 days, if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer as the Commission may prescribe by order upon application.

2. The Boards will monitor the Investment Companies for the existence of any material irreconcilable conflict between the contract holders of all Separate Accounts and of participants of Qualified Plans investing in the respective Investment Companies, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) state insurance regulatory authority action; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Investment Companies are being managed; (e) a difference among voting instructions given by Variable Contract owners; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Variable Contract

owners; or (g) as appropriate, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. Participating Insurance Companies and GEIM, or any other investment manager of an Investment Company, and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10 percent or more of the assets of the Investment Company (collectively, ''Participants'') will report any potential or existing conflicts, of which they become aware, to the relevant Board. Participants will be obligated to assist the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for it to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the relevant Board whenever the voting instructions of Variable Contract owners are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participants investing in an Investment Company under their participation agreements, and those participation agreements shall provide that such responsibilities will be carried out with a view only to the interests of the Variable Contract owners or, as appropriate, Qualified Plan participants.

4. If a majority of a Board, or a majority of its disinterested members (''Independent Members''), determines that a material irreconcilable conflict exists, the relevant Participant shall, at its expense and to the extent reasonably practicable (as determined by a majority of Independent Members), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the Portfolios and reinvesting those assets in a different investment medium, which may include another portfolio of the relevant Investment Company; (b) in the case of Participating Insurance Companies, submitting the question whether such segregation should be implemented to a vote of all affected Variable Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners, life insurance contract owners, or Variable Contract owners of one or more Participating Insurance Company) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of the decision of a Participating Insurance Company to disregard the voting instructions of Variable Contract owners, and that decision represents a minority position or would preclude a majority vote, such Participating Insurance Company may be required, at the election of the relevant Investment Company, to withdraw the investment of its Separate Account therein. No charge or penalty will be imposed as a result of such withdrawal. Likewise, and as appropriate, if a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the relevant Investment Company, to withdraw its investment in the Investment Company; no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a determination by a Board that an irreconcilable material conflict exists and to bear the cost of such remedial action shall be a contractual obligation of all Participants under their participation agreements governing participation in the Investment Companies, and these responsibilities will be carried out with a view only to the interests of Variable Contract owners or, as appropriate Qualified Plan participants.

5. A majority of Independent Members shall determine whether any proposed action adequately remedies any irreconcilable material conflict, but in no event will the relevant Investment Company or GEIM (or any other investment adviser of the Investment Companies) be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition to establish a new funding medium for any Variable Contract if an offer to do so has been declined by a vote of a majority of Variable Contract owners materially affected by the irreconcilable material conflict.

6. The determination by a Board of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to all contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable insurance contract owners. Accordingly, when appropriate, such a Participating Insurance Company will vote shares of a Portfolio held in its Separate Accounts in a manner consistent with timely voting instructions received from Variable Contract owners. A Participating Insurance Company also will vote shares of a Portfolio held in its Separate Accounts for which no timely voting instructions from Variable Contract owners are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies shall be responsible for assuring that each of their Separate Accounts investing in an Investment Company calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in an Investment Company shall be a contractual obligation of all Participating Insurance Companies under their participation agreements with the Investment Companies. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

8. Each Investment Company will notify all Participants that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Investment Company shall disclose in its prospectus that: (a) Its shares may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans; (b) because of differences in tax treatment or other considerations, the interests of Variable Contract owners investing in the Investment Company and the interests of Qualified Plans investing in the Investment Company may conflict; and (c) its Board will monitor for any material conflicts and determine what action, if any, should be taken.

9. All reports received by the Board regarding potential or existing conflicts, and all action of the Board with respect to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

10. If, and to the extent that, Rule 6e–2 or Rule 6e–3(T) is amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect

to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested, then the Investment Companies and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

11. Each Investment Company will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Investment Companies), and, in particular, will comply with Section 16(a) and, if and when applicable, Section 16(b). Further, each Investment Company will act in accordance with the interpretation of the Commission of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may adopt with respect thereto.

12. The Participants shall submit to the Boards, at least annually, such reports, materials or data as the Boards may reasonably request so that the Boards may carry out fully the obligations imposed upon them by these stated conditions. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of the Participants to provide these reports, materials, and data upon reasonable request of the Boards shall be a contractual obligation of the Participant under its participation agreement with an Investment Company.

13. None of the Investment Companies will accept a purchase order from a Plan if such purchase would make the Plan an owner of 10 percent or more of the assets of an Investment Company, unless such Qualified Plan executes a fund participation agreement with such Investment Company. A qualified Plan will execute an application containing an acknowledgment of this condition upon its initial purchase of the shares of an Investment Company.

Conclusion

For the reasons stated above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–27390 Filed 10–24–96; 8:45 am]

BILLING CODE 8010–01–M

[Release 34–37844; File No. 600–23]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of an Application for Clearing Agency Registration

October 21, 1996.

Notice is hereby given that on October 7, 1996, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') an application, pursuant to Sections 17A and 19(a) of the Securities Exchange Act of 1934 (''Act''),[1] requesting that the Commission grant GSCC full registration as a clearing agency or in the alternative extend GSCC's temporary registration as a clearing agency until such time as the Commission is able to grant GSCC permanent registration.[2] The Commission is publishing this notice to solicit comments from interested persons.

On May 24, 1988, the Commission approved pursuant to Sections 17A and 19(a) of the Act and Rule 17Ab2–1(c) promulgated thereunder[3] the application of GSCC for registration as a clearing agency for a period of three years.[4] The Commission subsequently has extended GSCC's registration until November 30, 1996.[5]

GSCC provides clearance and settlement services for its members, transactions in government securities. GSCC offers its members services for next-day settling trades, forward settling trades, auction takedown activity, repurchase transactions (''repos''), the multilateral netting of trades, the novation of netted trades, and daily marking-to-the-market. In connection with GSCC's clearance and settlement services, GSCC provides a centralized loss procedure and maintains margin to offset netting and settlement risks.

GSCC believes that its efforts to enhance its system's safety and capacity argue in favor of permanent approval. For example, GSCC recently amended its rules (1) to enable GSCC to enter into one or more limited cross guarantee agreements[6] and (2) to allow GSCC's interdealer broker netting members to become eligible for GSCC's repo netting service.[7] In addition, GSCC represents that it and the Board of Trade Clearing Corporation have made progress toward establishing a cross-margining arrangement for the benefit of market participants that are active in both the cash and futures government markets. GSCC also represents that it is working with The Options Clearing Corporation to establish a link with the Intermarket Clearing Corporation for the settlement of certain new treasury futures products that will be offered by a futures exchange owned by the American Stock Exchange.

At the time of GSCC's initial registration, the Commission granted GSCC exemptions from the fair representation requirements in Section 17A(b)(3)(C) of the Act.[8] In its Registration Letter, GSCC has requested that the Commission withdraw GSCC's exemption from the fair representation requirements in Section 17A(b)(3)(C). GSCC believes that its current selection process for its board of directors is equitable and assures members fair representation because any GSCC member may nominate candidates for election to GSCC's board and may vote for candidates so nominated. The Commission is reviewing GSCC's request to withdraw the exemption.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application by November 15, 1996. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with Section 19(a)(1) of the

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[1] 15 U.S.C. 78q–1, 78s(a) (1988).

[2] Letter from Sal Ricca, President and Chief Operating Officer, GSCC, to Richard Lindsey, Director, Division of Market Regulation, Commission (October 2, 1996) (''Registration Letter'').

[3] 17 CFR 240.17Ab2–1 (1996).

[4] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

[5] Securities Exchange Act Release Nos. 29067 (April 11, 1991), 56 FR 15652; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; and 36508 (November 27, 1995), 60 FR 61719.

[6] Securities Exchange Act Release No. 37413 (July 9, 1996), 61 FR 36945.

[7] Securities Exchange Act Release No. 37482 (July 25, 1996), 61 FR 40275.

[8] In its order granting GSCC its initial temporary approval, the Commission stated that while the composition of GSCC's Board of Directors reasonably reflected GSCC's anticipated initial membership, the Commission believed that it would be appropriate to defer to a later date its determination of whether GSCC's process for selecting its Board of Directors assures participants fair representation. This decision was based on the fact that GSCC planned on expanding its services during the temporary registration period and on the uncertainty with regards to GSCC's future participant base.

Act.[9] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Reference should be made to File No. 600–23. Copies of the amended application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–27435 Filed 10–24–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37845; File No. SR–NASD–95–54]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a Modification of the Operation of the Small Order Execution System (''SOES'') During Locked and Crossed Markets

October 21, 1996.

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 November 15, 1995,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 proposes to modify NASD Rule 4730(b)(4)[2] to provide that during locked or crossed markets, the system will execute orders in five-second intervals against a locked or crossed market maker at the best price, regardless of whether the market maker was responsible for the locked or crossed condition. Below is the text of the rule change. Proposed new language is in italics. Deleted language is in brackets.

Marketplace Rules

* * * * *

Rule 4730 Participation Obligations in SOES

* * * * *

b. * * *

(4) At any time a locked or crossed market, as defined in Part VI, Section 2(e) of Schedule D to the NASD By-Laws, exists for an NNM security, a Market Maker with a quotation for that security in the Nasdaq System that is [causing the] locked or crossed [market] may have orders representing shares equal to the minimum exposure limit or the firm's exposure limit, whichever is greater, executed by SOES for that Market Maker's account at its quoted price if that price is the best price. Those orders will be executed irrespective of any preference indicated by the Order Entry Firm. *During locked or crossed markets, SOES will execute orders against those Market Makers that are locked or crossed in predetermined time intervals. This period of time shall initially be established as five (5) seconds, but may be modified upon necessary Commission approval and appropriate notification to SOES participants.*

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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

The NASD is proposing to modify SOES to provide that during locked or crossed markets, the system will execute orders in five-second intervals against a locked or crossed market maker at the best price, regardless of whether the market maker was responsible for the locked or crossed condition. Currently, when markets are not locked or crossed, SOES provides market makers with a 15-second period of time following their receipt of a SOES execution report to update their quotation before being required to execute another order in that security through SOES. When the market for a Nasdaq National Market security is locked or crossed,[3] however, SOES is currently designed so that the market maker whose quotation is locked or crossed will have SOES orders representing shares equal to the SOES minimum exposure limit[4] or the firm's exposure limit, whichever is greater, executed by SOES against that market maker's account without any delay between SOES executions (''locked and crossed market rule'').[5] Thus, in such instances, unlike the operation of SOES during non-locked or crossed markets, the market maker's account will receive SOES executions without any delay between executions until its exposure limit is exhausted. In addition, during locked or crossed markets, SOES orders are executed against market makers whose quotations are locked or crossed irrespective of any preference indicated by the SOES order entry firm.

The locked and crossed market rule was formulated by the NASD and approved by the SEC in response to the operation of SOES during the October 1987 Market Break.[6] Specifically, the feature was added to remedy the situation where SOES would cease executing orders in locked and crossed market situations. The feature was designed to increase the accuracy of displayed quotations in NNM securities by providing an incentive for market

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[9] 15 U.S.C. 78s(a)(1) (1988).

[10] 17 CFR 200.30–3(a)(16) (1996).

[1] The NASD amended the proposed rule change four times subsequent to its initial filing. Amendment No. 4, filed October 16, 1996, changed the narrative in the proposed rule change. Amendment No. 3, filed October 2, 1996, replaced Amendment No. 2, which was filed September 23, 1996. Amendment No. 2, in turn, replaced Amendment No. 1, which was filed August 5, 1996.

The proposed rule change, as originally submitted, would have provided market makers with a 15-second grace period following their receipt of a SOES execution report during locked and crossed markets in which to update their quotation in that security before being required to execute another SOES order in that security. The filing as amended would establish a 5 second grace period between SOES executions in locked and crossed markets. *See* Letter from Robert E. Aber, Vice President and General Counsel, The Nasdaq Stock Market to Katherine England, Assistant Director, Division of Market Regulation, Commission (October 2, 1996).

[2] *NASD Manual,* Marketplace Rules (CCH), Rule 4730.

[3] Quotations are ''locked'' when the bid price quoted by one market maker in a security equals the ask price quoted by another market maker in the same security. Quotations are ''crossed'' when the bid price quoted by one market maker in a security is greater than the ask price quoted by another market maker in the same security.

[4] The minimum exposure limit for SOES is currently twice the maximum SOES order size for a given security. Thus, the minimum exposure limit for a NNM security in the 1,000-share tier size is 2,000 shares.

[5] *See* Rule 4730(b)(4).

[6] *See* Securities Exchange Act Release No. 25791 (June 9, 1988), 53 FR 22594 (order approving file No. SR–NASD–88–1).

makers to reduce the frequency and duration of locked and crossed markets.

Unfortunately, in today's trading environment, the incentive created by the locked and crossed market rule to avoid locked and crossed markets has been nullified by the volume and velocity of orders received and executed during locked and crossed markets. As set forth below, the volume of orders executed through SOES during locked and crossed markets clearly illustrates that the locked and crossed market rule operates to severely penalize rather than incentivise market makers when they have caused a locked or crossed market. As a result, both the firm that caused the locked or crossed market and the firm that is locked or crossed can be exposed to high levels of risk. In sum, the rapidity with which massive amounts of SOES orders are received and executed during locked and crossed markets provides market makers no meaningful opportunity to rectify locked and crossed market situations until after they have executed significant volume through SOES.

More specifically, since the locked and crossed market rule was implemented, there have been many instances where market makers have received numerous, instantaneous SOES executions in the fleeting time period during which their quotes were locked or crossed. The rule was intended to operate as an incentive for market makers to avoid locked and crossed markets; however, that incentive has been dissimulated and the rule is now being used by active SOES order entry firms to execute significant volume through SOES against market markers that have caused locked or crossed markets, or whose quotes have been locked or crossed by another market maker, before they have had an opportunity to respond and rectify the locked or crossed market condition. In the NASD's view, the rule can only operate as a true incentive to avoid locked and crossed markets when market makers have a reasonable opportunity to react to SOES transactions executed against them during a locked or crossed market situation. Presently, by the time a market maker realizes it needs to update its quote, its exposure limit often is unknowingly exhausted.

The profound risks that market markers are exposed to because of the locked and crossed market rule are dramatically illustrated by the trading activity that occurred through SOES on Thursday morning, October 19, 1995, in Cordis Corporation (CORD). On this day, the opening in CORD was delayed until 11:15 because a hostile takeover bid was announced for shares of the company. During a span of 3 minutes and 12 seconds just after the stock opened, the market for CORD was locked or crossed on six occasions for a total of 2 minutes and 3 seconds. During this 2 minutes and 3 seconds, 176 SOES executions occurred, with 170 of these trades being for 1,000 shares and 6 for 500 shares. SOES volume in CORD during the 3 minutes and 12 seconds was 220,000 shares and SOES volume during the 2 minutes and 3 seconds that the market was locked or crossed was 173,000 shares. This trading volume, which took place in just two to three minutes, represents a substantial percentage of the average daily trading volume in CORD for the six-month period prior to October 19, 1995. Specifically, the average daily trading volume in CORD from April 18, 1995 to October 18, 1995 was 383,569 shares. Thus, in just 3 minutes and 12 seconds on October 19, 1995, SOES order entry firms executed 57.3 percent of CORD's average daily trading volume for the prior six months; and in just 2 minutes and 3 seconds SOES order entry firms executed 45.1 percent of CORD's average daily trading volume for the prior six months. Following are several illustrative examples of SOES activity during these instances.

- A total of 13 trades for 13,000 shares were executed when the market was locked for just 7 seconds. Of these 13 executions, 6 were against one firm for 6,000 shares during a 3-second period and 4 of them occurred within one second.
- A total of 21 executions for 20,500 shares occurred when the market was crossed for just 9 seconds. Of these 21 executions, 6 were against one firm, 4 were against another, and two firms each received three executions. In addition, the firm that received 6 executions received 5 of them for 4,500 shares within two seconds.
- A total of 5 executions for 4,500 shares occurred when the market was locked for just 3 seconds. Of these 5 executions, 3 occurred against the same firm within 2 seconds for 3,000 shares.

The NASD believes that this type of trading activity through SOES exposes market makers to high levels of risk that, in turn, seriously undermines the viability of the Nasdaq market and the commitment of market making capital to NNM issues. Accordingly, the NASD and Nasdaq believe it is appropriate to limit the potentially high risk exposure of market makers in locked and crossed market situations by modifying SOES to afford market makers a 5-second period to update their quotes after they have received a SOES execution report during locked and crossed market situations. The NASD believes this proposal strikes a reasonable balance between the needs to keep SOES available to small, retail investors during times of market turbulence and to provide market makers with a meaningful incentive to update their quotations so as to avoid locked and crossed markets, on the one hand, and the need to preserve the liquidity of the Nasdaq market by not exposing market makers to unwarranted risk simply because their quote was locked or crossed for a brief period of time or because they are actively adjusting their quotes to arrive at a new equilibrium price level after a trading halt has been lifted or material news has been disseminated, on the other hand. In addition, the NASD notes that its proposal is consistent with the objectives underlying the locked and crossed market rule because it still ensures that SOES will be in operation when markets are locked or crossed and it still ensures that market makers will have a meaningful incentive to unlock markets quickly because they will receives SOES executions every 5 seconds if their quotes are locked or crossed. At the same time, just as is the case when markets are not locked or crossed, market makers will be afforded a brief period of time to update their quotes without being subjected to potentially high risk exposure, thereby promoting a more orderly realignment of quotations in locked and crossed market situations. In sum, the NASD believes the detriment to the market created by the current configuration of SOES during locked and crossed markets could be minimized by adding the 5-second interval between SOES executions, without compromising the access of small investors to market maker quotes and without eliminating the incentive for market makers to not lock or cross markets.

For the above reasons, the NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 15A(a)(1)(C) of the Act and Rule 11Ac1–1 thereunder. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market

and a national market system and in general to protect investors and the public interest. Specifically, the NASD believes its proposal will promote a more orderly realignment of quotations during locked and crossed markets by affording market makers whose quotations are locked or crossed a 5-second interval to react to SOES orders that they have already automatically executed, wholly consistent with the operation of SOES during times when markets are not locked or crossed. In addition, because market makers will still be obligated to execute SOES orders during locked and crossed markets at 5-second intervals, market makers will still have an incentive to rectify locked and crossed market situations. Finally, because SOES will continue to execute trades during locked and crossed markets, small, retail investors will continue to have immediate access to the best prices available on Nasdaq during locked and crossed markets.

Section 15A(b)(9) provides that the rules of the Association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed 5-second interval after SOES executions during locked and crossed markets will apply across the board and not target any particular SOES user or participant. Accordingly, the NASD believes that its proposal is not anti-competitive, as it is uniform in application and it seeks to preserve the ability of SOES to provide fair and efficient automated executions for small investor orders, while preserving market maker participation in SOES and market liquidity.

Section 15A(b)(11) empowers the NASD to adopt rules governing the form and content of quotations relating to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting and distributing quotations. Because the proposed rule change will facilitate a more orderly reaction to and rectification of locked and crossed markets, the NASD believes the rule change will enhance the integrity and soundness of quotations in NNM securities.

In addition, the NASD believes that the proposed rule change is consistent with significant national market system objectives contained in Section 11A(a)(1)(C) of the Act. This provision states it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things: (i) economically efficient execution of securities transactions; (ii) fair competition among brokers and dealers; and (iii) the practicality of brokers executing investor orders in the best market. Specifically, the NASD believes the proposed 5-second interval after SOES executions during locked and crossed markets will advance each of these objectives by preserving the operational efficiencies of SOES in the processing of small investor's orders.

Finally, consistent with the SEC's finding that the 15-second interval is consistent with the SEC's Firm Quote Rule during regular market conditions, the NASD believes its proposal to extend a 5-second interval during locked and crossed markets is likewise consistent with the Firm Quote Rule. Specifically, when the SEC approved the 15-second interval with respect to regular market conditions, it stated that it was:

> Consistent with the requirements of the SEC's Firm Quote Rule which requires that brokers and dealers execute orders to buy and sell securities at their published quotes unless communicating a revised bid or offer or unless updating their quotations in response to an execution. The proposed 15-second update period in no way diminishes the requirement that market makers maintain firm quotes and be willing to execute at those quotes. The 15-second update period only will be in effect in response to an execution and only serves to provide market makers time to react to that execution and adjust their positions, if necessary. Market makers will continue to be required to execute customer orders quickly and efficiently.[7]

The NASD believes that the Commission's legal analysis and statutory finding that the 15-second interval is consistent with the Firm Quote Rule applies with equal force to the proposed rule change. Indeed, nowhere in the SEC's Firm Quote Rule does it provide that market makers are ineligible to avail themselves of the exceptions to the Rule because a market is locked or crossed. In fact, under Rule 11Ac1–1(b)(3)(C), when there is a level of trading activity or the existence of unusual market conditions such that an exchange is incapable of collecting, processing, and making available quotations in a manner which accurately reflects the current state of the market on the floor of an exchange, that exchange may relieve its market makers of their firm quote obligations.[8] Accordingly, since SOES market makers will not in any way be relieved of any of their firm quote obligations under the proposal, the NASD believes the proposed rule change is wholly consistent with the SEC's Firm Quote Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 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 90 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 NASD consents, the Commission will:

A. By order approve such 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, N.W., Washington, D.C. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All

[7] *See* Securities Exchange Act Release No. 29801 (October 10, 1991), 56 FR 52098.

[8] Because only exchanges can declare fast market conditions under the Firm Quote Rule, the same market event (*i.e.*, a locked or crossed market) can presently result in dramatically different regulatory requirements for similarly situated market participants. Specifically, under SOES, exceptions from the Firm Quote Rule are eliminated when markets are locked or crossed, while exchange specialists may be entirely relieved of their firm quote obligations during locked and crossed markets.

submissions should refer to SR–NASD–94–54 and should be submitted by November 15, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 96–27434 Filed 10–24–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37842; File No. SR–PSE–96–40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Index Options on the Dow Jones & Co. Taiwan Index

October 18, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 17, 1996, the Pacific Stock Exchange, Inc. (''PSE'' or ''Exchange'') 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 by the self-regulatory organization. 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 PSE, pursuant to Rule 19b–4 of the Act, proposes to list for trading index options on the Dow Jones & Co. Taiwan Index (''Index'').

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 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 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

1. Purpose. The Exchange is proposing to list and trade cash-settled, European-style stock index options on the Dow Jones & Co. Taiwan Index. The Index is comprised of 113 representative stocks traded on the Taiwan Stock Exchange (''TSE'').[3] The Exchange represents that the Index is representative of the Taiwan stock market as a whole, and therefore, is deemed to be a broad-based index.

Index Design

The Index was designed by, and is maintained by, Dow Jones & Co. The 113 stocks comprising the Index were selected for their market weight, trading liquidity, and representation of the business industries reflected on the TSE. The Exchange believes that these stocks reflect the industrial composition of the broader Taiwanese equity market.

The Index is weighted by the market capitalization of the component stocks. As of August 30, 1996, the market capitalization of the Index was US$181 billion (at the exchange rate of NT $27.5 per dollar). The average market capitalization of these stocks was $1.6 billion on the same date (at the same rate of exchange). The individual market capitalization of these stocks ranged from $150 million (Hong Ho Precision Textile Co.) to $18.6 billion (Cathay Life Insurance) on the same date. The largest stock accounted for 10.26% of the Index, while the smallest accounted for .08%. The top five stocks in the Index, by weight, accounted for approximately 31% of the Index. The average daily trading volume of the component securities for the period April 1 through August 30, 1996, ranged from a low of 457,091 shares (Hsing Ta Cement Co.) to a high of 49,879,418 shares (China Steel), with an average daily trading volume for all components of the Index of approximately 7,698,763 shares.

Calculation and Maintenance of Index

The value of the Index is determined by multiplying the price of each stock by its number of shares outstanding, adding those sums, and then dividing by a divisor which gives the Index a value of 100 on its base date of December 31, 1991. The Index had a closing value of 160.33 on August 30, 1996. The Index will be maintained by Dow Jones & Co. and, in order to maintain continuity of the Index, the divisor of the Index will be adjusted to reflect certain events relating to the component stocks. These events include, but are not limited to, changes in the number of shares outstanding, spin-offs, certain rights issuances, and mergers and acquisitions.

The composition of the Index will be reviewed periodically and Dow Jones & Co. may make component changes at any time to ensure that the Index continues to represent the overall character of the Taiwanese equity market. When considering replacement stocks, Dow Jones & Co. will choose from among the most heavily capitalized and actively traded stocks on the TSE. In addition, Dow Jones & Co. will consider other factors including industry grouping, level of foreign accessibility (*i.e.*, whether foreigners may purchase the stock), name recognition, and volatility.

Index Option Trading

The Exchange proposes to base trading in options on the Index on the full value of the Index as expressed in U.S. dollars. The Exchange also may provide for the listing of long-term index option series (''LEAPS'') on the Index. The Exchange will list expiration months for Index options and Index LEAPS in accordance with PSE Rule 7.8.

The trading hours for options on the Index will be from 6:30 a.m. Pacific time to 1:15 p.m. Pacific time. Dow Jones Telerate (''Telerate'') will calculate the value of the Index every fifteen seconds throughout the trading day and disseminate the Index value through the Options Price Reporting Authority (''OPRA'').

The Exchange is proposing to establish position limits for Index options equal to 50,000 contracts on the same side of the market, with no more than 30,000 contracts in the series with the nearest expiration date. These limits are roughly equivalent, in dollar terms, to the limits applicable to options on other indices. Furthermore, the hedge exemption rule applicable to broad-based index options, Commentary .02 to PSE Rule 7.6, will apply to Index options.

The PSE also represents that it has the necessary systems capacity to support new series that would result from the introduction of the Index options.

Exercise and Settlement

The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month, and trading in the expiring contract month on the PSE will normally cease on Friday at 1:15 p.m. Pacific time unless a holiday occurs.

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[9] 17 CFR 200.30–3(a)(12) (1989).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] A list of index components is available at the Commission and at the PSE.

The exercise settlement value of Index options at expiration will be determined from closing prices established at the close of the regular Friday trading sessions in Taiwan. If a stock does not trade during this interval or if it fails to open for trading, the last available price of the stock will be used in the calculation of the Index. When expirations are removed in accordance with Exchange holidays, such as when the PSE is closed on the Friday before expiration, the last trading day for expiring options will be Thursday and the exercise settlement value of Index options at expiration will be determined at the close of the regular Thursday trading sessions in Taiwan even if the Taiwanese markets are open on Friday. If the Taiwanese markets are closed on the Friday before expiration but the PSE is open for trading, the last trading day for expiring options will similarly be Thursday, with the exercise settlement value being determined from Thursday closing prices on the TSE.

Surveillance

The Exchange will apply its existing index option surveillance procedures to Index options. In addition, the Exchange has entered into a surveillance sharing agreement with the TSE, which will enable the Exchange to obtain information concerning the trading of the component stocks of the Index.

2. Statutory basis. The PSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to facilitate transactions in securities as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The self-regulatory organization does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 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, N.W., Washington, D.C. 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, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–40 and should be submitted by November 15, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–27389 Filed 10–24–96; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Office of the Commissioner

1997 Cost-of-Living Increase and Other Determinations

AGENCY: Office of the Commissioner, Social Security Administration.

ACTION: Notice.

SUMMARY: The Commissioner has determined—

(1) A 2.9 percent cost-of-living increase in Social Security benefits under title II of the Social Security Act (the Act), effective for December 1996;

(2) An increase in the Federal Supplemental Security Income (SSI) monthly benefit amounts under title XVI of the Act for 1997 to $484 for an eligible individual, $726 for an eligible individual with an eligible spouse, and $242 for an essential person;

(3) The national average wage index for 1995 to be $24,705.66;

(4) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base to be $65,400 for remuneration paid in 1997 and self-employment income earned in taxable years beginning in 1997;

(5) For beneficiaries under age 65, the monthly exempt amount under the Social Security retirement earnings test for taxable years ending in calendar year 1997 to be $720;

(6) The dollar amounts (''bend points'') use in the benefit formula for workers who become eligible for benefits in 1997 and in the formula for computing maximum family benefits;

(7) The amount of earnings a person must have to be credited with a quarter of coverage in 1997 to be $670;

(8) The ''old-law'' contribution and benefit base to be $48,600 for 1997;

(9) The monthly amount of substantial gainful activity applicable to statutorily blind individuals in 1997 to be $1,000;

(10) The domestic worker coverage threshold to be $1,000 for 1997; and

(1) The OASDI fund ration to be 139.9 percent for 1996.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3013. A summary of the information in this announcement is available in a recorded message by telephoning (410) 965–3053. This telephone message will be updated to reflect changes to the cost-of-living benefit increase and other determinations. Information relating to this announcement is also available on the Social Security Administration's World Wide Web server—http://www.ssa.gov/OACT/COLA/FR.sum.html.

SUPPLEMENTARY INFORMATION: The Commissioner is required by the Act to publish within 45 days after the close of the third calendar quarter of 1996 the benefit increase percentage and the revised table of ''special minimum'' benefits (section 215(i)(2)(D)). Also, the Commissioner is required to publish on or before November 1 the national average wage index for 1995 (section 215(a)(1)(D)), the OASDI fund ration for 1996 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 1997 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 1997 (section 213(d)(2)), the monthly exempt amounts

under the Social Security retirement earnings test for 1997 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 1997 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 1997 (section 203(a)(2)(C)).

Cost-of-Living Increases

General. The cost-of-living increase is 2.9 percent for benefits under titles II and XVI of the Act.

Under title II, OASDI benefits will increase by 2.9 percent beginning with the December 1996 benefits, which are payable on January 3, 1997. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 2.9 percent effective for payments made for the month of January 1997 but paid on December 31, 1996. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f). The percentage increase effective January 1997 is the same as the title II percentage increase and the annual payment amount is rounded, when not a multiple of $12, to the next lower multiple of $12.

Automatic Benefit Increase Computation. Under section 215(i) of the Act, the third calendar quarter of 1996 is a cost-of-living computation quarter for all the purposes of the Act. The Commissioner is, therefore, required to increase benefits, effective with December 1996, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 1996, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1995 through the third quarter of 1996.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. The arithmetic mean is rounded, if necessary, to the nearest 0.1. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 1995, was: for July 1995, 149.9; for August 1995, 150.2; and for September 1995, 150.6. The arithmetic mean for this calendar quarter is 150.2. The corresponding Consumer Price Index for each month in the quarter ending September 30, 1996, was: for July 1996, 154.3; for August 1996, 154.5; and for September 1996, 155.1. The arithmetic mean for this calendar quarter is 154.6. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1996, exceeds that for the calendar quarter ending September 30, 1995 by 2.9 percent, a cost-of-living benefit increase of 2.9 percent is effective for benefits under title II of the Act beginning December 1996.

Title II Benefit Amounts. In accordance with section 215(i) of the Act, in the case of insured workers and family members for whom eligibility for benefits (i.e., the worker's attainment of age 62, or disability or death before age 62) occurred before 1997, benefits will increase by 2.9 percent beginning with benefits for December 1996 which are payable on January 3, 1997. In the case of first eligibility after 1996, the 2.9 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, benefits are determined by means of a benefit table. A copy of this table may be obtained by writing to: Social Security Administration, Office of Public Inquiries, 4100 Annex, Baltimore, MD 21235.

Section 215(i)(2)(D) of the Act requires that, when the Commissioner determines an automatic increase in Social Security benefits, the Commissioner shall publish in the Federal Register a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). These benefits are referred to as ''special minimum'' benefits and are payable to certain individuals with long periods of relatively low earnings. To qualify for such benefits, an individual must have at least 11 ''years of coverage.'' To earn a year of coverage for purposes of the special minimum, a person must earn at least a certain proportion (25 percent for years before 1991, and 15 percent for years after 1990) of the ''old-law'' contributions and benefit base. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 2.9 percent benefit increase.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS

Special minimum primary insurance amount payable for Dec. 1996	Number of years of coverage	Special minimum primary insurance amount payable for Dec. 1996	Special minimum family benefit payable for Dec. 1996
$26.40	11	$27.10	$40.90
52.80	12	54.30	82.10
79.70	13	82.00	123.30
106.20	14	109.20	164.30
132.80	15	136.60	205.00
159.50	16	164.10	246.70
186.20	17	191.50	287.90
212.90	18	219.00	328.90
239.50	19	246.40	370.10
266.00	20	273.70	411.10
293.00	21	301.40	452.50
319.40	22	328.60	493.60
346.30	23	356.30	535.30
373.00	24	383.80	576.20
399.60	25	411.10	617.00

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS—Continued

Special minimum primary insurance amount payable for Dec. 1996	Number of years of coverage	Special minimum primary insurance amount payable for Dec. 1996	Special minimum family benefit payable for Dec. 1996
426.50	26	438.80	658.90
453.10	27	466.20	699.90
479.60	28	493.50	740.80
506.20	29	520.80	782.10
532.90	30	548.30	823.00

Section 227 of the Act provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surviving spouse. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefit amount of $193.40 for an individual under sections 227 and 228 of the Act is increased by 2.9 percent to obtain the new amount of $199.00. The present monthly benefit amount of $96.70 for a spouse under section 227 is increased by 2.9 percent to $99.50.

Title XVI Benefit Amounts. In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 2.9 percent effective January 1997. Therefore, the yearly Federal SSI benefit amounts of $5,640 for an eligible individual, $8,460 for an eligible individual with an eligible spouse, and $2,820 for an essential person, which became effective January 1996, are increased, effective January 1997, to $5,808, $8,712, and $2,904, respectively, after rounding. The corresponding monthly amounts for 1997 are determined by dividing the yearly amounts by 12, giving $484, $726, and $242, respectively. The monthly amount is reduced by subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Fee for Services Performed as a Representative Payee. Sections 205(j)(4)(A)(i) and 1631 (a)(2)(D)(i) of the Act permit a qualified organization to collect from an individual a monthly fee for expenses incurred in providing services performed as such individual's representative payee. Currently the fee is limited to the lesser of (1) 10 percent of the monthly benefit involved, or (2) $25 per month ($50 per month in any case in which the individual is entitled to disability benefits and the Commissioner has determined that payment to the representative payee would serve the interest of the individual because the individual has an alcoholism or drug addiction condition and is incapable of managing such benefits). The dollar fee limits are subject to increase by the automatic cost-of-living increase, with the resulting amounts rounded to the nearest whole dollar amount. The current amounts are thus increased by 2.9 percent to $26 and $51 for 1997.

National Average Wage Index for 1995

General. Under various provisions of the Act, several amounts are scheduled to increase automatically for 1997 based on the annual increase in the national average wage index. The amounts are (1) the OASDI contribution and benefit base, (2) the retirement test exempt amount for beneficiaries under age 65, (3) the dollar amounts, or ''bend points,'' in the primary insurance amount and maximum family benefit formulas, (4) the amount of earnings required for a worker to be credited with a quarter of coverage, (5) the ''old law'' contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments), and (6) the substantial gainful activity amount applicable to statutorily blind individuals. Section 3121(x) of the Internal Revenue Code requires that the domestic employee coverage threshold be based on changes in the national average wage index. The threshold, however, does not increase for 1997.

Computation. The determination of the national average wage index for calendar year 1995 is based on the 1994 national average wage index of $23,753.53 announced in the Federal Register on October 25, 1995 (60 FR 54751), along with the percentage increase in average wages from 1994 to 1995 measured by annual wage data tabulated by the Social Security Administration (SSA). The wage data tabulated by SSA include contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated directly from this data were $22,786.73 and $23,700.11 for 1994 and 1995, respectively. To determine the national average wage index for 1995 at a level that is consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), the 1994 national average wage index of $23,753.53 is multiplied by the percentage increase in average wages from 1994 to 1995 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent):

Amount. The national average wage index for 1995 is $23,753.53 times $23,700.11 divided by $22,786.73, which equals $24,705.66. Therefore, the national average wage index for calendar year 1995 is determined to be $24,705.66.

OASDI Contribution and Benefit Base

General. The OASDI contribution and benefit base is $65,400 for remuneration paid in 1997 and self-employment income earned in taxable years beginning in 1997.

The OASDI contribution and benefit base serves two purposes:

(a) It is the maximum annual amount of earnings on which OASDI taxes are paid. The OASDI tax rate for remuneration paid in 1997 is set by statute at 6.2 percent for employees and employers, each. The OASDI tax rate for self-employment income earned in taxable years beginning in 1997 is 12.4 percent. (The Hospital Insurance tax is due on remuneration, without limitation, paid in 1997, at the rate of 1.45 percent for employees and employers, each, and on self-employment income earned in taxable years beginning in 1997, at the rate of 2.9 percent.)

(b) It is the maximum annual amount used in determining a person's OASDI benefits.

Computation. Section 230(b) of the Act provides the formula used to determine the OASDI contribution and benefit base. Under the formula, the base for 1997 shall be equal to the larger

of (1) the current base ($62,700) or (2) the 1994 base of $60,600 multiplied by the ratio of the national average wage index for 1995 to that for 1992. If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount. The ratio of the national average wage index for 1995, $24,705.66 as determined above, compared to that for 1992, $22,935.42, is 1.0771837. Multiplying the 1994 OASDI contribution and benefit base amount of $60,600 by the ratio of 1.0771837 produces the amount of $65,277.33 which must then be rounded to $65,400. Because $65,400 exceeds the current base amount of $62,700, the OASDI contribution and benefit base is determined to be $65,400 for 1997.

Retirement Earnings Test Exempt Amounts

General. Social Security benefits are withheld when a beneficiary under age 70 has earnings in excess of the retirement earnings test exempt amount. Since 1978, higher exempt amounts have applied to beneficiaries aged 65 through 69 compared to those under age 65. Formulas for determining the monthly exempt amounts are provided in section 203(f)(8)(B) of the Act, as amended by section 102 of the ''Senior Citizens' Right to Work Act of 1996,'' Title I of Pub. L. 104–121. This amendment set the annual exempt amount for beneficiaries aged 65 through 69 to $12,500 for 1996, $13,500 for 1997, $14,500 for 1998, $15,500 for 1999, $17,000 for 2000, $25,000 for 2001, and $30,000 for 2002. The corresponding monthly exempt amounts are exactly one-twelfth of the annual amounts. After 2002, the monthly exempt amount for this group of beneficiaries will increase under the applicable formula.

For beneficiaries aged 65 through 69, $1 in benefits is withheld for every $3 of earnings in excess of the annual exempt amount. For beneficiaries under age 65, $1 in benefits is withheld for every $2 of earnings in excess of the annual exempt amount.

Conputation. Under the formula in section 203(f)(8)(B) applicable to beneficiaries under age 65, the monthly exempt amount for 1997 shall be the larger of (1) the 1996 monthly exempt amount or (2) the 1994 monthly exempt amount multiplied by the ratio of the national average wage index for 1995 to that for 1992. The ratio of the national average wage index for 1995, $24,705.66 as determined above, compared to that for 1992, $22,935.42, is 1.0771837. Section 203(f)(8)(B) further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Exempt Amount for Beneficiaries Under Age 65. Multiplying the 1994 retirement earnings test monthly exempt amount of $670 by the ratio 1.0771837 produces the amount of $721.71. This must then be rounded to $720. Because $720 is larger than the corresponding current exempt amount of $690, the retirement earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $720 for 1997. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $8,640.

Computing Benefits After 1978

General. The Social Security Amendments of 1977 provided a method for computing benefits which generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's ''average indexed monthly earnings'' to compute the primary insurance amount. The computation formula is adjusted automatically each year to reflect changes in general wage levels, as measured by the national average wage index.

A worker's earnings are adjusted, or ''indexed,'' to reflect the change in general wage levels that occurred during the worker's years of employment. Such indexation ensures that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime. A certain number of years of earnings are needed to compute the average indexed monthly earnings. After the number of years is determined, those years with the highest indexed earnings are chosen, the indexed earnings are summed, and the total amount is divided by the total number of months in those years. The resulting average amount is then rounded down to the next lower dollar amount. The result is the average indexed monthly earnings.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled before age 62, or dying before attaining age 62, in 1997, the national average wage index for 1995, $24,705.66, is divided by the national average wage index for each year prior to 1995 in which the worker had earnings. The actual wages and self-employment income, as defined in section 211(b) of the Act and credited for each year, is multiplied by the corresponding ratio to obtain the worker's indexed earnings for each year before 1995. Any earnings in 1995 or later are considered at face value, without indexing. The average indexed monthly earnings is then computed and used to determine the worker's primary insurance amount for 1997.

Computing the Primary Insurance Amount. The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The dollar amounts in the formula which govern the portions of the average indexed monthly earnings are frequently referred to as the ''bend points'' of the formula. Thus, the bend points for 1979 were $180 and $1,085.

The bend points for 1997 are obtained by multiplying the corresponding 1979 bend-point amounts by the ratio between the national average wage index for 1995, $24,705.66, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1997, the ratio is 2.5262858. Multiplying the 1979 amounts of $180 and $1,085 by 2.5262858 produces the amounts of $454.73 and $2,741.02. These must then be rounded to $455 and $2,741. Accordingly, the portions of the average indexed monthly earnings to be used in 1997 are determined to be the first $455, the amount between $455 and $2,741, and the amount over $2,741.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1997, or who die in 1997 before becoming eligible for benefits, their primary insurance amount will be the sum of:

(a) 90 percent of the first $455 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $455 and through $2,741, plus

(c) 15 percent of the average indexed monthly earnings over $2,741.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the rounding adjustment described above are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

General. The 1977 amendments continue the long established policy of limiting the total monthly benefits which a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits which may be paid to a worker's family. The

Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a formula for computing the maximum benefits payable to the family of a disabled worker. This formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum. The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The dollar amounts in the formula which govern the portions of the primary insurance amount are frequently referred to as the ''bend points'' of the family-maximum formula. Thus, the bend points for 1979 were $230, $332, and $433.

The bend points for 1997 are obtained by multiplying the corresponding 1979 bend-point amounts by the ratio between the national average wage index for 1995, $24,705.66, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 1997, the ratio is 2.5262858. Multiplying the amounts of $230, $332, and $433 by 2.5262858 produces the amounts of $581.05, $838.73, and $1,093.88. These amounts are then rounded to $581, $839, and $1,094. Accordingly, the portions of the primary insurance amounts to be used in 1997 are determined to be the first $581, the amount between $581 and $839, the amount between $839 and $1,094, and the amount over $1,094.

Consequently, for the family of a worker who becomes age 62 or dies in 1997 before age 62, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $581 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $581 through $839, plus

(c) 134 percent of the worker's primary insurance amount over $839 through $1,094, plus

(d) 175 percent of the worker's primary insurance amount over $1,094.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the rounding adjustment described above are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

Quarter of Coverage Amount

General. The 1997 amount of earnings required for a quarter of coverage is $670. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverage for the year).

Computation. Under the prescribed formula, the quarter of coverage amount for 1997 shall be equal to the larger of (1) the current amount of $640 or (2) the 1978 amount of $250 multiplied by the ratio of the national average wage index for 1995 to that for 1976. The national average wage index for 1976 was previously determined to be $9,226.48. The average wage index for 1995 is $24,705.66 as determined above. Section 213(d) further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Quarter of Coverage Amount. The ratio of the national average wage index for 1995, $24,705.66, compared to that for 1976, $9,226.48, is 2.6776907. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 2.6776907 produces the amount of $669.42, which must then be rounded to $670. Because $670 exceeds the current amount of $640, the quarter of coverage amount is determined to be $670 for 1997.

''Old-Law'' Contribution and Benefit Base

General. The 1997 ''old-law'' contribution and benefit base is $48,600. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Act as it read prior to the 1977 amendments.

The ''old-law'' contribution and benefit base is used by:

(a) the Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(b) the Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the ''old-law'' base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation. The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments, but with the revised indexing formula introduced by section 321(g) of the ''Social Security Independence and Program Improvements Act of 1994.'' Under the formula, the ''old-law'' contribution and benefit base shall be the larger of (1) the current ''old-law'' base ($46,500) or (2) the 1994 ''old-law'' base ($45,000) multiplied by the ratio of the national average wage index for 1995 to that for 1992. If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount. The ratio of the national average wage index for 1995, $24,705.66 as determined above, compared to that for 1992, $22,935.42, is 1.0771837. Multiplying the 1994 ''old-law'' contribution and benefit base amount of $45,000 by the ratio of 1.0771837 produces the amount of $48,473.27 which must then be rounded to $48,600. Because $48,600 exceeds the current amount of $46,500, the ''old-law'' contribution and benefit base is determined to be $48,600 for 1997.

Substantial Gainful Activity Amount for Blind Individuals

General. A finding of disability under Titles II and XVI of the Act requires that a person be unable to engage in substantial gainful activity (SGA). Under current regulations, a person who is not statutorily blind and is earning more than $500 a month (net of

impairment-related work expenses) is ordinarily considered to be engaging in SGA. The Social Security amendments of 1977 established a higher SGA amount for statutorily blind individuals by setting their monthly SGA amount to the monthly exempt amount for persons aged 65 through 69 under the retirement earnings test provisions of the Act. As mentioned earlier, section 102 of Pub. L. 104–121 increased the exempt amount for persons aged 65 through 69 to specific levels for 1996–2002. Section 102 further provided that the SGA amount for blind individuals be the same as it would have been if section 102 had not been enacted. Thus, the monthly SGA amount for blind individuals in 1996 is $960—the same as the monthly exempt amount for persons aged 65 through 69 promulgated in the Federal Register on October 25, 1995 (60 FR 54751).

Computation. Under the formula in section 203(f)(8)(B) in effect prior to the enactment of Pub. L. 104–121, the monthly SGA amount for statutorily blind individuals for 1997 shall be the larger of (1) such amount for 1996 or (2) such amount for 1994 multiplied by the ratio of the national average wage index for 1995 to that for 1992. The ratio of the national average wage index for 1995, $24,705.66 as determined above, compared to that for 1992, $22,935.42, is 1.0771837. Section 203(f)(8)(B) further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

SGA Amount for Statutorily Blind Individuals. Multiplying the 1994 monthly SGA amount for statutorily blind individuals of $930 by the ratio of 1.0771837 produces the amount of $1,001.78. This must then be rounded to $1,000. Because $1,000 is larger than the current amount of $960, the monthly SGA amount for statutorily blind individuals is determined to be $1,000 for 1997.

Domestic Employee Coverage Threshold

General. Section 2 of the ''Social Security Domestic Employment Reform Act of 1994'' (Pub. L. 103–387) increased the threshold for coverage of a domestic employee's wages paid per employer from $50 per calendar quarter to $1,000 in calendar year 1994. The statute holds the coverage threshold at the $1,000 level for 1995 and then increases the threshold in $100 increments for years after 1995. The formula for increasing the threshold is provided in section 3121(x) of the Internal Revenue Code.

Computation. Under the new formula, the domestic employee coverage threshold amount for 1997 shall be equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 1995 to that for 1993. The national average wage index for 1993 was previously determined to be $23,132.67. The national average wage index for 1995 is $24,705.66 as determined above. If the amount so determined is not a multiple of $100, it shall be rounded to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount. The ratio of the national average wage index for 1995, $24,705.66, compared to that for 1993, $23,132.67, is 1.0679986. Multiplying the 1995 domestic employee coverage threshold amount of $1,000 by the ratio of 1.0679986 produces the amount of $1,068.00, which must then be rounded to $1,000. Accordingly, the domestic employee coverage threshold amount is determined to be $1,000 for 1997.

OASDI Fund Ratio

General. Section 215(i) of the Act provides for automatic cost-of-living increases in OASDI benefit amounts. This section also includes a ''stabilizer'' provision that can limit the automatic OASDI benefit increase under certain circumstances. If the combined assets of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified threshold, the automatic benefit increase is equal to the lesser of (1) the increase in the national average wage index or (2) the increase in prices. The threshold specified for the OASDI fund ratio is 20.0 percent for benefit increases for December of 1989 and later. The law also provides for subsequent ''catch-up'' benefit increases for beneficiaries whose previous benefit increases were affected by this provision. ''Catch-up'' benefit increases can occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation. Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1996 is the ratio of (1) the combined assets of the OASI and DI Trust Funds at the beginning of 1996 to (2) the estimated expenditures of the OASI and DI Trust Funds during 1996, excluding transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio. The combined assets of the OASI and DI Trust Funds at the beginning of 1996 equaled $496,068 million, and the expenditures are estimated to be $354,615 million. Thus, the OASDI fund ratio for 1996 is 139.9 percent, which exceeds the applicable threshold of 20.0 percent. Therefore, the stabilizer provision does not affect the benefit increase for December 1996. Although the OASDI fund ratio exceeds the 32.0-percent threshold for potential ''catch-up'' benefit increases, no past benefit increase has been reduced under the stabilizer provision. Thus, no ''catch-up'' benefit increase is required.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.004 Social Security—Survivors Insurance; 96.006 Supplemental Security Income.)

Dated: October 18, 1996.

Shirley S. Chater,

Commissioner, Social Security Administration.

[FR Doc. 96–27414 Filed 10–24–96; 8:45 am]

BILLING CODE 4190–29–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); 1995 Annual Review Public Hearings Site

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of site for the hearings associated with the 1995 Annual Review.

SUMMARY: This notice announces that the hearings for the 1995 Annual Review under the Generalized System of Preferences will be held November 13 and 14, 1996 at the International Trade Commission, Main Hearing Room, 500 E Street, S.W., Washington, D.C. 20436. The hearings will begin at 10 am on November 13th.

For further information contact the GSP Information Center (202) 395–6971.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 96–27410 Filed 10–24–96; 8:45 am]

BILLING CODE 3190–01–M

[Docket Number 301–103]

Termination of Section 302 Investigation Regarding Portugal's Implementation of the Patent Protection Provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination and monitoring.

SUMMARY: On April 30, 1996, the United States Trade Representative (USTR) initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2412(b)(1)), with respect to certain acts, policies and practices of the Government of Portugal relating to the term of existing patents. Following consultations with the United States under the auspices of the World Trade Organization (WTO), Portugal issued a decree-law to implement properly its patent term-related obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Having reached a satisfactory resolution of the issues under investigation, the USTR has determined this section 302 investigation and monitor implementation of the agreement under section 306 of the Trade Act.

EFFECTIVE DATE: The effective date of the termination of the investigation is October 21, 1996.

ADDRESSES: Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th Street, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Joseph Papovich, Deputy Assistant USTR for Intellectual Property (202) 395–6864, or Thomas Robertson, Associate General Counsel (202) 395–6800.

SUPPLEMENTARY INFORMATION: On April 30, 1996, the USTR initiated an investigation under section 302(b)(1) of the Trade Act with respect to certain acts, policies and practices of the Government of Portugal relating to the term of existing patents. The United States alleged that these acts, policies and practices result in patents owned by U.S. individuals and firms receiving shorter terms than those required by the TRIPs Agreement. The United States also requested consultations with Portugal under the procedures of the WTO Dispute Settlement Understanding (DSU). 61 FR 19970 (May 3, 1996).

At issue in this investigation was whether developed-country Members of the WTO are obligated under Article 70(2) of the TRIPS Agreement to apply the provisions of Article 33 of the TRIPS Agreement to all patents that were in force on January 1, 1996, and to all patents that are granted based on applications that were pending on January 1, 1996. Article 33 of the TRIPS Agreement requires Members to grant a patent term that lasts not less than 20 years from earliest effective filing date claimed. Portugal had declined to apply the Article 33-mandated term to pending patents, and claimed that the TRIPS Agreement did not require it to do so.

On May 30, 1996, the United States and Portugal (with representatives of the European Commission present at Portugal's request) held formal consultations on this matter under the WTO DSU procedures. In those consultations, Portugal formally agreed to the United States' interpretation of the obligations in the TRIPS Agreement and announced that it would make a series of changes to its system to implement these obligations. On August 23, 1996, Portugal issued Decree-Law 141/96 confirming that all patents that were in force on January 1, 1996, and all patents granted after this date based on applications that were pending on January 1, 1996, will receive a term of protection that lasts either 15 years from the date of grant of the patent or 20 years from the effective filing date of the patent, whichever term is longer.

Based on these consultations and the measures that Portugal has undertaken to implement its obligations under the TRIPS Agreement, Portugal and the United States notified the WTO Dispute Settlement Body on October 3, 1996, that they have agreed to terminate consultations on this matter and that the United States has formally withdrawn this matter from further attention under the provisions of the DSU. On the basis of the measures Portugal has undertaken to provide a satisfactory resolution to the matter under investigation, the USTR has decided to terminate this section 302 investigation. Pursuant to section 306 of the Trade Act, the USTR will monitor Portugal's implementation of its TRIPS Agreement obligations with respect to the term of protection granted to patents in force on or after January 1, 1996.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 96–27409 Filed 10–24–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 10/18/96

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1870.
Date Filed: October 15, 1996.
Parties: Members of the International Air Transport Association.
Subject: TC1 Telex Mail Vote 830, US-Venezuela Apex Fares—Reso 075ff, Intended effective date: December 1, 1996.

Docket Number: OST–96–1871.
Date Filed: October 15, 1996.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0012 dated September 6, 1996 r1–2, PTC2 EUR 0013 dated September 6, 1996 r3–4, PTC2 EUR 0014 dated September 6, 1996 r5–6. Within Europe Resolutions. Intended effective date: March 1, 1997.

Docket Number: OST–96–1876.
Date Filed: October 17, 1996.
Parties: Members of the International Air Transport Association.
Subject: TC1 Telex Mail Vote 831, Brazil-Argentina/Paraguay/Uruguay Resos r–1—070j, r–2—072vv, r–3—078m. Intended effective date: November 1, 1996.

Docket Number: OST–96–1877.
Date Filed: October 17, 1996.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0028 dated October 15, 1996, PTC COMP Fares 0028 dated October 15, 1996, U.S.-North Atlantic Add-ons (Reso 015n). Intended effective date: January 1, 1997.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–27499 Filed 10–24–96; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 18, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1868.
Date filed: October 15, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 12, 1996.
Description: Application of U.S. CalJet Airlines, Inc. d/b/a CalJet Airlines,

pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, requests authority to engage in interstate scheduled air transportation of passengers, property, and mail: Between a place in (i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory or possession of the United States; (ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii; (iii) the District of Columbia and another place in the District of Columbia; and (iv) a territory or possession of the United States and another place in the same territory or possession.

Docket Number: OST–96–1873.
Date filed: October 16, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 13, 1996.

Description: Application of United Air Lines, Inc., pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Regulations, applies for renewal of authority to serve Japan, the Philippines and Vietnam in its amended Certificate of Public Convenience and Necessity for Route 130. This authority is due to expire on April 17, 1997. United invokes the provisions of Part 377 of the Department's Special Regulations to continue its temporary certificate authority in effect pursuant to 5 U.S.C. Section 558(c) pending final Department action on this application.

Docket Number: OST–96–1874.
Date filed: October 16, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 13, 1996.

Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Sections 41102, 41108 and Subpart Q of the regulations, applies for renewal of its Certificate of Public Convenience and Necessity for Route 515, as reissued by Order 92–3–41, authorizing Delta to engage in foreign air transportation of persons, property and mail between the terminal points Portland, Oregon and Tokyo, Japan. Delta's certificate for Route 515 expires on April 18, 1997. Delta requests renewal of its certificate for an additional five year duration.

Docket Number: OST–96–1878.
Date filed: October 17, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 14, 1996.

Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. 41101, 14 CFR 302.1750(a)(4), and Subpart Q of the Regulations, requests, renewal of Segment 3 of its certificate of public convenience and necessity for Route 179, which authorizes Northwest to engage in foreign air transportation of persons, property, and mail between Detroit, Michigan and London, England.

Paulette V. Twine,
Chief, Documentary Services Division.

[FR Doc. 96–27498 Filed 10–24–96; 8:45 am]
BILLING CODE 4910–62–P

[CGD 96–057]

Towing Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups will meet to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. The agenda will include working group reports and discussion of various Coast Guard programs such as Prevention Through People and Coast Guard rulemaking projects. Both meetings are open to the public.

DATES: The TSAC meeting will be held on November 5, 1996, from 9 a.m. to 1 p.m. The working group meetings will be held on November 4, 1996, from 9 a.m. to 4 p.m. Written material must be received on or before October 28, 1996.

ADDRESSES: The meetings will be held in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. Written material and requests to make oral presentations should be submitted to LTJG Patrick J. DeShon, Assistant Executive Director, Commandant (G–MSE–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: LTJG Patrick J. DeShon, Assistant Executive Director, Commandant (G–MSE–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, telephone (202) 267–2997, fax (202) 267–4816.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 *et seq.* The agenda will include discussion of the following topics:

Work Groups

(1) Prevention Through People.
(2) Licensing and International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW) Implementation.
(3) Barge retrieval and anchoring systems.
(4) Fire suppression systems for towing vessels.
(5) Structural soundness and loading practices.

Procedural

Attendance at both meetings is open to the public. With advance notice, and Chairperson's discretion, members of the public may make oral presentation during the meeting. Persons wishing to make oral presentations should notify the Assistant Executive Director, listed under ''ADDRESSES,'' no later than October 28, 1996. Written material may be submitted at any time for the presentation to the Committee. However, to ensure advance distribution to each Committee member, persons submitting written material are asked to provide 25 copies to the Assistant Executive Director no later than October 21, 1996.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: October 17, 1996.

Joseph J. Angelo,
Director of Standards Marine Safety and Environmental Protection.

[FR Doc. 96–27500 Filed 10–24–96; 8:45 am]
BILLING CODE 4910–14–M

Coast Guard

Privacy Act of 1974: Deletion of Systems of Records Notices

AGENCY: Coast Guard, Transportation.

ACTION: Notice to delete Privacy Act systems of records.

SUMMARY: The Department of Transportation is deleting the following systems from its inventory of Privacy Act systems of records notices.

EFFECTIVE DATE: October 25, 1996.

FOR FURTHER INFORMATION CONTACT: Crystal M. Bush, Privacy Coordinator, U.S. Department of Transportation, Washington, DC 20590. Telephone: (202) 366–9713.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, the Department of Transportation conducted a review of several of its Privacy Act systems of records and determined the following records are no longer being maintained by the Department.

System number	System name
DOT/CG 529	Civilian Payroll System.
DOT/CG 635	Coast Guard Mutual Assistance.
DOT/CG 691	Master Chief Petty Officer of the Coast Guard Individual Grievance and Correspondence File.

Dated: October 18, 1996.

Crystal M. Bush,

Privacy Act Coordinator.

[FR Doc. 96–27497 Filed 10–24–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–96–51]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before November 14, 1996.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the following internet address: nprmcmts@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Marisa Mullen (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 22, 1996.

Donald P. Byrne,

Assistance Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27001.
Petitioner: Jetstream Aircraft Ltd.
Sections of the FAR Affected: 14 CFR 25.562(c)(5) and 25.785(a).
Description of Relief Sought: To extend Exemption No. 5587C granting relief from compliance with the Head Injury Criteria for front row passengers of the Jetstream Model 4101 airplane.

Docket No.: 28672.
Petitioner: Alaska Airlines, Inc.
Sections of the FAR Affected: 14 CFR 43.3, 43.5, 43.7, and 121.709.
Description of Relief Sought: To permit certificated Alaska Airlines flight crewmembers to sign the airworthiness release or log entry for the installation and/or removal of medivac stretchers in lieu of an authorized certificated mechanic or repairman.

Docket No.: 28685.
Petitioner: Raytheon Aircraft Services.
Sections of the FAR Affected: 14 CFR 135.398(b).
Description of Relief Sought: To allow the petitioner to operate its commuter category Beechcraft 2000 Starship and King Air 350 without collecting obstruction data or computing obstacle clearance performance data.

Dispositions of Petitions

Docket No.: 011SW.
Petitioner: Agusta S.p.A.
Sections of the FAR Affected: 14 CFR 27.1(a).
Description of Relief Sought/Disposition: To permit the increase of the maximum gross weight of the A109 series helicopters from 6,000 pounds to 7,000 pounds while maintaining the original normal category rotorcraft certification. *GRANT, October 9, 1996, Exemption No. 6518.*

Docket No.: 28689.
Petitioner: Air Medic.
Sections of the FAR Affected: 14 CFR 25.561, 25.562, and 25.785(b).
Description of Relief Sought/Disposition: To permit certification of medical stretchers for transport of persons whose medical condition dictates such accommodations for use on the Boeing Model 777 airplanes and Airbus Model A330 and A340 airplanes. *Grant, October 3, 1996, Exemption No. 6515.*

[FR Doc. 96–27491 Filed 10–24–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Burbank-Glendale-Pasadena Airport, Burbank, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Burbank-Glendale-Pasadena Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before November 25, 1996.

ADDRESSES: Comments on this application may be mailed in triplicate to the following address: Federal Aviation Administration, Airports Division, P.O. Box 92007, WWPC, Los Angeles, CA 90009, or delivered in triplicate to the following street address: Federal Aviation Administration, Airports Division, AWP–600, 15000 Aviation Blvd., Hawthorne, CA 90261.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Thomas Greer, Executive Director, Burbank-Glendale-Pasadena Airport Authority, 2627 Hollywood Way, Burbank, CA 91505.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Burbank-Glendale-Pasadena Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: John Milligan, Supervisor, Standards Section, AWP–621, Airports Division, Federal Aviation Administration, 15000 Aviation Blvd., Hawthorne, CA 90261, Tel (310) 725–3621. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Burbank-

Glendale-Pasadena Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 4, 1996 the FAA determined that the application to use the revenue from a PFC submitted by Burbank-Glendale-Pasadena Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 17, 1997.

The following is a brief overview of the use application number 96–02–U–00–BUR:

Level of PFC: $3.00.

Actual charge effective date: September 1, 1994.

Estimated charge expiration date: January 1, 2000.

Total estimated net PFC revenue to be used: $27,441,000.00.

Brief description of proposed project(s): AF–04 Construct ARFF Station; LA–02 Acquire land—Plant B–6.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Burbank-Glendale-Pasadena Airport Authority, Burbank-Glendale-Pasadena Airport.

Issued in Hawthorne, California on October 10, 1996.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 96–27493 Filed 10–24–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Transit Administration

Environmental Impact Statement on the Third Street Light Rail Project in San Francisco, CA

AGENCY: Federal Transit Administration, DOT.

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

SUMMARY: The Federal Transit Administration (FTA) and the San Francisco Municipal Railway (MUNI) hereby give notice that they intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), on the proposed construction of a light rail transit service along the Third Street corridor in San Francisco. The Third Street Light Rail Project would extend from a southern terminus connecting with the Bayshore CalTrain Station, travel along Bayshore Boulevard, cross Highway 101 to operate in a dedicated median right-of-way on Third Street through the Bayview commercial core, then past the Central Waterfront and Potrero Hill to King Street. North of Third and King Streets, surface and subway options would extend the light rail line through South of Market, the downtown area, crossing Market Street to the downtown area, with a northern terminus in Chinatown near Sacramento or Washington Street. Other options would operate directly into the Market Street MUNI Metro subway. As part of the project, a new light rail maintenance and storage facility is proposed for a site just east of I–280, between 16th and Mariposa Streets.

The local lead agency—the City and County of San Francisco, Planning Department, Office of Environmental Review (OER)—will ensure that the environmental document also satisfies the requirements of the California Environmental Quality Act (CEQA). In addition to the Third Street Light Rail Project, the EIS/EIR will evaluate a No Build Alternative, as well as any feasible alternatives generated through the scoping process. Scoping will be accomplished through correspondence with interested persons, organizations and federal, state and local agencies, and through two public scoping meetings. In addition, a Technical Advisory Committee and a Community Advisory Group will be established to provide input to the project. Numerous local community workshops and public informational forums are also planned to take place throughout the project corridor.

MEETING DATES: Public scoping meetings will be held at the following times and locations:

Day	Date	Time	Location
Wednesday	November 20, 1996	6:00 p.m.–9:00 p.m ...	ANA Hotel, 50 Third Street.
Thursday	November 21, 1996	6:00 p.m.–9:00 p.m ...	Southeast Community Center, 1600 Oakdale Avenue.

The meetings will have an Open House format from 6:00 p.m. to 7:00 p.m., with a presentation and public comments on the EIS/EIR scope planned from 7:00 p.m. to 9:00 p.m.

ADDRESS FOR WRITTEN COMMENTS: Written comments on the scope of alternatives and impacts to be considered in the EIS/EIR should be sent to the local lead agency by December 6, 1996. Written comments should be sent to Mr. Paul Deutsch, Planning Department, Office of Environmental Review, 1660 Mission Street, Fifth Floor, San Francisco, CA 94103.

FOR FURTHER PROJECT INFORMATION CONTACT: Sue Olive, Project Manager, Service Planning Department, San Francisco Municipal Railway, 949 Presidio Ave., San Francisco, CA. 94115. Phone (415) 923–6100; or Donna Turchie, Office of Planning and Program Development, Federal Transit Administration, 201 Mission St., Rm. 2210, San Francisco, CA 94105. Phone (415) 744–3115.

SUPPLEMENTARY INFORMATION:

Scoping

FTA and the local lead agency invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the EIS/EIR and identifying any significant social, economic, or environmental issues related to the alternatives. An information packet describing the purpose of the proposed federal action, the proposed alternatives, the impact topics to be evaluated, the community involvement program, and the preliminary project schedule will be available at the Public Scoping Meetings. Persons may request the scoping materials by contacting Paul Deutsch at the address above, or by calling him at (415) 558–6383. Scoping comments may be made verbally at either of the public scoping meetings or in writing. See the **DATES** and **ADDRESSES** sections above for locations and times. During scoping, comments should focus on identifying specific social, economic or environmental impacts to be evaluated and suggesting design options

which are less costly or less environmentally damaging while achieving similar transit objectives. Scoping is not the appropriate time to indicate a preference for a particular alternative. Comments on preferences should be communicated after the Draft EIS/EIR has been completed. If you wish to be placed on the mailing list to receive further information as the project develops, contact Sue Olive as previously described.

Description of Study Area and Project Need

The project is to construct an electrified light rail line on the surface and in subway along the Third Street corridor in San Francisco as an alternative to the MUNI 15 and 9X diesel bus lines that currently serve the area. The project would provide many San Francisco residents with more efficient access to downtown job centers, the Mission Bay project area and proposed new waterfront ballpark, and would enhance mobility by improving connections with local and regional transit lines. This major transit investment is also intended to help achieve desired community and economic development objectives for the Bayshore Corridor communities of Potrero Hill, Bayview-Hunters Point and Visitacion Valley. The new light rail line would connect these neighborhoods with downtown San Francisco, and possibly Chinatown.

Alternatives

The Third Street Light Rail Project is examining two alternatives to be carried forward into environmental analysis (Draft EIS/EIR). The two alternatives are:

- The ''No Build'' Diesel Bus Alternative would be a continuation or expansion of the MUNI 15–Third and 9X San Bruno Expresses that are currently the major trunk lines serving the project area, and
- A ''Build'' Light Rail Alternative, which assumes construction of a light rail line linking some or all of Chinatown, Downtown, South of Market, Potrero Hill, Bayview-Hunters Point and Visitacion Valley neighborhoods, primarily along Third Street. The Light Rail Alternative has multiple downtown and Mission Bay alignment options that will be evaluated and screened during the initial seven-month study phase. All options share a common alignment along Third between the southern terminus at the Bayshore CalTrain Station and 16th Street. The Third Street light rail line would operate in a dedicated median right-of-way along Bayshore Boulevard and use the existing Highway 101 overcrossing to reach Third Street. Along Third Street, the alignment would remain in the median as it traverses the Bayview commercial core, over Islais Creek, and through the Central Waterfront area to 16th Street. A new light rail operations and maintenance facility is proposed for a 10-acre site east of I–280 between 16th Street and Mariposa Streets. North of 16th Street, three primary surface and subway alignment options, each containing suboption variants, are being studied. The project also hopes to use rail as a catalyst for revitalizing the Third Street commercial core in Bayview-Hunters Point.

Probable Effects

FTA and the local lead agency plan to evaluate in the EIS/EIR all significant social, economic, and environmental impacts of the alternatives. Among the primary issues are the expected increase in transit ridership, traveltime savings, the capital outlays needed to construct the project, the cost of operating and maintaining the facilities created by the project, and the financial impacts on the funding agencies. Environmental and social impacts and benefits proposed for analysis include: land use and neighborhood impacts; parklands; traffic and parking impacts, particularly in the Bayview commercial core and near stations; visual impacts; impacts on historic architecture properties and archaeological resources; and noise and vibration impacts. Impacts on natural areas, biology, hazards, air and water quality, groundwater and geology will also be covered. The impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate significant adverse impacts will be considered.

FTA Procedures

In accordance with the Federal Transit Act and FTA policy, the Draft EIS/EIR will be prepared first. After its publication, the Draft EIS/EIR will be available for 45-day public and agency review and comment period, and a public hearing will be held. On the basis of the Draft EIS/EIR and the comments received, the San Francisco Public Transportation Commission will select a locally preferred alternative. Then the Final EIS/EIR will be prepared responding to all comments on the Draft EIS/EIR, and FTA will issue a Record of Decision on the proposed federal action.

Issued on: October 22, 1996.

Leslie Rogers,

Regional Administrator, FTA.

[FR Doc. 96–27496 Filed 10–24–96; 8:45 am]

BILLING CODE 4910–57–U

Research and Special Programs Administration (RSPA)

Meetings of Pipeline Safety Advisory Committees

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) notice is hereby given of the following meetings of the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). Each Committee meeting, as well as a joint session of the two Committees, will be held at the Department of Transportation, Room 2230, 400 Seventh Street, S.W., Washington, DC 20590.

On November 6, 1996, at 10:00 a.m., the THLPSSC will meet. Agenda items include:

1. Emergency Flow Restriction Devices
2. API Risk Based Approach to Hydrostatic Testing
3. Breakout Tanks and Tank Standards
4. Lines Operating below 20% of SMYS
5. OPA Status Update
6. Progress in Defining Unusually Sensitive Areas

On November 6, 1996, at 1:00 p.m., the THLPSSC will be joined by members of the TPSSC for a joint session which will include:

1. Welcome by the OPS Associate Administrator
2. Panel on Reauthorization and the Budget
3. Regulatory Reform Phase II
4. Compliance Policy Task Force
5. General Regulatory Update
6. Preparation for Risk Management Demonstration Project
7. Strategy for Improving Access to Pipeline Data and Meeting the Government Performance Results Act

On November 7, 1996, from 9:30 a.m. to 12:00 noon, the joint TPSSC–THLPSSC session will include:

1. OPS Rulemakings Update
2. Report on National Pipeline Mapping Project and Follow-up Strategy
3. Non-Destructive Evaluation Project
4. Offshore Update
5. Proposed Damage Prevention Quality Action Team
6. Operator Qualification Negotiated Rulemaking

At 1:00 p.m. on November 7, the TPSSC will meet. Agenda items include:

1. Welcome by the OPS Associate Administrator
2. Definition of Gas Gathering Lines
3. Liquid Natural Gas Regulatory Updates
4. Excess Flow Valve Performance Standards Customer Notification

5. Determining the Extent of Corrosion on Exposed Gas Lines
6. Passage of Instrumented Internal Inspection Devices
7. Plastic Pipe Issues

Each meeting will be open to the public. Members of the public may present oral statements on the topics. Due to the limited time available, each person who wants to make an oral statement must notify Mary Jo Cooney, Room 2335, Department of Transportation Building, 400 Seventh Street, S.W., Washington, DC 20590, telephone (202) 366–4774, not later than October 31, 1996, on the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committee before or after any meeting.

Issued in Washington, DC on October 21, 1996.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 96–27487 Filed 10–24–96; 8:45 am]

BILLING CODE 4910–60–P

Surface Transportation Board

[STB Finance Docket No. 33133]

Dakota Rail, Inc.—Acquisition of Control Exemption—Otter Tail Valley Railroad Company, Inc.

Dakota Rail, Inc. (Dakota), has filed a notice of exemption to acquire control, through stock purchase, of Otter Tail Valley Railroad Company, Inc. (OTVR).[1] OTVR, a Class III rail carrier, operates solely in Minnesota.[2]

Dakota, a Class III rail carrier, is a wholly owned subsidiary of RailAmerica, Inc. It operates a noncontiguous rail line from Hutchinson, MN, to Wayzata, MN. Under the terms of an agreement with OTVR, Dakota will acquire 100% of the outstanding stock of OTVR.[3] The effective date of the exemption was October 11, 1996.

This transaction is related to a notice of exemption filed in STB Finance Docket No. 33138, *RailAmerica, Inc.—Acquisition of Control Exemption—Otter Tail Valley Railroad Company, Inc.,* wherein RailAmerica seeks to acquire control, through Dakota, of OTVR.

Dakota indicates that: (1) OTVR does not connect with any other railroads in Dakota's corporate family; (2) the involved transaction is not part of a series of anticipated transactions that would connect Dakota with any other railroad in its corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2). The purpose of the transaction is to achieve operating economies and to improve service over the lines.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33133, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, one copy of all pleadings must be served on: Edward D. Greenberg, Canal Square, 1054 Thirty-First Street, N.W., Washington, DC 20007.

Decided: October 17, 1996.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–27422 Filed 10–24–96; 8:45 am]

BILLING CODE 4915–00–P

[1] On October 4, 1996, Dakota filed a request to amend its verified notice of exemption filed on September 25, 1996, in this proceeding to properly characterize the transaction as ''acquisition of control'' rather than ''acquisition of control and merger.'' Dakota states that, while it intends to merge OTVR into Dakota, there will be a period where OTVR will exist as a separate entity, with Dakota owning 100% of OTVR's outstanding stock and thus controlling OTVR. It indicates that it will seek separate approval of the merger of OTVR into Dakota.

[2] OTVR's main line runs from milepost 185.1, near Fergus Falls, MN, northwest to Barnesville Junction, MN (milepost 218.6 = 0). From Barnesville Junction, milepost 0, the main line runs northwest to Moorehead, MN, at milepost 21.25. In addition, a branch line runs from milepost 49.0, at Fergus Falls, west to milepost 61.5, at Foxhome, MN.

[3] By decision served October 9, 1996, the Board's Secretary granted a motion for a protective order permitting the stock purchase agreement to be filed under seal.

[STB Finance Docket No. 33138]

RailAmerica, Inc.—Acquisition of Control Exemption—Otter Tail Valley Company, Inc.

RailAmerica, Inc. (RailAmerica), a noncarrier, has filed a notice of exemption to acquire control, through its wholly owned subsidiary Dakota Rail, Inc., of Otter Tail Valley Railroad Company, Inc. (OTVR).[1] OTVR, a Class III rail carrier, operates solely in Minnesota.[2]

RailAmerica also controls the following eight Class III rail carriers that do not connect with OTVR: Huron & Eastern Railway Company, Inc., the Saginaw Valley Railway Company, Inc., the South Central Tennessee Railroad Company, Dakota, the West Texas & Lubbock Railroad Company, Inc., the Plainview Terminal Company, Evansville Terminal Company, Inc., and the Cascade and Columbia River Railroad Company.[3] The effective date of the exemption was October 11, 1996.

This transaction is related to a notice of exemption filed in STB Finance Docket No. 33133, *Dakota Rail, Inc.—Acquisition of Control Exemption—Otter Tail Valley Railroad Company, Inc.,* wherein Dakota seeks to acquire control, through stock purchase, of OTVR.

RailAmerica states that: (1) OTVR does not connect with any other railroads in its corporate family; (2) the involved transaction is not part of a

[1] Dakota seeks to acquire control, through stock purchase, of OTVR, in a concurrently filed notice of exemption in STB Finance Docket No. 33133, *Dakota Rail, Inc.—Acquisition of Control Exemption—Otter Tail Valley Railroad Company, Inc.*

[2] OTVR's main line runs from milepost 185.1, near Fergus Falls, MN, northwest to Barnesville Junction, MN (milepost 218.6 = 0). From Barnesville Junction, milepost 0, the main line runs northwest to Moorehead, MN, at milepost 21.25. In addition, a branch line runs from milepost 49.0, at Fergus Falls, west to milepost 61.5, at Foxhome, MN.

[3] Common control of these carriers was approved in: *John H. Marino, Eric D. Gerst, and Mariner Corporation—Control Exemption—Saginaw Valley Railway Company, Inc.,* Finance Docket No. 31196 (ICC served Apr. 23, 1991); *RailAmerica, Inc.—Control Exemption—South Central Tennessee Railroad Company,* Finance Docket No. 32421 (ICC served Jan. 18, 1994); *RailAmerica, Inc.—Control Exemption—Prairie Holding Corporation and Dakota Rail, Inc.,* Finance Docket No. 32750 (ICC served Sept. 25, 1995); *RailAmerica, Inc.—Continuance in Control Exemption—West Texas and Lubbock Railroad Company, Inc. and Plainview Terminal Company,* Finance Docket No. 32797 (ICC served Dec. 27, 1995); *RailAmerica, Inc.—Continuance in Control Exemption—Evansville Terminal Company, Inc.,* STB Finance Docket No. 32990 (STB served July 17, 1996); and *RailAmerica, Inc.—Continuance in Control Exemption—Cascade and Columbia River Railroad Company,* STB Finance Docket No. 33048 (STB served Sept. 13, 1996).

series of anticipated transactions that would connect OTVR with any other railroad in its corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2). The purpose of the transaction is to achieve operating economies and to improve service and financial viability.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33138, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, one copy of all pleadings must be served on: Edward D. Greenberg, Canal Square, 1054 Thirty-First Street, N.W., Washington, DC 20007.

Decided: October 17, 1996.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–27423 Filed 10–24–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB review; Comment Request

October 17, 1996.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: New.

Form Number: FMS 5902 and FMS 5903.

Type of Review: New collection.

Title: Resolution Authorizing Execution of Depositary, Financial Agency, and Collateral Agreement (5902); and Depositary, Financial Agency, and Collateral Agreement (5903).

Description: Financial institutions are required to complete an Agreement and Resolution to become a depositary of the Government. The approved applications designate the depositary as an authorized recipient of deposits of public money and to perform other services.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 350.

Estimated Burden Hours Per Response:

FMS Form 5902—15 minutes

FMS Form 5903—15 minutes

Frequency of Response: Other (one-time application).

Estimated Total Reporting Burden: 175 hours.

Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–27370 Filed 10–24–96; 8:45 am]

BILLING CODE 4810–35–P–M

Submission for OMB Review; Comment Request

October 17, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the focus group interviews described below during the first week of November 1996, the Department of Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by October 25, 1996. To obtain a copy of this survey, please contact the Public Debt Clearance Officer at the address listed below.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0122.

Project Number: BPD 96–1.

Type of Review: Revision.

Title: Focus Group Questions for Savings Bonds Marketing Office (SBMO) Marketing Study.

Description: The need for market research arises primarily from the Bureau's plan to offer U.S. Savings Bonds to the public through a new means of purchase in addition to the existing options of payroll savings and over-the-counter purchase through the Regional Delivery System. The new purchase method would allow individuals to apply to a single national source for monthly or other recurring purchase through Automated Clearing House (ACH) debits from their personal checking accounts. Information about consumer needs and about the potential size of this market are needed to guide the design of the ACH recurring purchase program and the selection of appropriate vendors.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 80.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Other.

Estimated Total Reporting Burden: 160 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–27371 Filed 10–24–96; 8:45 am]

BILLING CODE 4810–40–P

Submission to OMB for Review; Comment Request

October 18, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to

OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0008.

Form Number: IRS Forms W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3PR, W–3cPR, and W–3SS.

Type of Review: Extension.

Title: Wage and Tax Statement (W–2), Statement of Corrected Income and Tax Amounts (W–2c), American Samoa Wage and Tax Statement (W–2AS), Guam Wage and Tax Statement (W–2GU), U.S. Virgin Islands Wage and Tax Statement (W–2VI), Transmittal of Wage and Tax Statements (W–3), Transmittal of Corrected Income and Tax Statements (W–3c), Informe de Comprobantes de Retencion (W–3PR), Transmision de Comprobantes de Retencion Corregidos (W–3cPR), and Transmittal of Wage and Tax Statements (W–3SS).

Description: Employers report income and withholding on Form W–2. Forms W–2AS, W–2GU and W–2V are the U.S. possessions versions of Form W–2. The Form W–3 series is used to transmit Forms W–2 to the Social Security Administration (SSA). Forms W–2c, W–3c and W–3cPR are used to correct previously filed Forms W–2, W–3 and W–3PR. Individuals use Form W–2 to prepare their income tax return.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 6,493,883.

Estimated Burden Hours Per Respondent:

Form	Response time (minutes)
W–2	32
W–2c	52
W–2AS	22
W–2GU	23
W–2VI	22
W–3	25
W–3c	20
W–3PR	20
W–3cPR	28
W–3SS	23

Frequency of Response: Annually

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1209.

Regulation Project Number: IA–83–90 Final.

Type of Review: Extension.

Title: Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer.

Description: These regulations govern the circumstances under which tax return information may be disclosed for purposes of conducting quality or peer reviews, and disclosures that are necessary because of the tax return preparer's death or incapacity.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 250,000.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 250,000 hours.

OMB Number: 1545–1231.

Regulation Project Number: IA–38–90 Final (T.D. 8382).

Type of Review: Extension.

Title: Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund.

Description: These regulations set forth rules under section 6694 of the Internal Revenue Code regarding the penalty for understatement of a taxpayer's liability on a Federal income tax return or claim for refund. In certain circumstances, the preparer may avoid the penalty by disclosing on a Form 8275 or by advising the taxpayer or another preparer that disclosure is necessary.

Respondents: Business or other for-profit, Individual or households.

Estimated Number of Respondents: 100,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 50,000 hours.

OMB Number: 1545–1271.

Regulation Project Numbers: INTL–54–91 NPRM (Formerly INTL–610–86) and INTL–178–86 NPRM.

Type of Review: Extension.

Title: Transfers of Stock or Securities by U.S. Persons to Foreign Corporations (INTL–54–91 NPRM); and Foreign Liquidations and Reorganization (INTL–178–86 NPRM).

Description: A U.S. person must generally file a gain recognition agreement with the Service in order to defer gain on a section 367(a) transfer of stock to a foreign corporation, and must file a notice with the Service if it realizes any income in a section 367(b) exchange. These requirements ensure compliance with the respective sections.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 600.

Estimated Burden Hours Per Respondent: 4 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 2,400 hours.

OMB Number: 1545–1359.

Regulation Project Number: INTL–978–86 NPRM.

Type of Review: Extension.

Title: Information Reporting by Passport and Permanent Residence Applicants.

Description: The regulations require applicants for passports and permanent residence status to report certain tax information on the applications. The regulations are intended to give the Service notice of non-filers and of persons with foreign source income not subject to normal withholding, and to notify such persons of their duty to file U.S. tax returns.

Respondents: Individuals or households.

Estimated Number of Respondents: 5,500,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 750,000 hours.

OMB Number: 1545–1421.

Regulation Project Number: IA–62–93 TEMP and NPRM.

Type of Review: Extension.

Title: Certain Elections Under the Omnibus Budget Reconciliation Act of 1993.

Description: These regulations establish various elections with respect to which immediate interim guidance on the time and manner of making the elections is necessary. These regulations enable taxpayers to take advantage of the benefits of various Code provisions.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents: 410,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 202,500 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–27372 Filed 10–24–96; 8:45 am].

BILLING CODE 4830–01–M

Submission to OMB for Review; Comment Request

October 18, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1027.

Form Number: IRS Form 1120–PC.

Type of Review: Revision.

Title: U.S. Property and Casualty Insurance Company Income Tax Return.

Description: Property and casualty insurance companies are required to file an annual return of income and pay the tax due. The data is used to insure that companies have correctly reported income and paid the correct tax.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 2,200.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—99 hr., 29 min.

Learning about the law or the form—35 hr., 5 min.

Preparing the form—56 hr., 51 min.

Copying, assembling, and sending the form to the IRS—5 hr., 22 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 432,916 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 96–27373 Filed 10–24–96; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 61, No. 208
Friday, October 25, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

Correction

In notice document 96–25586 appearing on page 52441 in the issue of Monday, October 7, 1996, in the third column, in the file line at the end of the document, ''96–25556'' should read ''96–25586''.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97-18-000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

Correction

In notice document 96–26978 beginning on page 54788 in the issue of Tuesday, October 22, 1996, the docket number is corrected to read as set forth above.

BILLING CODE 1505–01–D

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 228

RIN 0412–AA28

Rules on Source, Origin and Nationality for Commodities and Services Financed by the Agency for International Development

Correction

In rule document 96–26246, beginning on page 53615, in the issue of Tuesday, October 15, 1996, make the following correction:

On page 53620, in the first column, in the subpart heading, ''Supplies'' should read ''Suppliers''.

BILLING CODE 1505–01–D

Federal Register

Friday
October 25, 1996

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, et al.

Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 175, 176, 178

[Docket No. HM–215B; Notice No. 96–20]

RIN 2137–AC82

Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the Hazardous Materials Regulations to maintain alignment with corresponding provisions of international standards. Because of recent changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), these proposed revisions are necessary to facilitate the transport of hazardous materials in international commerce.

DATES: Comments must be received by November 25, 1996.

ADDRESSES: Address comments to the Dockets Unit (DHM–30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, D.C. 20590–0001. Comments should identify the docket and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m. Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bob Richard, Assistant International Standards Coordinator, telephone (202) 366–0656, or Beth Romo, Office of Hazardous Materials Standards, telephone (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 1990, the Research and Special Programs Administration (RSPA) published a final rule [Docket HM–181; 55 FR 52402] which comprehensively revised the Hazardous Materials Regulations (HMR), 49 CFR Parts 171 to 180, with respect to hazard communication, classification, and packaging requirements, based on the UN Recommendations. One intended effect of the rule was to facilitate the international transportation of hazardous materials by ensuring a basic consistency between the HMR and international regulations.

The UN Recommendations are not regulations, but are recommendations issued by the UN Committee of Experts on the Transport of Dangerous Goods. These recommendations are amended and updated biennially by the Committee of Experts and are distributed to nations throughout the world. They serve as the basis for national, regional, and international modal regulations (specifically the IMDG Code, issued by the International Maritime Organization (IMO), and the ICAO Technical Instructions, issued by the ICAO Dangerous Goods Panel). In 49 CFR 171.12, the HMR authorize shipments prepared in accordance with the IMDG Code if all or part of the transportation is by vessel, subject to certain conditions and limitations. Offering, accepting and transporting hazardous materials by aircraft, in conformance with the ICAO Technical Instructions, and by motor vehicle either before or after being transported by aircraft, are authorized in § 171.11 (subject to certain conditions and limitations).

On December 29, 1994, RSPA issued a final rule [Docket HM–215A; 59 FR 67390] amending the HMR by incorporating changes to more fully align the HMR with the seventh and eighth revised editions of the UN Recommendations, Amendment 27 to the IMDG Code and the 1995–96 ICAO Technical Instructions. The final rule provided consistency with international air and sea transportation requirements which became effective January 1, 1995.

This NPRM proposes changes to the HMR based on the ninth revised edition of the UN Recommendations, the 1997–98 ICAO Technical Instructions, and Amendment 28 to the IMDG Code. It is intended to more fully align the HMR with international air and sea transport requirements which become effective on January 1, 1997. Other proposed changes are based on feedback from the regulated industry and RSPA initiatives.

II. Overview of Proposed Changes

Some of the more significant proposed amendments in this notice include:

—A new definition for ''Aerosol'' and two new definitions for packagings—''salvage packaging'' and ''intermediate packaging''—would be added. ''Intermediate packaging'' is a term used for explosives packagings in the explosive packaging tables.
—New provisions for marking and use of salvage packagings.
—Amendments to the Hazardous Materials Table (HMT) which add, revise or remove certain proper shipping names, hazard class, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements.
—Addition and removal of certain entries to the List of Marine Pollutants.
—New packaging requirements for explosives.
—More specific tests and criteria for classifying and assigning packing groups to flammable solids, pyrophoric liquids and solids, self-heating materials and water reactive materials.
—New definitions and packing group assignments for Division 5.1 solid and liquid materials based on new test methods and criteria.
—Revised definitions and packaging requirements for Division 5.2, Organic Peroxides including amendment of the diluent type B definition and requirements pertaining to the use of diluents for desensitization of organic peroxides.
—New criteria for classifying and assigning packing groups to mixtures of Division 6.1 materials possessing oral and dermal toxicity hazards.
—Addition of new self-reactive substances and revision of certain other self-reactive substances, based on amendments to Table 14.4 in the UN Recommendations.
—Amendments to the requirements for 31HZ2 composite intermediate bulk containers (IBCs).

III. Summary of Regulatory Change by Section

Part 171

Section 171.7. Various American Society for Testing and Materials (ASTM) standards would be added or updated, including an ASTM standard for flash point determination (ASTM D–3828–93) which establishes whether a material is capable of sustaining combustion in relation to classifying flammable liquids (ASTM D–4206–94),

and the ASTM standard for assessing corrosivity to metals (ASTM G 31–72 (Reapproved 1995)). ASTM D–3828–93 is the Standard Test Method for Flash Point by Small Scale Closed Tester. This method is equivalent to ASTM D–3278 but specifically applies to testing petroleum products and lubricants. ASTM D 4206–89 (Reapproved 1994) Standard Test Method for Sustained Burning of Liquid Mixtures by the Setaflash Apparatus (Open Cup) is equivalent to the test method currently provided in Part 173, Appendix H—Method of Testing for Sustained Combustibility.

In addition, the most current versions of the ICAO Technical Instructions, the IMDG Code, the UN Recommendations and the UN Manual of Tests and Criteria would be incorporated. Two references would be added for incorporation under the Transportation of Dangerous Goods (TDG) Regulations issued by Transport Canada. These new entries reference Schedule 21 and Schedule 22, which were adopted in 1995.

Section 171.8. A new definition for ''Aerosol'' would be added, consistent with provisions of § 173.306(a)(3). The definition for aerosols in the IMDG Code and the ICAO Technical Instructions includes containers that are filled solely with a gas, whereas aerosol containers authorized in § 173.306(a)(3) may be charged with a gas only for the purpose of expelling a liquid, powder or paste. Corresponding proposed changes in §§ 171.11, 171.12 and 171.12a would clarify the proposed definition of aerosols as it applies to aerosols imported in accordance with the ICAO Technical Instructions, the IMDG Code and the TDG Regulations.

In addition, a definition for ''SADT'' (self-accelerating decomposition temperature) would be added with a reference to § 173.21(f) for determining SADT. New definitions for salvage packagings and intermediate packagings would be added consistent with those in the UN Recommendations. Intermediate packagings are prescribed in Part 173 for certain explosives.

Sections 171.11, 171.12, and 171.12a. These sections authorize shipments prepared under the ICAO Technical Instructions, the IMDG Code, and the TDG Regulations, respectively. The following proposed changes apply to all three sections.

RSPA is proposing to remove the requirement to include the words ''Dangerous When Wet'' on shipping papers in association with the basic description for Division 4.3 materials. This proposal is based on RSPA's belief that the ''Dangerous When Wet'' hazard is adequately communicated through an indication of the Division 4.3 hazard class as part of the basic description on shipping papers. In addition, packagings are required to be labeled with Division 4.3 labels, and transport vehicles and bulk packagings are required to display Division 4.3 placards. Furthermore, emergency responders primarily use the UN number or shipping description as a basis for determining appropriate actions to be taken in the initial stages of an incident involving hazardous materials.

The words ''Toxic Inhalation Hazard'' would be added as an alternative to ''Poison Inhalation Hazard'' or ''Inhalation Hazard'' and ''Toxic'' or ''Toxic Gas'' would be added as alternatives to ''Poison'' or ''Poison Gas''.

New provisions would be added, as discussed above for § 171.8, to allow only aerosols meeting the definition of ''aerosol'' in § 171.8 or small receptacles containing gas conforming to §§ 173.304 and 173.306 to be imported in accordance with the ICAO Technical Instructions, IMDG Code and TDG regulations.

Part 172

Section 172.101. A new paragraph (c)(14) would be added to allow isomers of materials listed in the HMT which meet the same hazard class, subsidiary risk and packing group to be identified using the listed shipping description. A new paragraph (c)(15) would be added to allow hydrates of inorganic substances to be described using the proper shipping name for the equivalent anhydrous material. Paragraph (f) would be revised to acknowledge that Division 6.2 materials (other than regulated medical waste) do not have packing group assignments.

The Hazardous Materials Table (HMT) would be revised as follows:

New Packing Group I entries would be added for certain commodities, including Adhesives, Resin solutions, Paint and Paint-related material, Disinfectants, Dyes, and Oxidizing liquid, n.o.s.

An alternative proper shipping name ''Refrigerant gas'' plus the ''R'' number would be added to numerous entries, consistent with the ninth revised edition of the UN Recommendations. Current entries that contain an italicized ''R'' number would be revised to include the ''R'' number in Roman type as part of the ''Refrigerant gas'' alternative proper shipping name.

Certain Class 1 entries assigned NA numbers for domestic transportation would be removed. These include Explosive pest control devices and Propellant explosives (both liquid and solid). Domestic exceptions for these explosives would be incorporated into the proposed explosive packing instructions, where applicable.

New entries would be added for compressed gases and liquefied gases which are toxic and also meet flammable, corrosive, or oxidizing criteria.

Packaging authorizations for the current entry ''Gas, refrigerated liquid'' would be revised to reference the packaging provisions for cryogenic liquids. In addition, two new entries ''Gas, refrigerated liquid, flammable, n.o.s.'' and ''Gas, refrigerated liquid, oxidizing, n.o.s.'' would be added.

Several entries, such as Phenyl isocyanate and Phosphorous trichloride, would be amended by revising the primary hazard class in Column (3) and/or Packing Group in Column (5). For some entries, such a change in hazard class or packing group also would result in a corresponding removal of the ''+'' in Column (1).

In Column (2) of the HMT, several proper shipping names are listed in Roman type, indicating that they are authorized proper shipping names. However, they are not listed as proper shipping names under the UN Recommendations, the ICAO Technical Instructions, or the IMDG Code. For consistency with the international regulations, RSPA proposes to amend a number of proper shipping names, including ''Aircraft evacuation slides'', from Roman type to italics to indicate that they are no longer authorized proper shipping names. RSPA is not proposing to remove them from the § 172.101 Table because they provide guidance by referencing authorized proper shipping names, *e.g.*, ''Calcium selenate, *see* Selenates *or* Selenites''.

Certain entries, such as Diphenylmethane-4,4′-diisocyanate or Methyl benzoate, (which do not meet toxicity criteria for a Division 6.1 Packing Group III material), would be removed. These commodities were deleted from the List of Dangerous Goods in the ninth revised edition of the UN Recommendations.

Various proper shipping names would be clarified by the addition or removal of the word ''compressed'', ''inhibited'', ''liquefied'' or ''solution''.

RSPA is proposing adjustments to quantity limits for certain materials identified as poisonous by inhalation when transported by passenger or cargo aircraft or passenger railcar. Numerous proposed changes are consistent with current quantity limits prescribed in the ICAO Technical Instructions. Certain other materials would be forbidden for transportation by aircraft or passenger

railcar because they have been identified as poisonous by inhalation and assigned Hazard Zone A for liquids and Hazard Zones A and B for gases.

Other changes to the HMT include: (1) creating separate entries for ''Ammonia, anhydrous'' and ''Ammonia solutions''; (2) adding ''First aid kits'' as an alternative proper shipping name for the entry ''Chemical kits'' if the first aid kits contain hazardous materials; (3) adding new entries for ''Chemical sample, toxic, liquid (or solid)'' to recognize samples taken for analysis in conjunction with procedures addressing antiproliferation measures associated with chemical weapons; (4) combining entries for ''Chlorite solution'' and ''Hypochlorite solutions''; (5) removing ''Methyl alcohol'' as an authorized proper shipping name for ''Methanol'' but retaining it in italics as a cross reference; (6) adding a Class 3 subsidiary risk in Column (6) for several entries; and (7) creating a new entry for ''Aerosols (engine starting fluid)'' to indicate that these aerosols are prohibited on both passenger and cargo only aircraft.

Appendix B to § 172.101. A number of materials would be added, removed or amended in the HMR's List of Marine Pollutants. The changes would be based on Amendment 27 (to the extent not already incorporated in HM–215A) and Amendment 28 of the IMDG Code.

Section 172.102. A new special provision 15 would be added to prescribe quantity limits and packaging for chemical kits and first aid kits. Other special provisions would be added to authorize reclassification for certain commodities and to provide exceptions based on testing, concentrations, or stabilization for materials such as Maneb, aqueous solutions of inorganic solid nitrates, Ferrocerium, and Ammonium nitrate.

A new special provision A25 would be added to authorize polyester resin kits in certain quantities to be packaged in non-specification packagings for transportation by aircraft.

In addition to revising the proper shipping name ''Aluminum smelting by-products or Aluminum remelting by-products'' (formerly Aluminum processing by-products), a new special provision B115 would be assigned to this entry to permit certain non-specification bulk packagings for these products.

Special provision N50, which provides an exception from Class 9 labeling for marine pollutants that are not hazardous substances or hazardous wastes, would be removed. This is consistent with Amendment 28 of the IMDG Code, which requires that Class 9 substances for which no label was required must now display a Class 9 label.

Section 172.203. RSPA is proposing to remove the requirement in paragraph (j) that the words ''Dangerous When Wet'' be annotated on shipping papers. As discussed previously, RSPA believes that the ''Dangerous When Wet'' hazard is adequately communicated through an indication of the Division 4.3 hazard class as part of the basic description on shipping papers. In addition, packagings are required to be labeled with Division 4.3 labels, and transport vehicles and bulk packagings are required to display Division 4.3 placards. Furthermore, emergency responders primarily use the UN number or shipping description as a basis for determining appropriate actions to be taken in the initial stages of an incident involving hazardous materials.

The list of generic proper shipping names which require inclusion of a technical name in paragraph (k)(3) would be amended by adding several entries for hydrocarbon gases, hydrocarbon gas mixtures, and compressed or liquefied toxic gases which have a subsidiary hazard of oxidizer, corrosivity or flammability.

In addition, RSPA is proposing to add the word ''Toxic'' and the phrase ''Toxic-Inhalation Hazard'' in paragraph (m)(3) as an alternative to ''Poison''. RSPA also is proposing a new paragraph (m)(4) to provide an exception from the requirement to indicate on a shipping paper that a material is toxic if the toxicity of the material is based solely on corrosive destruction of tissue rather than systemic poisoning. This proposed exception corresponds to an exception from subsidiary risk labeling adopted under HM–215A.

Part 173

Section 173.3. Paragraph (c)(3) would be amended to authorize the word ''SALVAGE'' as an alternative marking for salvage drums. In addition, a new paragraph (c)(7) would be added to allow the use of salvage packagings which have been certified and marked to UN standards. However, RSPA is not proposing to make mandatory other marking requirements adopted in the UN Recommendations such as: (1) adding the letter ''T'' in the package specification markings following the package identification code (e.g. 1A2T/Y300/...); (2) annotating the words ''SALVAGE PACKAGING'' after the basic description on the shipping papers; and (3) adopting salvage packaging performance tests requiring salvage packagings to be tested at the Packing Group II level using liquid as the test medium. It is RSPA's view that additional costs incurred by such marking and performance testing requirements are not justified because salvage packaging provisions currently prescribed in the HMR are adequate.

Section 173.21. The last sentence of paragraph (f) would be revised to correctly reference the UN Manual of Tests and Criteria.

Section 173.32c. Based on a letter from an intermodal portable tank owner requesting consistency with a provision in the IMDG Code, RSPA is proposing to revise paragraph (j) to require that an intermodal (IM) portable tank or its compartment having a volume greater than 7500 L must have a minimum filling density of 80 percent. Currently, the HMR prohibits any IM portable tank or compartment of an IM portable tank having a volume greater than 5000 L from being filled to less than 80 percent by volume. This proposed change is consistent with other international codes related to minimum filling requirements. RSPA is soliciting comments concerning how many compartmented IM portable tanks are currently in service, and the capacities of those tanks.

Section 173.35. Under the IMDG Code, 31HZ2 composite IBCs are required to be transported in closed freight containers or transport vehicles for transportation by vessel. RSPA is not proposing any comparable requirement for domestic transportation by any mode at this time.

Section 173.60. This section would be amended for consistency with the UN Recommendations. The proposed amendments are largely editorial and serve to streamline and consolidate general requirements for packaging explosives while eliminating redundant and unnecessary requirements. These proposed amendments serve to more clearly convey the general packaging requirements applicable to packaging explosives for transportation without imposing new requirements.

Section 173.62. The Explosives Table, which identifies explosives packing methods, would be revised to be consistent with recent changes adopted in the UN Recommendations. New packaging methods have been developed by the UN Committee of Experts on the Transport of Dangerous Goods. This effort incorporated suggestions from the explosives industry and national defense departments, including the US Department of Defense. The new methods would be significantly more flexible than the methods currently prescribed in the Explosives Table and would incorporate a broader range of

options for authorized inner, intermediate and outer packagings than currently permitted. In several instances, inner and intermediate packagings would no longer be required. For instance, certain blasting explosives with hard outer casings would not be required to be packaged in inner packagings. A new packing method (Packing Instruction 117) would incorporate authorization to transport certain Division 1.1D and 1.5D explosives in IBCs. Many of the explosive packing methods amendments were based on comments received from Department of Defense and explosive industry representatives, and on competent authority approvals and exemptions issued to shippers of explosives.

The current packing method designations (for example, E–15, E–159) would be replaced by Explosives Packing Instructions consistent with those adopted in the ICAO Technical Instructions. The proposed Packing Instructions would use designations ranging from Packing Instruction 101 through 144. Twenty-nine Packing Instructions are proposed. Packing Instruction 101 would be similar to E–103 in the current regulations in that it would cover explosives requiring competent authority packaging approval. Packing Instructions 110 through 117 would apply to explosive substances. Packing Instructions 130 through 144 would apply to explosive articles.

Under the current requirements five packing methods require competent authority approval (E–102, E–103, E–138, E–146 and E–149). The proposed Packing Instruction 101 would include all explosives requiring competent authority packaging approval under a single packing method. In addition, many explosives (particularly those shipped under not otherwise specified (n.o.s.) entries) which currently require competent authority packaging approval would be assigned to specific packing methods eliminating the requirement for the competent authority to approve the packaging for these explosives. A statement indicating that Packing Instruction 101 may be used for any explosive, subject to the approval of the Associate Administrator for Hazardous Materials Safety, would be added to authorize the competent authority to approve packagings not covered in the Explosives Packing Instructions. If adopted, these amendments would enhance safety, provide greater packaging flexibility and reduce the regulatory and paperwork burden on shippers of explosives.

The paragraph (d) table of particular packaging requirements and exceptions would be removed, as these provisions would be incorporated into the proposed Explosives Packing Instruction Table and the general packing requirements in § 173.60.

For clarity, and because of the extensive changes to the content and format of the tables, the entire proposed Explosives Table and Explosives Packing Instruction Table have been reprinted.

Section 173.124. Amendments to the test methods for flammable solids, pyrophoric materials, self heating substances and water reactive materials are proposed, consistent with the UN Recommendations. The Self-Reactive Materials Table would be updated to include seven new substances, consistent with the UN Recommendations. In the ninth revised edition of the UN Recommendations, Figure 14.2 (Flow Chart for Self-Reactive Substances) was amended. Paragraph (a)(2)(iv) of that chart is used to determine the generic type for a self-reactive material.

Section 173.125. The criteria for classification and packing group assignment for readily combustible materials of Division 4.1 would be amended for consistency with the UN Recommendations. Reference to Appendix E (which would be removed) would be replaced by references to the UN Manual of Tests and Criteria.

In paragraph (b), the UN burning rate test and criteria for classification would be incorporated. The classification criteria for readily combustible materials would be amended to require powdered, granular and pasty materials to be classified in Division 4.1 when the burning time for one or more of the test runs, according to the UN burning rate test method, is less than 45 seconds or the rate of burning is more than 2.2 mm/s. Powders of metals or metal alloys would be classified in Division 4.1 when they can be ignited and the reaction spreads over the whole length of the sample in 10 minutes or less.

Readily combustible solids would be assigned to Packing Group II if the burning time is less than 45 seconds and the flame passes the wetted zone. Packing Group II would be assigned to powders of metal or metal alloys if the zone of reaction spreads over the whole length of the sample in five minutes or less. Packing Group III would be assigned if the burning time is less than 45 seconds and the wetted zone stops the flame propagation for at least four minutes. Packing Group III would be assigned to metal powders if the reaction spreads over the whole length of the sample in more than five minutes but not more than ten minutes.

In paragraph (c), Packing Group II and III assignment criteria for self-heating materials would be amended. The criteria would be revised to more accurately account for the volume of material being transported. For instance, certain self-heating materials which are packaged and transported in volumes less than 3 cubic meters or in quantities less than 450 liters would not be subject to the requirements of the HMR.

In paragraph (d), the packing group assignment criteria would be amended consistent with the UN Recommendations. These amendments would not significantly affect the packing group assignment criteria, but would be purely editorial to clarify the meaning of ''spontaneous ignition.''

Section 173.127. Proposed changes to this section would amend the definition for solid oxidizers and introduce a new definition, test, and criteria for liquid oxidizers. Liquid oxidizers would not be classified by analogy as currently required in the HMR. The references to Appendix F would be replaced by a reference to the UN Manual of Tests and Criteria.

Paragraph (b)(2) would be revised to include a statement indicating that the material must be tested in the concentration offered for transport. The criteria for packing group assignment would be revised to specify the ratios of solid oxidizing material and cellulose used in assessing the burning characteristics for comparison with the burning characteristics of potassium bromate, potassium perchlorate or potassium persulphate and cellulose mixtures. The revised criteria would be clearer, more precise and would eliminate the ambiguity associated with the criteria currently provided in the HMR.

Paragraph (b)(3) would be replaced with packing group assignment criteria for liquid oxidizers adopted in the ninth revised edition of the UN Recommendations. Incorporating specific criteria for liquid oxidizers would provide a more precise means for shippers to classify these products and would eliminate ambiguity involved in classifying these materials by analogy.

Section 173.128. In paragraph (c)(3) the reference to the UN Manual of Tests and Criteria would be amended to reflect its correct title. Paragraph (d) would be amended to update the reference to Figure 11.2 (Classification and Flowchart Scheme for Organic Peroxides).

Section 173.132. A new paragraph (b)(3)(iii) would be added to clarify when solid and liquid materials are

required to be tested for acute toxicity by inhalation. Current paragraph (c) would be redesignated as paragraph (d), and a new paragraph (c) would be added to authorize three methods for use in classifying and assigning packing groups to mixtures of materials possessing oral and dermal toxicity characteristics.

Section 173.136. A new paragraph (c) would be added to clarify that skin corrosion test data developed prior to September 30, 1995, would continue to be valid. In the preamble to the HM–215A final rule (December 29, 1994; 59 FR 67400), RSPA stated that it would not require retesting of materials classified under the previous test method in Appendix A of Part 173.

Section 173.137. Paragraph (b) would be revised to clarify that, when determining whether a material meets Class 8 Packing Group II, the material cannot meet Class 8 Packing Group I.

Section 173.152. Limited quantity provisions would be added for polyester resin kits being transported by highway, rail or vessel.

Section 173.162. A new sentence would be added at the end of the paragraph to provide an exception from the HMR for small quantities of gallium contained in manufactured articles or apparatuses.

Section 173.166. This section would be revised to remove all references to ''seat-belt modules,'' consistent with changes in the UN Recommendations. Packaging provisions in paragraph (e) would be revised to add drums, jerricans, and plastic boxes to the array of authorized packagings. In addition to non-specification containers currently authorized for transporting air bags within a controlled distribution system, RSPA is proposing to also specifically authorize dedicated handling devices.

Section 173.185. This section would be revised for consistency with changes adopted in the ninth revised edition of the UN Recommendations and in the ICAO Technical Instructions.

Currently there are different quantity limitations in the HMR for determining whether lithium cells and batteries may be designated as items of Class 9 on the basis of whether they meet the tests and criteria provided in the UN Manual of Tests and Criteria. These limitations also apply to lithium cells and batteries contained in equipment. The limitations are based on whether the cells or batteries will be transported on passenger or cargo aircraft. Consistent with the ICAO Technical Instructions, RSPA is proposing to allow cells containing not more than 12 grams of lithium or lithium alloy and batteries containing not more than 500 grams of lithium or lithium alloy to be designated as Class 9 when transported by passenger or cargo aircraft. This would also apply to lithium cells and batteries contained in equipment under specified conditions.

RSPA is also proposing to expand the types of packagings authorized for transporting cells and batteries by aircraft to include an array of boxes, drums, and jerricans. Additionally, RSPA is proposing to eliminate the requirement for equipment containing lithium cells and batteries to be packaged in waterproof outer packaging if the equipment itself is constructed to be waterproof (*i.e.*, lifesaving equipment designed to function underwater).

Sections 173.201–173.203 and 173.211–173.213. Aluminum jerricans, 3B1 or 3B2, would be added as authorized packagings in each of these sections.

Section 173.220. Consistent with proposed changes in § 176.905 for wet batteries transported by vessel, paragraph (c)(1) would be revised to remove the reference to § 176.905 and to state that a motor vehicle or mechanical equipment which is electrically powered is not subject to the HMR.

Section 173.224. In paragraph (b), the Self-Reactives Materials Table would be revised by adding seven new entries. The Packing Method Table for Generic Types in paragraph (c)(3) would be removed because the information is specifically listed in the Self-Reactives Materials Table, and paragraph (c)(4) would be redesignated paragraph (c)(3).

Section 173.225. Paragraph (b) explains column headings in the Organic Peroxide table. Specifically, paragraph (b)(2) describes the information comprised in the column entitled ''ID Number.'' The word ''Exempt'' occasionally appears in place of an identification number, but is not defined in § 173.225. In this notice, RSPA proposes to amend paragraph (b)(2) of § 173.225 by adding a statement to clarify that the word ''Exempt,'' if it appears in the Organic Peroxide Table, means that the material is not regulated as an organic peroxide.

In paragraph (b)(4)(ii), the use of type B diluents for desensitization of organic peroxides would be authorized for all organic peroxides provided that the boiling point is at least 60 °C (140 °F) greater than the SADT of the organic peroxide in a 50 kg package. Paragraph (b)(6) would be revised to indicate that lower control temperatures are required when IBCs and bulk packagings are used.

Paragraph (c)(2), which prohibits IBCs and bulk packagings unless authorized through an approval, would be removed. The Packing Method Table for Generic Types in paragraph (c)(3) would be removed because the information is specifically listed in the Organic Peroxides Table, and paragraph (c)(4) would be redesignated paragraph (c)(3).

Paragraph (d) would be revised to consolidate two tables specifying packagings for liquid and solid organic peroxides and self-reactive materials into one table for both liquids and solids.

Paragraph (e)(5) would be revised to authorize the transport of stabilized peroxyacetic acid, type F (containing not more than 17 percent peroxyacetic acid) in type 31A IBCs. This proposal is based on a competent authority approval issued to authorize the use of 31A stainless steel IBCs. A corresponding proposal made by the United States has been tentatively approved by the UN Committee of Experts for incorporation into the tenth revised edition of the UN Recommendations.

Section 173.226. Paragraph (c)(1) would be amended to add aluminum jerricans as an authorized packaging.

Sections 173.316 and 173.318. These sections would be amended by adding a requirement for mixtures of cryogenic liquids, where charging requirements are not specifically prescribed, to be shipped in packagings approved by the Associate Administrator for Hazardous Materials Safety.

Appendix E and Appendix F. The guidelines for classification and packing group assignment for Classes 4 and 5 would be removed. RSPA believes the UN Manual of Tests and Criteria is a more appropriate reference for these test methods. By removing Appendix E and F, RSPA will decrease the number of amendments to the HMR necessary for consistency with the UN Manual and will reduce the number of pages in the HMR.

Part 175

Section 175.10. Paragraph (a)(22) would be amended to allow mercury thermometers (in addition to mercury barometers) to be carried in carry-on baggage by a representative of a government weather bureau or similar official agency, provided the individual advises the aircraft operator of its presence in the baggage.

Part 176

Section 176.78. Paragraph (k), which pertains to stowage of power-operated industrial trucks on board a vessel, would be revised to correspond to proposed revisions in § 176.905.

Section 176.84. A new note 17 would be added to prescribe segregation for a

compressed or liquefied gas which is toxic, flammable and corrosive.

Section 176.905. RSPA is proposing to revise the provisions for transporting motor vehicles or mechanical equipment powered by internal combustion engines by vessel to reflect recent changes which have occurred in the IMDG Code and in response to comments received during public outreach meetings. In Amendment 27 of the Code, the proper shipping name ''Engines, Internal Combustion'', UN3166 was added in order to regulate motor vehicles and other equipment powered by internal combustion engines. However, this proper shipping name has been removed and these materials were deregulated in Amendment 28 of the IMDG Code. Although RSPA is not providing total relief for the transport of motor vehicles by vessel, it is appropriate to modify the vessel carriage provisions to allow battery cables to remain connected in transport and allow vehicles transported on roll-on roll-off ships to be transported unregulated. Additionally, revisions to this section would clarify transport provisions for vehicles fueled with compressed gas and for certain battery-powered vehicles.

Part 178

Section 178.511. This section would be amended to adopt requirements for aluminum jerricans consistent with the UN Recommendations. Packaging codes 3B1 and 3B2 would be added. Paragraph (b) would be amended to incorporate construction requirements for aluminum jerricans consistent with the UN Recommendations.

Section 178.703. In paragraph (b)(6) requirements for marking inner receptacles of 31HZ2 composite IBCs would be added. This would require all inner receptacles to be marked with the code number designating the intermediate bulk container design type, the name or symbol of the manufacturer, the date of manufacture and the country authorizing the allocation of the mark. In addition, where the outer casing of a 31HZ2 IBC could be dismantled, each of the detachable parts would be required to be marked with the month and year of manufacture and the name or symbol of the manufacturer.

Section 178.707. In paragraph (c)(2) a new requirement would be added indicating that the outer packaging of 31HZ2 composite IBCs must enclose the inner receptacles on all sides. In paragraph (c)(3) a new requirement would be added indicating that inner receptacles of 31HZ2 composite IBCs must consist of at least three plies of film. In paragraph (c)(6) a new requirement would be added indicating that IBCs of type 31HZ2 must be limited to a capacity of not more than 1250 liters.

Section 178.815. In paragraph (c)(3) the words ''which bear the stacking load'' would be added to clarify that rigid plastic IBCs and composite IBCs with plastic outer packagings need to be tested for 28 days at 40 °C (104 °F) when the plastic outer packagings bear the stacking load. As a result of this proposed change, IBCs with plastic outer packagings which are designed with metal corner posts which bear the stacking load would not be required to be tested for 28 days at 40 °C (104 °F).

RSPA is specifying a deadline for comments that is less than the 60 days recommended in Executive Order 12866. This shorter comment period is intended to enable RSPA to develop and issue a final rule to coincide with international standards which become effective on January 1, 1997. RSPA will consider late-filed comments to the greatest extent practicable.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034].

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal hazardous materials transportation law, 49 U.S.C. 5701–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This notice of proposed rulemaking addresses covered subjects under items i, ii, iii and v above and, if adopted as final, would preempt State, local, or Indian tribe requirements not meeting the ''substantively the same'' standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that if DOT issues a regulation concerning any of the covered subjects DOT must determine and publish in the Federal Register the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule 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 180 days after the effective date of a final rule under this docket. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

This proposed rule would incorporate changes introduced in the ninth revised edition of the UN Recommendations, the 1997–98 ICAO Technical Instructions, and Amendment 28 to the IMDG Code. It would apply to offerors and carriers of hazardous materials and would facilitate the transportation of hazardous materials in international commerce by providing consistency with international requirements. U.S. companies, including numerous small entities competing in foreign markets, will be forced to comply with a dual system of regulation, to their economic disadvantage, if the changes proposed in this NPRM are not adopted. The proposed changes are intended to avoid this result. I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal.

D. Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget (OMB) under OMB control numbers 2137–0034 for shipping papers and 2137–0557 for approvals. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicles safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In the § 171.7(a)(3) Table, under the entry American Society for Testing and Materials, two new entries would be added in numerical order.

§ 171.7 Reference material.

(a) *Matter incorporated by reference.* * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
American Society for Testing and Materials	
* * * * * * *	
ASTM D 3828–93, Standard Test Methods for Flash Point by Small Scale Closed Tester	173.120
ASTM D 4206–96 Standard Test Method for Sustained Burning of Liquid Mixtures by the Setaflash Apparatus (Open Cup)	173.120
* * * * * * *	

* * * * *

§ 171.7 [Amended]

3. In addition, in § 171.7, in the table in paragraph (a)(3), the following changes would be made:

a. In the entry ASTM D 93–90, the wording ''D 93–90'' would be revised to read ''D 93–96''.

b. In the entry ASTM D 3278–89, the wording ''D 3278–89'' would be revised to read ''D 3278–96''.

c. In the entry ASTM G 31–72, the wording ''(Reapproved 1990)'' would be revised to read ''(Reapproved 1995)''.

d. Under International Civil Aviation Organization (ICAO), for the entry Technical Instructions for the Safe Transport of Dangerous Goods by Air, the date ''1995–1996'' would be revised to read ''1997–1998''.

e. Under International Maritime Organization (IMO), the entry ''International Maritime Dangerous Goods (IMDG) Code, 1990 Consolidated Edition, as amended by Amendment 27 (1994) (English edition)'' would be amended by removing the wording ''1990 Consolidated Edition, as amended by Amendment 27 (1994)'' and adding in its place ''1994 Consolidated Edition, as amended by Amendment 28 (1996)''.

f. Under Transport Canada, the entry ''Transportation of Dangerous Goods Regulations, 1 July 1985'' would be amended by revising the reference ''and SOR/94–264 (English edition)'' at the end of the entry to read '', SOR/94–264 (English edition), SOR/95–241, and SOR/95–547''.

g. Under United Nations, for the entry ''UN Recommendations on the Transport of Dangerous Goods, Eighth Revised Edition (1993)'' the wording ''Eighth Revised Edition (1993)'' would be revised to read ''Ninth Revised Edition (1995)''.

h. Under United Nations, for the entry ''UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria'' the wording ''Tests and Criteria, Second Edition, 1990'' would be revised to read ''Manual of Tests and Criteria, Second Revised Edition, 1995''.

4. In § 171.8, the following definitions would be added in the appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Aerosol means any non-refillable metal receptacle containing a gas compressed, liquefied or dissolved under pressure, the sole purpose of which is to expel a nonpoisonous (other than a Division 6.1 Packing Group III material) liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected in suspension in a gas.

* * * * *

Intermediate packaging means a packaging which encloses an inner packaging or article and is itself enclosed in an outer packaging.

* * * * *

SADT means self-accelerated decomposition temperature. See § 173.21(f) of this subchapter.

Salvage packagings means special packagings conforming to § 173.3 of this subchapter into which damaged, defective or leaking hazardous materials packages, or hazardous materials that have spilled or leaked, are placed for purposes of transport for recovery or disposal.

* * * * *

5. In § 171.11, paragraph (d)(4) would be revised and a new paragraph (d)(14) would be added, to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(4) When a hazardous material that is regulated by this subchapter for transportation by highway is transported by motor vehicle on a public highway under the provisions of this section, the following requirements apply:

(i) The motor vehicle must be placarded in accordance with subpart F of part 172 of this subchapter; and

(ii) The shipping paper must include an indication that the shipment is being made under the provisions of this section or must include the letters ''ICAO.''

* * * * *

(14) Only aerosols as defined in § 171.8 may be transported in accordance with this section.

§ 171.11 [Amended]

6. In addition, in § 171.11, the following changes would be made:

a. In paragraph (d)(9)(i), the wording '' 'Poison-Inhalation Hazard' '' would be revised to read '' 'Toxic Inhalation Hazard' or 'Poison Inhalation Hazard' ''.

b. In paragraph (d)(9)(iii) the wording '' 'POISON' or 'POISON GAS' '' would be revised to read '' 'TOXIC' or 'TOXIC GAS' or 'POISON' or 'POISON GAS' ''.

7. In § 171.12, a new paragraph (b)(17) would be added to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(17) Only aerosols as defined in § 171.8 may be transported in accordance with this section.

* * * * *

§ 171.12 [Amended]

8. In addition, in § 171.12, the following changes would be made:

a. In paragraph (b)(8)(i), the wording '' 'Poison-Inhalation Hazard' '' would be revised to read '' 'Toxic Inhalation Hazard' or 'Poison Inhalation Hazard'' '.

b. In paragraph (b)(8)(iii), the wording '' 'POISON' or 'POISON GAS'' ' would be revised to read '' 'TOXIC' or 'TOXIC GAS' or 'POISON' or 'POISON GAS'' '.

c. Paragraph (b)(13) would be removed and reserved.

9. In § 171.12a, a new paragraph (b)(16) would be added to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(16) Only aerosols as defined in § 171.8 or are assigned UN 2037 may be transported in accordance with this section.

§ 171.12a [Amended]

10. In addition, in § 171.12a, the following changes would be made:

a. In paragraph (b)(5)(i), the words '' 'Poison Inhalation Hazard' '' would be revised to read '' 'Toxic Inhalation Hazard' or 'Poison Inhalation Hazard' ''.

b. In paragraph (b)(5)(iii), the wording '' 'POISON' or 'POISON GAS' '' would be revised to read '' 'TOXIC' or 'TOXIC GAS' or 'POISON' or 'POISON GAS' ''.

c. Paragraph (b)(12) would be removed and reserved.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

11. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

12. In § 172.101, new paragraphs (c)(14) and (c)(15) would be added to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(14) Isomers of a material which meet the same hazard class or division, subsidiary risks and packing group may be identified using the proper shipping name for that material.

(15) Hydrates of inorganic substances may be identified using the proper shipping name for the equivalent anhydrous substance.

* * * * *

§ 172.101 [Amended]

13. In addition, in § 172.101, in paragraph (f), in the second sentence, the wording ''Classes 2 and 7 materials and ORM–D materials'' would be revised to read ''Class 2, Class 7, Division 6.2 (other than regulated medical wastes), and ORM–D materials''.

14. In § 172.101, the Hazardous Materials Table would be amended by removing, adding, or revising, in appropriate alphabetical sequence, the following entries to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE]												
		*	*		*	*	*		*	*			
	Aluminum processing by-products.												
		*	*		*	*	*		*	*			
1	Ammonia, anhydrous, liquefied *or* Ammonia solutions, *relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia.*												
D	Ammonia, anhydrous, liquefied *or* Ammonia solutions, *relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia.*												
		*	*		*	*	*		*	*			
	n-Amylene.												
		*	*		*	*	*		*	*			
	Boosters with detonator.		NA0350.										
		*	*		*	*	*		*	*			
	2-Bromo-2-nitropropane-1,3-diol.												
		*	*		*	*	*		*	*			
	n-Butly bromide.												
		*	*		*	*	*		*	*			
	Butoxyl.												
		*	*		*	*	*		*	*			
	Butylpropionate.												
		*	*		*	*	*		*	*			
	Chemical kits.												
		*	*		*	*	*		*	*			
	Chlorite solution *with more than 5 percent but less than 16 percent available chlorine.*												

Chlorite solution *with not less than 16 percent available chlorine*.		
*	*	*
Dibromobenzene.		
*	*	*
Dichloropropane, see Propylene dichloride.		
*	*	*
Diethylaminoethanol.		
*	*	*
Diphenylmethane-4,4′-diisocyanate.		
*	*	*
Engine starting fluid, *with flammable gas*.		
*	*	*
Ethylene glycol monobutyl ether.		
*	*	*
Explosive pest control devices.	.....	NA0006.
*	*	*
Explosive pest control devices.	.....	NA0412.
*	*	*
Firefighters, solid *with flammable liquid* (both entries).		
*	*	*
Furfural.		
*	*	*
Halogenated irritating liquids, n.o.s. (all three entries).		
*	*	*
Hexaethyl tetraphosphate, liquid (PG I and III).		
*	*	*
Hexaethyl tetraphosphate, *solid* (PG I and III).		
*	*	*
Hypochlorite solutions *with more than 5 percent but less than 16 percent available chlorine*.		

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*		*	*	*	*		*	*			
	Hypochlorite solutions *with 16 percent or more available chlorine*.												
		*		*	*	*	*		*	*			
	Mannitol hexanitrate, wetted *or* Nitromannite, wetted *with not less than 40 percent water, by mass or mixture of alcohol and water*.												
		*		*	*	*	*		*	*			
	Methyl benzoate.												
		*		*	*	*	*		*	*			
	Methyl vinyl ketone.												
		*		*	*	*	*		*	*			
	Nitrosoguanidine.												
		*		*	*	*	*		*	*			
	tert-Octyl mercaptan.												
		*		*	*	*	*		*	*			
	Pentan-2,4-dione.												
		*		*	*	*	*		*	*			
	Percarbonates, inorganic, n.o.s.												
		*		*	*	*	*		*	*			
	Plastic molding material *in dough, sheet or extruded rope form*.												
		*		*	*	*	*		*	*			
	Potassium salts of aromatic nitroderivatives, *explosive*.												
		*		*	*	*	*		*	*			
	Propellant, explosive, liquid.	.....	NA0474.										
	Propellant, explosive, liquid.	.....	NA0477.										
		*		*	*	*	*		*	*			
	Propylene dichloride.												

	*		*		*	*	*	*	*						
	Selenium power.														
	*		*		*	*	*	*	*						
	Sodium percarbonate.														
	*		*		*	*	*	*	*						
	Sodium salts of aromatic nitroderivatives, n.o.s. *explosive*.														
	*		*		*	*	*	*	*						
	Tributylamine.														
	*		*		*	*	*	*	*						
	Triflouromethane and chlorotrifluoromethane mixture (*constant boiling mixture*) (*R503*).														
	*		*		*	*	*	*	*						
	Triisocyanatoisocyanurate of isophoronediisocyanate solution, *with 70 percent, by mass*.														
	*		*		*	*	*	*	*						
	[ADD:].														
	*		*		*	*	*	*	*						
	Adhesives *containing a flammable liquid*.	3	UN1133	I	3	B42, T7, T30.	150	201	243	1 L	30 L	B			
	*		*		*	*	*	*	*						
	Aerosols, flammable, n.o.s. (*engine starting fluid*) (*each not exceeding 1 L capacity*).	2.1	UN1950		2.1	N82	306	None	None	Forbidden	Forbidden	A	40, 48, 85		
	*		*		*	*	*	*	*						
	Aluminum smelting by-products *or* Aluminum remelting by-products.	4.3	UN3170	II	4.3	B106, B115.	None	212	242	15 kg	50 kg	B	85, 103		
	*		*		*	*	*	*	*						
				III	4.3	B106, B115.	None	213	241	25 kg	100 kg	B	85, 103		
	*		*		*	*	*	*	*						
	2-Amino-4,6-Dinitrophenol, wetted *with not less than 20 percent water by mass*.	4.1	UN3317	I	4.1	23, A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28, 36		
	*		*		*	*	*	*	*						
1	Ammonia, anhydrous	2.3	UN1005		2.3, 8	4	None	304	314, 315	Forbidden	25 kg	D	40, 57		
	*		*		*	*	*	*	*						
D	Ammonia, anhydrous	2.2	UN1005		2.2	13	None	304	314, 315	Forbidden	25 kg	D	40, 57		

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*	*		*	*	*		*	*			
1	Ammonia, solution, *relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia.*	2.3	UN3318		2.3, 8	4	None	304	314, 315	Forbidden	25 kg	D	40, 57
D	Ammonia, solution, *relative density less than 0.880 at 15 degrees C in water, with more than 50 percent annomia.*	2.2	UN3318		2.2	13	None	304	314, 315	Forbidden	25 kg	D	40, 57
		*	*		*	*	*		*	*			
	2-Bromo-2-nitropropane-1,3-diol.	4.1	UN3241	III	4.1	46	151	213	240	25 kg	50 kg	C	12, 25, 40
		*	*		*	*	*		*	*			
	1-Bromobutane	3	UN1126	II	3	T1	150	202	242	5 L	60 L	B	40
		*	*		*	*	*		*	*			
	Butyl propionates	3	UN1914	III	3	B1, T1	150	203	242	60 L	220 L	A	
		*	*		*	*	*		*	*			
	Calcium chlorate aqueous solution. [ADD]	5.1	UN2429.										
				III	8	A2, N41, T8.	152	203	241	2.5L	30L	B	56, 68, 106
		*	*		*	*	*		*	*			
	Chemical kits *or* First aid kits (*containing hazardous materials*).	9	UN3316		9	15	None	None	None	10kg	10kg	A	
	Chemical sample, toxic *liquid or solid.*	6.1	UN3315	I	6.1	72	None	None	None	Forbidden	Forbidden	D	40
		*	*		*	*	*		*	*			
	Chlorite solution	8	UN1908	II	8	A3, A6, A7, B2, N34, T8.	154	202	242	1L	30L	B	26
				III	8	A3, A6, A7, B2, N34, T8.	154	203	241	5L	60L	B	26

*		*		*	*	*	*		*	*			
Coating solution (*includes surface treatments or coatings used for industrial or other purposes such as vehicle undercoating, drum or barrel lining*).	3	UN1139	I	3	T42	150	201	243	1L	30L	E		
*		*		*	*	*		*	*				
Compressed gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone A.*	2.3	UN3304		2.3, 8	1	None	192	245	Forbidden	Forbidden	D	40	
Compressed gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN3304		2.3, 8	2	None	302, 305	314, 315	Forbidden	Forbidden	D	40	
Compressed gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN3304		2.3, 8	3	None	302, 305	314, 315	Forbidden	Forbidden	D	40	
Compressed gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN3304		2.3, 8	4	None	302, 305	314, 315	Forbidden	Forbidden	D	40	
Compressed gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone A.*	2.3	UN3305		2.3, 2.1, 8	1	None	192	245	Forbidden	Forbidden	D	17, 40	
Compressed gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN3305		2.3, 2.1, 8	2	None	302, 305	314, 315	Forbidden	Forbidden	D	17, 40	
Compressed gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN3305		2.3, 2.1, 8	3	None	302, 305	314, 315	Forbidden	Forbidden	D	17, 40	
Compressed gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN3305		2.3, 2.1, 8	4	None	302, 305	314, 315	Forbidden	Forbidden	D	17, 40	
Compressed gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone A.*	2.3	UN3306		2.3, 5.1, 8	1	None	192	244	Forbidden	Forbidden	D	40, 89, 90	
Compressed gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN3306		2.3, 5.1, 8	2	None	302, 305	314, 315	Forbidden	Forbidden	D	40, 89, 90	
Compressed gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN3306		2.3,5.1,8	3	None	302, 305	314, 315	Forbidden	Forbidden	D	40, 89, 90	
Compressed gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN3306		2.3, 5.1, 8	4	None	302, 305	314, 315	Forbidden	Forbidden	D	40, 89, 90	

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Compressed gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone A.*	2.3	UN3303		2.3, 5.1	1	None	192	245	Forbidden	Forbidden	D	40
	Compressed gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN3303		2.3, 5.1	2	None	302, 305	314, 315	Forbidden	Forbidden	D	40
	Compressed gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN3303		2.3, 5.1	3	None	302, 305	314, 315	Forbidden	Forbidden	D	40
	Compressed gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN3303		2.3, 5.1	4	None	302, 305	314, 315	Forbidden	Forbidden	D	40
	*	*	*	*	*	*	*		*	*			
	Detonator assemblies, nonelectric *for blasting.*	1, 4S	UN0500	II	1,4S	104	63(f), 63(g)	62	None	25kg	100kg	A	
	*	*	*	*	*	*	*		*	*			
	1,2-Dichloropropane	3	UN1279	II	3	N36,T1	150	202	242	5L	60L	B	
	*	*	*	*	*	*	*		*	*			
	2-Diethylaminoethanol	8	UN2686	II	8.3	B2, T15, T26.	None	202	243	1L	30L	A	
	*	*	*	*	*	*	*		*	*			
	2-Dimethylaminoethyl acrylate.	6.1	UN3302	II	6.1	T8	None	202	243	5L	60L	D	25
	*	*	*	*	*	*	*		*	*			
	Disinfectant, liquid, corrosive, n.o.s..	8	UN1903	I	8	A7, B10, T42.	None	202	243	0.5L	2.5L	B	
	*	*	*	*	*	*	*		*	*			
	Dyes, liquid, corrosive, n.o.s. *or* Dye intermediates, liquid, corrosive, n.o.s.	8	UN2801	I	8	11, B10	None	201	243	0.5L	2.5L	A	
	*	*	*	*	*	*	*		*	*			
	Firelighters	4.1	UN2623	II	4.1	A1, A19	None	213	None	25 kg	100 kg	A	
	*	*	*	*	*	*	*		*	*			
	Furaldehydes	6.1	UN1199	II	6.1, 3	T15	None	202	243	5L	60L	A	
	*	*	*	*	*	*	*		*	*			
	Gas cartridges, (*flammable*) *without a release device, non-refillable.*	2.1	UN2037		2.1		306	304	None	1 kg	15 kg	B	40

*	*	*	*	*	*	*	*	*	*			
Gas refrigerated liquid, flammable, n.o.s. (*cryogenic liquid*).	2.1	UN3312	.....	2.1	.....	None	316	318	Forbidden	Forbidden	D	40
Gas, refrigerated liquid, oxidizing, n.o.s. (*cryogenic liquid*).	2.2	UN3311	.....	2.2, 5.1	.....	None	316	318	Forbidden	Forbidden	D	
*	*	*	*	*	*	*	*	*	*			
Hypochlorite solutions	8	UN1791	II	8	A7, B2, B15, N34, T7.	154	202	242	1L	30 L	B	26
.....	.....	.....	III	8	B104, N34, T7.	154	203	241	5L	60 L	B	26
*	*	*	*	*	*	*	*	*	*			
Liquefied gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone A*.	2.3	UN3308	.....	2.3, 8	1	None	192	245	Forbidden	Forbidden	D	40
Liquefied gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone B*.	2.3	UN3308	.....	2.3, 8	2	None	304	314, 315 ...	Forbidden	Forbidden	D	40
Liquefied gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone C*.	2.3	UN3308	.....	2.3, 8	3	None	304	314, 315 ...	Forbidden	Forbidden	D	40
Liquefied gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone D*.	2.3	UN3308	.....	2.3, 8	4	None	304	314, 315 ...	Forbidden	Forbidden	D	40
*	*	*	*	*	*	*	*	*	*			
Liquefied gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone A*.	2.3	UN3309	.....	2.3, 2.1, 8	1	None	192	245	Forbidden	Forbidden	D	17, 40
Liquefied gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone B*.	2.3	UN3309	.....	2.3, 2.1, 8	2	None	304	314, 315 ...	Forbidden	Forbidden	D	17, 40
Liquefied gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone C*.	2.3	UN3309	.....	2.3, 2.1, 8	3	None	304	314, 315 ...	Forbidden	Forbidden	D	17, 40
Liquefied gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone D*.	2.3	UN3309	.....	2.3, 2.1, 8	4	None	304	314, 315 ...	Forbidden	Forbidden	D	17, 40
*	*	*	*	*	*	*	*	*	*			
Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone A*.	2.3	UN3310	.....	2.3, 5.1, 8	1	None	192	245	Forbidden	Forbidden	D	40, 89, 90
Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone B*.	2.3	UN3310	.....	2.3, 2.1, 8	2	None	304	314, 315 ...	Forbidden	Forbidden	D	40, 89, 90
Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone C*.	2.3	UN3310	.....	2.3, 2.1, 8	3	None	304	314, 315 ...	Forbidden	Forbidden	D	40, 89, 90

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN3310		2.3, 2.1, 8	4	None	304	314, 315	Forbidden	Forbidden	D	40, 89, 90
	Liquefied gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone A.*	2.3	UN3307		2.3, 5.1	1	None	192	245	Forbidden	Forbidden	D	40
	Liquefied gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN3307		2.3, 5.1	2	None	304	314, 315	Forbidden	Forbidden	D	40
	Liquefied gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN3307		2.3, 5.1	3	None	304	314, 315	Forbidden	Forbidden	D	40
	Liquefied gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN3307		2.3, 5.1	4	None	304	314, 315	Forbidden	Forbidden	D	40
	*	*	*		*	*	*		*	*			
	Mannitol hexanitrate wetted *or* Nitromannite, wetted *with not less than 40 percent water, or mixture of alcohol and water, by mass.*	1.1D	UN0133	II	1.1D	121	None	62	None	Forbidden	Forbidden	B	IE, 5E
	*	*	*		*	*	*		*	*			
	2-Methyl-2-heptanethiol.	6.1	UN3023	I	6.1, 3	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40,102
	*	*	*		*	*	*		*	*			
	Methyl vinyl ketoe, stabilized.	6.1	UN1251	I	6.1, 3, 8	1, 25, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	B	40
	*	*	*		*	*	*		*	*			
	n-Butyl bromide, see 1-Bromobutane.												
	*	*	*		*	*	*		*	*			
	Nitroglycerin mixture *with more than 2 percent but not more than 10 percent nitroglycerin, by mass, desensitized.*	4.1	UN3319		4.1	118	None	None	None	Forbidden	0.5 kg	1	

*	*	*	*	*	*	*	*	*	*	*	*	
Organic pigments, self-heating.	4.2	UN3313	II	4.2	B101	None	212	241	15 kg	50 kg	C	
.....	.....	.....	III	4.2	B101	None	213	241	25 kg	100 kg	C	
*	*	*	*	*	*	*	*	*	*	*	*	
Oxidizing liquid, n.o.s.	5.1	UN3139	I	5.1	127, A2	None	201	243	Forbidden	2.5L	D	56, 58, 69, 106
*	*	*	*	*	*	*	*	*	*	*	*	
Paint *including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler, and liquid lacquer base.*	3	UN1263	I	3	T8, T31	150	201	243	1L	30L	E	
*	*	*	*	*	*	*	*	*	*	*	*	
Paint related material *including paint thinning, drying, removing, or reducing compound.*	3	UN1263	I	3	T8, T31	150	201	243	1L	30L	E	
*	*	*	*	*	*	*	*	*	*	*	*	
Pentane-2,4-dione	3	UN2310	III	3,6.1	B1, T1	150	203	242	60L	220L	A	
*	*	*	*	*	*	*	*	*	*	*	*	
1-Pentane *(n-amylene).*	3	UN1108	I	3	T14	150	201	243	1L	301	E	
*	*	*	*	*	*	*	*	*				
Perchlorates, inorganic, aqueous solution, n.o.s. [ADD]	5.1	UN3211										
.....	.....	.....	III	5.1	T8	152	203	241	2.5L	30L	B	56, 58, 69, 106
*	*	*	*	*	*	*	*	*	*	*	*	
Plastic molding compound *in dough, sheet or extruded rope form evolving flammable vapor.*	9	UN3314	III	9	32	155	213	None	100 kg	200 kg	A	85, 87
*	*	*	*	*	*	*	*	*	*	*	*	
Potassium chlorate, aqueous solution [ADD]	5.1	UN1485										
.....	.....	.....	III	5.1	A2, T8	152	203	241	2.5L	30L	B	56, 58, 69, 106
*	*	*	*	*	*	*	*	*	*	*	*	
Resin solution, *flammable.*	3	UN1866	I	3	B52, T8, T31.	150	201	243	1L	30L	E	
*	*	*	*	*	*	*	*	*	*	*	*	
Sodium borohydride and sodium hydroxide solution, *with not more than 12 percent sodium borohydride and not more than 40 percent sodium hydroxide by mass.*	8	UN3320	II	8	B2, N34, T8.	154	202	242	1L	30L	A	26
.....	.....	.....	III	8	B2, N34, T7.	154	203	241	5L	60L	A	

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*	*	*	*	*	*	*	*	*	*			
	Sodium chlorate, aqueous solution [ADD]	5.1	UN2428										
	.....	.....	.....	III	5.1	A2, T8	152	203	241	2.5L	30L	B	56, 58, 69, 106
	*	*	*	*	*	*	*	*	*	*			
	Tributylamine	6.1	UN2542	II	6.1	B110, T14	None	202	243	5 L	60 L	A	
	*	*	*	*	*	*	*	*	*	*			
	[REVISE]												
	*	*	*	*	*	*	*	*	*	*			
	Chloroacetone, stabilized.	6.1	UN1695	I	6.1, 3, 8	2, B9, B14, B32, B74, N12, N32, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95
	*	*	*	*	*	*	*	*	*	*			
	Cyclohexyl isocyanate	6.1	UN2488	I	6.1, 3	B9, B14, B32, B74, B77, T38, T43, T45.	None	277	244	Forbidden	Forbidden	D	20, 40, 95
	*	*	*	*	*	*	*	*	*	*			
	Gas, refrigerated liquid, n.o.s. (*cryogenic liquid*).	2.2	UN3158	.....	2.2	.....	None	316	318	50 kg	500 kg	D	
	*	*	*	*	*	*	*	*	*	*			
	Methyl chloracetate ...	6.1	UN2295	I	6.1,3	T42	None	201	243	1L	30L	D	
	*	*	*	*	*	*	*	*	*	*			
	Methyl isothiocyanate	6.1	UN2477	I	6.1,3	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	A	
	*	*	*	*	*	*	*	*	*	*			
	Phenyl isocyanate	6.1	UN2487	I	6.1,3	2, B9, B14, B32, B74, B77, N33, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95

*	*	*	*	*	*	*	*	*	*	*	*	*	*
Phosphorous trichloride.	6.1	UN1809	1	6.1, 8	2, B9, B14, B15, B32, B74, B77, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	C	40
*	*	*	*	*	*	*	*	*	*	*	*	*	*
Trifluorochloroethylene, inhibited.	2.3	UN1082		2.3, 2.1	3, B14	None	304	314, 315	Forbidden	Forbidden	D	40
*	*	*	*	*	*	*	*	*	*	*	*	*	*
Vinylpyridines, inhibited.	6.1	UN3073	II	6.1, 3, 8	B100, T8	None	202	243	1 L	30 L	B	40
*	*	*	*	*	*	*	*	*	*	*	*	*	*

§ 172.101 [Amended]

15. In addition, in the § 172.101 Hazardous Materials Table, the following changes would be made:

15–1. In Column 2, the following hazardous materials descriptions and proper shipping names would be revised as follows:

Current column 2 entry	Revise to read:
Air bag inflators *or* Air bag modules *or* Seat-belt pre-tensioners *or* Seat-belt modules.	Air bag inflators *or* Air bag modules *or* Seat-belt pretensioners.
Aircraft evacuation slides, *see* Life saving appliances *etc*	*Aircraft evacuation slides, see* Life saving appliances *etc.*
Aircraft survival kits, *see* Life saving appliances *etc*	*Aircraft survival kits, see* Life saving appliances *etc.*
Alcohols, toxic, n.o.s	Alcohols, flammable, toxic, n.o.s.
Aldehydes, toxic, n.o.s	Aldehydes, flammable, toxic, n.o.s.
Amyl methyl ketone	n-Amyl methyl ketone.
Arsenic compounds, liquid, n.o.s	Arsenic compounds, liquid, n.o.s. *inorganic.*
Arsenic compounds, solid, n.o.s	Arsenic compounds, solid, n.o.s. *inorganic.*
Barium selenate, *see* Selenates *or* Selenites	*Barium selenate, see* Selenates *or* Selenites.
Barium selenite, *see* Selenates *or* Selenites	*Barium selenite, see* Selenates *or* Selenites.
Battery-powered vehicle *or* Battery-powered equipment *wet battery*	Battery-powered vehicle *or* Battery-powered equipment.
Boron trifluoride	Boron trifluoride, compressed.
Bromotrifluoromethane *R13B1*	Bromotrifluoromethane *or* Refrigerant gas R13B1.
Butane *or* Butane mixtures	Butane.
n-Butyl methacrylate	n-Butyl methacrylate, inhibited.
Butylacrylate	Butyl acrylates, inhibited.
Calcium selenate, *see* Selenates *or* Selenites	*Calcium selenate, see* Selenates *or* Selenites.
Carbon dioxide and oxygen mixtures	Carbon dioxide and oxygen mixtures, compressed.
Carbon monoxide	Carbon monoxide, compressed.
Carbon monoxide and hydrogen mixture	Carbon monoxide and hydrogen mixture, compressed.
Carbonyl fluoride	Carbonyl fluoride, compressed.
Cartridges, safety, blank, *see* Cartridges for weapons, blank *(UN 0014)*	*Cartridges, safety, blank, see* Cartridges for weapons, blank *(UN 0014).*
Cartridges, safety, *see* Cartridges for weapons, *other than blank or* Cartridges, power device *(UN 0323).*	*Cartridges, safety, see* Cartridges for weapons, *other than blank or* Cartridges, power device *(UN 0323).*
1-Chloro-1,1-difluoroethanes *R142b*	1-Chloro-1,1-difluoroethane *or* Refrigerant gas R142b.
1-Chloro-1,2,2,2-tetrafluoroethane *R124*	1-Chloro-1,2,2,2-tetrafluoroethane *or* Refrigerant gas R124.
1-Chloro-2,2,2-trifluoroethane *R133a*	1-Chloro-2,2,2-trifluoroethane *or* Refrigerant gas *R133a.*
Chlorodifluorobromomethane *R12B1*	Chlorodifluorobromomethane *or* Refrigerant gas R12B1.
Chlorodifluoromethane and chloropentafluoroethane mixture *with fixed boiling point, with approximately 49 percent chlorodifluoromethane, R502.*	Chlorodifluoromethane and chloropentafluoroethane mixture *or* Refrigerant gas R502 *with fixed boiling point, with approximately 49 percent chlorodifluoromethane.*
Chlorodifluoromethane *R22*	Chlorodifluoromethane *or* Refrigerant gas R22.
Chloropentafluoroethane *R115*	Chloropentafluoroethane *or* Refrigerant gas R115.
Chlorotrifluoromethane and trifluoromethane azeotropic mixture *with approximately 60 percent chlorotrifluoromethane, R503.*	Chlorotrifluoromethane and trifluoromethane azeotropic mixture *or* Refrigerant gas R503 *with approximately 60 percent chlorotrifluoromethane.*
Chlorotrifluoromethane *R13*	Chlorotrifluoromethane *or* Refrigerant gas R13.
Coal gas	Coal gas, compressed.
Copper selenate, *see* Selenates *or* Selenites	*Copper selenate, see* Selenates *or* Selenites.
Copper selenite, *see* Selenates *or* Selenites	*Copper selenite, see* Selenates *or* Selenites.
Cyanogen, liquefied	Cyanogen.
Cyclopropane, liquefied	Cyclopropane.
Deuterium	Deuterium, compressed.
Diborane	Diborane, compressed.
Dichlorodifluoromethane and difluoroethane azeotropic mixture *with approximately 74 percent dichlorodifluoromethane, R500.*	Dichlorodifluoromethane and difluoroethane azeotropic mixture *or* Refrigerant gas R500 *with approximately 74 percent dichlorodifluoromethane.*
Dichlorodifluoromethane *R12*	Dichlorodifluoromethane *or* Refrigerant gas R12.
Dichloroethylene	1,2-Dichloroethylene.
Dichlorofluoromethane *R21*	Dichlorofluoromethane *or* Refrigerant gas R21.
Dichlorotetrafluoroethane *R114*	1,2-Dichloro-1,1,2,2-Tetrafluoroethane *or* Refrigerant gas R114.
1,1-Difluoroethane *R152a*	1,1-Difluoroethane *or* Refrigerant gas R152a.
1,1-Difluoroethylene *R1132a*	1,1-Difluoroethylene *or* Refrigerant gas R1132a.
Difluoromethane	Difluoromethane *or* Refrigerant gas R32.
Dimethylaminoethyl methacrylate	2-Dimethylaminoethyl methacrylate.
Dinitrogen tetroxide, liquefied	Dinitrogen tetroxide.
Dipropyl ether	Di-n-propyl ether.
Disodium trioxosilicate, pentahydrate	Disodium trioxosilicate.
Ethane, compressed	Ethane.
Ethyl fluoride	Ethyl fluoride *or* Refrigerant gas R161.
Ethylene, acetylene and propylene in mixtures, refrigerated liquid	Ethylene, acetylene and propylene mixture, refrigerated liquid.
Flammable gas in lighters, *see* Lighters *or* lighter refills, *containing flammable gas.*	*Flammable gas in lighters, see* Lighters *or* Lighter refills, *cigarettes, containing flammable gas.*
Fuse, instantaneous, non-detonating *or* Quickmatch	Fuse, non-detonating.
Heptafluoropropane	Heptafluoropropane *or* Refrigerant gas R227.
Hexafluoroethane *R1116*	Hexafluoroethane, compressed *or* Refrigerant gas R116.
Hexafluoropropylene *R1216*	Hexafluoropropylene, compressed *or* Refrigerant gas R1216.

Current column 2 entry	Revise to read:
Hydriotic acid, solution	Hydriotic acid.
Hydrobromic acid solution (four entries)	Hydrobromic acid.
Hydrocarbon gases, compressed, n.o.s. *or* Hydrocarbon gases mixtures, compressed, n.o.s.	Hydrocarbon gas mixture, compressed, n.o.s.
Hydrocarbon gases, liquefied, n.o.s. *or* Hydrocarbon gases mixtures, liquefied, n.o.s.	Hydrocarbon gas mixture, liquefied, n.o.s.
Hydrochloric acid, solution	Hydrochloric acid.
Hydrofluoric acid solution (both entries)	Hydrofluoric acid.
Hydrogen sulfide, liquefied	Hydrogen sulfide.
Isobutane *or* Isobutane mixtures *see also* Petroleum gases, liquefied	Isobutane *see also* Petroleum gases, liquefied.
Isobutyl acrylate	Isobutyl acrylate, inhibited.
Isobutyl methacrylate	Isobutyl methacrylate, inhibited.
Isopentane, *see* Pentane	*Isopentane, see* Pentane.
Jet thrust unit (Jato), see Rocket motors	*Jet thrust unit (Jato), see* Rocket motors.
Magnesium bisulfite solution, *see* Bisulfites, aqueous solutions, n.o.s	*Magnesium bisulfite solution, see* Bisulfites, aqueous solutions, n.o.s.
Mercury iodide	Mercury iodide, *solid.*
Methacrylaldehyde	Methacrylaldehyde, inhibited.
Methanol *or* Methyl alcohol (both entries)	Methanol (both entries).
Methyl alcohol *see* Methanol	*Methyl alcohol see* Methanol.
Methyl chloride	Methyl chloride *or* Refrigerant gas R40.
Methyl fluoride	Methyl fluoride *or* Refrigerant gas R41.
Methylmorpholine	4-Methylmorpholine *or* n-methylmorpholine.
Nitric oxide	Nitric oxide, compressed.
Nitrogen trifluoride (both entries)	Nitrogen trifluoride, compressed.
Nitrogen dioxide, liquefied	Nitrogen dioxide.
Nitrous oxide, compressed	Nitrous oxide.
2,5-Norbornadiene *or* Dicycloheptadiene	2,5-Norbornadiene *or* Bicyclo[2,2,1]hepta-2,5-diene, inhibited.
Octafluorobut-2-ene	Octafluorobut-2-ene *or* Refrigerant gas R1318.
Octafluorocyclobutane *RC318*	Octafluorocyclobutane *or* Refrigerant gas RC318.
Octafluoropropane *R218*	Octafluoropropane *or* Refrigerant gas R218.
Oil gas	Oil gas, compressed.
Oxygen difluoride	Oxygen difluoride, compressed.
Pentafluoroethane	Pentafluoroethane *or* Refrigerant gas R125.
Perfluoroethyl vinyl ether	Perfluoro(ethyl vinyl ether).
Perfluoromethyl vinyl ether	Perfluoro(methyl vinyl ether).
Phosphorus pentafluoride	Phosphorus pentafluoride, compressed.
Polyalkylamines, n.o.s., *see* Amines, *etc*	*Polyalkylamines, n.o.s., see* Amines, *etc.*
Potassium bisulfite solution, *see* Bisulfites, inorganic, aqueous solutions, n.o.s.	*Potassium bisulfite solution, see* Bisulfites, inorganic, aqueous solutions, n.o.s.
Potassium selenate, *see* Selenates *or* Selenites	*Potassium selenate, see* Selenates *or* Selenites.
Potassium selenite, *see* Selenates *or* Selenites	*Potassium selenite, see* Selenates *or* Selenites.
Propane *or* propane mixtures	Propane.
Rare gases mixture	Rare gases mixture, compressed.
Rare gases and nitrogen mixture	Rare gases and nitrogen mixture, compressed.
Rare gases and oxygen mixture	Rare gases and oxygen mixture, compressed.
Receptacles, small, containing gas (both entries)	Receptacles, small, containing gas (gas cartridges) (both entries).
Refrigerating machines, *containing non-flammable, non-toxic, liquefied gas or ammonia solutions (UN2073).*	Refrigerating machines, *containing non-flammable, non-toxic, liquefied gas or ammonia solution (UN2672).*
Silane	Silane, compressed.
Silicon tetrafluoride	Silicon tetrafluoride, compressed.
Sodium hydrogendifluoride	Sodium hydrogendifluoride, solid.
Steel swarf, *see* Ferrous metal borings, *etc*	*Steel swarf, see* Ferrous metal borings, *etc.*
Sulfur dioxide, liquefied	Sulfur dioxide.
Sulfur trioxide, inhibited	Sulfur trioxide, inhibited *or* Sulfur trioxide, stabilized.
1,1,1,2-Tetrafluoroethane	1,1,1,2-Tetrafluoroethane *or* Refrigerant gas R134a.
Tetrafluoromethane, *R14*	Tetrafluoromethane, compressed *or* Refrigerant gas R14.
Toluene sulfonic acid, *see* Alkyl, *or* Aryl sulfonic acid *etc*	*Toluene sulfonic acid, see* Alkyl, *or* Aryl sulfonic acid *etc.*
Trifluoroethane, compressed, *R143*	1,1,1-Trifluoroethane, compressed *or* Refrigerant gas, R143.
Trifluoromethane	Trifluoromethane *or* Refrigerant gas, R23.
Vinyl toluene, inhibited, *mixed isomers*	Vinyltoluenes, inhibited.
Vinyltrichlorosilane	Vinyltrichlorosilane, inhibited.
Xenon	Xenon, compressed.
Zinc bisulfite solution, *see* Bisulfites, inorganic aqueous solutions, n.o.s	*Zinc bisulfite solution, see* Bisulfites, aqueous solutions, n.o.s.
Zinc selenate, *see* Selenates *or* Selenites	*Zinc selenate, see* Selenates *or* Selenites.
Zinc selenite, *see* Selenates *or* Selenites	*Zinc selenite, see* Selenates *or* Selenites.

15–2. For the entry ''Alkali metal alcoholates, self-heating, corrosive, n.o.s.'', in Column (7), special provision ''64'' would be added.

15–3. For the entry ''Alkaline earth metal alcoholates, n.o.s.'', in Column (7), special provision ''65'' would be added.

15–4. For the entry ''Ammonium nitrate, liquid *(hot concentrated solution)*'' in Column (7), special provision ''68,'' would be added as the first special provision.

15–5. For the entry ''Battery-powered vehicle *or* Battery-powered equipment'' in Column (10A), the ''A'' would be removed.

15–6. For the entry ''Benzaldehyde'', in Column (7), special provision ''T1'' would be added.

15–7. For the entry ''Carbon dioxide and oxygen mixtures'', in Column (6), the designation '',5.1'' would be added immediately following ''2.2''.

15–8. For the entry ''Charges, propelling'' UN0491, in Column (7), special provision ''122'' would be added.

15–9. For the entry ''Corrosive liquids, toxic, n.o.s.'', in Packing Group I, in Column (7), special provisions '', T18,T27'' would be added immediately following ''B10''.

15–10. For the entry ''Corrosive liquids, toxic, n.o.s.'', in PG II, in Column (7), special provisions '', T18,T26'' would be added immediately following ''B3''.

15–11. For the entry ''Corrosive liquids, toxic, n.o.s.'', in PG III, in Column (7), special provision '', T8'' would be added.

15–12. For the entry ''Cyclohexyl isocyanate'', in Columns (9A) and (9B), the wording ''5 L'' and ''60 L'' would be revised to read ''Forbidden'' in each column.

15–13. For the entry ''Divinyl ether, inhibited'', in Column (9A), the wording ''5 L'' would be revised to read ''1 L''.

15–14. For the entry ''Ethyl isocyanate'', in Column (9B), the wording ''30 L'' would be revised to read ''Forbidden''.

15–15. For the entry ''Ethylene oxide and carbon dioxide mixture *with more than 87 percent ethylene oxide*'', in Column (9B), the wording ''75 kg'' would be revised to read ''25 kg''.

15–16. For the entry ''Explosives, blasting, type C'', in Column (7), special provision ''123'' would be added.

15–17. For the entry ''Ferrocerium'', in Column (7), special provision ''59,'' would be added as the first entry.

15–18. For the entry ''Hexafluoroacetone'', in Column (9B), the wording ''25 kg'' would be revised to read ''Forbidden''.

15–19. For the entry ''Isobutyl isocyanate'', in Column (9B), the wording ''60 L'' would be revised to read ''Forbidden''.

15–20. For the entry ''Isopropyl isocyanate'', in Column (9B), the wording ''30 L'' would be revised to read ''Forbidden''.

15–21. For the entry ''Isosorbide-5-mononitrate'', in Column (7), special provision ''66'' would be added.

15–22. For the entry ''Maneb *or* Maneb preparations'', in Column (7), special provision ''57,'' would be added as the first entry.

15–23. For the entry ''Metal catalyst, dry'' in PG II, in Column (8C), the word ''None'' would be removed and ''242'' would be added in its place.

15–24. For the entry ''Metal catalyst, dry'' in PG III, in Column (8C), the word ''None'' would be removed and ''241'' would be added in its place.

15–25. For the entry ''Methylacrylic acid, inhibited'', in Column (7), special provision ''45'' would be removed and ''T47'' added in its place.

15–26. For the entry ''Methyoxymethyl isocyanate'', in Column (9B), the wording ''30 L'' would be revised to read ''Forbidden''.

15–27. For the entry ''Nitrates, inorganic, aqueous solution, n.o.s'', for PG II and III, in Column (7) special provision ''58,'' would be added as the first entry.

15–28. For the entry ''Oil gas'', in Column (9B), the wording ''150 kg'' would be revised to read ''25 kg''.

15–29. For the entry ''Oxidizing liquid, n.o.s.'' in PG II and III, in Column (7), special provision ''127,'' would be added as the first entry.

15–30. For the entry ''Pentaerythrite tetranitrate *or* Pentaerythritol tetranitrate, *or* PETN, *with not less than 7 percent wax by mass*'', in Column (7), special provision ''120'' would be added.

15–31. For the entry ''Pentaerythrite tetranitrate, wetted *or* Pentaerythritol tetranitrate, wetted *or* PETN, wetted *with not less than 25 percent water, by mass*'', in Column (1), the letter ''D'' would be removed, and in Column (7), special provision ''121'' would be added.

15–32. For the entry ''Polyester resin kit'', in Column (7), special provision '', A25'' would be added immediately following ''40''; and in Column (8A), the wording ''None'' would be removed and ''152'' added in its place.

15–33. For the entry ''Potassium'', in Column (9A), the wording ''1 kg'' would be revised to read ''Forbidden''.

15–34. the entry ''Potassium metal alloys'', in Column (9A), the wording ''1 kg'' would be revised to read ''Forbidden''.

15–35. For the entries ''Propellant, liquid'', UN0495 and ''Propellant, liquid'', UN0497, in Column (7), special provisions '', 125, 126'' would be added following ''37''.

15–36. For the entry ''Silicon tetrafluoride'', in Column (9B), the wording ''25 kg'' would be revised to read ''Forbidden''.

15–37. For the entry ''Sodium'', in Column (9A), the wording ''1 kg'' would be revised to read ''Forbidden''.

15–38. For the entry ''Sulfur UN1350'', in Column (7), special provision ''30,'' would be added as the first entry; and in Columns (8A) and (8B), the references ''151'' and ''213'' would be revised to read ''None'' in each column.

15–39. For the entry ''Sulfur tetrafluoride'', in Column (9B), the wording ''25 kg'' would be revised to read ''Forbidden''.

15–40. For the entry ''Toxic liquids, oxidizing, n.o.s.'' inhalation hazard in PG I, Zone A, in Column (9B), the wording ''2.5 L'' would be revised to read ''Forbidden''.

15–41. For the entry ''Trifluoroacetyl chloride'', in Column (6), the designation '',8'' would be added after ''2.3''.

15–42. For the entry ''Urea nitrate *dry or wetted with less than 20 percent water, by mass*'' , in Column (7), special provision ''119'' would be added.

15–43. In Column (6), the wording '',3'' would be added as the last entry for each of the following entries:

Allyl isothiocyanate, inhibited
Bromoacetone
n-Butyl chloroformate
Cyclobutyl chloroformate
Epibromohydrin
Epichlorohydrin
Ethyl bromoacetate
Ethyl chloroacetate
Isocyanatobenzotrifluorides
Propylene chlorohydrin

16. In Appendix B to § 172.101, the List of Marine Pollutants would be amended by adding the following materials in appropriate alphabetical order:

Appendix B to § 172.101—List of Marine pollutants.

* * * * *

S.M.P	Marine pollutant
(1)	(2)
[ADD:]	
*	* * * * *
	Acetaldehyde.
	Alkyl (C_{10}–C_{21}) sulphonic acid ester of phenol.
	Anisole.
	Benzaldehyde.
	Bromobenzene.
	Butanedione.
	normal-Butyraldehyde.
	Camphor oil.
	Coconitrile.
PP	Cymenes (o-;m-;p-).
	normal-Decaldehyde.
	normal-Decanol.
	Di-*normal*-butyl ketone.
	sym-Dichlorodiethyl ether.
	Dimethyl disulphide.

S.M.P (1)	Marine pollutant (2)
	1,2-Dimethylhydrazine.
	1,1-Dimethylhydrazine.
	Dipentene.
	2,4-Di-tert-butyl phenol.
	2,6-Di-tert-butyl phenol.
	Diphenyl ether/biphenyl phenyl ether mixtures.
	Diphenyl-diphenyl ether (mixtures).
	2-Ethylhexaldehyde.
	2-Ethylbutyraldehyde.
PP	Furathiocarb (150).
	normal-Heptyl aldehyde.
	2,4-Hexadiene aldehyde.
	normal-Hexyl aldehyde.
	Hydrogen cyanide solution in alcohol, with not more than.
	45% hydrogen cyanide.
	Iron sponge, spent.
	Isobutyraldehyde.
	Isodecaldehyde.
	Isononanol.
	Isooctaldehyde.
	Isooctanol.
	Isotetramethylbenzene.
	Isovaleraldehyde.
	Lead and zinc calcines.
	2-Methylbutyraldehyde.
	Nitrobenzene.
	1-Nonanal.
	1-Nonanol.
	normal-Octaldehyde.
	1-Octanol.
	Phenylcyclohexane.
	Propionaldehyde.
	Tallow nitrile.
	4-Thiapentanal.
PP	Triphenylphosphate.
	1-Undecanol.
	normal-Valeraldehyde.
* * * * *	

Appendix B to § 172.101 [Amended]

17. In addition, in Appendix B to § 172.101, the List of Marine Pollutants would be amended as follows:

a. The entry ''Azenphos-methyl'' would be revised to read ''Azinphos-methyl''.

b. The designation ''PP'' in column (1) of the List of Marine Pollutants would be removed for the entry ''Diethylbenzenes (mixed isomers)''.

c. The entry ''Mononitrobenzene'' would be revised to read ''Nitrobenzene''.

d. The entry ''1,1,2,2-Tetrabromoethane'' would be revised to read ''Tetrabromoethane''.

e. The entry ''1,1,2,2-Tetrachloroethylene'' would be revised to read ''Tetrachloroethylene''.

f. The designation ''PP'' would be added in column (1) for the following materials:

Chlorinated paraffins (C–10—C–13)
Copper chloride (solution)
Copper metal powder
Esfenvalerate
Fenbutatin oxide
1,3-Hexachlorobutadiene
Quizalofop
Quizalofop-p-ethyl
Tetrachlorovinfos
Tetraethyl lead
Tricresyl phosphate with more than 3% ortho isomer

g. The following entries would be removed:

Acetylene dibromide
Arsenates, liquid, n.o.s.
Arsenates, solid, n.o.s.
Arsenic bromide
Arsenic chloride
Arsenical pesticides liquid, toxic, flammable, n.o.s.
Biphenyl phenyl ether and diphenyl oxide, mixtures
1-Butanethiol
Carbon bisulphide
Chlorobenzylchlorides
alpha-Chloropropylene
1-Chloropropylene
2-Chloropropylene
Chromyl chloride
Copper arsentate
1,2-Dibromethene
1,2-Dibromoethane
o-Dichlorobenzene
p-Dichlorobenzene
Dichloroether
Dichloroethyl oxide
Dimethylarsinic acid
Ethylene chloride
Ethylene dichloride
Ethylidene dichloride
Isopropyltoluene
Maneb preparations with not less than 60% maneb
Mercuric sulphide
Mercury iodine, solution
Metaarsenic acid
3-Methyl pyridine
Methylchloroform
Methylene bromide
Methylene dibromide
Naphtha, coal tar
Nitrates, inorganic, n.o.s.
Nitrites, inorganic, n.o.s.
Potassium dihydrogen arsenate
Propenyl chloride (cis-; trans-)
Propylene dichloride
Propylidene dichloride
Sodium metaarsenite
Sodium orthoarsenate
Strontium orthoarsenite
Turpentine substitute
White arsenic

18. In § 172.102, in paragraph (c)(1), Special Provision 45 would be removed, Special Provisions 15 and 32 would be revised, a sentence would be added at the end of Special Provisions 23 and 43, a sentence would be added at the beginning of Special Provision 102, Special Provisions 57, 58, 59, 64, 65, 66, 68, 72, 74, 118, 119, 120, 121, 122, 123, 125, 126, and 127 would be added; in paragraph (c)(2), Special Provision A25 would be added; in paragraph (c)(3), Special Provision B115 would be added; in paragraph (c)(5) Special Provision N50 would be removed; and in paragraph (c)(7)(ii), Special Provision T47 would be added, to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

* * * * *

15. Chemical kits and first aid kits are boxes, cases, etc., containing small amounts of various compatible dangerous goods which are used for medical, analytical, or testing purposes and for which exceptions are provided in this subchapter. For transportation by aircraft, any hazardous materials forbidden in passenger aircraft may not be included in these kits. Inner packagings may not exceed 250 mL for liquids or 250 g for solids and must be protected from other materials in the kit. The total quantity of hazardous materials in any one kit may not exceed either 1 L or 1 kg. The packing group assigned to the kit as a whole must be the most stringent packing group assigned to any individual substance contained in the kit. Kits must be packed in wooden boxes (4C1, 4C2), plywood boxes (4D), reconstituted wood boxes (4F), fiberboard boxes (4G) or plastic boxes (4H1, 4H2); these packagings must meet the requirements appropriate to the packing group assigned to the kit as a whole. The total quantity of hazardous materials in any one package may not exceed either 10 L or 10 kg. Kits which are carried on board vehicles for first-aid or operating purposes are not subject to the requirements of this subchapter.

* * * * *

23. * * * Quantities of not more than 500 g per package with not less than 10 percent water by mass may also be classed in Division 4.1, provided a negative test result is obtained when tested in accordance with test series 6(c) of the UN Manual of Tests and Criteria.

* * * * *

32. Polymeric beads and molding compounds may be made from polystyrene, poly(methyl methacrylate) or other polymeric material.

* * * * *

43. * * * Packagings should be so constructed that explosion is not possible by reason of increased internal pressure.

* * * * *

57. Maneb *or* Maneb preparations stabilized against self-heating need not be classified in Division 4.2 when it can be demonstrated by testing that a cubic volume of 1 m^3 of substance does not self-ignite and that the temperature at the center of the sample does not exceed 200°C, when the sample is maintained at a temperature of not less than 75°C±2°C for a period of 24 hours,

in accordance with procedures set forth for testing self-heating materials in the UN Manual of Tests and Criteria.

58. Aqueous solutions of Division 5.1 inorganic solid nitrate substances are considered as not meeting the criteria of Division 5.1 if the concentration of the substances in solution at the minimum temperature encountered in transport is not greater than 80% of the saturation limit.

59. Ferrocerium, stabilized against corrosion, with a minimum iron content of 10 percent is not subject to the requirements of this subchapter.

64. The group of alkali metals includes lithium, sodium, potassium, rubidium, and caesium.

65. The group of alkaline earth metals includes magnesium, calcium, strontium, and barium.

66. Formulations of these substances containing not less than 30 percent non-volatile, non-flammable phlegmatizer are not subject to this subchapter.

68. Provided the ammonium nitrate remains in solution under all conditions of transport, aqueous solutions of ammonium nitrate, with not more than 0.2% combustible material, in a concentration not exceeding 80% are not subject to this subchapter.

* * * * *

72. This entry may only be used for samples of chemicals taken for analysis in connection with the implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. The transport of substances under this entry must be in accordance with the chain of custody and security procedures specified by the Organization for the Prohibition of Chemical Weapons. The chemical sample may only be transported provided prior approval has been granted by the Associate Administrator for Hazardous Materials Safety or the Director General of the Organization for the Prohibition of Chemical Weapons and provided the sample complies with the following requirements:

a. The sample must be packaged in accordance with the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air; and

b. During transport, the sample must be accompanied by a copy of the document of approval for transport, showing the quantity limitations and the packing requirements.

74. During transport, this material must be protected from direct sunshine and stored or kept in a cool and well-ventilated place, away from all sources of heat.

* * * * *

102. The ends of the detonating cord must be tied fast so that the explosive cannot escape. * * *

* * * * *

118. This substance may not be transported under the provisions of Division 4.1 unless specifically approved by the Associate Administrator for Hazardous Materials Safety. The method of packing and the assignment of the packing group must also be approved by the Associate Administrator for Hazardous Materials Safety.

119. This substance, when in quantities of not more than 11.5 kg (25.3 pounds), with not less than 10 percent water, by mass, also may be classed in Division 4.1, provided a negative test result is obtained when tested in accordance with test series 6(c) of the UN Manual of Tests and Criteria.

120. The phlegmatized substance must be significantly less sensitive than PETN.

121. This substance, when containing less alcohol, water or phlegmatizer than specified, may not be transported unless approved by the Associate Administrator for Hazardous Materials Safety.

122. Metal packagings must be so constructed that the risk of explosion, by reason of increase in internal pressure from internal or external causes is prevented.

123. Any explosives, blasting, type C containing chlorates must be segregated from explosives containing ammonium nitrate or other ammonium salts.

125. Inner packagings must have taped screw cap closures and be not more than 5 liters capacity each. Inner packagings must be surrounded with non-combustible absorbent cushioning materials. The amount of absorbent cushioning material must be sufficient to absorb the liquid contents. Metal receptacles must be cushioned from each other. Net mass of propellant is limited to 30 kg (66 pounds) per package when outer packagings are boxes.

126. When intermediate packagings are drums, they must be surrounded with non-combustible cushioning material in a quantity sufficient to absorb the liquid contents. A composite packaging consisting of a plastic receptacle in a metal drum may be used instead of the inner and intermediate packagings. The net volume of propellant in each package may not exceed 120 L (31.7 gallons).

127. This entry does not apply to mixtures containing more than 70 percent ammonium nitrate and more than 0.4 percent combustible material (calculated as carbon), excluding water.

(2) * * *

* * * * *

A25. A polyester resin kit containing a net quantity of organic peroxide not to exceed 125 ml or 500 g per kit, with not more than 30 ml or 100 g per inner packaging, and a flammable liquid not to exceed 900 g per kit may be packaged in non-specification packaging.

* * * * *

(3) * * *

* * * * *

B115. Rail cars, highway trailers, roll-on/roll-off bins, or other non-specification bulk packagings are authorized. Packagings must be sift-proof, prevent liquid water from reaching the hazardous material, and be provided with sufficient venting to preclude dangerous accumulation of flammable, corrosive, or toxic gaseous emissions such as methane, hydrogen, and ammonia. The material must be loaded dry.

* * * * *

(7) * * *

(ii) * * *

T47. Temperature must be maintained between 18°C (64.4°F) and 40°C (104°F) when carried in tanks. Tanks containing solidified methyacrylic acid may not be reheated during transport.

* * * * *

§ 172.102 [Amended]

19. In addition, in § 172.102, in paragraph (c)(1), in special provisions 38 and 46, in the first sentence of each special provision, the wording ''OP6B'' would be revised to read ''OP6'' each place it appears.

20. In § 172.203, paragraph (j) would be removed and reserved, paragraph (k)(3) would be amended by adding 14 new entries in appropriate alphabetical order to the list of proper shipping names, and a new paragraph (m)(4) would be added, to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(k) * * *

(3) * * *

Compressed gas, toxic, corrosive, n.o.s.
Compressed gas, toxic, flammable, corrosive, n.o.s.
Compressed gas, toxic, oxidizing, corrosive, n.o.s.
Compressed gas, toxic, oxidizing, n.o.s.

* * * * *

Gas, refrigerated liquid, flammable, n.o.s.

* * * * *

Gas, refrigerated liquid, oxidizing, n.o.s.

* * * * *

Hydrocarbon gases, compressed, n.o.s.
Hydrocarbon gases mixtures, compressed, n.o.s.
Hydrocarbon gases, liquefied, n.o.s.
Hydrocarbon gases mixtures, liquefied, n.o.s.

* * * * *

Liquefied gas, toxic, corrosive, n.o.s.
Liquefied gas, toxic, flammable, corrosive, n.o.s.
Liquefied gas, toxic, oxidizing, corrosive, n.o.s.
Liquefied gas, toxic, oxidizing, n.o.s.

* * * * *

(m) * * *

(4) The provisions of paragraphs (m)(1) through (m)(3) of this section do not apply to a material if the toxicity of the material is based solely on the corrosive destruction of tissue rather than systemic poisoning.

* * * * *

§ 172.203 [Amended]

21. In addition, in § 172.203, in paragraph (m)(3), in the first sentence, the wording ''or 'Toxic-Inhalation Hazard' '' would be added immediately following '' 'Poison-Inhalation Hazard' ''; and in the second sentence the wording '' 'Poison' '' would be revised to read '' 'Poison' or 'Toxic' ''.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

22. The authority citation for part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

23. In § 173.3, paragraph (c)(3) would be revised and a new paragraph (c)(7) would be added, to read as follows:

§ 173.3 Packaging and exceptions.

* * * * *

(c) * * *

(3) Each salvage packaging must be marked with the proper shipping name of the hazardous material inside the packaging and the name and address of the consignee. In addition, the packaging must be marked ''SALVAGE'' or ''SALVAGE DRUM''.

* * * * *

(7) A salvage packaging marked ''T'' in accordance with applicable provisions in the UN Recommendations may be used.

§ 173.3 [Amended]

24. In addition, in § 173.3, in paragraph (c)(1), at the beginning of the paragraph, the wording ''The drum'' would be revised to read ''Except as provided in paragraph (c)(7) of this section, the drum''.

25. In § 173.21, the last sentence in paragraph (f) introductory text would be revised to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(f) * * * The SADT may be determined by any of the test methods described in Part II of the UN Manual of Tests and Criteria.

* * * * *

§ 173.32c [Amended]

26. In § 173.32c, in paragraph (j), the wording ''5,000 liters (1,900 gallons)'' would be revised to read ''7500 L''.

27. Section 173.60 would be revised to read as follows:

§ 173.60 General packaging requirements for explosives.

(a) Unless otherwise provided in this subpart and in § 173.7(a), packaging used for Class 1 (explosives) materials must meet Packing Group II requirements. Each packaging used for an explosive must be capable of meeting the test requirements of subpart M of part 178 of this subchapter, at the specified level of performance, and the applicable general packaging requirements of paragraph (b) of this section.

(b) The general requirements for packaging of explosives are as follows:

(1) Nails, staples, and other closure devices, made of metal, having no protective covering may not penetrate to the inside of the outer packaging unless the inner packaging adequately protects the explosive against contact with the metal.

(2) The closure device of containers for liquid explosives must provide double protection against leakage, such as a screw cap secured in place with tape.

(3) Inner packagings, fittings, and cushioning materials, and the placing of explosive substances or articles in packages, must be such that the explosive substance is prevented from becoming loose in the outer packaging during transportation. Metallic components of articles must be prevented from making contact with metal packagings. Articles containing explosive substances not enclosed in an outer casing must be separated from each other in order to prevent friction and impact. Padding, trays, partitioning in the inner or outer packaging, molded plastics or receptacles may be used for this purpose.

(4) When the packaging includes water that could freeze during transportation, a sufficient amount of anti-freeze, such as denatured ethyl alcohol, must be added to the water to prevent freezing. If the anti-freeze creates a fire hazard, it may not be used. When a percentage of water in the substance is specified, the combined weight of water and anti-freeze may be substituted.

(5) If an article is fitted with its own means of ignition or initiation, it must be effectively protected from accidental actuation during normal conditions of transportation.

(6) The entry of explosive substances into the recesses of double-seamed metal packagings must be prevented.

(7) The closure device of a metal drum must include a suitable gasket; if the closure device includes metal-to-metal screw-threads, the ingress of explosive substances into the threading must be prevented.

(8) Whenever loose explosive substances or the explosive substance of an uncased or partly cased article may come into contact with the inner surface of metal packagings (1A2, 1B2, 4A, 4B and metal receptacles), the metal packaging should be provided with an inner liner or coating.

(9) Packagings must be made of materials compatible with, and impermeable to, the explosives contained in the package, so that neither interaction between the explosives and the packaging materials, nor leakage, causes the explosive to become unsafe in transportation, or the hazard division or compatibility group to change.

(10) An explosive article containing an electrical means of initiation that is sensitive to external electromagnetic radiation, must have its means of initiation effectively protected from electromagnetic radiation sources (for example, radar or radio transmitters) through either design of the packaging or of the article, or both.

(11) Plastic packagings may not be able to generate or accumulate sufficient static electricity to cause the packaged explosive substances or articles to initiate, ignite or inadvertently function. Metal packagings must be compatible with the explosive substance they contain.

(12) Explosive substances may not be packed in inner or outer packagings where the differences in internal and external pressures, due to thermal or other effects, could cause an explosion or rupture of the package.

(13) Packagings for water soluble substances must be water resistant. Packagings for desensitized or phlegmatized substances must be closed to prevent changes in concentration during transport. When containing less alcohol, water, or phlegmatizer than specified in its proper shipping description, the substance is a ''forbidden'' material.

28. Section 173.62 would be revised to read as follows:

§ 173.62 Specific packaging requirements for explosives.

(a) Except as provided in paragraph (e) of this section, when the § 172.101 Table specifies that an explosive must be packaged in accordance with this section, only non-bulk packagings which conform to the provisions of paragraphs (b), (c) and (d) of this section and the applicable requirements in §§ 173.60 and 173.61 may be used unless otherwise approved by the Associate Administrator. Intermediate bulk packagings may be used for explosives assigned to Packing Instruction 117 in paragraph (b) of this section. Intermediate bulk packagings must conform with the requirements of this subchapter.

(b) Explosives Table. The Explosives Table specifies the Packing Instructions assigned to each explosive. Explosives are identified in the first column in numerical sequence by their identification number (ID #), which is listed in column 4 of the § 172.101 Table, of this subchapter. The second column of the Explosives Table specifies the Packing Instruction (PI)

which must be used for packaging the explosive. The Explosives Packing Method Table in paragraph (c) of this section defines the methods of packaging. The Packing Instructions are identified using a 3 digit designation. The Packing Instructions prefixed by the letters ''US'' are those particular to the United States and not found in applicable international regulations.

EXPLOSIVES TABLE

ID No.	PI
UN0004	112
UN0005	130
UN0006	130
UN0007	130
UN0009	130
UN0010	130
UN0012	130
UN0014	130
UN0015	130
UN0016	130
UN0018	130
UN0019	130
UN0020	101
UN0021	101
UN0027	113
UN0028	113
UN0029	131
UN0030	131
UN0033	130
UN0034	130
UN0035	130
UN0037	130
UN0038	130
UN0039	130
UN0042	132
UN0043	133
UN0044	133
UN0048	130
UN0049	135
UN0050	135
UN0054	135
UN0055	136
UN0056	130
UN0059	137
UN0060	132
UN0065	139
UN0066	140
UN0070	134
UN0072	112(a)
UN0073	133
UN0074	110(a) or 110(b)
UN0075	115
UN0076	112
UN0077	114
UN0078	112
UN0079	112(b) or 112(c)
UN0081	116
UN0082	116 or 117
UN0083	116
UN0084	116
UN0092	135
UN0093	135
UN0094	113
UN0099	134
UN0101	140
UN0102	139
UN0103	140
UN0104	139
UN0105	140
UN0106	141

EXPLOSIVES TABLE—Continued

ID No.	PI
UN0107	141
UN0110	141
UN0113	110(a) or 110(b)
UN0114	110(a) or 110(b)
UN0118	112
UN0121	142
UN0124	US1
UN0129	110(a) or 110(b)
UN0130	110(a) or 110(b)
UN0131	142
UN0132	114(b)
UN0133	112(a)
UN0135	110(a) or 110(b)
UN0136	130
UN0137	130
UN0138	130
UN0143	115
UN0144	115
UN0146	112
UN0147	112(b)
UN0150	112(a) or 112(b)
UN0151	112
UN0153	112(b) or 112(c)
UN0154	112
UN0155	112(b) or 112(c)
UN0159	111
UN0160	114(b)
UN0161	114(b)
UN0167	130
UN0168	130
UN0169	130
UN0171	130
UN0173	134
UN0174	134
UN0180	130
UN0181	130
UN0182	130
UN0183	130
UN0186	130
UN0190	101
UN0191	135
UN0192	135
UN0193	135
UN0194	135
UN0195	135
UN0196	135
UN0197	135
UN0204	134
UN0207	112(b) or 112(c)
UN0208	112(b) or 112(c)
UN0209	112
UN0212	133
UN0213	112(b) or 112(c)
UN0214	112
UN0215	112
UN0216	112(b) or 112(c)
UN0217	112(b) or 112(c)
UN0218	112(b) or 112(c)
UN0219	112
UN0220	112
UN0221	130
UN0222	112(b) or 112(c)
UN0224	110(a) or 110(b)
UN0225	133
UN0226	112(a)
UN0234	114
UN0235	114
UN0236	114
UN0237	138
UN0238	130
UN0240	130
UN0241	116 or 117

EXPLOSIVES TABLE—Continued

ID No.	PI
UN0242	130
UN0243	130
UN0244	130
UN0245	130
UN0246	130
UN0247	101
UN0248	144
UN0249	144
UN0250	101
UN0254	130
UN0255	131
UN0257	141
UN0266	112
UN0267	131
UN0268	133
UN0271	143
UN0272	143
UN0275	134
UN0276	134
UN0277	134
UN0278	134
UN0279	130
UN0280	130
UN0281	130
UN0282	112
UN0283	132
UN0284	141
UN0285	141
UN0286	130
UN0287	130
UN0288	138
UN0289	139
UN0290	139
UN0291	130
UN0292	141
UN0293	141
UN0294	130
UN0295	130
UN0296	134
UN0297	130
UN0299	130
UN0300	130
UN0301	130
UN0303	130
UN0305	113
UN0306	133
UN0312	135
UN0313	135
UN0314	142
UN0315	142
UN0316	141
UN0317	141
UN0318	141
UN0319	133
UN0320	133
UN0321	130
UN0322	101
UN0323	134
UN0324	130
UN0325	142
UN0326	130
UN0327	130
UN0328	130
UN0329	130
UN0330	130
UN0331	116 or 117
UN0332	116 or 117
UN0333	135
UN0334	135
UN0335	135
UN0336	135
UN0337	135

EXPLOSIVES TABLE—Continued

ID No.	PI
UN0338	130
UN0339	130
UN0340	112(a) or 112(b)
UN0341	112(b)
UN0342	114(a)
UN0343	111
UN0344	130
UN0345	130
UN0346	130
UN0347	130
UN0348	130
UN0349	101
UN0350	101
UN0351	101
UN0352	101
UN0353	101
UN0354	101
UN0355	101
UN0356	101
UN0357	101
UN0358	101
UN0359	101
UN0360	131
UN0361	131
UN0362	130
UN0363	130
UN0364	133
UN0365	133
UN0366	133
UN0367	141
UN0368	141
UN0369	130
UN0370	130
UN0371	130
UN0372	141
UN0373	135
UN0374	134
UN0375	134
UN0376	133
UN0377	133
UN0378	133
UN0379	136
UN0380	101
UN0381	134
UN0382	101
UN0383	101
UN0384	101
UN0385	112(b) or 112(c)
UN0386	112(b) or 112(c)
UN0387	112(b) or 112(c)
UN0388	112(b) or 112(c)
UN0389	112(b) or 112(c)
UN0390	112(b) or 112(c)
UN0391	112(a)
UN0392	112(b) or 112(c)
UN0393	112(b)
UN0394	112(a)
UN0395	101
UN0396	101
UN0397	101
UN0398	101
UN0399	101
UN0400	101
UN0401	112
UN0402	112(b) or 112(c)
UN0403	135
UN0404	135
UN0405	135
UN0406	114(b)
UN0407	114(b)

EXPLOSIVES TABLE—Continued

ID No.	PI
UN0408	141
UN0409	141
UN0410	141
UN0411	112(b) or 112(c)
UN0412	130
UN0413	130
UN0414	130
UN0415	143
UN0417	130
UN0418	135
UN0419	135
UN0420	135
UN0421	135
UN0424	130
UN0425	130
UN0426	130
UN0427	130
UN0428	135
UN0429	135
UN0430	135
UN0431	135
UN0432	135
UN0433	111
UN0434	130
UN0435	130
UN0436	130
UN0437	130
UN0438	130
UN0439	137
UN0440	137
UN0441	137
UN0442	137
UN0443	137
UN0444	137
UN0445	137
UN0446	136
UN0447	136
UN0448	114(b)
UN0449	101
UN0450	101
UN0451	130
UN0452	141
UN0453	130
UN0454	142
UN0455	131
UN0456	131
UN0457	130
UN0458	130
UN0459	130
UN0460	130
UN0461	101
UN0462	101
UN0463	101
UN0464	101
UN0465	101
UN0466	101
UN0467	101
UN0468	101
UN0469	101
UN0470	101
UN0471	101
UN0472	101
UN0473	101
UN0474	101
UN0475	101
UN0476	101
UN0477	101
UN0478	101
UN0479	101
UN0480	101

EXPLOSIVES TABLE—Continued

ID No.	PI
UN0481	101
UN0482	101
UN0483	112(b) or 112(c)
UN0484	112(b) or 112(c)
UN0486	101
UN0487	135
UN0488	130
UN0489	112(b) or 112(c)
UN0490	112(b) or 112(c)
UN0491	143
UN0492	135
UN0493	135
UN0494	US1
UN0495	115
UN0496	112(b) or 112(c)
UN0497	115
UN0498	114(b)
UN0499	114(b)
UN0500	131
NA0124	US1
NA0276	134
NA0323	134
NA0337	135
NA0349	133
NA0494	US1

(c) Explosives Packing Instruction Table. Explosives must be packaged in accordance with the following table:

(1) The first column lists, in alphanumeric sequence, the packing methods prescribed for explosives in the Explosives Table of paragraph (b) of this section.

(2) The second column specifies the inner packagings that are required. If inner packagings are not required, a notation of ''Not necessary'' appears in the column. The term ''Not necessary'' means that a suitable inner packaging may be used but is not required.

(3) The third column specifies the intermediate packagings that are required. If intermediate packagings are not required, a notation of ''Not necessary'' appears in the column. The term ''Not necessary'' means that a suitable intermediate packaging may be used but is not required.

(4) The fourth column specifies the outer packagings which are required. If inner packagings and/or intermediate packagings are specified in the second and third columns, then the packaging specified in the fourth column must be used as the outer packaging of a combination packaging; otherwise it may be used as a single packaging.

(5) Packing Instruction 101 may be used for any explosive substance or article if an equivalent level of safety is shown to be maintained subject to the approval of the Associate Administrator.

TABLE OF PACKING METHODS

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
101			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS:	This Packing Instruction may be used as an alternative to a specifically assigned packing method with the approval of the Associate Administrator for Hazardous Materials Safety prior to transportation. When this packing instruction is used, the following must be marked on the shipping documents: ''Packaging approved by the competent authority of the United States of America (USA)''.		
1. Samples of new or existing explosive substances or articles may be transported as directed by the Associate Administrator for Hazardous Materials Safety for purposes including: testing, classification, research and development, quality control, or as a commercial sample. Explosive samples which are wetted or desensitized must be limited to 25 kg. Explosive samples which are not wetted or desensitized must be limited to 10 kg in small packages as specified by the Associate Administrator for Hazardous Materials Safety.			
110(a)			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. The Intermediate packagings must be filled with water saturated material such as an anti-freeze solution or wetted cushioning. 2. Outer packagings must be filled with water saturated material such as an anti-freeze solution or wetted cushioning. Outer packagings must be constructed and sealed to prevent evaporation of the wetting solution, except when 0224 is being carried dry.	Bags plastics textile, plastic coated or lined rubber textile, rubberized textile	Bags plastics textile, plastic coated or lined rubber textile, rubberized Receptacles plastics metal	Drums steel, removable (1A2). plastics, removable head (1H2)
110(b)			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN 0074, 0113, 0114, 0129, 0130, 0135 and 0224, the following conditions must be satisfied: a. inner packagings must not contain more than 50 g of explosive substance (quantity corresponding to dry substance); b. each inner packaging must be separated from other inner packagings by dividing partitions; and c. the outer packaging must not be partitioned with more than 25 compartments.	Receptacles metal wood rubber, conductive plastics, conductive Bags rubber, conductive plastics, conductive	Dividing partitions metal wood plastics fibreboard	Boxes natural wood, sift-proof wall (4C2) plywood (4D). reconstituted wood (4F)
111			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN 0159, inner packagings are not required when metal (1A2 or 1B2) or plastics (1H2) drums are used as outer packagings.	Bags paper, waterproofed plastics textile, rubberized Sheets plastics textile, rubberized	Not necessary	Boxes steel (4A). aluminium (4B). natural wood, ordinary (4C1) natural wood, sift proof (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, expanded (4H1) plastics, solid (4H2) Drums steel, removable head (1A2) aluminium, removable head (1B2) plywood (1D) fibreboard (1G) plastics, removable head (1H2)
112(a)			
This packing instruction applies to wetted solids.			

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN Nos. 0004, 0076, 0078, 0154, 0219 and 0394, packagings must be lead free. 2. Intermediate packagings are not required if leakproof drums are used as the outer packaging. 3. For UN 0072 and UN 0226, intermediate packagings are not required.	Bags paper, multiwall, water resistant plastics textile textile, rubberized woven plastics Receptacles metal plastics	Bags plastics textile, plastic coated or lined Receptacles metal plastics	Boxes steel (4A) aluminium (4B) natural wood, ordinary (4C1) natural wood, sift proof (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, expanded (4H1) plastics, solid (4H2) Drums steel, removable head (1A2) aluminium, removable head (1B2) fibre (1G) plastics, removable head (1H2)
112(b) This packing instruction applies to dry solids other than powders.			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0004, 0076, 0078, 0154, 0216, 0219 and 0386, packagings must be lead free. 2. For UN 0209, bags, sift-proof (5H2) are recommended for flake or prilled TNT in the dry state and a maximum net mass of 30 kg. 3. For UN 0222 and UN 0223, inner packagings are not required.	Bags paper, Kraft paper, multiwall, water resistant plastics textile textile, rubberized woven plastics	Bags (for UN 0150 only) plastics textile, plastic coated or lined	Bags woven plastics, sift-proof (5H2/3) plastics, film (5H4) textile, sift-proof (5L2) textile, water resistant (5L3) paper, multiwall, water resistant (5M2) Boxes steel (4A) aluminium (4B) natural wood, ordinary (4C1) natural wood, sift proof (4C2) plywood (4D) reconstituted wood (4F) fibre board (4G) plastics, expanded (4H1) plastics, solid (4H2) Drums steel, removable head (1A2) aluminium, removable head (1B2) fibre (1G) plastics, removable head (1H2)
112(c) This packing instruction applies to solid dry powders			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0004, 0076, 0078, 0154, 0216, 0219 and 0386, packagings must be lead free. 2. For UN 0209, bags, sift-proof (5H2) are recommended for flake or prilled TNT in the dry state. Bags must not exceed a maximum net mass of 30 kg. 3. Inner packagings are not required if drums are used as the outer packaging. 4. At least one of the packagings must be sift-proof.	Bags paper, multiwall, water resistant plastics woven plastics Receptacles fibreboard metal plastics wood	Bags paper, multiwall water resistant with inner lining plastics Receptacles metal plastics	Boxes steel (4A) natural wood, ordinary (4C1) natural wood, sift proof (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, solid (4H2) Drums steel, removable head (1A2) aluminium, removable head (1B2) fibre (1G).
113			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0077, 0234, 0235 and 236, packagings must be lead free 2. For UN 0342, inner packagings are not required when metal (1A2 or 1B2) or plastics (1H2) drums are used as outer packagings 3. Intermediate packagings are not required if leakproof removable head drums are used as the outer packaging.	Bags paper plastics textile, rubberized Receptacles fibreboard metal plastics wood Sheets paper, kraft paper, waxed	Not necessary	Boxes steel (4A) natural wood, ordinary (4C1) natural wood, sift-proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, solid (4H2) Drums steel, removable head (1A2) aluminium, removable head (1B2) fibre (1G)
114(a) This packing instruction applies to wetted solids.			

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0077, 0234, 0235 and 0236, packagings must be lead free 2. For UN 0342, inner packagings are not required when metal (1A2 or 1B2) or plastics (1H2) drums are used as outer packagings 3. Intermediate packagings are not required if leakproof removable head drums are used as the outer packaging.	Bags plastics textile woven plastics Receptacles metal plastics	Bags plastics textile, plastic coated or lined Receptacles metal plastics	Boxes steel (4A) natural wood, ordinary (4C1) natural wood, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, solid (4H2) Drums steel, removable head (1A2) aluminium, removable head (1B2) plywood (1D) fibre (1G) plastics, removable head (1H2)
114(b)			
This packaging instruction applies to dry solids			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0077, 0132, 0234, 0235 and 0236, packagings must be lead free. 2. For UN 0160 and UN 0161, when metal drums (1A2 or 1B2) are used as the outer packaging, metal packagings must be so constructed that the risk of explosion, by reason of increase internal pressure from internal or extenernal causes is prevented. . For UN 0160 and UN 0161, inner packagings are not required if drums are used as the outer packaging.	Bags paper, kraft plastics textile, sift-proof woven plastics, sift-proof Receptables fibreboard metal paper plastics woven plastics, sift-proof	Not necessary	Boxes natural wood, ordinary (4C1) natural wood, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) Drums steel, removable head (1A2) aluminium, removable head (1B2) plywood (1D) fibre (1G) plastics, removable head (1H2)
115			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For liquid explosives, inner packagings must be surrounded with non-combustible absorbent cushioning material in sufficient quantity to absorb the entire liquid content. Metal receptacles should be cushioned from each other. The net mass of explosive per package may not exceed 30 kg when boxes are used as outer packaging. The net volume of explosive in each package other than boxes must not exceed 120 litres. 2. For UN 0075, 0143, 0495 and 0497 when boxes are used as the outer packaging, inner packagings must have taped screw cap closures and be not more than 5 litres capacity each. A composite packaging consisting of a plastic receptacle in a metal drum (6HA1) may be used in lieu of combination packagings. Liquid substances must not freeze at temperatures above −15°C (+5°F). 3. For UN 0144, intermediate packagings are not necessary.	Receptacles metal plastics	Bags plastics in metal receptacles Drums metal	Boxes natural wood, ordinary (4C1) natural wood, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) Drums steel, removable head (1A2) aluminium, removable head (1B2) plywood (1D) fibre (1G) Specification MC 200 containers may be used for transport by motor vehicle.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
116			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0082, 0241, 0331 and 0332, inner packagings are not necessary if leakproof removable head drums are used as the outer packaging. 2. For UN 0082, 0241, 0331 and 0332, inner packagings are not required when the explosive is contained in a material impervious to liquid. 3. For UN 0081, inner packagings are not required when contained in rigid plastic which is impervious to nitric esters. 4. For UN 0331, inner packagings are not required when bags (5H2), (5H3) or (5H4) are used as outer packagings. 5. Bags (5H2 or 5H3) must be used only for UN 0082, 0241, 0331 and 0332. 6. For UN 0081, bags must not be used as outer packagings.	Bags paper, water and oil resistant plastics textile, plastic coated or lined woven plasics, sift-proof Receptacles fibreboard, water resistant metal plastics wood, sift-proof Sheets paper, water resistant paper, waxed plastics	Not necessary	Bags woven plastics (5H1/2/3). paper, multiwall, water resistant (5M2) plastics, film (5H4) textile, sift-proof (5L2) textile, water resistant (5L3) Boxes steel (4A) aluminium (4B) wood, natural, ordinary (4C1) natural wood, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, solid (4H2) Drums steel, removable head (1A2) aluminium, removable head (1B2) fibre (1G) plastics, removable head (1H2) Jerricans steel, removable head (3A2) plastics, removable head (3H2)
117			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. This packing instruction may only be used for explosives of 0082 when they are mixtures of ammonium nitrate or other inorganic nitrates with other combustible substances which are not explosive ingredients. Such explosives must not contain nitroglycerin, similar liquid organic nitrates, liquid or solid nitrocarbons, or chlorates. 2. This packing instruction may only be used for explosives of UN 0241 which consist of water as an essential ingredient and high proportions of ammonium nitrate or other oxidizers, some or all of which are in solution. The other constituents may include hydrocarbons or aluminium powder, but must not include nitro-derivatives such as trinitrotoluene. 3. Metal IBCs must not be used for UN 0082 and 0241. 4. Flexible IBCs may only be used for solids.	Not necessary	Not necessary	IBCs metal (11A), (11B), (11N), (21A), (21B), (21N), (31A), (31B), (31N) flexible (13H2), (13H3), (13H4), (13L2), (13L3), (13L4), (13M2) rigid plastics (11H1), (11H2), (21H1), (21H2), (31H1), (31H2) composite (11HZ1), (11HZ2), (21HZ1), (21HZ2), (31HZ1), (31HZ2)

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
130			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. The following applies to UN 0006, 0009, 0010, 0015, 0016, 0018, 0019, 0034, 0035, 0038, 0039, 0048, 0056, 0137, 0138, 0168, 0169, 0171, 0181, 0182, 0183, 0186, 0221, 0238, 0243, 0244, 0245, 0246, 0254, 0280, 0281, 0286, 0287, 0297, 0299, 0300, 0301, 0303, 0321, 0328, 0329, 0344, 0345 0346, 0347, 0362, 0363, 0370, 0412, 0424, 0425, 0434, 0435, 0436, 0437, 0438, 0451, 0459 and 0488. Large and robust explosives articles, normally intended for military use, without their means of initiation or with their means of initiation containing at least two effective protective features, may be carried unpackaged. When such articles have propelling charges or are self-propelled, their ignition systems must be protected against stimuli encountered during normal conditions of transport. A negative result in Test Series 4 on an unpackaged article indicates that the article can be considered for transport unpackaged. Such unpackaged articles may be fixed to cradles or contained in crates or other suitable handling devices.	Not necessary	Not necessary	Boxes steel (4A) aluminium (4B) wood natural, ordinary (4C1) natural wood, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, expanded (4H1) plastics, solid (4H2) Drums steel, removable head (1A2) aluminium, removable head (1B2) fibre (1G) plastics, removable head (1H2)
131			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0029, 0267 and 0455, bags and reels may not be used as inner packagings. 2. For UN 0030, 0255 and 0456, inner packagings are not required when detonators are packed in pasteboard tubes, or when their leg wires are wound on spools with the caps either placed inside the spool or securely taped to the wire on the spool, so as to restrict freedom of movement of the caps and to protect them from impact forces. 3. For UN 0360, 0361 and 0500, detonators are not required to be attached to the safety fuse, metal-clad mild detonating cord, detonating cord, or shock tube. Inner packagings are not required if the packing configuration restricts freedom of movement of the caps and protects them from impact forces.	Bags paper plastics Receptacles fibreboard metal plastics wood Reels	Not necessary	Boxes steel (4A) aluminium (4B) wood, natural, ordinary (4C1) natural wood, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) Drums steel, removable head (1A2) aluminium, removable head (1B2) fibre (1G) plastics, removable head (1H2)
132(a)			
	Not necessary	Not necessary	Boxes steel (4A) aluminium (4B) wood, natural, ordinary (4C1) wood, natural, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, solid (4H2)

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
132(b)			
	Receptacles fibreboard metal plastics Sheets paper plastics	Not necessary	Boxes steel (4A) aluminium (4B) wood, natural, ordinary (4C1) wood, natural, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, solid (4H2)
133			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0043, 0060, 0225, 0268 and 0306 trays are not authorized as inner packagings. 2. Intermediate packagings are only required when trays are used as inner packagings.	Receptacles fibreboard metal plastics wood Trays, fitted with dividing partitions fibreboard plastics wood	Receptacles fibreboard metal plastics wood	Boxes steel (4A) aluminium (4B) wood, natural, ordinary (4C1) wood, natural, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, solid (4H2)
134			
	Bags water resistant Receptacles fibreboard metal plastics wood Sheets fibreboard, corrugated Tubes fibreboard	Not necessary	Boxes steel (4A) aluminium (4B) wood, natural, ordinary (4C1) wood, natural, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, solid (4H2) Drums steel, removable head (1A2) aluminium, removable head (1B2)
135			
	Bags paper plastics Receptacles fibreboard metal plastics wood Sheets paper plastics	Not necessary	Boxes steel (4A) aluminium (4B) wood, natural, ordinary (4C1) wood, natural, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, expanded (4H1) plastics, solid (4H2) Drums steel, removable head (1A2) aluminium, removable head (1B2) fibre (1G) plastics, removable head (1H2)
136			
	Bags plastics textile Boxes fibreboard plastics wood Dividing partitions in the outer packagings	Not necessary	Boxes steel (4A) aluminium (4B) wood, natural, ordinary (4C1) wood, natural, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, solid (4H2) Drums steel, removable head (1A2) aluminium, removable head (1B2) fibre (1G) plastics, removable head (1H2)

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
137			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN 0059, 0439, 0440 and 0441, when the shaped charges are packed singly, the conical cavity must face downwards and the package marked ''THIS SIDE UP''. When the shaped charges are packed in pairs, the conical cavities must face inwards to minimize the jetting effect in the event of accidental initiation.	Bags plastics Boxes fibreboard Tubes fibreboard metal plastics Dividing partitions in the outer packagings	Not necessary	Boxes steel (4A) aluminium (4B) wood, natural, ordinary (4C1) wood, natural, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G)
138			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: If the ends of the articles are sealed, inner packagings are not necessary.	Bags plastics	Not necessary	Boxes steel (4A) aluminium (4B) wood, natural, ordinary (4C1) wood, natural, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, solid (4H2) Drums steel, removable head (1A2) aluminium, removable head (1B2)
139			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0065, 0102, 0104, 0289 and 0290, the ends of the detonating cord must be sealed, for example, by a plug firmly fixed so that the explosive cannot escape. The ends of CORD DETONATING flexible must be fastened securely. 2. For UN 0065 and UN 0289, inner packagings are not required when they are fastened securely in coils.	Bags plastics Receptacles fibreboard metal plastics wood Reels Sheets paper plastics	Not necessary	Boxes steel (4A) aluminium (4B) wood, natural, ordinary (4C1) wood, natural, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, solid (4H2) Drums steel, removable head (1A2) aluminium, removable head (1B2) plywood (1D) fibre (1G) plastics, removable head (1H2)
140			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. If the ends of UN 0105 are sealed, no inner packagings are required. 2. For UN 0101, the packaging must be sift-proof except when the fuse is covered by a paper tube and both ends of the tube are covered with removable caps. 3. For UN 0101, steel or aluminium boxes or drums must not be used.	Bags plastics Reels Sheets paper, kraft plastics	Not necessary	Boxes steel (4A) aluminium (4B) wood, natural, ordinary (4C1) wood, natural, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, solid (4H2) Drums steel, removable head (1A2) aluminium, removable head (1B2) fibre (1G)
141			
	Receptacles fibreboard metal plastics wood Trays, fitted with dividing partitions plastics wood Dividing partitions in the outer packagings	Not necessary	Boxes steel (4A) aluminium (4B) wood, natural, ordinary (4C1) wood, natural, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, solid (4H2) Drums steel, removable head (1A2) aluminium, removable head (1B2) fibre (1G) plastics, removable head (1H2)

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
142			
	Bags paper plastics Receptacles fibreboard metal plastics wood Sheets paper Trays, fitted with dividing partitions plastics	Not necessary	Boxes steel (4A) aluminium (4B) wood, natural, ordinary (4C1) wood, natural, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, solid (4H2) Drums steel, removable head (1A2) aluminium, removable head (1B2) fibre (1G) plastics, removable head (1H2)
143			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0271, 0272, 0415 and 0491 when metal packagings are used, metal packagings must be so constructed that the risk of explosion, by reason of increase in internal pressure from internal or external causes is prevented. 2. Composite packagings (6HH2) (plastic receptacle with outer solid box) may be used in lieu of combination packagings.	Bags paper, kraft plastics textile textile, rubberized Receptacles fibreboard metal plastics Trays, fitted with dividing partitions plastics wood	Not necessary	Boxes steel (4A) aluminium (4B) wood, natural, ordinary (4C1) wood, natural, sift proof walls (4C2) plywood (4D) reconstituted wood (4F) fibreboard (4G) plastics, solid (4H2) Drums steel, removable head (1A2) aluminium, removable head (1B2) plywood (1D) fibre (1G) plastics, removable head (1H2)
144			
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN 0248 and UN 0249, packagings must be protected against the ingress of water. When CONTRIVANCES, WATER ACTIVATED are transported unpackaged, they must be provided with at least two independent protective features which prevent the ingress of water.	Receptacles fibreboard metal plastics Dividing partitions in the outer packagings	Not necessary	Boxes steel (4A) aluminium (4B) wood, natural, ordinary (4C1) with metal liner plywood (4D) with metal liner reconstituted wood (4F) with metal liner plastics, expanded (4H1)

US 1

1. A jet perforating gun, charged, oil well may be transported under the following conditions:

a. Initiation devices carried on the same motor vehicle or offshore supply vessel must be segregated; each kind from every other kind, and from any gun, tool or other supplies, unless approved in accordance with § 173.56. Segregated initiation devices must be carried in a container having individual pockets for each such device or in a fully enclosed steel container lined with a non-sparking material. No more than two segregated initiation devices per gun may be carried on the same motor vehicle.

b. Each shaped charge affixed to the gun may not contain more than 112 g (4 ounces) of explosives.

c. Each shaped charge if not completely enclosed in glass or metal, must be fully protected by a metal cover after installation in the gun.

d. A jet perforating gun classed as 1.1D or 1.4D may be transported by highway by private or contract carriers engaged in oil well operations.

(i) A motor vehicle transporting a gun must have specially built racks or carrying cases designed and constructed so that the gun is securely held in place during transportation and is not subject to damage by contact, one to the other or any other article or material carried in the vehicle, and;

(ii) The assembled gun packed on the vehicle may not extend beyond the body of the motor vehicle.

e. A jet perforating gun classed as 1.4D may be transported by a private offshore supply vessel only when the gun is carried in a motor vehicle as specified in paragraph (d) of this packing method or on offshore well tool pallets provided that:

(i) All the conditions specified in paragraphs (a), (b), and (c) of this packing method are met;

(ii) The total explosive contents do not exceed 9.1 kg (20 pounds) per tool pallet;

(iii) Each cargo vessel compartment may contain up to 90.8 kg (200 pounds) of explosive content if the segregation requirements in §176.83(b)(3) of this subchapter are met; and

(iv) When more than one vehicle or tool pallet is stowed ''on deck'' a minimum horizontal separation of 3 m (9.8 feet) must be provided.

(d) Class 1 (explosive) materials owned by the Department of Defense and packaged prior to January 1, 1990, in accordance with the requirements of this subchapter in effect at that time, are excepted from the requirements of part 178 of this subchapter provided the packagings have maintained their integrity and the goods are declared as government-owned goods packaged prior to January 1, 1990.

§ 173.124 [Amended]

29. In § 173.124, the following changes would be made:

a. In paragraph (a)(1) introductory text, the word ''Wetted'' would be revised to read ''Desensitized''.

b. In paragraph (a)(2)(i)(D)(*2*) the words ''for a 50 kg package'' would be added after the words ''greater than 75 °C (167 °F)''.

c. In paragraphs (a)(3) (ii) and (iii), the wording ''paragraph 2.c.(2) of appendix E to this part'' would be revised to read ''UN Manual of Tests and Criteria'' each place it appears.

d. In paragraph (b)(1), the wording ''paragraph 3.a.(1) or 3.a.(2), as appropriate, of appendix E to this part'' would be revised to read ''the UN Manual of Tests and Criteria''.

e. In paragraph (b)(2), the wording ''paragraph 3.b.(1) of appendix E to this part'' would be revised to read ''UN Manual of Tests and Criteria''.

f. In paragraph (c), the wording ''paragraph 4 of appendix E to this part''

would be revised to read ''UN Manual of Tests and Criteria''.

30. In § 173.125, paragraphs (b), (c)(2)(i), (c)(2)(ii), and (d)(1) through (d)(3) would be revised to read as follows:

§ 173.125 Class 4—Assignment of packing group.

* * * * *

(b) Packing group criteria for readily combustible materials of Division 4.1 are as follows:

(1) Powdered, granular or pasty materials must be classified in Division 4.1 when the time of burning of one or more of the test runs, in accordance with the UN Manual of Tests and Criteria is less than 45 seconds or the rate of burning is more than 2.2 mm/s. Powders of metals or metal alloys must be classified in Division 4.1 when they can be ignited and the reaction spreads over the whole length of the sample in 10 minutes or less.

(2) Packing group criteria for readily combustible materials of Division 4.1 are assigned as follows:

(i) For readily combustible solids (other than metal powders), Packing Group II if the burning time is less than 45 seconds and the flame passes the wetted zone. Packing Group II must be assigned to powders of metal or metal alloys if the zone of reaction spreads over the whole length of the sample in 5 minutes or less.

(ii) For readily combustible solids (other than metal powders), Packing Group III must be assigned if the burning rate time is less than 45 seconds and the wetted zone stops the flame propagation for at least 4 minutes. Packing Group III must be assigned to metal powders if the reaction spreads over the whole length of the sample in more than 5 minutes but not more than 10 minutes.

(c) * * *

(2) * * *

(i) Packing Group II, if the material gives a positive test result when tested with a 2.5-cm cube size sample at 140 °C; or

(ii) Packing Group III, if—

(A) A positive test result is obtained in a test using a 100 mm sample cube at 140 °C and a negative test result is obtained in a test using a 25 mm sample cube at 140 °C and the substance is transported in packagings with a volume of more than 3 cubic meters; or

(B) A positive test result is obtained in a test using a 100 mm sample cube at 120 °C and a negative result is obtained in a test using a 25 mm sample cube at 140 °C and the substance is transported in packagings with a volume of more than 450 liters; or

(C) A positive result is obtained in a test using a 100 mm sample cube at 100 °C and a negative result is obtained in a test using a 25 mm sample cube at 140 °C and the substance is transported in packagings with a volume of more than 450 liters.

(d) * * *

(1) Packing Group I, if the material reacts vigorously with water at ambient temperatures and demonstrates a tendency for the gas produced to ignite spontaneously, or which reacts readily with water at ambient temperatures such that the rate of evolution of flammable gases is equal or greater than 10 liters per kilogram of material over any one minute;

(2) Packing Group II, if the material reacts readily with water at ambient temperatures such that the maximum rate of evolution of flammable gases is equal to or greater than 20 liters per kilogram of material per hour, and which does not meet the criteria for Packing Group I; or

(3) Packing Group III, if the material reacts slowly with water at ambient temperatures such that the maximum rate of evolution of flammable gases is greater than 1 liter per kilogram of material per hour, and which does not meet the criteria for Packing Group I or II.

31. Section 173.127 would be revised to read as follows:

§ 173.127 Class 5, Division 5.1—Definition and assignment of packing groups.

(a) *Definition.* For the purpose of this subchapter, *oxidizer* (Division 5.1) means a material that may, generally by yielding oxygen, cause or enhance the combustion of other materials.

(1) A solid material is classed as a Division 5.1 material if, when tested in accordance with the UN Manual of Tests and Criteria, its mean burning time is less than or equal to the burning time of a 3:7 potassium bromate/cellulose mixture.

(2) A liquid material is classed as a Division 5.1 material if, when tested in accordance with the UN Manual of Tests and Criteria, it spontaneously ignites or its mean time for a pressure rise from 690 kPa to 2070 kPa gauge is less then the time of a 1:1 nitric acid (65 percent)/cellulose mixture.

(b) *Assignment of packing groups.* (1) The packing group of a Division 5.1 material which is a solid shall be assigned using the following criteria:

(i) Packing Group I, for any material which, in either concentration tested, exhibits a mean burning time less than the mean burning time of a 3:2 potassium bromate/cellulose mixture;

(ii) Packing Group II, for any material which, in either concentration tested, exhibits a mean burning time less than or equal to the mean burning time of a 2:3 potassium bromate/cellulose mixture and the criteria for Packing Group I are not met;

(iii) Packing Group III for any material which, in either concentration tested, exhibits a mean burning time less than or equal to the mean burning time of a 3:7 potassium bromate/cellulose mixture and the criteria for Packing Groups I and II are not met.

(2) The packing group of a Division 5.1 material which is a liquid shall be assigned using the following criteria:

(i) Packing Group I for:

(A) Any material which spontaneously ignites when mixed with cellulose in a 1:1 ratio; or

(B) Any material which exhibits a mean pressure rise time less than the pressure rise time of a 1:1 perchloric acid (50 percent)/cellulose mixture.

(ii) Packing Group II, any material which exhibits a mean pressure rise time less than or equal to the pressure rise time of a 1:1 aqueous sodium chlorate solution (40 percent)/cellulose mixture and the criteria for Packing Group I are not met.

(iii) Packing Group III, any material which exhibits a mean pressure rise time less than or equal to the pressure rise time of a 1:1 nitric acid (65 percent)/cellulose mixture and the criteria for Packing Group I and II are not met.

§ 173.128 [Amended]

32. In § 173.128, the following changes would be made:

a. In paragraph (c)(3), the wording ''United Nations Recommendations on the Transport of Dangerous Goods, Tests and Criteria, part III'' would be revised to read ''UN Manual of Tests and Criteria''.

b. In paragraph (e), the wording ''Figure 11.1 (Classification and Flow Chart Scheme for Organic Peroxides) from the UN Recommendations, Tests and Criteria, part III'' would be revised to read ''Figure 11.2 (Classification and Flow Chart Scheme for Organic Peroxides) from the UN Manual of Tests and Criteria, Part II''.

33. In § 173.132, a new paragraph (b)(3)(iii) would be added, paragraph (c) would be redesignated as paragraph (d), and a new paragraph (c) would be added, to read as follows:

§ 173.132 Class 6, Division 6.1—Definitions.

* * * * *

(b) * * *

(3) * * *

(iii) A solid substance must be tested if at least 10 percent of its total mass is likely to be dust in a respirable range, *e.g.,* the aerodynamic diameter of that particle-fraction is 10 microns or less. A liquid substance must be tested if a mist is likely to be generated in a leakage of the transport containment. Both for solid and liquid substances more than 90% (by mass) of a specimen prepared for inhalation toxicity must be in the respirable range as defined in this paragraph (b)(3)(iii).

(c) For purposes of classifying and assigning packing groups to mixtures possessing oral or dermal toxicity hazards according to the criteria in § 173.133(a)(1), it is necessary to determine the acute LD_{50} of the mixture. If a mixture contains more than one active constituent, there are three possible approaches that may be used to determine the oral or dermal LD_{50} of the mixture. The preferred method is to obtain reliable acute oral and dermal toxicity data on the actual mixture to be transported. If reliable, accurate data is not available, then either of the following methods may be performed:

(1) Classify the formulation according to the most hazardous constituent of the mixture as if that constituent were present in the same concentration as the total concentration of all active constituents; or

(2) Apply the formula:

$$\frac{C_A}{T_A} + \frac{C_B}{T_B} \frac{C_Z}{T_Z} = \frac{100}{T_M}$$

Where:

C=the % concentration of constituent A, B . . . Z in the mixture;

T=the oral LD_{50} values of constituent A, B . . . Z;

T_M=the oral LD_{50} value of the mixture.

* * * * *

34. In § 173.136, a new paragraph (c) would be added to read as follows:

§ 173.136 Class 8—Definitions

* * * * *

(c) Skin corrosion test data produced no later than September 30, 1995, using the procedures of Part 173, Appendix A, in effect on September 30, 1995 (see 49 CFR part 173, appendix A, revised as of October 1, 1994) for appropriate exposure times may be used for classification and assignment of packing group for Class 8 materials corrosive to skin.

§ 173.137 [Amended]

35. In § 173.137, in paragraph (b), the wording ''other than those meeting Packing Group I criteria'' would be added immediately following the word ''Materials''.

36. In § 173.152, a new paragraph (b)(3)(iii) would be added to read as follows:

§ 173.152 Exceptions for Division 5.1 (oxidizers) and Division 5.2 (organic peroxides).

* * * * *

(b) * * *

(3) * * *

(iii) For polyester resin kits transported by highway, rail, or vessel, the organic peroxide (the activator) must be of type D, E, or F and not require temperature control. The organic peroxide must be packed in inner packagings not over 125 ml (4.22 ounces) net capacity each for liquids or 500 g (17.64 ounces) net capacity each for solids. The flammable liquid (the base) must be packed in inner packagings in accordance with § 173.150 (b)(2) or (b)(3). The components must be packed in strong outer packagings. The total gross weight of the completed package may not exceed 30 kg (66 pounds).

* * * * *

37. In § 173.162, a sentence would be added at the end of the section to read as follows:

§ 173.162 Gallium.

* * * Manufactured articles or apparatuses, each containing not more than 100 mg (0.0035 ounce) of gallium and packaged so that the quantity of gallium per package does not exceed 1 g (0.35 ounce) are not subject to the requirements of this subchapter.

38. In § 173.166, the section heading and paragraph (e) would be revised to read as follows:

§ 173.166 Air bag inflators, air bag modules and seat-belt pretensioners.

* * * * *

(e) *Packagings.* The following packagings are authorized:

(1) 1A2, 1B2, 1G or 1H2 drums.

(2) 3A2 or 3H2 jerricans.

(3) 4C1, 4C2, 4D, 4F, 4G or 4H2 boxes.

(4) Reusable high strength plastic or metal containers or dedicated handling devices are authorized for shipment of air bag inflators, air bag modules, and seat-belt pretensioners by highway or rail from a manufacturing facility to the assembly facility, subject to the following conditions:

(i) The gross weight of the container or handling device may not exceed 1000 kg (2205 pounds). The container or handling device structure must provide adequate support to allow them to be stacked at least three high with no damage to the containers or devices.

(ii) If not completely enclosed by design, the container or handling device must be covered with plastic, fiberboard, or metal. The covering must be secured to the container by non-metallic banding or other comparable methods.

(iii) Internal dunnage must be sufficient to prevent movement of the devices within the container.

* * * * *

§ 173.166 [Amended]

39. In addition, in § 173.166, the following changes would be made:

a. The last sentence in paragraph (a) would be removed.

b. In paragraph (b) introductory text, the word ''or'' would be added immediately following ''air bag module,'' and the wording ''or seat-belt module'' would be removed.

c. In paragraph (b)(2), the wording ''Tests and Criteria, Second Edition, 1990'' would be revised to read ''Manual of Tests and Criteria, second revised edition, 1995''.

d. In paragraph (b)(4), the wording ''or seat-belt'' and the wording ''or seat-belt pre-tensioner'' would be removed.

e. In paragraph (c), in the last sentence, the wording ''or pre-tensioner'' would be removed.

f. In paragraph (d)(1), the wording ''An air bag or seat-belt module'' would be revised to read ''An air bag module or seat-belt pretensioner''.

g. In paragraph (d)(2), the wording ''or seat-belt'' and the wording ''or pre-tensioner'' would be removed.

h. In paragraph (f), in the first sentence, the wording ''or handling device'' would be added immediately following ''each package''.

40. Section 173.185 would be revised to read as follows:

§ 173.185 Lithium batteries and cells.

(a) Except as otherwise provided in this subpart, a lithium cell or battery is authorized for transportation only if it conforms to the provisions of this section.

(b) *Exceptions.* Cells and batteries are not subject to the requirements of this subchapter if they meet the following requirements:

(1) Each cell with a liquid cathode may contain no more than 0.5 g of lithium or lithium alloy, and each cell with a solid cathode may contain no more than 1.0 g lithium or lithium alloy;

(2) Each battery with a liquid cathode may contain an aggregate quantity of no more than 1.0 g lithium or lithium alloy, and each battery with a solid cathode may contain an aggregate quantity of no more than 2.0 g of lithium or lithium alloy;

(3) Each cell or battery containing a liquid cathode must be hermetically sealed;

(4) Cells and batteries must be separated so as to prevent short circuits and must be packed in strong packagings, except when installed in equipment; and

(5) If a liquid cathode battery contains more than 0.5 g of lithium or lithium alloy or a solid cathode battery contains more than 1.0 g lithium or lithium alloy, it may not contain a liquid or gas that is a hazardous material according to this subchapter unless the liquid or gas, if free, would be completely absorbed or neutralized by other materials in the battery.

(c) Cells and batteries also are not subject to this subchapter if they meet the following requirements:

(1) Each cell contains not more than 5 g of lithium or lithium alloy;

(2) Each battery contains not more than 25 g of lithium or lithium alloy;

(3) Each cell or battery is of the type proven to be non-dangerous by testing in accordance with tests in the UN Manual of Tests and Criteria, such testing must be carried out on each type prior to the initial transport of that type; and

(4) Cells and batteries are designed or packed in such a way as to prevent short circuits under conditions normally encountered in transportation.

(d) Cells and batteries and equipment containing cells and batteries which were first transported prior to January 1, 1995, and were assigned to Class 9 on the basis of the requirements of this subchapter in effect on October 1, 1993, may continue to be transported in accordance with the applicable requirements in effect on October 1, 1993.

(e) Cells and batteries may be transported as items of Class 9 if they meet the requirements in paragraphs (e)(1) through (e)(9) of this section:

(1) Cells must not contain more than 12 g of lithium or lithium alloy.

(2) Batteries must not contain more than 500 g of lithium or lithium alloy.

(3) Each cell and battery must be equipped with an effective means of preventing external short circuits.

(4) Each cell and battery must incorporate a safety venting device or be designed in a manner that will preclude a violent rupture under conditions normally incident to transportation.

(5) Batteries containing cells or series of cells connected in parallel must be equipped with diodes to prevent reverse current flow.

(6) Cells and batteries must be packed in strong inner packagings containing not more than 500 g of lithium or lithium alloy per inner packaging.

(7) Cells and batteries must be packed in inner packagings in such a manner as to effectively prevent short circuits and to prevent movement which could lead to short circuits.

(8) Cells and batteries must be packaged in packagings conforming to the requirements of part 178 of this subchapter at the Packing Group II performance level: Inner packagings must be packed within metal boxes (4A or 4B), wooden boxes (4C1, 4C2, 4D,or 4F), fiberboard boxes (4G), solid plastic boxes (4H2), fiber drums (1G), metal drums (1A2 or 1B2), plywood drums (1D), plastic jerricans (3H2), or metal jerricans (3A2 or 3B2).

(9) Each cell or battery must be of the type proven to meet the criteria of Class 9 by testing in accordance with tests in the UN Manual of Tests and Criteria.

(10) Except as provided in paragraph (h) of this section, cells or batteries may not be offered for transportation or transported if any cell has been discharged to the extent that the open circuit voltage is less than two volts or is less than 2/3 of the voltage of the fully charged cell, whichever is less.

(f) Equipment containing or packed with cells and batteries meeting the requirements of paragraph (b) or (c) of this section is excepted from all other requirements of this subchapter.

(g) Equipment containing or packed with cells and batteries may be transported as items of Class 9 if the batteries and cells meet all the requirements of paragraph (e) of this section and are packaged as follows:

(1) Equipment containing cells and batteries must be packed in a strong outer packaging that is waterproof or is made waterproof through the use of a liner unless the equipment is made waterproof by nature of its construction. The equipment must be secured within the outer packaging and be packed as to effectively prevent movement, short circuits, and accidental operation during transport; and

(2) Cells and batteries packed with equipment must be packed in inner packagings conforming to paragraph (e)(8) of this section in such a manner as to effectively prevent movement and short circuits. The quantity of lithium contained in any piece of equipment must not exceed 12 g per cell and 500 g per battery. Not more than 5 kg of cells and batteries may be packed with each item of equipment.

(h) Cells and batteries, for disposal, may be offered for transportation or transported to a permitted storage facility and disposal site by motor vehicle when they meet the following requirements:

(1) Cells, when new, may not contain more than 12 g and batteries may not contain more than 500 g of lithium or lithium alloy;

(2) Be equipped with an effective means of preventing external short circuits; and

(3) Be packed in a strong outer packaging conforming to the requirements of §§ 173.24 and 173.24a. The packaging need not conform to performance requirements of part 178 of this subchapter.

(i) Cells and batteries and equipment containing or packed with cells and batteries which do not comply with the provisions of this section may be transported only if they are approved by the Associate Administrator for Hazardous Materials Safety.

(j) For testing purposes, when not contained in equipment, cells containing not more than 12 g of lithium or lithium alloy and batteries containing not more than 500 g of lithium or lithium alloy may be offered for transportation or transported by highway only as items of Class 9. Packaging must conform with paragraphs (e)(8)(i) and (iii) of this section with not more than 100 cells per package.

41. In § 173.220, paragraph (c)(1) would be revised to read as follows:

§ 173.220 Internal combustion engines, self-propelled vehicles, and mechanical equipment containing internal combustion engines or wet batteries.

* * * * *

(c) * * *

(1) For transportation by vessel, the provisions of this subchapter do not apply to a motor vehicle or mechanical equipment which is electrically powered by a wet electric storage battery.

* * * * *

42. In § 173.224, the Self-Reactive Materials Table at the end of paragraph (b) would be revised to read as follows:

§ 173.224 Packaging and control and emergency temperatures for self-reactive materials.

(b) * * *

* * * * *

SELF-REACTIVE MATERIALS TABLE

Self-reactive substance (1)	Identification number (2)	Concentration—(%) (3)	Packing method (4)	Control temperature—(°C) (5)	Emergency temperature (6)	Notes (7)
Azodicarbonamide formulation type B, temperature controlled	3232	<100	OP5			1
Azodicarbonamide formulation type C	3224	<100	OP6			
Azodicarbonamide formulation type C, temperature controlled	3234	<100	OP6			1
Azodicarbonamide formulation type D	3226	<100	OP7			
Azodicarbonamide formulation type D, temperature controlled	3236	<100	OP7			1
2,2′ -Azodi(2,4-dimethyl-4-methoxyvaleronitrile)	3236	100	OP7	–5	+5	
2,2′ -Azodi(2,4-dimethylvaleronitrile)	3236	100	OP7	+10	+15	
2,2′ -Azodi(ethyl 2-methylpropionate)	3235	100	OP7	+20	+25	
1,1-Azodi (hexahydrobenzonitrile)	3226	100	OP7			
2,2-Azodi(isobutyronitrile)	3234	100	OP6	+40	+45	
2,2-Azodi(2-methylbutyronitrile)	3236	100	OP7	+35	+40	
Benzene-1,3-disulphohydrazide, as a paste	3226	52	OP7			
Benzene sulphohydrazide	3226	100	OP7			
4-(Benzyl(ethyl)amino)-3- ethoxybenzenediazonium zinc chloride.	3226	100	OP7			
4-(Benzyl(methyl)amino)-3- ethoxybenzenediazonium zinc chloride.	3236	100	OP7	+40	+45	
3-Chloro-4-diethylaminobenzenediazonium zinc chloride	3226	100	OP7			
2-Diazo-1-Naphthol-4-sulphochloride	3222	100	OP5			
2-Diazo-1-Naphthol-5-sulphochloride	3222	100	OP5			
2,5-Diethoxy-4- morpholinobenzenediazonium zinc chloride	3236	67–100	OP7	+35	+40	
2,5-Diethoxy-4- morpholinobenzenediazonium zinc chloride	3236	66	OP7	+40	+45	
2,5-Diethoxy-4- morpholinobenzenediazonium tetrafluoroborate.	3236	100	OP7	+30	+35	
2,5-Diethoxy-4- (phenylsulphonyl)benzenediazonium zinc chloride.	3236	67	OP7	+40	+45	
Diethylene glycol bis(allyl carbonate) + Diisopropylperoxydicarbonate.	3237	≥88+≤12	OP8	–10	0	
2,5-Dimethoxy-4-(4-methylphenylsulphony)benzenediazonium zinc chloride.	3236	79	OP7	+40	+45	
4-Dimethylamino-6-(2- dimethylaminoethoxy)toluene-2-diazonium zinc chloride.	3236	100	OP7	+40	+45	
N,N′-Dinitroso-N, N′-dimethyl- terephthalamide, as a paste	3224	72	OP6			
N,N′-Dinitrosopentamethylenetetramine	3224	82	OP6			2
Diphenyloxide-4,4′-disulphohydrazide	3226	100	OP7			
4-Dipropylaminobenzenediazonium zinc chloride	3226	100	OP7			
2-(N,N-Ethoxycarbonylphenylamino)-3- methoxy-4-(N-methyl-N- cyclohexylamino)benzenediazonium zinc chloride.	3236	63–92	OP7	+40	+45	
2-(N,N-Ethoxycarbonylphenylamino)-3- methoxy-4-(N-methyl-N- cyclohexylamino)benzenediazonium zinc chloride.	3236	62	OP7	+35	+40	
N-Formyl-2-(nitromethylene)-1,3- perhydrothiazine	3236	100	OP7	+45	+50	
2-(2-Hydroxyethoxy)-1-(pyrrolidin-1- yl)benzene-4-diazonium zinc chloride.	3236	100	OP7	+45	+50	
3-(2-Hydroxyethoxy)-4-(pyrrolidin-1- yl)benzenediazonium zinc chloride.	3236	100	OP7	+40	+45	
2-(N,N- Methylaminoethylcarbonyl)-4-(3,4- dimethyl-phenylsulphonyl)benzene diazonium zinc chloride.	3236	96	OP7	+45	+50	
4- Methylbenzenesulphonylhydrazide	3226	100	OP7			
3-Methyl-4-(pyrrolidin-1- yl)benzenediazonium tetrafluoroborate.	3234	95	OP6	+45	+50	
4-Nitrosophenol	3236	100	OP7	+35	+40	
Self-reactive liquid, sample	3223		OP2			3
Self-reactive liquid, sample, temperature control	3233		OP2			3
Self-reactive solid, sample	3224		OP2			3
Self-reactive solid, sample, temperature control	3234		OP2			3
Sodium 2-diazo-1-naphthol-4-sulphonate	3226	100	OP7			
Sodium 2-diazo-1-naphthol-5-sulphonate	3226	100	OP7			
Tetramine palladium (II) nitrate	3234	100	OP6	+30	+35	

NOTES:
1. The emergency and control temperatures must be determined in accordance with § 173.21(f).
2. With a compatible diluent having a boiling point of not less than 150°C.

3. Samples may only be offered for transportation when all available data indicate that the sample is no more dangerous than a self-reactive substance type B, and the sample is packaged using packaging method OP2, in quantities less than 10 kg per shipment, employing any necessary temperature controls.

* * * * *

§ 173.224 [Amended]

43. In addition, in § 173.224, the following changes would be made:

a. Paragraph (c)(3) would be removed.

b. Paragraph (c)(4) would be redesignated as paragraph (c)(3).

c. In the first sentence in paragraph (c)(1), the reference ''(c)(4)'' would be revised to read ''(c)(3)''.

d. In newly designated paragraph (c)(3)(ii), the wording ''OP2A or OP2B, for a liquid or a solid, respectively'' would be revised to read ''OP2''.

44. In § 173.225, paragraph (b)(2) would be amended by adding a second sentence, and paragraph (b)(4)(ii), paragraph (b)(6), the Organic Peroxides Table at the end of paragraph (b), paragraph (d) and paragraph (e)(5) would be revised, to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(b) * * *

(2) *ID number.* * * * The word ''EXEMPT'' appearing in the column denotes that the material is not regulated as an organic peroxide.

* * * * *

(4) * * *

(ii) The required mass percent of ''Diluent type B'' is specified in Column 4b. A diluent type B is an organic liquid which is compatible with the organic peroxide and which has a boiling point, at atmospheric pressure, of less than 150 °C (302 °F) but at least 60 °C (140 °F), and a flash point greater than 5 °C (41 °F). Type B diluents may be used for desensitizing all organic peroxides provided that the boiling point is at least 60 °C (140 °F) above the SADT of the peroxide in a 50 kg (110 lbs) package. A type A diluent may be used to replace a type B diluent in equal concentration.

* * * * *

(6) *Packing method.* Column 6 specifies the highest packing method (largest packaging capacity) authorized for the organic peroxide. Lower numbered packing methods (smaller packaging capacities) are also authorized. For example, if OP3 is specified, then OP2 and OP1 are also authorized. When an IBC or bulk packaging is authorized and meets the requirements of paragraph (e) of this section, lower control temperatures than those specified for non-bulk packagings are required. The Table of Packing Methods in paragraph (d) of this section defines the non-bulk packing methods.

* * * * *

ORGANIC PEROXIDE TABLE

Technical name	ID No.	Concentration (Mass %)	Diluent (Mass %)			Water (Mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Acetyl acetone peroxide	UN3105	≤42	≤48	.....	.....	≥8	OP7	.....	.....	2
Acetyl acetone peroxide [as a paste]	UN3106	≤32	.....	.....	.....	.....	OP7	.....	.....	21
Acetyl benzoyl peroxide	UN3105	≤45	≥55	.....	.....	.....	OP7	.....	.....	
Acetyl cyclohexanesulfonyl peroxide	UN3112	≤82	.....	.....	.....	≥12	OP4	−10	0	
Acetyl cyclohexanesulfonyl peroxide	UN3115	≤32	.....	≥68	.....	.....	OP7	−10	0	
tert-Amyl hydroperoxide	UN3107	≤88	≥6	.....	.....	≥6	OP8	.....	.....	
tert-Amyl peroxyacetate	UN3107	≤62	≥38	.....	.....	.....	OP8	.....	.....	
tert-Amyl peroxybenzoate	UN3105	≤96	≥4	.....	.....	.....	OP7	.....	.....	
tert-Amyl peroxy-2-ethylhexanoate	UN3115	≤100	.....	.....	.....	.....	OP7	+20	+25	
tert-Amyl peroxy-2-ethylhexyl carbonate	UN3105	≤100	.....	.....	.....	.....	OP7	.....	.....	
tert-Amyl peroxyneodecanoate	UN3115	≤77	.....	≥23	.....	.....	OP7	0	+10	
tert-Amyl peroxypivalate	UN3113	≤77	.....	≥23	.....	.....	OP5	+10	+15	
tert-Amylperoxy-3,5,5-trimethylhexanoate	UN3101	≤100	.....	.....	.....	.....	OP5	.....	.....	
tert-Butyl cumyl peroxide	UN3105	>42 − 100	.....	.....	.....	.....	OP7	.....	.....	1, 9
tert-Butyl cumyl peroxide	UN3106	≤42	.....	.....	≥58	.....	OP7	.....	.....	1, 9
n-Butyl-4,4-di-(tert-butylperoxy)valerate	UN3103	>52 − 100	.....	.....	.....	.....	OP5	.....	.....	
n-Butyl-4,4-di-(tert-butylperoxy)valerate	UN3106	≤52	.....	.....	≥48	.....	OP7	.....	.....	
n-Butyl-4,4-di-(tert-butylperoxy)valerate	UN3108	≤42	.....	.....	≥58	.....	OP8	.....	.....	
tert-Butyl hydroperoxide	UN3103	>79 − 90	.....	.....	.....	≥10	OP5	.....	.....	13
tert-Butyl hydroperoxide	UN3105	≤80	≥20	.....	.....	.....	OP7	.....	.....	4, 13
tert-Butyl hydroperoxide	UN3107	≤79	.....	.....	.....	>14	OP8	.....	.....	13, 16
tert-Butyl hydroperoxide	UN3109	≤72	.....	.....	.....	≥28	OP8	.....	.....	7, 13
tert-Butyl hydroperoxide [and] Di-tert-butylperoxide.	UN3103	<82+>9	.....	.....	.....	≥7	OP5	.....	.....	13
tert-Butyl monoperoxymaleate	UN3102	>52 − 100	.....	.....	.....	.....	OP5	.....	.....	
tert-Butyl monoperoxymaleate	UN3103	≤52	≥48	.....	.....	.....	OP6	.....	.....	
tert-Butyl monoperoxymaleate	UN3108	≤52	.....	.....	≥48	.....	OP8	.....	.....	
tert-Butyl monoperoxymaleate [as a paste]	UN3108	≤52	.....	.....	.....	.....	OP8	.....	.....	
tert-Butyl monoperoxymaleate [as a paste]	UN3110	≤42	.....	.....	.....	.....	OP8	.....	.....	7
tert-Butyl monoperoxyphthalate	UN3102	≤100	.....	.....	.....	.....	OP5	.....	.....	
tert-Butyl peroxyacetate	UN3101	>52–77	≥23	.....	.....	.....	OP5	.....	.....	
tert-Butyl peroxyacetate	UN3103	>32–52	≥48	.....	.....	.....	OP6	.....	.....	
tert-Butyl peroxyacetate	UN3109	≤32	≥68	.....	.....	.....	OP8	.....	.....	10
tert-Butyl peroxyacetate	UN3119	≤32	.....	≥68	.....	.....	Bulk	+30	+35	7
tert-Butyl peroxyacetate	UN3109	≤22	.....	≥78	.....	.....	OP8	.....	.....	14
tert-Butyl peroxybenzoate	UN3103	>77–100	≤23	.....	.....	.....	OP5	.....	.....	
tert-Butyl peroxybenzoate	UN3105	>52–77	≥23	.....	.....	.....	OP7	.....	.....	1
tert-Butyl peroxybenzoate	UN3106	≤52	.....	.....	≥48	.....	OP7	.....	.....	
tert-Butyl peroxybutyl fumarate	UN3105	≤52	≥48	.....	.....	.....	OP7	.....	.....	
tert-Butyl peroxycrotonate	UN3105	≤77	≥23	.....	.....	.....	OP7	.....	.....	
tert-Butyl peroxydiethylacetate	UN3113	≤100	.....	.....	.....	.....	OP5	+20	+25	
tert-Butyl peroxydiethylacetate [and] tert-Butyl peroxybenzoate.	UN3105	≤33 + ≤33	≥33	.....	.....	.....	OP7	.....	.....	

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (Mass %)	Diluent (Mass %)			Water (Mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
tert-Butyl peroxy-2-ethylhexanoate	UN3113	>52–100	.....	.....	.....	.....	OP6	+20	+25	
tert-Butyl peroxy-2-ethylhexanoate	UN3117	≤52	.....	≥48	.....	.....	OP8	+30	+35	
tert-Butyl peroxy-2-ethylhexanoate	UN3118	≤52	.....	.....	≥48	.....	OP8	+20	+25	
tert-Butyl peroxy-2-ethylhexanoate	UN3119	≤32	.....	≥68	.....	.....	OP8	+40	+45	
tert-Butyl peroxy-2-ethylhexanoate	UN3119	≤32	.....	≥68	.....	.....	IBC	+30	+35	10
tert-Butyl peroxy-2-ethylhexanoate	UN3119	≤32	.....	≥68	.....	.....	Bulk	+10	+15	14
tert-Butyl peroxy-2-ethylhexanoate [and] 2,2-di-(tert-Butylperoxy)butane.	UN3115	≤31+≤36	.....	≥33	.....	.....	OP7	+35	+40	
tert-Butyl peroxy-2-ethylhexanoate [and] 2,2-di-(tert-Butylperoxy)butane.	UN3106	≤12 + ≤14	≥14	.....	≥60	.....	OP7	.....	.....	
tert-Butyl peroxy-2-ethylhexylcarbonate	UN3105	≤100	.....	.....	.....	.....	OP7	.....	.....	
tert-Butyl peroxyisobutyrate	UN3111	>52–77	.....	≥23	.....	.....	OP5	+15	+20	
tert-Butyl peroxyisobutyrate	UN3115	≤52	.....	≥48	.....	.....	OP7	+15	+20	
tert-Butylperoxyisopropylcarbonate	UN3103	≤77	≥23	.....	.....	.....	OP5	.....	.....	
1-(2-tert-Butylperoxy isopropyl)-3-isopropenylbenzene.	UN3105	≤77	≥23	.....	.....	.....	OP7	.....	.....	
1-(2-tert-Butylperoxy isopropyl)-3-isopropenylbenzene.	UN3108	≤42	.....	.....	≥58	.....	OP8	.....	.....	
tert-Butyl peroxy-2-methylbenzoate	UN3103	≤100	.....	.....	.....	.....	OP5	.....	.....	
tert-Butyl peroxyneodecanoate	UN3115	>77–100	.....	.....	.....	.....	OP7	−5	+5	
tert-Butyl peroxyneodecanoate	UN3115	≤77	.....	≥23	.....	.....	OP7	0	+10	
tert-Butyl peroxyneodecanoate [as a stable dispersion in water].	UN3117	≤42	.....	.....	.....	.....	OP8	0	+10	
tert-Butyl peroxyneodecanoate [as a stable dispersion in water (frozen)].	UN3118	≤42	.....	.....	.....	.....	OP8	0	+10	
tert-Butyl peroxyneoheptanoate	UN3115	≤77	≥23	.....	.....	.....	OP7	+10	+15	
3-tert-Butylperoxy-3-phenylphthalide	UN3106	≤100	.....	.....	.....	.....	OP7	.....	.....	
tert-Butyl peroxypivalate	UN3113	>67–77	≥23	.....	.....	.....	OP5	0	+10	
tert-Butyl peroxypivalate	UN3115	≤67	.....	≥33	.....	.....	OP7	0	+10	
tert-Butyl peroxypivalate	UN3119	≤27	.....	≥73	.....	.....	OP8	+30	+35	
tert-Butyl peroxypivalate	UN3119	≤27	.....	≥73	.....	.....	IBC	+10	+15	10
tert-Butyl peroxypivalate	UN3119	≤27	.....	≥73	.....	.....	Bulk	−5	+5	14
tert-Butylperoxy stearylcarbonate	UN3106	≤100	.....	.....	.....	.....	OP7	.....	.....	
tert-Butyl peroxy-3,5,5-trimethylhexanoate	UN3105	>32–100	.....	.....	.....	.....	OP7	.....	.....	
tert-Butyl peroxy-3,5,5-trimethylhexanoate	UN3109	≤32	≥68	.....	.....	.....	OP8	.....	.....	10
tert-Butyl peroxy-3,5,5-trimethylhexanoate	UN3119	≤32	.....	≥68	.....	.....	Bulk	+35	+40	14
3-Chloroperoxybenzoic acid	UN3102	>57–86	.....	.....	≥14	.....	OP1	.....	.....	
3-Chloroperoxybenzoic acid	UN3106	≤77	.....	.....	≥6	≥17	OP7	.....	.....	
3-Chloroperoxybenzoic acid	UN3106	≤57	.....	.....	≥3	≥40	OP7	.....	.....	
Cumyl hydroperoxide	UN3107	>90–98	≤10	.....	.....	.....	OP8	.....	.....	13
Cumyl hydroperoxide	UN3109	≤90	≥10	.....	.....	.....	OP8	.....	.....	7, 13, 15
Cumyl peroxyneodecanoate	UN3115	≤77	.....	≥23	.....	.....	OP7	−10	0	
Cumyl hydroperoxide [as a stable dispersion in water].	UN3119	≤52	.....	.....	.....	.....	OP8	−10	0	
Cumyl peroxyneoheptanoate	UN3115	≤77	≥23	.....	.....	.....	OP7	0	+10	
Cumyl peroxypivalate	UN3115	≤77	.....	≥23	.....	.....	OP7	−5	+5	
Cyclohexanone peroxide(s)	UN3104	≤91	.....	.....	.....	≥9	OP6	.....	.....	13
Cyclohexanone peroxide(s)	UN3105	≤72	.....	≥28	.....	.....	OP7	.....	.....	5
Cyclohexanone peroxide(s) [as a paste]	UN3106	≤72	.....	.....	.....	.....	OP7	.....	.....	5, 21
Cyclohexanone peroxide(s)	Exempt	≤32	.....	.....	≥68	.....	Exempt	.....	.....	
Diacetone alcohol peroxides	UN3115	≤57	.....	≥26	.....	≥8	OP7	+40	+45	5
Diacetyl peroxide	UN3115	≤27	.....	≥73	.....	.....	OP7	+20	+25	8.13
Di-tert-amyl peroxide	UN3107	≤100	.....	.....	.....	.....	OP8	.....	.....	
1,1-Di-(tert-amylperoxy)cyclohexane	UN3103	≤82	≥18	.....	.....	.....	OP6	.....	.....	
Dibenzoyl peroxide	UN3102	>51–100	.....	.....	≤48	.....	OP2	.....	.....	3
Dibenzoyl peroxide	UN3102	≤77–94	.....	.....	.....	≥6	OP4	.....	.....	3
Dibenzoyl peroxide	UN3104	≤77	.....	.....	.....	≥23	OP6	.....	.....	
Dibenzoyl peroxide	UN3106	≤62	.....	.....	≥28	≥10	OP7	.....	.....	
Dibenzoyl peroxide [as a paste]	UN3106	>52–62	.....	.....	.....	.....	OP7	.....	.....	21
Dibenzoyl peroxide [as a paste]	UN3108	≤56.5	.....	.....	.....	≥15	OP8	.....	.....	
Dibenzoyl peroxide	UN3106	>35–52	.....	.....	≥48	.....	OP7	.....	.....	
Dibenzoyl peroxide [as a paste]	UN3108	≤52	.....	.....	.....	.....	OP8	.....	.....	21
Dibenzoyl peroxide [as a paste]	Exempt	≤50	.....	.....	.....	≥18	Exempt	.....	.....	
Dibenzoyl peroxide	UN3107	>36–42	>18	.....	.....	≤40	OP8	.....	.....	
Dibenzoyl peroxide	UN3107	>36–42	≥58	.....	.....	.....	OP8	.....	.....	
Dibenzoyl perioxide [as a stable dispersion in water].	UN3109	≤42	.....	.....	.....	.....	OP8	.....	.....	10
Dibenzoyl peroxide	Exempt	≤35	.....	.....	≥65	.....	Exempt	.....	.....	
Dibenzyl peroxydicarbonate	UN3112	≤87	.....	.....	.....	≥13	OP5	+25	+30	
Di-(4-tert-butylcyclohexyl)peroxydicarbonate	UN3114	≤100	.....	.....	.....	.....	OP6	+30	+35	
Di-(4-tert-butylcyclohexyl)peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42	.....	.....	.....	.....	OP8	+30	+35	10
Di-tert-butyl peroxide	UN3107	>32–100	.....	.....	.....	.....	OP8	.....	.....	
Di-tert-butly peroxide	UN3109	≤52	.....	≥48	.....	.....	OP8	.....	.....	7, 24
Di-tert-butyl peroxyazelate	UN3105	≤52	≥48	.....	.....	.....	OP7	.....	.....	
2,2-Di-(tert-butylperoxy)butane	UN3103	≤52	≥48	.....	.....	.....	OP6	.....	.....	
1,1-Di-(tert-butylperoxy)cyclohexane	UN3101	>80–100	.....	.....	.....	.....	OP5	.....	.....	

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (Mass %)	Diluent (Mass %)			Water (Mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
1,1-Di-(tert-butylperoxy)cyclohexane	UN3103	>52–80	≥20	.....	.....	.....	OP5	.....	.....	
1,1-Di-(tert-butylperoxy)cyclohexane	UN3105	≤52	≥48	.....	.....	.....	OP7	.....	.....	
1,1-Di-(tert-butylperoxy)cyclohexane	UN3106	≤42	≥13	.....	≥45	.....	OP7	.....	.....	
1,1-Di-(tert-butylperoxy)cyclohexane	UN3109	≤42	≥58	.....	.....	.....	OP8	.....	.....	10
1,1-Di-(tert-butylperoxy)cyclohexane	UN3107	≤27	≥36	.....	.....	.....	OP8	.....	.....	22
1,1-Di-(tert-butylperoxy)cyclohexane	UN3109	≤25	≥25	≥50	.....	.....	OP8	.....	.....	7
1,1-Di-(tert-butylperoxy)cyclohexane	UN3109	≤13	≥13	≥74	.....	.....	OP8	.....	.....	7
Di-n-butyl peroxydicarbonate	UN3115	>27–52	.....	≥48	.....	.....	OP7	−15	−5	
Di-n-butyl peroxydicarbonate [as a stable dispersion in water (frozen)].	UN3118	≤42	.....	.....	.....	.....	OP8	−15	−5	
Di-n-butyl peroxydicarbonate	UN3117	≤27	.....	≥73	.....	.....	OP8	−10	0	
Di-sec-butyl peroxydicarbonate	UN3113	>52–100	.....	.....	.....	.....	OP4	−20	−10	6
Di-sec-butyl peroxydicarbonate	UN3115	≤52	.....	≥48	.....	.....	OP7	−15	−5	
Di-(2-tert-butylperoxyisopropyl)benzene(s)	UN3106	>42–100	.....	.....	≤57	.....	OP7	.....	.....	1,9
Di-(2-tert-butylperoxyisopropyl)benzene(s)	Exempt	≤42	.....	.....	≥58	.....	Exempt	.....	.....	
Di-(tert-butylperoxy)phthalate	UN3105	>42–52	≥48	.....	.....	.....	OP7	.....	.....	
Di-(tert-butylperoxy)phthalate [as a paste]	UN3106	≤52	.....	.....	.....	.....	OP7	.....	.....	21
Di-(tert-butylperoxy)phthalate	UN3107	≤42	≥58	.....	.....	.....	OP8	.....	.....	
2,2-Di-(tert-butylperoxy)propane	UN3105	≤52	≥48	.....	.....	.....	OP7	.....	.....	
2,2-Di-(tert-butylperoxy)propane	UN3106	≤42	≥13	.....	≥45	.....	OP7	.....	.....	
1,1-Di-(tert-butylperoxy)-3,5,5-trimethylcyclohexane.	UN3101	>90–100	.....	.....	.....	.....	OP5	.....	.....	
1,1-Di-(tert-butylperoxy)-3,5,5-trimethylcyclohexane.	UN3103	>57–90	≥10	.....	.....	.....	OP5	.....	.....	
1,1-Di-(tert-butylperoxy)-3,5,5-trimethylcyclohexane.	UN3106	≤57	.....	.....	≥43	.....	OP7	.....	.....	
1,1-Di-(tert-butylperoxy)-3,5,5-trimethylcyclohexane.	UN3107	≤57	≥43	.....	.....	.....	OP8	.....	.....	
1,1-Di-(tert-butylperoxy)-3,5,5-trimethylcyclohexane.	UN3107	≤32	≥26	≥42	.....	.....	OP8	.....	.....	
Dicetyl peroxydicarbonate	UN3116	≤100	.....	.....	.....	.....	OP7	+30	+35	
Dicetyl peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42	.....	.....	.....	.....	OP8	+30	+35	10
Di-4-chlorobenzoyl peroxide	UN3102	≤77	.....	.....	.....	≥23	OP5	.....	.....	
Di-4-chlorobenzoyl peroxide [as a paste]	UN3106	≤52	.....	.....	.....	.....	OP7	.....	.....	21
Di-4-chlorobenzoyl peroxide	Exempt	≤32	.....	.....	≥68	.....	Exempt	.....	.....	
Dicumyl peroxide	UN3109	>52–100	.....	≤48	.....	.....	OP8	.....	.....	7, 9, 11
Dicumyl peroxide	UN3110	>52–100	.....	.....	≤48	.....	OP8	.....	.....	7, 9, 11
Dicumyl peroxide	Exempt	≤52	≥48	.....	.....	.....	Exempt	.....	.....	
Dicumyl peroxide	Exempt	≤42	.....	.....	≥58	.....	Exempt	.....	.....	
Dicyclohexyl peroxydicarbonate	UN3112	>91-100	.....	.....	.....	.....	OP3	+5	+10	
Dicyclohexyl peroxydicarbonate	UN3114	≤91	.....	.....	.....	≥9	OP5	+5	+10	
Didecanoyl peroxide	UN3114	≤100	.....	.....	.....	.....	OP6	+30	+35	
2,2-Di-(4,4-di(tert-butylperoxy) cyclohexyl) propane.	UN3106	≤42	.....	.....	≥58	.....	OP7	.....	.....	
2,2-Di-(4,4-di(tertbutylperoxy) cyclohexyl) propane.	UN3107	≤25	.....	≥75	.....	.....	OP8	.....	.....	
Di-2,4-dichlorobenzoyl peroxide	UN3102	≤77	.....	.....	.....	≥23	OP5	.....	.....	
Di-2,4-dichlorobenzoyl peroxide [as a paste with silicone oil].	UN3106	≤52	.....	.....	.....	.....	OP7	.....	.....	
Di-(2-ethylhexyl) peroxydicarbonate	UN3113	>77–100	.....	.....	.....	.....	OP5	−20	−10	
Di-(2-ethylhexyl) peroxydicarbonate	UN3115	≤77	.....	.....	.....	.....	OP7	−15	−5	
Di-(2-ethylhexyl) peroxydicarbonate [as a stable dispersion in water].	UN3119	≤52	.....	.....	.....	.....	OP8	−15	−5	
Di-(2-ethylhexyl) peroxydicarbonate [as a stable dispersion in water (frozen)].	UN3118	≤42	.....	.....	.....	.....	OP8	−15	−5	
Diethyl peroxydicarbonate	UN3115	≤27	.....	≥73	.....	.....	OP7	−10	0	
2,2-Dihydroperoxypropane	UN3102	≤27	.....	.....	≥73	.....	OP5	.....	.....	
Di-(1-hydroxycyclohexyl)peroxide	UN3106	≤100	.....	.....	.....	.....	OP7	.....	.....	
Diisobutyryl peroxide	UN3111	>32–52	.....	≥48	.....	.....	OP5	−20	−10	
Diisobutyryl peroxide	UN3115	≤32	.....	≥68	.....	.....	OP7	−20	−10	
Diisopropylbenzene dihydroperoxide	UN3106	≤82	≥5	.....	.....	≥5	OP7	.....	.....	17
Diisopropyl peroxydicarbonate	UN3112	>52–100	.....	.....	.....	.....	OP2	−15	−5	
Diisopropyl peroxydicarbonate	UN3115	≤52	.....	≥48	.....	.....	OP7	−10	0	
Diisotridecyl peroxydicarbonate	UN3115	≤100	.....	.....	.....	.....	OP7	−10	0	
Dilauroyl peroxide	UN3106	≤100	.....	.....	.....	.....	OP7	.....	.....	
Dilauroyl peroxide [as a stable dispersion in water].	UN3109	≤42	.....	.....	.....	.....	OP8	.....	.....	10
Di-(2-methylbenzoyl)peroxide	UN3112	≤87	.....	.....	.....	≥13	OP5	+30	+35	
Di-(4-methylbenzoyl)peroxide [as a paste with silicone oil].	UN3106	≤52	.....	.....	.....	.....	OP7	.....	.....	
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane	UN3102	>82–100	.....	.....	.....	.....	OP5	.....	.....	
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane	UN3104	≤82	.....	.....	.....	≥18	OP5	.....	.....	
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane	UN3106	≤82	.....	.....	≥18	.....	OP7	.....	.....	
2,5-Dimethyl-2,5-di-(tertbutylperoxy)hexane	UN3105	>52 − 100	.....	.....	.....	.....	OP7	.....	.....	
2,5-Dimethyl-2,5-di-(tertbutylperoxy)hexyne-3	UN3103	>52 − 86	.....	.....	.....	.....	OP5	.....	.....	
2,5-Dimethyl-2,5-di-(tertbutylperoxy)hexane	UN3106	≤52	.....	.....	≥48	.....	OP7	.....	.....	

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (Mass %)	Diluent (Mass %)			Water (Mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
2,5-Dimethyl-2,5-di-(tertbutylperoxy)hexane	UN3109	≤52	≥48	.....	.....	.....	OP8	.....	.....	7
2,5-Dimethyl-2,5-di-(tertbutylperoxy)hexyane-3	UN3106	≤52	.....	.....	≥48	.....	OP7	.....	.....	
2,5-Dimethyl-2,5-di-(tertbutylperoxy)hexane [as a paste].	UN3108	≤47	.....	.....	.....	.....	OP8	.....	.....	
2,5-Dimethyl-2,5-di-(2-ethylhexanoylperoxy)hexane.	UN3115	≤100	.....	.....	.....	.....	OP7	+20	+25	
2,5-Dimethyl-2,5-dihydroperoxyhexane	UN3104	≤82	.....	.....	.....	≥18	OP6	.....	.....	
2,5-Dimethyl-2,5-di-(3,5,5-trimethylhexanoylperoxy)hexane.	UN3105	≤77	≥23	.....	.....	.....	OP7	.....	.....	
1,1-Dimethyl-3-hydroxybutylperoxyneoheptanoate.	UN3117	≤52	.....	≥48	.....	.....	OP8	+0	+10	
Dimyristyl peroxydicarbonate	UN3116	≤100	.....	.....	.....	.....	OP7	+20	+25	
Dimyristyl peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42	.....	.....	.....	.....	OP8	+20	+25	
Dimyristyl peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42	.....	.....	.....	.....	IBC	+15	+25	10
Di-(2-neodecanoylperoxyisopropyl)benzene	UN3115	≤52	≥48	.....	.....	.....	OP7	−10	0	
Di-n-nonanoyl peroxide	UN3116	≤100	.....	.....	.....	.....	OP7	0	+10	
Di-n-octanoyl peroxide	UN3114	≤100	.....	.....	.....	.....	OP5	+10	+15	
Diperoxy azelaic acid	UN3116	≤27	.....	.....	≥73	.....	OP7	+35	+40	
Diperoxy dodecane diacid	UN3116	>13 − 42	.....	.....	≥58	.....	OP7	+40	+45	
Diperoxy dodecane diacid	Exempt	≤13	.....	.....	≥87	.....	Exempt	.....	.....	
Di-(2-phenoxyethyl)peroxydicarbonate	UN3102	>85 − 100	.....	.....	.....	.....	OP5	.....	.....	
Di-(2-phenoxyethyl)peroxydicarbonate	UN3106	≤85	.....	.....	.....	≥15	OP7	.....	.....	
Dipropionyl peroxide	UN3117	≤27	.....	≥73	.....	.....	OP8	+15	+20	
Di-n-propyl peroxydicarbonate	UN3113	≤100	.....	.....	.....	.....	OP4	−25	−15	
Distearyl peroxydicarbonate	UN3106	≤87	.....	.....	≥13	.....	OP7	.....	.....	
Disuccinic acid peroxide	UN3102	>72 − 100	.....	.....	.....	.....	OP4	.....	.....	18
Disuccinic acid peroxide	UN3116	≤72	.....	.....	.....	≥28	OP7	+10	+15	
Di-(3,5,5-trimethyl-1,2-dioxolanyl-3)peroxide [as a paste].	UN3116	≤52	.....	.....	.....	.....	OP7	+30	+35	21
Di-(3,5,5-trimethylhexanoyl)peroxide	UN3115	>38–82	≥18	.....	.....	.....	OP7	0	+10	
Di-(3,5,5-trimethylhexanoyl)peroxide [as a stable dispersion in water].	UN3117	≤52	.....	.....	.....	.....	OP8	+10	+15	
Di-(3,5,5-trimethylhexanoyl)peroxide	UN3119	≤38	≥62	.....	.....	.....	OP8	+20	+25	
Di-(3,5,5-trimethylhexanoyl)peroxide	UN3119	≤38	≥62	.....	.....	.....	IBC	+10	+15	10
Di-(3,5,5-trimethylhexanoyl)peroxide	UN3119	≤38	≥62	.....	.....	.....	Bulk	−10	0	14
Ethyl 3,3-di-(tert-amylperoxy)butyrate	UN3105	≤67	≥33	.....	.....	.....	OP7	.....	.....	
Ethyl 3,3-di-(tert-butylperoxy)butyrate	UN3103	>77 − 100	.....	.....	.....	.....	OP5	.....	.....	
Ethyl 3,3-di-(tert-butylperoxy)butyrate	UN3105	≤77	≥23	.....	.....	.....	OP7	.....	.....	
Ethyl 3,3-di-(tert-butylperoxy)butyrate	UN3106	≤52	.....	.....	≥48	.....	OP7	.....	.....	
3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetraoxacyclononane.	UN3102	>52 − 100	.....	.....	.....	.....	OP4	.....	.....	
3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetraoxacyclononane.	UN3105	≤52	≥48	.....	.....	.....	OP7	.....	.....	
3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetraoxacyclononane.	UN3106	≤52	.....	.....	≥48	.....	OP7	.....	.....	
Isopropyl sec-butyl peroxydicarbonate + di-sec-butyl peroxydicarbonate + di-isopropyl peroxydicarbonate.	3111	≤52 + ≤28 + ≤22	.....	.....	.....	.....	OP5	−20	−10	
Isopropylcumyl hydroperoxide	UN3109	≤72	≥28	.....	.....	.....	OP8	.....	.....	7, 13
p-Menthyl hydroperoxide	UN3105	>72 − 100	.....	.....	.....	.....	OP7	.....	.....	13
p-Menthyl hydroperoxide	UN3109	<72	>44	.....	.....	.....	OP8	.....	.....	7, 25
Methylcyclohexanone peroxide(s)	UN3115	≤67	.....	≥33	.....	.....	OP7	+35	+40	
Methyl ethyl ketone peroxide(s)	UN3101	≤52	≥48	.....	.....	.....	OP5	.....	.....	5, 13
Methyl ethyl ketone peroxide(s)	UN3105	≤45	≥55	.....	.....	.....	OP7	.....	.....	5
Methyl ethyl ketone peroxide(s)	UN3107	≤40	≥60	.....	.....	.....	OP8	.....	.....	5
Methyl isobutyl ketone peroxide(s)	UN3105	≤62	≥19	.....	.....	.....	OP7	.....	.....	5, 23
Organic peroxide, liquid, sample	UN3103	.....	.....	.....	.....	.....	OP2	.....	.....	12
Organic peroxide, liquid, sample, temperature controlled.	UN3113	.....	.....	.....	.....	.....	OP2	.....	.....	12
Organic peroxide, solid, sample	UN3104	.....	.....	.....	.....	.....	OP2	.....	.....	12
Organic peroxide, solid, sample, temperature controlled.	UN3114	.....	.....	.....	.....	.....	OP2	.....	.....	12
Peracetic acid with not more than 20% hydrogen peroxide.	Exempt	≤6	.....	.....	.....	≥60	Exempt	.....	.....	
Peracetic acid with not more than 26% hydrogen peroxide.	UN3109	≤17	.....	.....	.....	.....	OP8	.....	.....	10, 13
Peracetic acid with 7% hydrogen peroxide	UN3107	≤36	.....	.....	.....	≥15	OP8	.....	.....	13
Peroxyacetic acid, type D, stabilized	UN3105	≤43	.....	.....	.....	.....	OP7	.....	.....	13, 20
Peroxyacetic acid, type E, stabilized	UN3107	≤43	.....	.....	.....	.....	OP8	.....	.....	13, 20
Peroxyacetic acid, type F, stabilized	UN3109	≤43	.....	.....	.....	.....	OP8	.....	.....	13, 20
Pinanyl hydroperoxide	UN3105	≥56 − 100	.....	.....	.....	.....	OP7	.....	.....	13
Pinanyl hydroperoxide	UN3109	<56	>44	.....	.....	.....	OP8	.....	.....	7
Tetrahydronaphthyl hydroperoxide	UN3106	≤100	.....	.....	.....	.....	OP7	.....	.....	
1,1,3,3-Tetramethylbutyl hydroperoxide	UN3105	≤100	.....	.....	.....	.....	OP7	.....	.....	

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (Mass %)	Diluent (Mass %)			Water (Mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
1,1,3,3-Tetramethylbutylperoxy-2-ethylhexanoate.	UN3115	≤100	.....	.....	.....	.....	OP7	+20	+25	
2,4,4-Trimethylpentyl-2-peroxyneodecanoate	UN3115	≤72	.....	≥28	.....	.....	OP7	−5	+5	
2,4,4-Trimethylpentyl-2-peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤52	.....	.....	.....	.....	OP8	−5	+5	
2,4,4-Trimethylpentyl-2-peroxy phenoxyacetate.	UN3115	≤37	.....	≥63	.....	.....	OP7	−10	0	

Notes:
1. For domestic shipments, OP8 is authorized.
2. Available oxygen must be <4.7 percent.
3. For concentrations <80 percent OP5 is allowed. For concentrations of at least 80 percent but <85 percent, OP4 is allowed. For concentrations of at least 85 percent, maximum package size is OP2.
4. The diluent may be replaced by di-tert-butyl peroxide.
5. Available oxygen must be ≤9 percent.
6. For domestic shipments, OP5 is authorized.
7. This material may be transported in intermediate bulk containers and bulk packagings under the provisions of paragraph (e) of this section.
8. Only non-metallic packagings are authorized.
9. For domestic shipments, this material may be transported in bulk packagings under the provisions of paragraph (e)(3)(ii) of this section.
10. This material may be transported in intermediate bulk containers under the provisions of paragraph (e) of this section.
11. Up to 2000 kg per container authorized.
12. Samples may only be offered for transportation when all available data indicate that the sample is no more dangerous than an Organic Peroxide type B, and the sample is packaged using packaging method OP2 in quantities less than 10 kg per shipment, employing any necessary temperature controls.
13. ''Corrosive'' subsidiary risk label is required.
14. This material may be transported in bulk packagings under the provisions of paragraph (e) of this section.
15. No ''Corrosive'' subsidiary risk label is required for concentrations below 80%.
16. With <6% di-tert-butyl peroxide.
17. With ≥8% 1-isopropylhydroperoxy-4-isopropylhydroxybenzene.
18. Addition of water to this organic peroxide will decrease its thermal stability.
19. [Reserved]
20. Mixtures with hydrogen peroxide, water and acid(s).
21. With diluent type A, with or without water.
22. With >36 percent, by mass, ethylbenzene.
23. With >19 percent, by mass, methyl isobutyl ketone.
24. Diluent type b with boiling point >100 C.
25. No ''Corrosive'' subsidiary risk label is required for concentrations below 56%.

* * * * *

(d) Packagings for organic peroxides and self-reactive substances are listed in the Maximum Quantity per Packing Method Table. The packing methods are designated OP1 to OP8. The quantities specified for each packing method represent the maximum that is authorized.

(1) The following types of packagings are authorized:

(i) Drums: 1A1, 1A2, 1B1, 1B2, 1D, 1G, 1H1, 1H2;

(ii) Jerricans: 3A1, 3A2, 3B1, 3B2, 3H1, 3H2;

(iii) Boxes: 4C1, 4C2, 4D, 4F, 4G, 4H1, 4H2, 4A, 4B; or

(iv) Composite packagings with a plastic inner receptacle: 6HA1, 6HA2, 6HB1, 6HB2, 6HC, 6HD1, 6HD2, 6HG1, 6HG2, 6HH1, 6HH2.

(2) Metal packaging (including inner packagings of combination packagings and outer packagings of combination or composite packagings) are used only for packing methods OP7 and OP8.

(3) In combination packagings, glass receptacles are used only as inner packagings with a maximum content of 0.5 kg or 0.5 liter.

(4) The maximum quantity per packaging or package for Packing Methods OP1–OP8 must be as follows:

MAXIMUM QUANTITY PER PACKAGING/PACKAGE FOR PACKING METHODS OP1 TO OP8

Maximum quantity	Packing method							
	OP1	OP2 [1]	OP3	OP4 [1]	OP5	OP6	OP7	OP8
Solids and combination packagings (liquid and solid) (kg)	0.5	0.5/10	5	5/25	25	50	50	[2] 200
Liquids (L)	0.5	.....	5	.....	30	60	60	[3] 225

[1] If two values are given, the first applies to the maximum net mass per inner packaging and the second to the maximum net mass of the complete package.
[2] 60 kg for jerricans and 100 kg for boxes.
[3] 60 L for jerricans.

(e) * * *

(5) *Intermediate bulk containers.* Intermediate bulk containers that are tested at the Packing Group II performance level in accordance with subpart O of part 178 of this subchapter are authorized as follows:

(i) Composite: 31HA1, 31H1; and

(ii) Metal: 31A.

§ 173.225 [Amended]

45. In addition, in § 173.225, the following changes would be made:

a. Paragraphs (c)(2) and (c)(3) would be removed.

b. Paragraphs (c)(4) and (c)(5) would be redesignated as paragraphs (c)(2) and (c)(3).

c. In the first sentence in paragraph (c)(1), the reference ''(c)(4)'' would be revised to read ''(c)(2)''.

d. In newly designated paragraph (c)(2)(ii), the wording ''OP2A or OP2B,

for a liquid or a solid, respectively'' would be revised to read ''OP2''.

§ 173.226 [Amended]

46. In § 173.226, in paragraph (c)(1), the entry ''Aluminum jerrican: 3B2'' would be added immediately following ''Plastic jerrican: 3H2''.

47. In § 173.316, a new paragraph (d) would be added to read as follows:

§ 173.316 Cryogenic liquids in cylinders.

* * * * *

(d) *Mixtures of cryogenic liquid.* Where charging requirements are not specifically prescribed in paragraph (c) of this section, the cryogenic liquid must be shipped in packagings approved by the Associate Administrator for Hazardous Materials Safety.

48. In § 173.318, a new paragraph (f)(4) would be added to read as follows:

§ 173.318 Cryogenic liquids in cargo tanks.

* * * * *

(f) * * *

(4) *Mixtures of cryogenic liquid.* Where charging requirements are not specifically prescribed in this paragraph (f), the cryogenic liquid must be shipped in packagings approved by the Associate Administrator for Hazardous Materials Safety.

* * * * *

Appendix E—[Removed]

49. Appendix E to Part 173 would be removed and reserved.

Appendix F—[Removed]

50. Appendix F to Part 173 would be removed and reserved.

§§ 173.201, 173.202, 173.203, 173.211, 173.212, 173.213 [Amended]

51. In addition to the amendments set forth above, part 173 would be amended by adding the wording ''Aluminum jerrican: 3B1 or 3B2'' immediately following ''Plastic jerrican: 3H1 or 3H2'' each place it appears in the following sections:

a. Section 173.201 (b) and (c)
b. Section 173.202 (b) and (c)
c. Section 173.203 (b) and (c)
d. Section 173.211 (b) and (c)
e. Section 173.212 (b) and (c)
f. Section 173.213 (b) and (c)

PART 175—CARRIAGE BY AIRCRAFT

52. The authority citation for part 175 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1807, 1808; 49 CFR part 1.

§ 175.10 [Amended]

53. In § 175.10, in paragraph (a)(22), the wording ''or thermometer'' would be added immediately following ''barometer'' each place it appears.

PART 176—CARRIAGE BY VESSEL

54. The authority citation for part 176 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1.

55. In § 176.78, paragraph (k) would be revised to read as follows:

§ 176.78 Use of power-operated industrial trucks on board vessels.

* * * * *

(k) *Stowage of power-operated industrial trucks on board a vessel.*

1. Trucks stowed on board a vessel must meet vessel stowage requirements in § 176.905.

* * * * *

56. In § 176.84, in the paragraph (b) table, a new entry for code 17, currently reserved, would be added in numerical order to read as follows:

§ 176.84 Other requirements for stowage and segregation for cargo vessels and passenger vessels.

* * * * *

(b) * * *

Code	Provisions
* * * * *	
17	Segregation same as for flammable gases but ''away from'' dangerous when wet.
* * * * *	

* * * * *

57. Section 176.905 would be revised to read as follows:

§ 176.905 Motor vehicles or mechanical equipment powered by internal combustion engines.

(a) A motor vehicle or any mechanized equipment powered by an internal combustion engine is subject to the following requirements when carried as cargo on a vessel:

(1) Before being loaded on a vessel, each motor vehicle or mechanical equipment must be inspected for fuel leaks. A motor vehicle or mechanical equipment showing any signs of leakage may not be transported.

(2) The fuel tank of the vehicle or mechanical equipment powered by liquid fuel may not be more than one-fourth full.

(3) Whenever possible, each vehicle or mechanical equipment must be stowed to allow for its inspection during transit.

(4) Motor vehicles or mechanical equipment may be refueled when necessary in the hold of a vessel in accordance with § 176.78.

(5)(i) When a motor vehicle or mechanical equipment with fuel in its tanks is stowed in a closed freight container, the following warning must be affixed to the access doors: WARNING—MAY CONTAIN EXPLOSIVE MIXTURES WITH AIR—KEEP IGNITION SOURCES AWAY WHEN OPENING.

(ii) The warning must be on a contrasting background and must be readily legible from a distance of 8 meters (26 feet).

(b) All equipment used for handling vehicles or mechanical equipment must be designed so that the fuel tank and fuel system are protected from stress that might cause rupture or other damage incident to handling.

(c) Two hand-held, portable, dry chemical fire extinguishers of at least 4.5 kg (10 pounds) capacity each must be separately located in an accessible location in each hold or compartment in which any motor vehicle or mechanical equipment is stowed.

(d) ''NO SMOKING'' signs must be conspicuously posted at each access opening to the hold or compartment.

(e) Each portable electrical light, including a flashlight, used in the stowage area must be an approved, explosion-proof type. All electrical connections for any portable light must be made to outlets outside the space in which any vehicle or mechanical equipment is stowed.

(f) Each hold or compartment must be ventilated and fitted with an overhead water sprinkler system or fixed fire extinguishing system capable of alerting personnel on the bridge.

(g) Each hold or compartment must be equipped with a smoke or fire detection system.

(h) All electrical equipment in the hold or compartment other than fixed explosion-proof lighting must be disconnected from its power source at a location outside the hold or compartment during the handling and transportation of any vehicle or mechanical equipment. Where the disconnecting means is a switch or circuit breaker, it must be locked in the open position until all vehicles have been discharged.

(i) *Exceptions.* A motor vehicle or mechanical equipment is excepted from the requirements of this subchapter if any one of the following requirements are met:

(1) The motor vehicle or mechanical equipment has an internal combustion

engine using liquid fuel that has a flashpoint less than 38 °C (100 °F) and—

(i) The fuel tank is empty;

(ii) The engine is run until it stalls for lack of fuel; and

(iii) No hazardous material is stowed in the vehicle or equipment.

(2) The motor vehicle or mechanical equipment has an internal combustion engine using liquid fuel that has a flashpoint of 38 °C (100 °F) or higher and—

(i) The fuel tank contains 418 liters (110 gallons) of fuel or less;

(ii) There are no fuel leaks in any portion of the fuel system; and

(iii) No hazardous material is stowed in the vehicle or equipment.

(3) The motor vehicle or mechanical equipment is stowed in a hold or compartment designated by the administration of the country in which the vessel is registered to be specially suited for vehicles. See 46 CFR 70.10–44 and 90.10–38 for U.S. vessels.

(4) The motor vehicle or mechanical equipment is electrically powered by wet electric storage batteries.

(5) The motor vehicle or mechanical equipment is equipped with liquefied petroleum gas or other compressed gas fuel tanks and—

(i) The tanks are completely emptied of (liquid) gas;

(ii) The line from the fuel tank to the regulator and the regulator itself is drained of all trace of (liquid) gas; and

(iii) The fuel shut-off valve is closed.

(j) The provisions of this subchapter do not apply to items of equipment such as fire extinguishers, compressed gas accumulators, airbag inflators and the like which are installed in the motor vehicle or mechanical equipment if they are necessary for the operation of the vehicle or equipment, or for the safety of its operator or passengers.

PART 178—SPECIFICATIONS FOR PACKAGINGS

58. The authority citation for part 178 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

59. In § 178.511, paragraph (a), paragraph (b) introductory text, and paragraph (b)(1) would be revised, paragraphs (b)(2) through (b)(6) would be redesignated as paragraphs (b)(3) through (b)(7) and a new paragraph (b)(2) would be added, to read as follows:

§ 178.511 Standards for aluminum and steel jerricans.

(a) The following are identification codes for aluminum and steel jerricans:

(1) 3A1 for a non-removable head steel jerrican;

(2) 3A2 for a removable head steel jerrican;

(3) 3B1 for a non-removable head aluminum jerrican; and

(4) 3B2 for a removable head aluminum jerrican.

(b) Construction requirements for aluminum and steel jerricans are as follows:

(1) For steel jerricans the body and heads must be constructed of steel sheet of suitable type and adequate thickness in relation to the capacity of the jerrican and its intended use. Minimum thickness and marking requirements in §§ 173.28(b)(4) and 178.503(a)(9) of this subchapter apply to jerricans intended for reuse.

(2) For aluminum jerricans the body and heads must be constructed of aluminum at least 99% pure or of an aluminum base alloy. Material must be of a type and of adequate thickness in relation to the capacity of the jerrican and to its intended use.

* * * * *

60. In § 178.703, a new paragraph (b)(6) would be added to read as follows:

§ 178.703 Marking of intermediate bulk containers.

* * * * *

(b) * * *

(6) For each composite intermediate bulk container, the inner receptacle must be marked with at least the following information:

(i) The code number designating the intermediate bulk container design type, the name or symbol of the manufacturer, the date of manufacture and the country authorizing the allocation of the mark as specified in paragraph (a) of this section;

(ii) Where the outer casing of a composite intermediate bulk container can be dismantled, each of the detachable parts must be marked with the month and year of manufacture and the name or symbol of the manufacturer.

61. In § 178.707, in paragraphs (c)(2) and (c)(3) introductory text, a new sentence would be added at the end of each paragraph, and a new paragraph (c)(6) would be added, to read as follows:

§ 178.707 Standards for composite intermediate bulk containers.

* * * * *

(c) * * *

(2) * * * The outer packaging of 31HZ2 composite intermediate bulk containers must enclose the inner receptacles on all sides.

(3) * * * The inner receptacle of 31HZ2 composite intermediate bulk containers must consist of at least three plies of film.

* * * * *

(6) Intermediate IBCs of type 31HZ2 must be limited to a capacity of not more than 1250 liters.

§ 178.815 [Amended]

62. In § 178.815, in paragraph (c)(3), the wording ''which bear the stacking load'' would be added immediately following ''with plastic outer packagings''.

Issued in Washington, DC on October 1, 1996, under authority delegated in 49 CFR part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 96–25547 Filed 10–24–96; 8:45 am]

BILLING CODE 4910–60–P/M

Federal Register

Friday
October 25, 1996

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 7, et al.

Approval, Exhaust Gas Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7, 31, 32, 36, 70, and 75

RIN 1219–AA27

Approval, Exhaust Gas Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule establishes new requirements for the approval of diesel engines and other components used in underground coal mines; requirements for monitoring of gaseous diesel exhaust emissions by coal mine operators; and safety standards for the use of diesel-powered equipment in underground coal mines. The final rule is derived in part from existing MSHA regulations, and provides protection against explosion, fire, and other safety and health hazards related to the use of diesel-powered equipment in underground coal mines. The final rule also amends certain equipment safety standards in part 75 previously applicable only to electric-powered equipment to apply to diesel-powered equipment. The new standards are consistent with advances in mining technology, address hazards not covered by existing standards, and impose minimal additional paperwork requirements.

EFFECTIVE DATES: This regulation is effective April 25, 1997, except for subparts E and F of part 7, the removal of part 31, the amendments to part 36, and § 75.1907 which are effective November 25, 1996. Incorporations by reference were approved by the Director of the Federal Register as of April 25, 1997.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Silvey can be reached at psilvey@msha.gov (Internet E-mail), 703–235–1910 (voice), or 703–235–5551 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Coal mine operators began to introduce diesel-powered equipment into underground mines in the early 1970's. The number of diesel units operating in underground coal mines has increased from approximately 150 in 1974 to over 2,900 units operating in 173 mines in 1995. MSHA projects that the number of diesel units operating in underground coal mines could increase to approximately 4,000 in 250 underground coal mines by the year 2000.

Although diesel-powered equipment does not have the inherent electrocution hazard of electric-powered equipment, it nonetheless presents a number of safety and health risks. By introducing an internal combustion engine into an environment where explosive levels of methane can be present, diesel-powered equipment brings with it risks of fire or explosion. Diesel engines also have high temperature exhaust components which, in the presence of coal and other combustibles in the underground mine environment, present a fire hazard. The handling and storage of diesel fuel underground also present potentially serious fire hazards. Finally, diesel engines produce exhaust gases containing carbon monoxide, oxides of nitrogen, and particulate matter, presenting potentially serious health risks to miners.

Before publication of this final rule, MSHA's regulations contained limited safety and health and machine approval requirements that specifically addressed the use of diesel-powered equipment in underground coal mines. In the 1980's, the increase of the numbers of this equipment in underground coal mines, coupled with the health and safety risks associated with its use, highlighted the need for a regulatory approach specifically tailored to diesel-powered equipment operated in underground coal mines.

In response to this need, the Secretary of Labor convened a Federal advisory committee in 1987 to evaluate and make recommendations for the safe and healthful use of diesel-powered equipment in underground coal mines. The Diesel Advisory Committee addressed approval issues—covering equipment design and performance; use issues—addressing the safe use of diesel equipment in the mine environment; and health issues—concerning the evaluation and control of health hazards associated with diesel equipment. In July 1988, the Committee issued a report of its recommendations entitled ''Report of the Mine Safety and Health Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines''. In its report the Committee concluded that MSHA should develop regulations to govern the approval and use of diesel-powered equipment in underground coal mines, and identified a number of specific areas to be addressed.

On October 4, 1989, the Mine Safety and Health Administration published a Notice of Proposed Rulemaking in the Federal Register [54 FR 40950] that included criteria for the approval of diesel engines and other related equipment; addressed exposure limits, monitoring, and recordkeeping requirements for certain diesel emissions; and provided corresponding safety standards for the use of diesel-powered equipment in underground coal mines, including the safe storage and transport of diesel fuel, and the training of persons performing work on diesel equipment. On the same day, MSHA also published an Advance Notice of Proposed Rulemaking [54 FR 40996] soliciting comment on the approach and scope of an MSHA approval program for diesel machines. MSHA held four public hearings on the proposed rule: in Salt Lake City, Utah; Pittsburgh, Pennsylvania; Chicago, Illinois; and Birmingham, Alabama.

This final rule, which includes specifications for the approval of diesel engines as well as provisions for the safe and healthful use of such equipment in underground coal mines, is derived from the data, information, and public comments compiled during the rulemaking process. The final rule, like the proposal, takes an integrated approach to the control of diesel safety and health hazards, requiring clean-burning engines on diesel-powered machines, maintained by persons who have been adequately trained for the task. Sufficient ventilating air is required where diesel-powered equipment is operated to control the potential health hazards of diesel exhaust. Sampling every shift confirms the effectiveness of the mine ventilation system in addressing these hazards.

Part 7 Equipment Approval

MSHA regulations require the Agency's approval of the design of electrical equipment to be used in the production areas of underground coal mines. This equipment must be designed to eliminate fire and explosion hazards. MSHA's approval program has been very successful in reducing the number of fires, explosions and other hazards associated with electric-powered equipment. The final rule establishes a similar approach for diesel-powered equipment used in areas of underground coal mines where permissible (explosion-proof) electric equipment is required, ensuring the same level of safety in mines where diesel-powered equipment is used.

The permissibility requirements for diesel-powered equipment used in gassy non-coal mines in MSHA's part 36 regulations have been in place for a number of years. Although specific regulations did not exist for diesel-powered equipment operated in underground coal mines, MSHA has used the ventilation plan approval process to require the use of permissible diesel-powered equipment, approved under part 36, in those areas of underground coal mines where permissible electric equipment is required. However, mine ventilation plans have generally only addressed fire and explosion protection for equipment operating near the point of coal extraction (inby), and other locations where methane may be present, and have not addressed other possible safety hazards associated with the use of diesel-powered equipment in other (outby) areas. Additionally, mine ventilation plans have not dealt with such important concerns as the storage and handling of diesel fuel and regular maintenance of diesel equipment.

The final rule requires that only approved engines be used in diesel-powered equipment in underground coal mines, and establishes approval requirements for diesel engines to be used in both permissible areas (inby) and nonpermissible areas (outby) under part 7, subpart E. The subpart E approval requirements are modeled after existing approval requirements in part 36 for engines used in gassy non-coal mines. Certain other safety features, such as flame arresters, spark arresters, and water scrubbers, must be added to the engines used in permissible areas to ensure that they can be operated safely in the coal mine environment. An engine in combination with these safety features is termed a diesel power package. A separate approval was established in the final rule for the power package because the power package manufacturer is normally a company other than the engine manufacturer and controls the assembly of the power package. In addition, approval requirements for power packages under part 7, subpart F, are incorporated into machines approved under existing part 36. This is similar to the approach taken for electrical equipment where explosion-proof components are incorporated into machines approved under part 18.

In order to protect miners from harmful contaminants emitted from diesel engines, the approval requirements in the final rule contain test procedures and limits on the concentrations of carbon monoxide and oxides of nitrogen. Based on commenters' recommendations, the final rule requires that the same test cycle be used for testing both the gaseous and particulate emissions. In response to commenters' recommendations, the final rule is based on ISO 8178, an international consensus standard, which establishes a common test cycle for the measurement of gaseous and particulate emissions. All equipment testing under part 7 is intended to be conducted at test sites other than MSHA facilities, such as manufacturers' laboratories, independent testing laboratories, or other government or university laboratories.

Part 70 Exhaust Gas Monitoring.

The final rule addresses the monitoring and control of gaseous diesel exhaust emissions. The final rule requires area sampling as part of the onshift examination during every work shift. These monitoring provisions will ensure, in a reliable and systematic manner, that miners will be protected from exposure to harmful levels of gaseous contaminants.

The final rule requires that mine operators take representative samples of carbon monoxide and nitrogen dioxide in strategic locations to determine concentrations of these contaminants in miners' workplaces. The sampling locations are based on knowledge of the specific operation of diesel equipment underground and the behavior of gaseous emissions generated by these machines. Samples exceeding an action level of 50 percent of the threshold limit values (TLV®) for carbon monoxide and nitrogen dioxide trigger corrective action by the mine operator.

Part 75 Safety Requirements

The final rule specifies minimum ventilating air quantities in areas where diesel equipment is operated, and requires that the quantities be incorporated into the mine operator's approved mine ventilation plan. As part of the equipment approval process in part 7 of the final rule, diesel engines used underground are tested for gaseous and particulate emissions. The required minimum ventilating air quantity is determined based on the results of these emission tests and is included on the approval plate for each unit of diesel-powered equipment. The approval plate quantity of ventilating air is the air quantity needed to dilute the exhaust gases to their permissible exposure limits. This air quantity should be used in ventilation system design by the mine operator and in the evaluation and approval of minimum air quantities in ventilation plans by MSHA.

Under the final rule individual units of diesel equipment must be ventilated, as a general rule, with the air quantity specified on the equipment's approval name plate. The quantity of air required in areas where multiple units of equipment are operated is based on a simple addition of approval plate air quantities. The final rule also allows for adjustments in air quantities for multiple units of equipment, if sampling of contaminants indicates that lesser air quantities will result in dilution to the necessary levels. In addition, the final rule establishes specific locations where air quantities must be measured.

Under the final rule, low sulfur fuel must be used to operate diesel-powered equipment underground. Low sulfur fuel, which is readily available and widely used throughout the United States, will lower gaseous and particulate emissions, helping to protect miners from exposure to harmful diesel exhaust contaminants. In addition, the final rule prohibits the use of flammable liquids as additives in diesel fuel used underground and requires that only additives registered with the Environmental Protection Agency in accordance with 40 CFR Part 79 be used in diesel-powered equipment.

The use of diesel fuel underground can present risks to miners' safety, because the spilling of fuel on hot surfaces or electric components, or the inadvertent ignition of stored diesel fuel, can result in fire. Additionally, a fire started with a combustible material other than diesel fuel that then spreads to diesel fuel stored underground could be catastrophic. Diesel fuel handling and storage are addressed in the final rule by specific requirements for diesel fuel storage and the transportation of fuel from one location to another.

New design, installation, and maintenance requirements are established under the final rule for fire suppression systems installed on diesel-powered equipment and fuel transportation units. The requirements in the final rule address the risk of fire on diesel-powered equipment caused by, for example, hot exhaust components, dragging brakes, and shorted electrical components igniting diesel fuel, hydraulic fluid, brake fluid, lube oil, and other combustible materials. The final rule also requires that automatic fire-suppression systems be listed or approved by a nationally recognized independent testing laboratory.

The final rule recognizes that regular maintenance of diesel-powered equipment is essential. Inadequate equipment maintenance can result in the creation of a fire or explosion

hazard, and the levels of harmful gaseous and particulate components in diesel exhaust can rise when equipment is not adequately maintained. In response, the final rule requires diesel-powered equipment to be examined on the same weekly basis as electric equipment. The rule specifically requires that air filters be changed and scrubbers be flushed regularly, and that weekly gaseous emission tests be conducted on certain diesel equipment while the engine is operating. The final rule also requires that persons performing certain work on diesel-powered equipment be qualified. Commenters agreed that requiring diesel-powered equipment to be maintained in approved condition is necessary to ensure that features installed to reduce the risk of fire, explosion, and harmful emissions are operating properly. The final rule does not adopt the proposal that MSHA approve the training plans used for qualification. Under the final rule, training to establish qualification for persons performing maintenance may be obtained through the equipment manufacturer, community colleges, training schools, or other training providers.

Amendments to Existing Part 75 Requirements

The final rule amends certain existing MSHA regulations in part 75 by extending their applicability to diesel-powered equipment. The final rule requires that certain types of diesel-powered equipment be equipped with methane monitors to detect dangerous levels of methane, and also with cabs or canopies to protect miners from roof falls. Additionally, the final rule clarifies that accumulation of coal dust and other combustible materials is prohibited on diesel-powered equipment. These safety features have been proven to save miners' lives.

II. Discussion of the Final Rule

A. General Discussion

Recordkeeping Requirements in the Final Rule

Recordkeeping requirements in the final rule are found in §§ 7.83 and 7.97, Application requirements; §§ 7.90 and 7.105, Approval marking; §§ 7.108, Power package checklist; § 75.363, Hazardous condition; posting, correcting and recording; § 75.371 (r), (kk), (ll), (mm), (nn), (oo), and (pp), Mine ventilation plan, contents; § 75.1901(a), Diesel fuel requirements; § 75.1904(b)(4)(i), Underground diesel fuel tanks and safety cans; § 75.1911(i) and (j), Fire suppression systems for diesel-powered equipment and fuel transportation units; § 75.1912(h) and (i), Fire suppression systems for permanent underground diesel fuel storage facilities; § 75.1914 (f)(1), (f)(2), (g)(5), (h)(1) and (h)(2), Maintenance of diesel-powered equipment; § 75.1915(a), (b)(5), (c)(1), and (c)(2), Training and qualification of persons working on diesel-powered equipment.

The paperwork burden imposed on manufacturers by the final rule totals 558, which is an increase of 790 burden hours for the transfer of hours from part 36 approval requirements, and a decrease of 232 hours for the removal of parts 31 and 32. In the first year the final rule is in effect, the burden hours on mine operators will be 56,258, of which large and small mine operators will incur 54,774 and 1,484 hours, respectively. After the first year, the burden hours to mine operators will be 52,228, of which large and small mine operators will incur 50,949 and 1,279 hours, respectively.

In the first year that the final rule is in effect, the total new paperwork burden hours to mine operators and manufacturers will be 56,816 [56,258 + (790 − 232)]. After the first year, the total new paperwork burden hours to mine operators and manufacturers will be 52,786 [52,228 + (790 − 232)].

MSHA solicited comments regarding the burden estimates or any other aspect of the collection of information in the proposed rule. Proposed paperwork requirements were submitted to the Office of Management and Budget (OMB) for review in accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (PRA 80). Comments by OMB were filed under comment numbers 1219–0111, 1219–0112, and 1219–0114. Control number 1219–0100 was approved for proposed paperwork burden hours required by part 7.

When proposed in 1989, the information collection requirements in the diesel equipment regulations were calculated under PRA 80. The final rule calculations are done in compliance with the Paperwork Reduction Act of 1995 (PRA 95). Generally, changes in the final rule burden hour and cost estimates from the proposed requirements result from the revision necessitated by PRA 95. When the change represents a regulatory change, it is so noted in the discussion of the appropriate section within the preamble. For details on the calculation of paperwork hours and costs see ''VII, Paperwork Reduction Act of 1995'' in the Regulatory Impact Analysis, which may be accessed electronically or may be requested from MSHA's Office of Standards, Regulations, and Variances.

Information is to be recorded, maintained for the period specified, and made accessible, upon request, to authorized representatives of the Secretary and to miners' representatives. Records are to be stored in a manner that is secure and not susceptible to alteration, to preserve the integrity of records for review by interested parties. This may be done traditionally, by recording in a book, or electronically by computer.

Examples of books that MSHA considers to be secure and not susceptible to alteration include, but are not limited to, record books that are currently approved by state mine safety agencies, and permanently bound books. Examples of books that would not be considered secure include loose-leaf binders and spiral notebooks.

Recognizing the trend of electronic storage and retrieval of information through computers to be an increasingly common business practice, MSHA permits the use of electronically stored records, provided that they are secure and not susceptible to alteration, that they are able to capture the information and signatures required, and that information is accessible to authorized representatives of the Secretary and miners' representatives. ''Secure'' is intended to mean unalterable or unable to be modified. An example of acceptable storage would be a ''write once, read many'' drive. Electronic records meeting these criteria are practical and as reliable as traditional records. Although the final rule does not require backing up the data, some means is necessary to ensure that the condition and existence of electronically stored information is not compromised or lost.

The 1995 Paperwork Reduction Act mandates agencies to encourage the use of electronic submission of responses to minimize the burden of the collection of information on respondents. Likewise, one of the major objectives of Executive Order No. 12866 is to make the regulatory process more accessible and open to the public as a means to reduce the duplication of information between agencies. Elsewhere in this preamble, MSHA announces the electronic availability of its rulemaking documents with access instructions. The mining community and other interested parties are encouraged to access on-line material as needed.

B. Section-by-Section Discussion

The following section-by-section portion of the preamble discusses each provision affected. The text of the final

rule is included at the end of the document.

General Discussion of Diesel Equipment Approvals and Safety Requirements

One of the three major areas addressed by the Diesel Advisory Committee was the approval of diesel-powered equipment. Historically, MSHA and its predecessor agencies have approved equipment intended for use in areas of mines where methane and other substances pose the danger of a fire or explosion. Through the approval process, equipment is evaluated against technical requirements which, when met, will render the equipment safe for its intended use in the mine environment. In part as a result of this process, the approved equipment used in mines in the United States is recognized as among the safest in the world.

The Advisory Committee recommended that diesel-powered equipment for use in underground mines be subject to MSHA approval in much the same way that electrical equipment has been regulated. Under existing standards, electrical equipment operated in the area of extraction and in return airways of underground coal mines and gassy metal and nonmetal mines, where methane may accumulate, must be approved as permissible (explosion-proof). Electrical equipment operated elsewhere in these mines is not required to be permissible, but is subject to certain safety requirements to protect against fire, shock, and other hazards of operation. The Advisory Committee further recommended:

- Only diesel-powered equipment currently considered permissible should be permitted to continue to operate in areas of coal mines where permissible electrical equipment is required.
- Separate specifications should be developed for diesel-powered equipment used in areas where permissible equipment is required and elsewhere.
- An approval program for diesel-powered equipment and portable, attended equipment should be established. This program should identify those equipment design features most readily addressed by the equipment manufacturers.
- A time schedule should be developed to allow for conversion of outby equipment presently in use through retrofits, replacement, or additional interim safety features to meet the applicable new requirements.
- Equipment newly introduced underground after a fixed date should meet the new standards.
- Current safety requirements including those that are applicable to electric equipment should apply to diesel equipment as appropriate.
- Only approved diesel engines should be used in underground equipment and the approval requirements should include measurements of exhaust gas pollutants and determination of a nameplate airflow quantity. Measurement of particulate generation should also be included in the engine approval process.

In the proposed rule, MSHA outlined three new subparts for existing part 7, which set approval requirements for diesel engines and power packages to be used in underground coal mines. The Agency also gave notice of its intention to develop approval requirements for fully assembled diesel-powered machines under a proposed subpart H for permissible equipment and subpart I for large outby equipment. Requirements for a limited class of light-duty equipment and stationary unattended equipment were proposed in part 75. A special class of equipment consisting of ambulances and fire fighting equipment was proposed that could be used in emergency situations as part of the mine's evacuation plan. The proposal also included provisions to permit fire prevention features in lieu of surface temperature controls for diesel locomotives.

Currently, MSHA approves diesel equipment under 30 CFR Part 36 for use in ''gassy noncoal mines''. In underground coal mines, ventilation plans specify the use of diesel-powered equipment approved as permissible under part 36 in areas where permissible electric equipment is required. In addition to the equipment approval under part 36, MSHA regulations address the approval of diesel mine locomotives in 30 CFR Part 31, and of mobile diesel-powered equipment for noncoal mines in 30 CFR Part 32. The proposal suggested that parts 31, 32, and 36 could be revised or revoked, and solicited comment. Some commenters favored retaining all of the existing diesel approval regulations since they still could have some application for equipment used in metal and nonmetal mines. Commenters generally agreed that the proposed rules for part 7 should supersede any applicability these existing approval regulations have for diesel engines used in underground coal mines.

The final rule for part 7 governs the approval of diesel engines intended for use in underground coal mines. As recommended by the Advisory Committee and as set forth in the proposed rule, the final rule requires that all diesel engines used in underground coal mines be approved.

Part 7 was originally promulgated in 1988 to establish application procedures and requirements for MSHA approval of certain products for use in underground mines, with testing conducted by the applicant or a third party. Traditionally, MSHA's role in approving products for safety emphasized testing by the Agency. Under part 7, testing is performed by the applicant or by a third party selected by the applicant, with MSHA maintaining the right to observe product testing. This approach has permitted MSHA to focus on its product audit function and keep pace with technological improvements in mining products.

As originally promulgated, part 7 applied to only two types of products: brattice cloth and ventilation tubing under subpart B, and battery assemblies under subpart C. Subsequently, three additional subparts were developed covering multiple-shot blasting units; electric motor assemblies; and electric cables, signaling cables, and cable splice kits. As designed, part 7 expedites the approval process, while providing greater assurance that the products are manufactured in accordance with safety specifications.

The final rule for part 7 is organized into two subparts—E and F. Subpart E sets diesel engine performance and exhaust emission requirements. As more fully discussed elsewhere in the preamble, subpart E creates two classes of engine approvals—one for Category A engines and one for Category B engines. Engines intended for use where permissible electric equipment is required in underground coal mines must have a Category A approval; engines for use elsewhere in underground coal mines must meet the requirements for Category B engines.

Subpart F of the final rule sets standards for safe design of diesel engines with respect to both fire and explosion hazards. The final rule establishes requirements for approval of diesel ''power packages'' on engines intended to be used where electric equipment is required to be permissible under existing standards. The term ''power packages'' refers to an approved engine and those components added to the engine, such as flame arresters, which prevent the ignition of methane, and surface temperature controls, which prevent the ignition of accumulations of combustible materials and combustible liquids. Permissible equipment is designed to be explosion-proof.

Subpart G of the proposed rule would have established requirements for diesel

power packages intended for use in areas of underground coal mines where permissible electrical equipment is not required. As this equipment is not designed to be operated in a potentially explosive methane environment, the proposed rule would not have required these power packages to have explosion-proof features. However, these diesel engines do present fire hazards which must be controlled. Under the proposal, subpart G would have set standards for surface temperatures, exhaust cooling, and safety system controls. As discussed more fully below, the final rule does not retain subpart G, but addresses these hazards through new requirements in part 75.

The proposed rule, responding to a recommendation of the Advisory Committee, also established a category of ''limited class of light-duty diesel-powered equipment.'' This category included machines with light-duty cycles, such as pickup trucks and personnel carriers. This equipment, while light-duty as compared to production equipment, can, nevertheless, present a fire hazard. For this ''limited class'' of diesel-powered equipment, instead of requiring surface temperature controls, the proposal set standards for fire prevention features that would prevent fuel, hydraulic fluid, and lubricants from coming into contact with hot engine surfaces. Features such as special fuel system protection, fire suppression systems, safe electrical systems, and engine compartment sensors that shut down the engine in the event of overheating were specified in the proposal for additional fire protection. Other necessary safety features, such as braking systems, were also addressed by the proposal. As recommended by the Advisory Committee, these requirements were not made part of the approval process described above, but were set forth in the proposal as safety standards for underground coal mines, appearing in 30 CFR Part 75.

The final rule retains many of the provisions of the ''limited class'' concept in the proposal, but broadens the scope of the equipment subject to these requirements to include all equipment not required to be permissible (outby equipment). This change eliminates the need for formal approval of outby equipment, and simplifies the final rule. This aspect of the final rule, and the diesel-powered equipment approval requirements, are discussed in detail under the section-by-section analysis which follows.

In the proposed rule MSHA notified the public of its intentions to develop two new approval regulations. Subpart H would have established requirements for the approval of fully assembled permissible diesel-powered equipment, and subpart I would have established approval requirements for fully assembled nonpermissible diesel-powered equipment. These sections would have included machine features currently required by part 36 for permissible equipment and similar features, described above, for ''limited class'' equipment. These subparts would have required the incorporation of appropriate power packages as described in proposed subparts F and G.

In the advance notice of proposed rulemaking, which accompanied the proposed rule, MSHA requested comments on this regulatory approach. Commenters objected to a formal approval program for nonpermissible equipment, but supported the incorporation of machine safety features in the use requirements specified in part 75. Commenters also supported the need for continuing the approval program for permissible equipment.

In response to these comments, the final rule retains part 36 as the basis for the approval program for permissible diesel-powered equipment and adopts the machine safety features specified for the limited class of light-duty equipment in the proposal for all nonpermissible equipment. Subparts H and I are not further developed. Instead, the final rule adopts the fire prevention features specified for limited class equipment for all nonpermissible equipment. Additionally, the final rule enhances the fire prevention features that now apply to all nonpermissible equipment. This approach eliminates the need for subpart G of the proposal dealing with power packages for outby equipment.

The final rule makes certain revisions to part 36 to update and make these existing requirements more flexible. The final rule revises part 36 to remove references to ''gassy noncoal mines and tunnels'', thus making these existing regulations applicable to equipment intended for use in coal as well as in metal and nonmetal mines. In addition, part 36 is amended to afford equipment manufacturers the option of incorporating in equipment submitted for approval either a part 7, subpart F power package, or engine and safety component systems that meet the existing requirements of part 36. Under the final rule, part 36-approved equipment with a part 7, subpart F power package will be suitable for use in underground coal mines where permissible electrical equipment is required. Part 36 equipment with engine and safety component systems certified under part 36 will continue to be recognized for use in metal and nonmetal mines where permissible equipment is required.

These changes are responsive to commenters who recommended that part 36 continue to be utilized for approving diesel-powered equipment. The final rule revisions to part 36 also retain, as recommended by commenters, a distinction between approval requirements for equipment used in coal mines and approval requirements for metal and nonmetal mining equipment.

The final rule revokes parts 31 and 32. MSHA previously identified these regulations for elimination in its response to the President's March 4, 1995, Regulatory Reform Initiative. Parts 31 and 32 are outdated and, with the final rule changes to parts 7 and 36, are obsolete. Only nine approvals have been issued under part 31 since its inception, and none have been issued since 1977. No other MSHA standards require part 31-approved equipment, and diesel mine locomotive manufacturers have submitted approval applications under part 36 for locomotives intended to be used where permissible equipment is required. With the revocation of part 31, diesel mine locomotive manufacturers may continue to acquire equipment approvals under part 36.

The part 32 approval requirements for mobile diesel-powered equipment used in noncoal mines are likewise unnecessary. No MSHA regulation requires the use of part 32 equipment, and no part 32 machine approval has been issued since 1981. Part 32 engine certifications have continued to be issued by MSHA, however, and some state and federal agencies' regulations make reference to part 32. State and federal agencies that reference part 32 are directed to look to part 7, subpart E, which contains engine requirements, and to §§ 75.1909 and 75.1910, which contain the requirements for other machine features. Together, these final standards cover the requirements previously found under part 32. These new sections of the final rule will continue to accommodate those government agencies that reference MSHA approval or certification regulations.

Likewise, manufacturers seeking part 32 engine approvals will be able to acquire the requisite engine approval through the new part 7, subpart E. Existing part 32 engine approvals continue to be valid.

A significant issue for the Advisory Committee and in the proposal was the schedule set for compliance with the new standards for diesel-powered equipment. The Advisory Committee

recommended that MSHA require diesel equipment newly introduced underground to meet the new standards after a certain date. The Committee further recommended that MSHA set a schedule for existing diesel equipment to meet any new requirements.

The proposal called for the part 7 approval requirements to be effective 60 days after publication of the final rule. The schedule for requiring in-mine use of diesel equipment meeting the new requirements was set by proposed § 75.1907. Under these provisions, the new requirements would have been met over a schedule ranging from six months to five years after the effective date of the final rule.

The final rule follows the approach of the proposal, setting effective dates for the new approval requirements, as well as the schedule for requiring in-mine use of diesel-powered equipment which meets the new requirements. In response to the comments and as a result of not adopting proposed subparts G, H, and I, the final rule sets a compliance schedule ranging from 60 days to three years after publication of the final rule. In order to facilitate implementation of the final rule, MSHA will begin accepting approval applications under revised parts 7 and 36 immediately. In addition, MSHA will continue power package testing until the Agency determines that a competitive capacity exists in the private sector. At that time, MSHA will discontinue power package testing and rely solely on the part 7 testing provisions.

Subpart E Overview

Subpart E of the final rule is new and amends existing part 7. As an amendment to these existing regulations, the general administrative provisions of subpart A of part 7 apply to the new subpart E application requirements.

Subpart E establishes engine performance and exhaust emission requirements for MSHA approval of diesel engines for use in underground coal mines. As discussed elsewhere in this preamble, diesel engines for use in metal and nonmetal mines are approved under part 36.

The final rule, like the proposal, creates two classes of engine approvals—Category A and B—for diesel engines to be used in underground coal mines. Several commenters objected to the proposed approval of diesel engines for use in outby areas, noting that outby electrical equipment is not subject to approval under existing standards. However, other commenters stated, and the Diesel Advisory Committee acknowledged, that all diesel engines in underground coal mines should meet certain safety and performance specifications. In its report the Advisory Committee suggested that, depending on equipment location and use, different requirements would be appropriate for diesel engines. One commenter to the proposal recommended that all diesel engines be approved as permissible.

For underground coal mines, MSHA believes that clean-burning engines are critically important. Unlike electrical equipment, diesel engines emit exhaust which contains toxic gases that can be harmful to miners. Inappropriately designed engines can pollute the mine atmosphere excessively, elevating toxic gases to levels that cannot be controlled with normal ventilation practices.

To achieve the objective of clean-burning, appropriately designed engines in mines, the final rule sets performance standards for all diesel engines, whether they are operated in the face area or outby.

The emission test requirements for Category A and B engines are the same, except that Category A engines are tested with methane injected into the intake system. Equipment operating at or near the point of coal extraction and in return air courses may encounter concentrations of methane gas, which is liberated during mining. Testing an engine with methane injected in its intake simulates operation of the engine in these areas of coal mines. Operation in methane atmospheres causes an increase in exhaust emissions, which requires higher ventilation rates.

Under the final rule, diesel equipment used in areas where permissible electrical equipment is required by existing standards incorporate fire and explosion prevention features provided by a power package. Such a power package must include a Category A engine and components added to the engine to prevent the ignition of methane and accumulations of combustibles. Power packages intended for use with Category A diesel engines must be approved under part 7, subpart F of the final rule.

Current safety standards require that intake air courses in areas away from or outby the mining face be maintained free of explosive concentrations of methane. Engines used on equipment operated in these outby areas must have a Category B approval under the final rule. Engines approved under Category B are emission tested without the injection of methane into the engine's intake system.

The proposed technical requirements for diesel engines addressed the control of gaseous exhaust emissions and quantification of the engines' particulate matter generation. The proposed rule also set specifications for the equipment used and the standard laboratory test conditions for determining gaseous and particulate output for diesel engines. The proposed requirements for measuring gaseous emissions were derived from now-removed part 32 and existing part 36, and the proposed requirements for measuring diesel particulate were based on the Environmental Protection Agency's requirements published in 40 CFR Part 86. In addition, the proposal specified the engine operating parameters as well as a method to calculate the ventilation rate and particulate index for the engine.

Engine manufacturers do not manufacture engines specifically for mining. Typically, ''off-road'', heavy-duty diesel engines are utilized in mining equipment. Over-the-road utility vehicles and smaller general industry equipment are also used in mines. At the time of the proposed rule, the only certification test specifications designed for engines used in mining were the MSHA engine certification standards in now-removed part 32 and in existing part 36.

In the proposal, MSHA used its rules in now-removed part 32 and existing part 36 for the steady-state test for gaseous diesel exhaust emission. The test equipment specified in the proposal for diesel exhaust particulate measurement was modeled after the transient test equipment required in 40 CFR Part 86, subpart N.

Commenters to the proposal stated that a correlation should not be made between MSHA's proposed rule and then-current EPA testing, because the proposal used a test with specific points in a ''steady state'', while EPA used a ''transient test.'' Commenters also recommended using the same test cycle for both gaseous and particulate matter. In addition, commenters generally recommended comparability of testing for similar types of tests and indicated a desire to use international standards whenever possible.

The International Organization for Standardization (ISO) has prepared ''ISO 8178 Reciprocating Internal Combustion Engines—Exhaust Emission Measurement'', which includes test specifications for off-road diesel engines. The ISO is a recognized international standard-setting body. Equipment manufacturers, as well as other standard-setting bodies, make reference to and adopt the standards developed by the ISO.

ISO 8178 is an international test standard for measuring off-road diesel engine emissions. It contains a detailed description of the test equipment requirements and standard procedures for conducting a steady-state test to determine both gaseous and particulate emissions. The ISO 8178 procedures also specify an 8-point test cycle for measuring both gaseous and particulate emissions. ISO 8178 does not set emission limits.

The final rule is based on the ISO 8178 ''Reciprocating Combustion Engines—Exhaust Emission Measurement'', part 1 test procedures that apply to gaseous and particulate emission testing for diesel engines. This change from the proposal is responsive to commenters' concerns about correlating the proposed rule and EPA diesel engine tests, and simplifies the test procedures. For example, under the final rule the gaseous emission tests are reduced to 8 test points from 39 test points under the proposal. The particulate emission tests are also reduced from 10 to 8 test points. In addition, the final rule permits the tests for exhaust gaseous and particulate emission tests to be performed concurrently following the same test cycle, rather than independently following different cycles. A number of minor changes are made in §§ 7.86, 7.87, 7.88, and 7.89 of the final rule, so that the tests performed under these sections conform to the ISO 8178 requirements. Substantive changes to these sections are discussed in this overview and in the section-by-section discussion that follows.

The final rule adds one requirement to the ISO 8178 test procedures. Section 7.89(a)(5)(iii) requires that 1.0 percent of methane be added to the intake air for testing Category A engines. This addition to the ISO 8178 procedure should present no technical difficulties for manufacturers or third-party laboratories. MSHA, however, will provide technical assistance for setting up this aspect of the test procedure upon request. The final rule also requires a test to determine the maximum fuel-to-air ratio, and specifies requirements for determining the gaseous ventilation rate and particulate index for diesel engines.

Basing the final rule on an international consensus standard enables diesel engine manufacturers to test with a single set of procedures common to both the United States and foreign markets. Also, existing test facilities established to perform tests to these international standards can be used to perform the tests prescribed by this final rule. In addition, use of the ISO 8178 test procedures leads to better comparability with international testing practices, and provides a more competitive posture for American products in foreign markets. Many off-road engine manufacturers are already complying with EPA and California Air Resources Board (CARB) requirements, which include testing in accordance with ISO 8178 procedures.

One commenter to the proposal objected to permitting engine manufacturers or third-party laboratories to test diesel engines for conformance to approval standards, questioning the objectivity of such an approach. MSHA experience over eight years with manufacturers and third-party laboratory testing under existing part 7 and the Agency's program for off-site testing (POST) of diesel engines confirms that non-MSHA testing is performed competently and produces reliable results. In addition, MSHA will initially witness all tests conducted by manufacturers and third parties to ensure continued reliability of test results. In all cases, MSHA will accept only results of tests performed by manufacturers or third-party laboratories which have the capability to competently perform the required tests with properly calibrated instrumentation.

Section 7.81 Purpose and effective date. The part 7, subpart E approval requirements are effective November 25, 1996. MSHA will begin accepting applications under subpart E immediately, but will complete any in-house part 32 applications, or evaluate such applications under the new part 7, subpart E, at the applicant's choice. As discussed elsewhere in this preamble, the requirements for the use of approved diesel engines in underground coal mines are effective in 3 years.

Commenters to the proposal generally supported the approval requirements of subpart E for diesel-powered equipment to be used in underground coal mines. Several commenters suggested, however, that a phase-in period, up to three years, be established. According to these commenters, manufacturers would use the phase-in period to gain experience with the new test procedures, become familiar with new engine approval application procedures, and re-evaluate their existing approvals.

The final rule does not incorporate a phase-in period for diesel engine approvals. Diesel engine manufacturers and third-party testing facilities are familiar with the ISO 8178 test procedures on which the final rule is based, and have the capability to perform these tests in their laboratories with minor changes. In fact, two engine manufacturers and a testing laboratory have tested diesel engines for MSHA approval using the ISO 8178 procedure.

With this diesel engine testing experience and capability already present in the marketplace, MSHA finds no reason to provide an extended phase-in period for the approval standards for diesel-powered equipment, and anticipates that manufacturers and third-party testing laboratories can immediately begin testing engines under subpart E.

Section 7.82 Definitions. In addition to the existing definitions in § 7.2, § 7.82 of the final rule sets out and clarifies the key terms which apply in subpart E. Commenters generally agreed with the proposed definitions, which were derived from definitions developed for ISO 8178 and the Society of Automotive Engineers (SAE) Recommended Practice J177.

No comments were received on the proposed definitions for ''Category A engines'', ''Category B engines'', ''corrosion-resistant material'', ''diesel engine'', ''exhaust emission'', ''percent load'', and ''steady-state condition''. These terms and their proposed definitions are adopted in the final rule.

The definitions of the terms ''rated speed'' and ''intermediate speed'' in the proposed rule have been modified in the final rule in response to a commenter who recommended that MSHA's definitions of these terms conform to definitions contained in internationally accepted standards. The definitions of these terms in the final rule are conformed to the definitions in ISO 8178.

The term ''peak torque speed'' in the proposed rule has been changed to ''maximum torque speed'' in the final rule to conform with ISO 8178. Both terms convey the same meaning.

One commenter objected to the definition of ''diesel particulate matter'' as ''any material, with the exception of water, which is collected on a filter passed by an air diluted exhaust stream.'' According to this commenter the proposed definition was vague and too dependent on the filter used and method of sampling. The final rule does not include the proposed definition, adopting instead the definition for diesel particulates contained in ISO 8178. The ISO definition is more specific, providing that diesel particulates are ''any material collected on a specified filter media after diluting diesel exhaust gases with clean filtered air at a temperature less than or equal to 325 K (52° C) as measured at a point immediately upstream of the primary filter. This is primarily carbon, condensed hydrocarbons, and sulphates

and associated water.'' In addition, the filter and sampling methods, which are well detailed in ISO 8178, are included in the final rule. The objective of this definition is to facilitate accurate, repeatable tests for the diesel particulate matter in an engine's exhaust. Other definitions may be more appropriate for addressing health effects.

The same commenter also objected to the proposed definition of ''total oxides of nitrogen'' as focusing only on nitric oxide and nitrogen dioxide. The commenter suggested revisions to these definitions and offered definitions for several other terms used in the proposed rule, including ''gaseous ventilation'', ''particulate index'', ''threshold limit value'', ''permissible exposure limit'' and ''recommended exposure limit.'' According to the commenter, these terms were not used consistently in the proposal. The final rule does not adopt these suggested changes. Many of these terms have accepted meanings that are well known. However, changes throughout the final rule have been made to be sure the terms are used consistently and appropriately.

The proposed definition of rated horsepower is revised in the final rule to conform with current procedures for evaluating engines under existing part 36. This change will help define an engine's power output as it is related to performance testing. A definition for the term ''operational range'' is added to also conform with current procedures for evaluating engines under existing part 36.

Section 7.83 Application requirements. The proposed application requirements were derived from now-removed part 32 and existing part 36 and are largely unchanged in the final rule. The application procedures are designed to provide sufficient information to demonstrate compliance with the technical requirements of subpart E, and form the basis for approval of diesel engines.

The final rule adopts the proposal to permit applicants to submit composite drawings in lieu of individual drawings. This approach reduces paperwork and affords applicants flexibility in the preparation of their drawings.

The final rule also provides for certain information to be submitted after approval testing. This information includes the ventilation rate and particulate index for the engine, and the fuel deration chart, which provides guidance for how to adjust approved engines to compensate for altitude.

Like existing part 7 and other MSHA approval standards, the documentation formulated in the application process forms the basis for MSHA's approval. Approved diesel engines must be manufactured in accordance with the specifications contained in the approval and, once put into service, approved engines must be maintained and operated within the parameters set in the MSHA approval.

In general, commenters concurred with the proposed application requirements. One commenter suggested that a description of the design features which promote efficiency and control over production of toxic emissions specifically include fuel injection timing. MSHA agrees that specifications for the fuel injection system of diesel engines and the fuel injection timing are key in controlling exhaust emissions. The proposal included a requirement that the fuel injection system be detailed in approval applications. However, a requirement specifying the fuel injection timing was not included in the proposed rule.

The final rule adopts the proposed requirement for a description of the fuel injection system, and adopts in paragraph (b)(6) the suggestion that fuel injection timing also be specified. This information had been required in now-removed part 32 and is required for part 36 engine approvals and to help ensure accurate measurement of the engine's emissions during the tests and proper maintenance of the engine's fuel injection timing.

Although the Agency allows electronic record storage in other areas of this regulation, electronic computer submission of part 7 approval applications is not yet available. MSHA's Approval and Certification Center is developing a means for computer submission, and at present has pilot programs to facilitate the use of electronic reporting. However, the system is in the formative stage and is not yet available for public use.

The paperwork hours in the approval application, including test requirements, are assigned OMB control number 1219–0100.

Section 7.84 Technical requirements. This section of the final rule sets the specific technical requirements for Category A and Category B diesel engines. The objective of this aspect of the final rule is to set standards which, when met, will produce clean-burning diesel engines that are safe and appropriate for use in the confined environment of underground coal mines.

Like the proposal, the final rule's requirements for the gaseous emissions of diesel engines are based on appropriate sections of existing part 36 approval regulations for diesel engines. Experience confirms that compliance with these regulations, which address fuel injection adjustments and fuel-to-air ratios, produces engines that operate without excessive gaseous emissions that can be harmful to miners.

One commenter to the proposal suggested that the fuel injection system on approved diesel engines be required to be fixed and sealed so that it could not be changed. According to the commenter, sealing the system would prevent unauthorized changes.

The final rule does not adopt this suggested change, as adjustments to diesel engine fuel injection systems are necessary for maintenance and to compensate for altitude. Adjustments such as these permit the fuel-to-air ratio for diesel engines to be maintained at a level which minimizes exhaust emissions.

The final rule does, however, adopt the proposed security requirements to prevent unauthorized fuel injection system adjustments. Fuel injection system adjustments are required to be changeable only after breaking a seal, or by altering the injection system's design. For example, a shim may be added or removed to change the fuel pump's performance. These parts are supplied by engine manufacturers and must be used in accordance with the engine's approval. For engines with electronic fuel injectors, specialized computer interface equipment is used to adjust the computer programming sequence. The programming sequence must be installed by the engine manufacturer and is listed with the engine approval documentation. After adjustments are made in a fuel injection system, any seal removed must be replaced. Failure to follow these procedures for adjusting a fuel injection system would result in the engine no longer being in approved condition. Under § 75.1914(a) of the final rule, diesel engines used in underground coal mines are required to be maintained in approved condition.

Consistent with a recommendation of the Diesel Advisory Committee, the technical requirements for diesel engines also include undiluted exhaust limits for carbon monoxide and oxides of nitrogen, both of which have toxic properties which can be harmful to miners. The limits set for these gases, which are determined when the engine is operated at its maximum fuel-to-air ratio, are derived from existing § 36.26(b) and now-removed § 32.4(f). As noted in the proposal, applying these exhaust gas limits to diesel engines for use in outby areas is new.

One commenter questioned why the proposal set the same undiluted exhaust gas limits for Category A and B engines, except that the carbon monoxide limit

was 0.30 percent for Category A engines, while the carbon monoxide limit for Category B engines was set at 0.25 percent. This aspect of the proposal, which is adopted without change in the final rule, recognizes a difference in the test procedure between Category A and B engines. As noted above, Category A engines must be designed to operate safely in face areas and return air courses where methane may be present. Thus, Category A engine testing is performed with 1.0 percent methane injected into the intake air. The methane acts as additional fuel in the engine, which affects the fuel-to-air ratio. This change in fuel-to-air ratio increases emission levels, especially carbon monoxide and oxides of nitrogen. Thus, the final rule technical requirements permit a slightly elevated carbon monoxide level for Category A engines during testing so as to avoid imposing an unnecessarily strict test requirement for this class of diesel engines. The ventilating air requirement, however, is based on the actual emissions measured during testing.

The final rule also defines procedures to establish the ventilating air quantities necessary to maintain the gaseous emissions of diesel engines within existing required ambient limits. Emissions from both Category A and Category B engines are diluted to the same ambient levels when their ventilating air requirements are calculated. Like the proposal and consistent with the recommendations of the Diesel Advisory Committee, the final rule addresses this issue by requiring that a ventilation rate be set for each engine model. Under the final rule, this ventilation rate must appear on the engine's approval plate. The ventilation rate, calculated under § 7.88 of the final rule, indicates the amount of air necessary to dilute carbon dioxide, carbon monoxide, nitric oxide, and nitrogen dioxide to within allowable levels. For consistency, the levels specified in the final rule are those set by existing § 75.322. These exposure standards are based on the 1972 threshold limit values set by the American Conference of Governmental Industrial Hygienists (ACGIH) and have applied to underground coal mines for nearly 25 years. This aspect of the final rule comports with the recommendation of the Diesel Advisory Committee that gaseous diesel exhaust components not be treated differently from contaminants generated by other mining sources. The final rule does not adopt updated exposure standards at this time because this issue remains in the rulemaking process for Air Quality standards.

The exposure levels adopted by the final rule for purposes of calculating the ventilation rate for an engine will lead to lower required air quantities for ventilating subpart E-approved engines, as compared to engines approved under now-superseded part 36. This is because engines previously approved under part 36 were required to dilute oxides of nitrogen and carbon dioxide to levels lower than currently specified by the threshold limit values (TLV®'s) in § 75.322. The ventilation rates set for engines under the final rule will be more precisely related to current exposure standards. In addition, § 75.325(g) of the final rule revises the percentage of the approval plate air quantity that is required when multiple units of diesel equipment operate in the same air current. Finally, as discussed elsewhere, the final rule is designed to produce an integrated system of controls to protect miners from overexposure to harmful diesel emissions.

Commenters generally accepted the value and purpose of setting a ventilation rate for each diesel engine model. Knowledge of the ventilation rate needed to control gaseous emissions to safe levels will allow comparison of the efficiency and ventilation demands of different engine models, and facilitate evaluation of their general ventilation needs during use. One commenter, however, urged that the gaseous ventilation rate for control of diesel engine exhaust gases not be part of the approval process. According to this commenter, existing ventilation and air quality standards are adequate.

The final rule adopts the requirements for determining the ventilation rate necessary to dilute diesel engine exhaust contaminants. Ventilation systems provide different quantities of air at different locations in the mine. Knowing the ventilating air quantities needed for diesel-powered equipment will allow the mine operator to make informed decisions about equipment selection and utilization and mine ventilation.

Other commenters, who acknowledged the purpose of establishing ventilation rates for approved diesel engines, recommended for the sake of clarity that the levels set for the gases be specified in the final rule. In the proposal, MSHA had set these levels by reference to the time weighted average (TWA) concentrations for the gases. The final rule adopts this suggestion and the levels for carbon dioxide, carbon monoxide, nitric oxide and nitrogen dioxide are specified in the final rule. The levels in the final rule are identical to the levels in existing § 75.322, and MSHA intends that the levels in the final rule conform with any levels that may ultimately be updated. Specifically, if any of the levels for any of these contaminants are revised as part of MSHA's Air Quality rulemaking, MSHA intends to conform the levels in this section to any revised levels.

The proposed requirement for fuel deration received no comments. The purpose of this requirement, which is adopted without change from the proposal, is to ensure that the fuel-to-air ratio does not increase due to the lower density of air at higher altitudes. Not correcting the maximum fuel delivery on the engine for higher altitude operation results in increased emission levels. The fuel injection rate established during the approval may be required to be reduced when the engine is used at a higher altitude.

Implementing a recommendation of the Diesel Advisory Committee, the proposed rule also called for a particulate index to be set for approved diesel engines. The particulate index specifies the quantity of air needed to dilute the particulate generated by the engine to 1 milligram of diesel particulate matter per cubic meter of air. The control of particulate matter in diesel engine exhaust was a significant issue for the Advisory Committee. The Committee concluded that whole diesel exhaust represents a probable risk for causing human lung cancer, and recommended that MSHA develop a regulatory scheme to monitor and control diesel particulate underground. The Committee did not recommend an exposure level, but did urge that consideration be given to what level of exposure to diesel particulate presents a health risk to miners. MSHA is currently developing regulations, separate from this rule, to address this issue.

The Diesel Advisory Committee also recommended that a particulate index be set for engines so that the mining industry and MSHA could compare the particulate levels generated by different engines in terms of a ventilating air quantity. For example, if the particulate indices for diesel engines of the same horsepower were established as 7,500 cubic feet of air per minute (cfm) and 12,000 cfm respectively, an equipment manufacturer, mine operator, and MSHA personnel could use this information, along with consideration of the type of machine the engines would power and the area of the mine in which it would be used, to make certain decisions. For example, a mine operator could use this information when choosing an engine to roughly estimate an engine's contribution of diesel particulate to the mine's total respirable

dust. MSHA would use this information when evaluating mine dust control plans. Equipment manufacturers can use the particulate index to design and install exhaust after-treatments.

The final rule retains the proposed requirement for a particulate index to be set for approved diesel engines. Unlike the ventilation rate set for each engine, the particulate index value will not appear on the engine's approval plate. The particulate index, calculated under § 7.89 of the final rule, indicates what air quantity is necessary to dilute the diesel particulate in the engine exhaust to 1 milligram of diesel particulate matter per cubic meter of air. This information will be available to the mining industry from the engine manufacturer and MSHA.

Some commenters to the proposal objected to the use of a particulate index to establish required ventilation air quantities for diesel engines. These commenters noted that a diesel particulate permissible exposure level has not yet been set and maintained that suitable monitoring technology is not available for widespread field use. These commenters also urged that control of diesel particulate in underground mines be accomplished through a combination of measures, including fuel requirements, equipment design, and controls such as ventilation and equipment maintenance. The commenters recommended that the particulate index not be part of the engine ventilation rate, and concluded that such an index should be viewed as a guideline providing useful information about diesel engines. The commenters further suggested that additional evaluation be undertaken to determine appropriate procedures for setting a particulate index.

The overall approach of the final rule is to control diesel emissions in the underground mine environment through various established methods, including those suggested by commenters. The information provided by the particulate index is part of the multi-level approach recommended by the Diesel Advisory Committee.

As explained above, the particulate index value determined for a diesel engine is intended to provide useful information about diesel engines, as the commenters suggested. In addition, the particulate index value does not appear on the equipment's approval plate and therefore is not considered in setting the engine's required ventilation rate.

Section 7.85 Critical characteristics. Critical characteristics, which are specified for all part 7-approved products, are those features or specifications which, because of their importance to proper operation of the equipment, must be inspected or tested on each unit manufactured. The proposal called for inspecting or testing each diesel engine to verify that the fuel rate is set to altitude, and the fuel injection pump adjustment is sealed, if applicable. No comments were received on this aspect of the proposal, and the final rule adopts the proposal without substantive change. Instead of requiring the fuel rate to be set to altitude, the final rule specifies that the fuel rate be properly set.

As discussed elsewhere in this preamble, the rate of fuel delivery to a diesel engine significantly affects its gaseous and particulate emission. As noted earlier, correct adjustment of the fuel injection pump is essential to the efficient operation of diesel engines.

Inspecting or testing the proposed critical characteristics for diesel engines approved under part 7, subpart E reasonably ensures that the performance and emission characteristics of production engines will be equivalent to those of the engine tested for approval. As a result, miners are protected against harmful exposure to diesel emissions.

No comments were received on this aspect of the proposal, which is adopted by the final rule, with the change noted above.

Section 7.86 Test equipment and specifications. This section adopts the measurement and evaluation methods for emissions from diesel engines as described in ISO 8178–1. The final rule describes the apparatus, or test cell, required for testing diesel engine performance, and sets the specifications for operating this testing equipment to perform steady-state tests for both gaseous and particulate emissions.

The major components of a test cell are a dynamometer with engine operating controls, and gaseous and particulate emission measurement systems. This test cell is used to perform the test required by §§ 7.87, 7.88, and 7.89 of the final rule. Most engine testing laboratories today have the equipment and meet the specifications called for by ISO 8178–1 and the final rule.

The final rule's test cell requirements are substantially the same as the proposed requirements, except that the specifications for the testing apparatus and test conditions are revised to conform with ISO 8178–1. Commenters to the proposal did not direct attention to these requirements, but did express concern about correlating the proposed rule test requirements and Environmental Protection Agency diesel engine tests, and recommended that the MSHA procedures conform to internationally accepted test procedures. The adoption of the ISO 8178–1 provisions eliminates this issue and is responsive to commenters' concerns.

Like the proposal, the final rule also sets specifications for the fuel to be used during testing of diesel engines. The proposed rule would have required No. 2D diesel fuel with certain properties. A uniform test fuel is important to obtaining repeatable test results and test data that can be compared. Commenters did not direct their attention to this aspect of the proposal, except that they generally encouraged adoption of international standards to the extent possible.

The final rule revises the proposed requirements for diesel engine test fuel to conform with the fuel requirements in § 75.1901. Section 75.1901 of the final rule specifies the use of diesel fuel containing no more than 0.05 percent sulfur. Under this section, diesel fuel used for engine testing must also be low in sulfur content. In addition, the properties specified for test fuel conform with the test fuel EPA requires for testing diesel engines that use low sulfur fuel. Thus, the final rule will not require testing laboratories to acquire special fuel to comply with the final rule.

The final rule also adopts the proposal that Category A engines, which are intended for operation in areas of mines where concentrations of methane gas could be encountered, be tested with 1.0 percent of methane added to the engine's intake air. As noted above, this addition to the ISO 8178 test procedure adopted by the final rule should present no technical difficulties for manufacturers or third-party laboratories. MSHA, however, will provide technical assistance for setting up this aspect of the test procedure upon request.

Metering in 1.0 percent of methane to the intake air of Category A engines replicates a foreseeable operating condition in underground mines. In addition, methane gas acts as a fuel when it is aspirated into a diesel engine, increasing its output of carbon monoxide and oxides of nitrogen. These emission effects need to be accounted for in determining the gaseous ventilation rate for Category A engines.

Section 7.87 Test to determine the maximum fuel-to-air ratio. As noted earlier, the tests prescribed by this section are performed using the test cell meeting the requirements of § 7.86. Determining the maximum fuel-to-air ratio for diesel engines is essential to controlling harmful diesel engine emissions. Too rich a fuel and air

mixture produces engine exhaust with elevated levels of carbon monoxide and oxides of nitrogen.

Under this section, engines are required to be operated at several speed/torque conditions to determine the concentrations of carbon monoxide and the oxides of nitrogen. Acceptable performance is achieved when the levels of these exhaust gases do not exceed the limits set by § 7.84(b) of the final rule throughout the operational range of the engine.

Commenters did not address the proposed test to determine the maximum fuel-to-air ratio for diesel engines. The final rule adopts the proposal without change.

Section 7.88 Test to determine the gaseous ventilation rate. The test to determine the gaseous ventilation rate for a diesel engine is required by the final rule to be performed using the test cell required by § 7.86. This test may be performed together with the test to determine the particulate index required by § 7.89.

The test required by this section measures the undiluted exhaust gas concentrations of carbon monoxide, carbon dioxide, nitric oxide, and nitrogen dioxide in the exhaust. These constituent gases of diesel engine exhaust are potentially harmful to miners in the confined environment of underground mines.

In accordance with § 7.86, exhaust gas measurements must be made at 8 specified points while the engine is operated at each rated speed and horsepower requested by the approval applicant. For Category A engines, 1.0 percent methane is added to the engine's intake, as discussed above.

Like the proposal, the final rule specifies the calculations to be performed using the results obtained from the test procedure. These calculations produce a gaseous ventilation rate for the diesel engine. As discussed above, the ventilation rate indicates the amount of ventilating air necessary to dilute carbon monoxide, carbon dioxide, nitric oxide and nitrogen dioxide to within permitted levels. The ventilation rate for each approved Category A or B diesel engine will appear on the engine's approval plate. Knowledge of the ventilation rate needed to control gaseous emissions to safe levels will allow comparison of the efficiency and ventilation demands of different engine models, and their general ventilation needs during use can be evaluated.

As discussed above, commenters generally accepted the value and purpose of setting a ventilation rate for each diesel engine model. One commenter urged that the ventilation rate not be part of the approval process, while others supported the approach taken in the proposed and final rules. These commenters, however, suggested that the levels for the exhaust gases be stated in the final rule. The final rule adopts this suggestion in § 7.84(c).

Section 7.89 Test to determine the particulate index. Like the other engine tests prescribed by the final rule, the test to determine the particulate index for an engine is required by the final rule to be performed using the test cell required by § 7.86. As noted above, this test may be performed concurrently with the test to determine an engine's gaseous ventilation rate required by § 7.88.

The test required by this section measures the amount of particulate in the engine's exhaust when it is operated at eight specified operating conditions. For Category A engines, 1.0 percent methane is added to the engine's intake, as discussed above.

The proposed rule would have required that the particulate index be determined using a different set of test points than those used to determine the gaseous ventilation rate. The particulate index tests were based on a cycle of 10 test points. In response to commenters' suggestions that the particulate and gaseous emissions tests be conducted using the same test cycle and internationally accepted test procedures, the final rule adopts the same ISO 8178–4, 8-point test cycle for both the particulate and gaseous emissions tests.

The Diesel Advisory Committee observed that whole diesel exhaust represents a probable risk for causing human lung cancer. While proposing no specific exposure level, the Diesel Advisory Committee recommended control of diesel particulate in engines used underground through a combination of measures, including equipment design.

Like the proposal, the final rule does not set a particulate limit for engines. Instead, the final rule specifies the calculations to be performed using the results obtained from the test procedures in this section. From the calculations, a particulate index is derived. As discussed above, the particulate index for an engine does not appear on its MSHA approval plate. This information will be available, however, from MSHA and the engine manufacturer.

Section 7.90 Approval markings. This section requires that each approved diesel engine be identified with a permanent approval plate containing certain information. Approval markings to identify equipment appropriate for use in mining have been used for more than 85 years, and are routinely relied upon by users of mining equipment as well as state and federal inspection authorities.

The information required to be displayed on diesel engine approval plates includes the MSHA-assigned approval number, together with the engine's model number, ventilation rate, rated power, high idle setting, and the altitude above which the engine must be derated. Including these specifications on diesel engine approval plates gives engine users convenient, immediate access to information important to proper maintenance and operation of diesel engines.

Commenters directed little attention to this aspect of the proposal, which is adopted without change in the final rule. Commenters who objected to setting a ventilation rate for diesel engines as part of the approval process repeated this concern with respect to the requirement for the ventilation rate to appear on engine approval plates. As discussed above, setting a gaseous ventilation rate for diesel engines comports with the recommendations of the Diesel Advisory Committee and provides diesel equipment users with information important to protecting miners. Knowledge of the rate of ventilation needed to control the gaseous exhaust emissions of a diesel engine facilitates comparison of the efficiency and ventilation demands of different engine models.

The other information required by the final rule to appear on an engine's approval plate likewise provides engine users needed data. The high idle setting informs maintenance personnel of the engine speed appropriate for conducting several of the tests to be performed as part of the engine's permissibility checklist. Together, an engine's approval number, model number, and its rated power and speed facilitate use of the manufacturer's maintenance procedures. The maintenance procedures, along with the altitude above which the engine must be derated, specify the adjustments which must be made to ensure that an engine continues to operate in approved condition.

Burden hours required to make and mount MSHA approval plates are assigned OMB control number 1219–0100.

Section 7.91 Post-approval product audit. This section incorporates the standard audit requirement for part 7-approved equipment, specifying that approval holders must make a diesel engine available for audit by MSHA, at no cost to the Agency. The obligation to

supply an engine for audit under this section arises only upon request by MSHA, and is limited to no more frequently than once a year, except for cause. Under existing § 7.8(b), the approval holder may observe any tests conducted under the audit.

Post-approval audits are a critical part of MSHA's quality control program for approved equipment. By inspecting and testing an engine for continuing compliance with its approval specifications, potential problems can be detected and confidence in the approval process is maintained. Since the inception of post-approval product audits under part 7, MSHA has detected numerous discrepancies, which have been effectively corrected.

Commenters directed no attention to this aspect of the proposal, which is adopted without change from the proposal.

Section 7.92 New technology. This section is designed to facilitate the introduction of new technology or new applications of existing technology. It allows MSHA to approve a diesel engine that incorporates technology for which the requirements of subpart E are not applicable, provided that MSHA determines the engine is as safe as one which meets the requirements of subpart E. To make this determination, MSHA develops appropriate technical requirements and test procedures when novel designs are submitted for approval. Experience with this provision under existing regulations has shown that new innovations can be effectively evaluated and made available for use in a prompt fashion, thus serving the best interests of miners' safety and health.

Commenters supported this aspect of the proposal, stressing that research and technological improvements in diesel engines can be expected. The final rule adopts the proposal without change.

Subpart F Overview

Subpart F of the final rule amends existing part 7, which specifies testing by the approval applicant or a third party. As an amendment to the existing regulations, the general administrative provisions of subpart A of part 7 apply to these new subpart F application requirements.

Subpart F establishes design and performance requirements for MSHA approval of ''diesel power packages'' for use in areas of underground coal mines where permissible electrical equipment is required by existing safety standards. A ''diesel power package'' is a diesel engine, together with the attached safety components, such as flame arresters, spark arresters, surface temperature controls, shut down systems, and the exhaust cooling system that make a diesel engine explosion-proof and reduce the engine's surface temperature to a safe level. Like the proposal, the final rule requirements for diesel power packages are largely derived from existing MSHA approval regulations in part 36, which apply to diesel engines for use in gassy underground mines. The final rule is also consistent with current MSHA practices for coal mines using diesel-powered equipment and with the recommendations of the Diesel Advisory Committee. The Advisory Committee specifically recommended an approval program for diesel power packages.

Commenters generally accepted the proposal for MSHA approval of diesel power packages, recognizing the need for diesel-powered equipment used in underground coal mines to meet critical specifications and to be properly tested for safe operation in a potentially explosive atmosphere. Some commenters directed their attention to the effective date of subpart F, expressing concern about the availability of commercial testing facilities. For the reasons discussed below, the final rule does not adopt an extended phase-in period. However, accommodations are made in the final rule to simplify the implementation of testing in the private sector, and MSHA will continue to perform diesel power package testing to subpart F specifications for up to 3 years, pending the development of private sector resources.

Other commenters recommended that diesel engine exhaust after-treatment devices, such as particulate filters or catalytic converters, be required as part of diesel power packages. These commenters also suggested that the ventilation rate and particulate index set under §§ 7.88 and 7.89 of the final rule credit the use of such devices.

The final rule responds to these comments in part. Under the MSHA approval program in subpart E, MSHA will evaluate exhaust gas and particulate controls, provided these devices are integral to the engine design and are part of normal production engines. The effectiveness of such controls will also be considered in setting the engine's ventilation rate and particulate index. This approach will ensure that the controls are compatible with the engine and are effective. MSHA has already approved, under existing regulations, engines which incorporate techniques such as electronic fuel injection systems. Exhaust after-treatment devices that are not part of an engine's design and production have been developed which can reduce the particulate matter in diesel engine exhaust. Also, catalytic converters are available which can be added to engines to reduce the levels of some harmful gaseous emissions. MSHA encourages the use of these devices, and under existing regulations has approved, as safe, several power packages that utilize catalytic converters and particulate filters. However, under the final rule MSHA will not evaluate the effectiveness of these exhaust after-treatment devices. Exhaust after-treatment devices encompass a wide range of concepts that have demonstrated varying degrees of effectiveness and reliability. The evaluation of these types of after-treatment devices is beyond the scope of a part 7 approval program.

For the same reasons, the final rule does not adopt a commenter's suggestion that the particulate index for an engine be adjusted to reflect the use of a diesel particulate filter. Also, the particulate index for an engine is intended to be used by manufacturers and mine operators as an aid for, among other things, selecting appropriate after-treatment devices such as particulate filters. Therefore, under the final rule the particulate index for an engine will indicate the particulate contained in the raw engine exhaust.

Other aspects of the final rule will, however, recognize exhaust after-treatment controls. The positive effects of catalytic converters in lowering levels of harmful exhaust gases may be considered under § 75.325(i) for reducing the quantity of ventilating air required where multiple pieces of diesel-powered equipment are in use. Also, particulate filters can be effective in maintaining compliance with the respirable dust standard set by existing § 70.100.

During the course of this rulemaking, the question has been raised as to whether the final rule should require that some or all diesel engines be equipped with particulate filters. As noted above, MSHA encourages the use of such filters and other emission controls. However, the proposed rule did not raise this issue and MSHA received only limited comment regarding the appropriate role of diesel particulate filters. The final rule, therefore, does not require the use of these filters. However, MSHA is currently developing a proposed rule to address control of miners' exposure to diesel particulate. This rulemaking will afford an opportunity to fully develop this issue.

Other commenters suggested that diesel engine cooling system

components, such as radiators, not be included as part of the approval of diesel power packages so as to permit changes in cooling system components to be made in the field without affecting the engine's approval. The final rule does not adopt this suggestion. The inter-relationship of the components in the cooling system of a diesel engine is critically important to controlling power package surface temperatures, which, when elevated, can lead to a fire. Consequently, the engine cooling system components must be considered an integral part of a diesel power package. This aspect of the final rule does not prohibit field radiator changes, provided that the inter-relationship of the engine's cooling system components is maintained in approved condition.

A number of minor changes are made in §§ 7.97, 7.98, 7.100, 7.101, 7.102, and 7.103 of the final rule to clarify the requirements of these sections. Substantive changes to these sections are discussed in the section-by-section discussion which follows.

Section 7.95 Purpose and effective date. The final rule's part 7, subpart F approval requirements apply to diesel power packages intended for equipment used in areas of underground coal mines where this equipment is required to be permissible. The design, performance and testing requirements of this section are effective November 25, 1996. MSHA will begin accepting applications under new subpart F immediately. To accommodate all interests, the Agency also will complete any in-house part 36 safety component certification applications, or evaluate such applications under new subpart F, at the applicant's choice. As noted elsewhere in this preamble, the requirements for approved diesel power packages in equipment used in underground coal mines become effective in 3 years.

As noted above, several commenters urged that an extended phase-in period of several years be included in the final rule. According to the commenters, a phase-in period is needed to allow for the development of competent third-party testing facilities, particularly with respect to explosion-proof testing. Other commenters suggested that subpart F be made effective immediately, so as to accelerate conformance to the new requirements for the benefit of miners' safety.

A number of the final rule's test requirements can be performed effectively with inexpensive, simple test equipment or facilities, or with the power package installed in the mining equipment. For example, the static pressure test required by § 7.104 to evaluate the structural integrity of power package components can be performed using currently available hand pump devices. Likewise, explosion-proof testing can be performed in inexpensive test chambers of relatively simple design.

Nonetheless, MSHA recognizes that some testing capabilities are not immediately available in the private sector, such as surface temperature testing and exhaust gas cooling efficiency testing with methane gas injection in the intake air. To facilitate the approval of power packages and accommodate the needs of applicants, MSHA may be consulted for simple alternative procedures which can be used to provide the same results. In addition, MSHA will perform the tests required by subpart F for diesel power package approval at its Approval and Certification Center upon request by applicants. MSHA anticipates providing these test services, for the fees set in accordance with 30 CFR Part 5, for up to 3 years, or until private sector testing capability is available. MSHA reserves the right to determine when competent private sector testing capability is available and to discontinue MSHA testing.

Section 7.96 Definitions. In addition to the existing definitions in §§ 7.2 and 7.82, this section of the final rule sets out and clarifies the key terms used in subpart F.

Commenters did not direct specific attention to this aspect of the proposal. The final rule adopts the proposed definitions, with five exceptions, adds two terms and definitions, and deletes three definitions from the proposal which now appear in subpart E. These changes are intended to add flexibility to the final rule and respond to confusion among some commenters with respect to the substantive requirements of subpart F.

The definition for ''exhaust conditioner'' has been revised to remove the words ''corrosion-resistant.'' The requirement for the exhaust conditioner to be made of corrosion-resistant material is adopted from the proposal in § 7.98(s)(4)(i). The definitions for ''exhaust system'' and ''intake system'' are revised to include the phrase ''but is not limited to'', to recognize the use of components not otherwise mentioned in the definitions for these terms. The term ''explosive mixture'' has been changed to ''flammable mixture'' to conform with part 36, and the definition for this term has been modified with the non-substantive change of removing the word ''violently.'' The definition for ''fastening'' has been modified for the sake of clarity to remove the words ''device such as'' when referring to bolts, screws, or studs. The term ''high idle speed/no load'' has been revised to ''high idle speed.'' This is another non-substantive change, since ''no load'' is specified in the definition of the term. New definitions for ''dry exhaust conditioner'' and ''wet exhaust conditioner'' are added to the final rule to more clearly differentiate between the requirements for these systems. Under the final rule, a dry exhaust conditioner is defined as a device which cools exhaust gases without direct contact with water, such as a heat exchanger. A wet exhaust conditioner is defined as a system which cools exhaust gases through direct contact with water. Minor changes to the definitions for ''step (rabbet) joint'' and ''threaded joint'' have been made for the sake of clarity. The terms ''corrosion-resistant material,'' ''idle speed/no load,'' and ''rated speed'' and their definitions are deleted from subpart F. These terms are common to both subparts E and F, and have already been defined in subpart E. Section 7.96 has been modified to incorporate the definitions of subpart E, § 7.82.

Section 7.97 Application requirements. This section is derived from existing part 36 and requires that an application for approval of a diesel power package contain sufficient information to document compliance with the technical requirements of the final rule. The list of information specified for inclusion in the approval application, which is revised from the proposal in response to commenters and to fully identify the engine and the fan blade material, is intended to help applicants supply the data necessary for a prompt evaluation. The final rule permits applicants to submit composite drawings. This approach reduces paperwork, affords applicants flexibility in the preparations of their drawings, and has proven to be effective in other MSHA approval programs.

Like existing part 7 and other MSHA approval standards, the documentation formulated in the application process under § 7.97 forms the basis for MSHA's approval of a diesel power package. Approved diesel power packages must be manufactured in accordance with the specifications contained in the approval and, once put into service, approved power packages must be maintained and operated within the parameters set in the MSHA approval.

The paperwork hours in the approval application, including test requirements, are assigned OMB control number 1219–0100.

Section 7.98 Technical requirements. This section of the final rule sets specific technical requirements

for diesel power packages. Diesel power packages are intended for use with Category A engines so that they can be operated safely and not create a fire or explosion hazard. Consistent with the Advisory Committee's recommendation that permissible diesel equipment be required in areas of underground coal mines where permissible electric equipment is required, the final rule's technical specifications introduce many of the safety features currently required for permissible electric-powered equipment.

Like the proposal, the final rule is derived largely from existing technical requirements in part 36 for diesel-powered equipment intended for use in gassy non-coal mines. The final rule also addresses the hazard of combustible coal dust by specifying a maximum surface temperature of 302 °F (150 °C). This is the same technical requirement applied to permissible electric-powered equipment. Other aspects of the final rule set specifications necessary to control engine surface temperatures, sparking, and the passage of flame from the exhaust system or components to the external atmosphere. Any of these conditions could ignite an explosion or fire in the underground coal mine environment.

Commenters generally accepted the proposed technical requirements, which, as noted above, are based on long-standing regulations which have been proven effective and workable. Commenters did, however, raise several issues.

Some commenters sought wider tolerances for explosion-proof enclosures in diesel power packages, citing experience in the United States and Europe. These commenters directed their attention to the proposed specifications for joints in engine exhaust systems, and suggested that MSHA review the proposed specification of 0.004 inches for maximum clearance for joints all in one plane.

The final rule retains this specification, which has proven to be effective for decades. Commenters offered no basis for the recommendation for a wider tolerance.

Other commenters suggested that electric starting devices for diesel engines be prohibited. The proposed rule recognized the conventional use of hydraulic, pneumatic or other mechanically actuated starting mechanisms, but also retained the flexibility to evaluate other means of starting under § 7.107 of the rule concerning new technology. This aspect of the proposal differs from the existing part 36 regulations from which this proposal was derived.

The final rule is intended to serve as a flexible set of regulations that will continue to be workable over a period of years. Throughout the final rule MSHA has adopted the more current practices and, where appropriate, provides that alternatives may be developed which are safe and effective. With this in mind, the final rule does not expressly prohibit the use of electric starting devices for diesel engines, adopting the proposal to permit MSHA to evaluate other starting mechanisms. Such alternatives are subject to evaluation under § 7.107 and must be found by MSHA to be as safe as the pneumatic and hydraulic starting mechanisms presently in use.

Some commenters asked for clarification of proposed paragraph (i) with respect to the safety shutdown system required for diesel power packages. The safety shutdown system is required to automatically shut off the fuel supply and stop the engine in response to certain dangerous engine conditions. MSHA intended in the proposal, and the final rule clarifies, that the shutdown system must respond to both high exhaust temperature and low water level in the engine's exhaust conditioner. Either of these conditions can rapidly lead to a fire or explosion hazard.

In addition, the final rule has been revised from the proposal to cover other safety system shutdowns that may be installed by the applicant. Section 75.342 requires methane monitors on some permissible equipment, and the final rule requires permissible equipment to be provided with a fire suppression system meeting the requirements of § 75.1911. Both of these standards specify that the diesel engine must shut down when either an elevated level of methane is encountered or when the fire suppression system is actuated. This requirement will most likely be satisfied by a connection to the safety shutdown system. The technical requirements of this rule now cover these additional sensors.

Another commenter suggested that the safety shutdown system include automatic brake lock-up to prevent diesel-powered equipment from rolling. This aspect of a machine's safety is evaluated under the existing requirements of part 36 and is not part of a diesel power-package approval. Thus, the final rule does not adopt this suggestion.

The final rule adopts clarifying revisions in addition to changes made in response to commenters. In several instances more precise language is adopted to differentiate between requirements for wet and dry exhaust conditioner systems. Proposed § 7.98(d) has been revised in the final rule to refer to ''nonmetallic rotating parts'' instead of ''fans'', to conform with other MSHA regulations. Paragraph (p)(2)(ix) has been revised to require that the minimum thread engagement of fastenings must meet the requirements of the explosion tests in § 7.104. This is a correction. This change conforms to paragraph (p)(2)(viii), which requires both tests for acceptance of a minimum thread engagement of fastenings less than ⅜ inch. In addition, paragraph (q)(7) of the final rule does not retain the proposed requirement that a ''minimum of four fastenings'' be used for explosion-proof joints. MSHA's experience shows that flange designs with fewer than four fastenings have proven to be effective. Paragraph (r)(5) has been revised to note that the opening for connection of a gage to measure the intake vacuum must be closed by a plug or other suitable device that is sealed or locked in place except when in use. This language conforms to the language of part 36, and closing of this opening is necessary to perform certain tests in this subpart. Paragraph (s)(1) has been revised to require that the flame arrester prevent the discharge of glowing particles, conforming it to the requirement in part 36. Finally, paragraph (s)(5) has been revised to note that the opening for connection of a gage to measure the backpressure must be closed by a plug or other suitable device that is sealed or locked in place except when in use. This language also conforms to part 36, and is needed to perform some of the tests under this subpart.

Section 7.99 Critical characteristics. Critical characteristics, which are specified for all part 7-approved products, are those features or specifications which, because of their importance to proper operation of the equipment, must be inspected or tested on each unit manufactured. The proposal focused on power package features essential to preventing fires and explosions in the underground coal mine environment, such as flame-arresting path clearances and the explosion-proof integrity of the power package. Commenters did not direct their attention to this aspect of the proposal, which is adopted without change in the final rule.

Section 7.100 Explosion tests. This section describes the tests to be performed on diesel power packages to ascertain whether they are explosion-proof, as specified by the technical

requirements in § 7.98. Like the proposal, the final rule is derived from existing § 36.46. Using an explosive mixture of natural gas and air, or methane and air, the tests prescribed by the final rule determine the power package's integrity in the event of an explosion inside the intake or exhaust system. This could be caused by an engine backfire during starting or ingestion of methane into the engine while it is running. The prescribed tests determine whether flame arresters and joints are capable of preventing propagation of the internal explosion to the surrounding atmosphere. These tests also determine the lowest water level in the exhaust conditioner that will act effectively as a flame arrester, and the peak explosion pressures generated in each segment of the intake and exhaust system. Excessive pressures may be an indication of a design flaw.

Commenters did not raise issues regarding the proposed explosion tests. However, the final rule includes one change from the proposal to better ensure the ability of a diesel power package to withstand an internal explosion, and another change to revise the speeds at which dynamic tests are to be conducted. The final rule also includes non-substantive changes for clarification and to conform the final rule with existing MSHA regulations.

Paragraphs (a)(2) (v) and (vi) of the final rule specify an internal peak pressure of 110 psig instead of the proposed 125 psig, during power package explosion-proof testing. Excessive internal pressures during explosion-proof testing indicate the potential for failure of the diesel power package in use, with potentially catastrophic results in the underground coal mine environment. Lowering the peak pressure expected during explosion-proof testing recognizes that diesel power package designs differ and that it is difficult to select the optimum location for pressure measurements. When pressures greater than 110 psig are measured during testing, the final rule specifies redesign of the system to reduce the pressure or more rigorous testing to verify the integrity of the system. Due to the critical nature of this test, MSHA has adopted the same approach in its explosion-proof test requirements for electric motors. The final rule conforms these like requirements.

Paragraph (a)(2)(vii) of the final rule requires that dynamic tests be conducted at two speeds—1800±200 RPM and 1000±200 RPM—instead of at rated speed and 50 percent of rated speed specified in the proposal. The speeds set by the final rule correspond to the speeds at which dynamic tests are performed successfully at MSHA facilities. Also some test facilities may not be capable of performing tests at the rated speed called for by the proposal. This change is also reflected in paragraphs (a)(3)(iii) (A) and (B).

For clarification, the final rule also adopts more precise language to identify requirements which apply to wet exhaust conditioners, distinguishing them from dry systems. The final rule also defines natural gas that may be used in explosion-proof testing in a manner that better recognizes the variables in the make-up of the hydrocarbons found in natural gas. As a result, the final rule affords greater flexibility for manufacturers and testing laboratories.

Section 7.101 Surface temperature tests. This section describes the tests necessary to ascertain that diesel power packages will not create a fire hazard in underground coal mines due to coal dust or other combustible materials contacting hot surfaces. Like the proposal, the final rule is derived from § 36.48, and sets a maximum external surface temperature of 302 °F (150 °C). The test protocol simulates the operation of a diesel power package under heavy use conditions. A note has been added to this section to alert the applicant that this test may be done simultaneously with the exhaust gas cooling efficiency test described in § 7.102 of the final rule.

Commenters did not direct their attention to this aspect of the proposal. The final rule is unchanged from the proposal, except for a non-substantive clarifying change regarding wet exhaust conditioners and the elimination of the reference to the use of natural gas. A reference to natural gas, which consists primarily of methane, is redundant. Instead, the final rule specifies the percentage of methane to be added to the intake. Elimination of the reference to natural gas also conforms this section to similar tests, which also determine engine performance and which only specify methane, in subpart E of part 7.

Section 7.102 Exhaust gas cooling efficiency test. This section describes the test procedures for measuring the temperature of the exhaust gas at the discharge point from the exhaust conditioner. Acceptable performance under this test is exhaust gases that do not exceed 170 °F (76 °C) for power packages with a wet exhaust conditioner, and 302 °F (150 °C) for a dry system. The proposed and final rules are derived from existing § 36.47 and address the hazard of hot exhaust gases creating a fire or explosion hazard.

Commenters raised only one issue concerning this aspect of the proposal, suggesting clarification of the different performance requirements for wet and dry exhaust conditioners. The final rule adopts this suggestion.

Section 7.103 Safety system controls test. This section is derived from § 36.47 and describes tests to evaluate the performance of the safety shutdown systems required for diesel power packages. As discussed above, these systems automatically shut down a diesel engine in response to potentially dangerous conditions, such as overheating. The tests prescribed introduce failure modes, such as loss of engine coolant, and initiate the safety system. Acceptable performance is achieved when the safety system automatically shuts down the engine before the technical requirements for approval are exceeded.

Commenters recommended that the final rule more clearly delineate the different requirements for wet and dry exhaust conditioners. The final rule adopts this suggestion in paragraphs (a)(3), (a)(4), (b)(2), and (b)(3).

Commenters also suggested that paragraph (a)(7)(ii) be amended to include a caveat about the surface temperature of a turbocharger not exceeding 302° F (150° C). This comment is not adopted because the final rule addresses surface temperature control under § 7.101 and requires that all external surfaces of power packages, including turbochargers, not exceed 302 °F (150° C). Paragraph (b)(7) has been revised to accept starting mechanisms constructed of nonsparking materials in addition to starting mechanisms that prevent the engagement of the starter while the engine is running. This revision conforms to § 7.98(j)(1), which permits both options under the final rule, as it would have under the proposal.

Section 7.104 Internal static pressure test. This section describes tests to determine if the design of the intake and exhaust system components of diesel power packages is structurally sound. The prescribed tests specify internally pressurizing each segment of the intake and exhaust system. The pressure required to be applied is four times the maximum pressure observed in the tests performed under § 7.100, or 150 psig (±5 psig), whichever is less. Acceptable performance is based on an assessment of key points in the intake and exhaust system, such as joints and welds, for evidence of leakage or damage.

Commenters raised no issues with respect to the proposal. Paragraph (b)(2)(vi) has been added to limit

permanent distortion of any planar surface of the diesel power package to 0.04-inches/linear foot or less. This change conforms this requirement to the same requirement applied to the explosion tests in § 7.100(b)(7).

Section 7.105 Approval markings. This section requires that each approved diesel power package be identified with a permanent approval plate inscribed with the MSHA approval number. If the power package includes a wet exhaust conditioner that functions as an exhaust flame arrester, the final rule requires that the approval plate also indicate the grade limitation for the power package. This information is important so that users are aware of the maximum grade on which the exhaust conditioner will be effective as a flame arrester.

As noted elsewhere in this preamble, approval markings have been used for more than 85 years, and are routinely relied upon by users of mining equipment as well as state and federal authorities to identify equipment appropriate for use in mining.

Another commenter suggested clarification of the proposal with respect to the grade limitation for certain diesel power packages. The final rule has been revised in response to this commenter to clarify that the grade limitation applies to systems which use a wet exhaust conditioner as a flame arrester. No grade limitation is appropriate for power packages with a dry exhaust conditioner.

Burden hours required to make and mount MSHA approval plates are assigned OMB control number 1219–0100.

Section 7.106 Post-approval product audit. This section incorporates the standard audit requirement for part 7-approved equipment, specifying that approval holders must make a diesel power package available for audit by MSHA, at no cost to the Agency. The obligation to supply a power package under this section arises only upon request by MSHA, and is limited to no more frequently than one a year, except for cause. Under existing § 7.8(b), the approval holder may observe any tests conducted under the audit.

Post-approval audits are a critical part of MSHA's quality control program for approved equipment. By inspecting and testing a diesel power package for continuing compliance with the specifications for its approval potential problems can be detected and confidence in the approval process is maintained. Since the inception of post-approval product audits under part 7, MSHA has detected numerous discrepancies which have been effectively corrected.

Commenters directed no attention to this aspect of the proposal, which is adopted without change from the proposal.

Section 7.107 New technology. This section is designed to facilitate the introduction of new technology or new applications of existing technology. It allows MSHA to approve a diesel power package that incorporates technology for which the requirements of subpart F are not applicable, provided that MSHA determines the power package is as safe as one which meets the requirements of subpart F. To make this determination, MSHA develops appropriate technical requirements and test procedures when applications for the approval of novel designs are submitted. To provide confidence in the adequacy of the design, such tests may be required to be performed by MSHA. Experience with this provision under existing regulations has shown that technological innovations can be effectively evaluated and made available for use in a prompt fashion, thus serving the best interests of miners' safety and health. Commenters generally supported this aspect of the proposal, and the final rule adopts the proposal without change.

Section 7.108 Power package checklist. This section requires that approved diesel power packages be accompanied by a description of the features which must be checked and tests that must be performed to ascertain that the power package is in approved condition. These instructions, which are developed as part of the approval process, are intended to aid power package users in keeping this equipment in safe operating condition.

Commenters did not direct specific attention to this aspect of the proposal, which is adopted without change in the final rule.

Part 7, Subparts G, H and I

The final rule does not adopt proposed subpart G to part 7, nor further develops the advance notice of rulemaking published concurrently with the proposal concerning subparts H and I to part 7. Subpart G-approved power packages would have been required for nonpermissible, heavy-duty diesel-powered equipment used in underground coal mines. Subpart H would have established regulations for the approval of fully assembled permissible diesel-powered machines, and subpart I would have set requirements for the approval of fully assembled nonpermissible, heavy-duty diesel-powered equipment. In lieu of this approach, the final rule responds to the commenters who urged that safety and fire protection features for nonpermissible diesel-powered equipment be addressed in the Agency's part 75 safety standards for underground coal mines. Existing part 36 is retained by the final rule and revised to specifically apply to permissible diesel-powered equipment for use in underground coal mines. Subpart H is not further developed by the final rule.

In the proposal, subparts G and I were developed as an approach to several of the Advisory Committee's concerns. In its deliberations, the Advisory Committee considered the risk of fire on nonpermissible diesel-powered equipment caused by hot surfaces igniting combustibles such as hydraulic and lubricating oils, diesel fuel, and coal dust. To address this hazard, the Committee recommended limiting engine surface temperatures. Under the proposal, surface temperature controls and other machine safety features for heavy-duty nonpermissible diesel equipment would have been addressed in subparts G and I.

The Committee, however, also recognized the difficulty of applying such controls to all nonpermissible diesel-powered equipment, especially light-duty, utility equipment. The Advisory Committee, therefore, recommended that a ''limited class'' of light-duty equipment be identified for which less complex fire prevention measures would be required, such as fire suppression systems which shut down the engine, guarded drive shafts to prevent damage of fuel and hydraulic lines in the event of a shaft failure, protection of the fuel tank and lines, and proper design of the electrical system to prevent electrical arcs. The proposal included these requirements for a ''limited class'' of light-duty equipment in the part 75 safety standards for underground coal mines.

The Advisory Committee also examined what additional features should be included in the approval requirements for completely assembled units of diesel-powered equipment. The Committee recommended that MSHA develop an approval program that would emphasize other equipment safety features which could be readily addressed by equipment manufacturers. These features included safeguarding of the fuel system, an exhaust gas dilution system, a fire suppression system, and appropriate electrical and braking systems. As a completely assembled machine, the interrelationship of these systems would be evaluated as part of the approval process contemplated in the proposal under subpart H.

A number of commenters objected to the approval of nonpermissible diesel-

powered equipment. These commenters maintained that such an expansion of MSHA's approval process would result in regulating diesel-powered equipment differently than electric-powered equipment without justification, and would present severe technical and economic difficulties in meeting certain proposed requirements. The commenters recommended that the final rule adhere to the long-standing regulatory approach for electric-powered equipment, which sets performance-oriented safety requirements for nonpermissible equipment in the Agency's part 75 safety standards for underground coal mines. According to the commenters, this approach would be responsive to the hazards posed by diesel-powered equipment, and provide sufficient flexibility to facilitate the introduction of new and safer technology.

In contrast, one commenter urged that all diesel-powered equipment be approved as permissible, without regard to the equipment's use in the mine. This commenter pointed out that diesel-powered equipment presents different hazards than electric equipment, inasmuch as it contains both a fuel source and an ignition source. The commenter further maintained that permissible diesel-powered equipment receives better maintenance than nonpermissible equipment, and explosive accumulations of methane can be encountered anywhere in an underground coal mine. This commenter noted that since 1969, 10 explosions occurred in areas where nonpermissible equipment is permitted, and seven of these explosions were caused by equipment that was not maintained in permissible condition.

Another commenter agreed that heavy-duty nonpermissible equipment should have approved engines and power packages to limit harmful emissions from the engine and protect against the fire hazard presented by hot engine surfaces. This commenter, however, objected to MSHA approval of fully assembled nonpermissible machines as contemplated by subpart I.

MSHA acknowledges that fire prevention and other machine safety features can be successfully introduced for nonpermissible equipment, without a formal approval program. This regulatory approach has been effectively implemented through MSHA's part 75 safety standards for underground coal mines as they apply to nonpermissible electric-powered equipment. For example § 75.518 provides fire protection by requiring electrical system overload protection for nonpermissible electric-powered machines. Section 75.523–3 provides a machine safety feature by requiring automatic emergency parking brakes. Setting such performance-based requirements for nonpermissible equipment maximizes the flexibility afforded mine operators and manufacturers to minimize the hazards of this equipment, and facilitates the introduction of new technology for dealing with these hazards. For example, new heat insulating materials have been developed since the publication of the proposed rule, which can be used to control surface temperatures on diesel-powered equipment.

To adapt this regulatory approach to nonpermissible diesel-powered equipment, the final rule extends the proposal's safety requirements for limited class equipment. Under the final rule, nonpermissible diesel-powered equipment is not required to be approved by MSHA. Instead, this equipment must comply with the final rule's safety requirements in §§ 75.1909 and 75.1910. These standards include requirements for fire prevention and machine safety features such as protection of hydraulic, fuel and electrical systems and adequate brakes and operator controls.

Part 36

Existing part 36, previously known as schedule 31, has been in effect since 1961. It sets approval requirements and specifications for diesel-powered equipment used in ''gassy noncoal mines and tunnels''. The final rule retains these existing regulations as the basis for approval of diesel-powered equipment and, in lieu of further developing subpart H, includes amendments which expand part 36 to apply to equipment used in underground coal mines. Specifically, part 36 is amended to afford manufacturers the option of incorporating into their equipment part 7-approved power packages. Diesel-powered equipment with approved power packages will be suitable for use in areas of underground coal mines where permissible equipment is required. The existing part 36 approval requirements for diesel-powered equipment used in metal and nonmetal mines are unchanged by the final rule. Part 36-approved equipment with certified engines and safety component systems will continue to be recognized for use in metal and nonmetal mines where permissible equipment is required. MSHA will issue approval numbers that differentiate between equipment for use in coal mines and equipment for use in metal and nonmetal mines. Machines approved under revised part 36 specifically for use in underground coal mines will be identified with an MSHA approval number in a new sequence ''36c–''. This will indicate that the equipment has been approved for use in underground coal mines. A part 36 MSHA approval number in the sequence ''31–'' will indicate that the equipment has been approved for use in metal and nonmetal mines.

These changes are responsive to a number of commenters who urged that the existing part 36 regulations for the approval of diesel-powered equipment be retained and continue to apply to equipment for use in metal and nonmetal mines. In addition, the final rule expands the scope of part 36, eliminating the need for separate approval regulations for diesel-powered equipment for use in underground coal mines as contemplated by subpart H in the proposal.

To retain part 36 and include the approval of diesel-powered equipment for use in underground coal mines, the final rule re-titles part 36 and eliminates references to ''gassy noncoal mines and tunnels'' and related definitions. In addition, the application requirements of § 36.6 and design requirements of § 36.20 are revised to recognize the use of part 7-approved power packages, which substitute for §§ 36.21 through 36.26 (except §§ 36.25(f) and 36.43 through 36.48).

The final rule also updates part 36 in several respects. Section 36.20, concerning the quality of material, workmanship and design, is revised to eliminate an outdated reference to § 18.24 of part 18, schedule 2F. In its place, the final rule requires compliance with § 7.98 of the final rule, which provides structural and flame path requirements for explosion-proof enclosures. This aspect of the final rule reflects long-standing requirements for explosion-proof components.

The definition of ''low-volatile hydrocarbon (diesel) fuel'' in § 36.2(i) is deleted by the final rule. This definition is outdated and potentially confusing in context with § 75.1901 of the final rule, which specifies requirements for diesel fuel.

C. 30 CFR Part 70 Discussion

Section 70.1900 Exhaust Gas Monitoring

As outlined in the proposal, the Advisory Committee regarded the health effects of diesel exhaust as a key area of concern. In its final report, the Advisory Committee focused on two areas—exposure limits and a sampling strategy to monitor the concentration of diesel exhaust in miners' work environment.

The Committee recommended further research to develop information about diesel particulate exposure levels at which health effects accrue. The Committee also addressed gaseous diesel exhaust components, concluding that suitable protection for miners would be achieved by relying on coal mine air quality standards, either as they currently exist or may be revised in the future. The Advisory Committee further concluded that exposure limits for gaseous contaminants of diesel exhaust should not be unique from the exposure limits set by the same contaminants generated by other mining sources, such as blasting. The Committee specifically recommended a periodic sampling strategy for carbon monoxide, nitric oxide and nitrogen dioxide and sampling for sulfur dioxide if diesel fuel containing more than 0.25 percent sulfur is used. In addition, the Advisory Committee recommended a sampling strategy which utilized return air course samples to trigger personal exposure sampling. The Advisory Committee's recommendations served as the basis for the proposed rule.

The proposed rule did not contain a diesel particulate exposure standard. At the conclusion of their deliberations the Advisory Committee recommended that the Secretary of Labor set in motion a mechanism whereby a diesel particulate standard could be set, and that the Secretary work in concert with the Bureau of Mines (BOM) and the National Institute for Occupational Safety and Health (NIOSH) to develop a sampling strategy and a program for its implementation. Subsequent to those deliberations, MSHA has been working closely with the BOM and NIOSH to develop methods for measuring diesel particulate and for the development of criteria for reducing miners' exposure to diesel particulate. In 1991, MSHA issued an advance notice of proposed rulemaking seeking additional information for the development of a rule. MSHA also held three workshops in 1995 that provided a forum for mine operators, labor unions, trade organizations, engine manufacturers, fuel producers, exhaust after-treatment manufacturers, and academia, to present and discuss information about technologies and approaches that can be utilized to limit the exposure of miners to diesel particulate. MSHA is currently using the information obtained from the advance notice of proposed rulemaking and the workshops to develop a proposed rule for reducing miners' exposure to diesel particulate.

The proposal generally followed the Advisory Committee recommendations for sampling and permissible exposure limits. Under the proposal, samples of carbon monoxide, nitric oxide and nitrogen dioxide would be taken weekly in the immediate return airways of each split of air where diesel equipment is used. When sampling results exceeded 50 percent of any permissible exposure limit set by the proposal, personal exposure monitoring would have been required. If personal exposure samples showed concentrations which exceeded 75 percent of the permissible exposure standard, sampling would continue each operational shift until, with 95 percent confidence, it was established that exposure was at or below the permissible level.

Commenters to the proposed rule generally accepted the need for regular sampling to evaluate miners' working conditions for the presence of potentially harmful gaseous diesel exhaust components. A number of commenters, however, noted that the proposed rule was too focused on sampling, and gave inadequate attention to requiring corrective action.

Some commenters recommended an alternative to sampling in return air courses. These commenters suggested a personal sampling approach keyed to the person in each mechanized mining unit likely to experience the highest diesel exhaust exposure. This ''designated occupation'' would be identified in the mine's ventilation plan. According to the commenters, this approach would recognize differences in mine configuration and mining methods.

Some commenters considered the proposed action level for area samples, set by the proposal at 50 percent of the permissible exposure limit values for the gaseous emission components being measured, to be reasonable. One commenter, in support of the action level concept, noted that sampling in the immediate return air course would measure the contribution of all diesel equipment on the mining section, thereby yielding readings that would give reasonable assurance that miners working on the section were protected.

Other commenters considered the 50 percent action level possibly too low for mines with naturally occurring ambient levels of carbon monoxide near the action level. Some of these commenters also foresaw possible problems at mines operating near the 50 percent action level. These commenters were concerned that an unnecessarily burdensome cycle of area sampling followed by personal sampling could result. Commenters also noted that the 50 percent action level could be raised because the permissible exposure limits themselves include a safety factor. No commenters offered data or specific support for a particular action level.

Commenters also expressed concern about how effectively the proposed sampling procedures would address variations in the concentration of diesel exhaust in miners' workplaces. A number of commenters suggested different strategies with more frequent samples to better monitor the presence of the gaseous components of diesel exhaust. Some commenters suggested special sampling to evaluate peak exposure when, for example, equipment was operated under load. Other commenters opposed such an approach, citing difficulties in determining when peak conditions might occur. Another commenter recommended, in addition to weekly samples in return air courses, weekly personal samples of each diesel equipment operator, and at the same time samples for at least two miners working inby all pieces of diesel equipment on the same split of air. According to this commenter, the suggested sampling strategy would yield better information about what diesel exhaust control measure modifications may be needed. Other commenters noted the dynamic nature of the underground mining environment, which varies the concentrations of diesel exhaust in miners' workplaces. These commenters recommended sampling be performed every shift in miners' work areas to timely detect the onset of elevated levels of diesel exhaust contaminants.

A number of commenters also noted that, in addition to sampling in the immediate return air course, attention should be given to the area of the section loading point. According to these commenters, diesel exhaust contaminants are often elevated at this location due to high engine loads at a single stationary point. Commenters also noted the need to address situations when diesels are used in locations outby the working faces. According to these commenters, construction projects can involve significant diesel usage at some mines.

The proposed rule did not specify sampling methods for evaluating the gaseous components of diesel exhaust. In the preamble discussion to the proposal, however, MSHA made reference to electrochemical analyzers and detector tubes as technology that could be used to determine concentrations of the gases to be measured. Commenters did not suggest specific sampling methods or object to those mentioned in the preamble discussion. Some commenters, however, emphasized that the methods chosen should not be highly technical in

nature. Several commenters urged that the task of sampling be something miners generally could perform with proper training.

As discussed elsewhere in this preamble, the final rule as a whole is designed to lay a foundation for the safe and healthful operation of diesel equipment in the confined, potentially explosive underground coal mine environment. To accomplish this objective, the final rule sets standards for diesel engines, suitable for mining. For the operation of this equipment, the final rule sets practicable standards for the use of low sulfur fuel and for adequate ventilation and proper maintenance of diesel equipment. These standards are intended to work together as an operating system to create a more healthful and safe working environment for miners.

Paragraph (a) of the final rule adopts a streamlined sampling strategy that is keyed to this operating system approach. The requirements of proposed § 70.1900 have been revised in the final rule to integrate sampling for gaseous components of diesel exhaust with existing on-shift workplace examination requirements and to take advantage of modern sampling instrumentation. The final rule also incorporates by reference the threshold limit values (TLV®'s) adopted by the American Conference of Governmental Industrial Hygienists (ACGIH). These TLV®'s are also incorporated by reference in MSHA's existing standards for exposure limits in § 75.322. The final rule retains the proposed action level concept with some modifications responsive to commenters. However, the final rule does not adopt the proposed requirement that area samples over the action level trigger personal sampling. Instead, paragraph (c) of the final rule requires corrective action to be taken immediately to reduce gaseous diesel exhaust concentrations to or below the action level. The final rule's sampling requirements are intended to provide a regular and timely check on how the total operating system of diesel exhaust control is working, with an emphasis on prompt corrective action.

Although the final rule does not require personal sampling, existing standards regulate miners' exposure to harmful airborne contaminants. These standards do not permit miner exposures over the established TLV®'s incorporated in this section of the final rule and in § 75.322. MSHA enforces these standards during mine inspections through personal and other sampling methods.

Like the proposal, paragraph (a) of the final rule specifies area samples in the ventilation return airways of each working section where diesel equipment is used, at a location which represents the contribution of all diesel equipment on the section. This approach was recommended by the Advisory Committee, and generally was supported by the commenters. In response to commenters, the final rule also requires samples in the area of the section loading point if diesel haulage equipment is operated on the working section, and at the point inby the last unit of diesel equipment on the longwall or shortwall face where mining equipment is being installed or removed. Depending on the mining system used, these are strategic locations in which to take area samples to evaluate the overall effectiveness of the control measures for diesel exhaust.

In addition, the final rule authorizes the MSHA district manager to specify area samples at other strategic locations on a mine-by-mine basis in order to accommodate circumstances which can result in significant concentrations of diesel exhaust. This aspect of the final rule responds to commenters' concerns about situations which can involve significant diesel usage in areas outby the working face, such as construction projects. The paperwork aspect of this provision results in a minimally increased burden since existing § 75.370 of this chapter requires that all underground coal mines have ventilation plans. Although this provision of the final rule is new, proposed § 75.390(b) would have required that the mine operator include certain minimum ventilation quantities in the mine's ventilation plan. Under the proposal, these minimum air quantities would have been related to the number of diesel-powered units operating and the air quantity necessary to control gaseous diesel emissions. Thus, this final rule provision is consistent with proposed § 75.390(b).

Monitoring of gaseous diesel exhaust components during the on-shift examination required by existing § 75.362 of this chapter makes checks for diesel exhaust concentrations part of the workplace examinations which have been historically conducted in the coal mining industry. On-shift examinations are designed to detect hazards which can develop during a working shift when normal mining operations are underway. Such examinations include tests for methane gas accumulations and oxygen deficiency, and determinations of air direction and velocity. Tests for diesel exhaust gases can be readily made during the on-shift examination by the same mine personnel. Currently, multi-gas detectors are available and in use in a significant number of mines in the industry which can sample simultaneously and directly read out results for methane, oxygen, carbon monoxide and nitrogen dioxide. Making checks of the mine's diesel exhaust control system part of the existing practice of on-shift examinations minimizes the burden of compliance with the final rule's sampling requirements. Under the final rule, special staff and a separate diesel exhaust sampling schedule should be unnecessary.

Sampling as part of the on-shift examination also increases the frequency of diesel exhaust concentration monitoring from the proposed weekly schedule, and responds to commenters who questioned the adequacy of the proposal in this regard. The final rule's increased frequency of sampling affords more timely and meaningful information about the performance of the mine's overall diesel exhaust control system. Diesel equipment is highly mobile and the mining environment changes rapidly as mine development progresses. Monitoring each shift alerts the mine operator to emerging problems with the control of diesel exhaust, before miners are overexposed to harmful contaminants.

Consistent with existing § 75.362 of this chapter, the final rule also requires sampling to be performed by a certified person designated by the operator. This aspect of the final rule is generally consistent with the proposal as it requires that competent persons perform the sampling, the results of which form the basis for important decisions about miners' work environments.

Under the final rule, sampling would be required for two gaseous components of diesel exhaust: carbon monoxide and nitrogen dioxide. The final rule does not retain the proposal for sampling sulfur dioxide when diesel fuel containing more than 0.25 percent sulfur is used. Section 75.1901 of the final rule requires the use of low-sulfur fuel at all times, rendering this aspect of the proposed rule unnecessary. The final rule also deletes the proposed requirement for sampling nitric oxide.

Both carbon monoxide and nitric oxide are produced in significant quantities when diesel engines operate under load. Elevated carbon monoxide is also indicative of engine faults such as misadjusted fuel systems, failure to derate engines for altitude, or dirty air cleaners. Conditions of use such as prolonged diesel engine idling can also produce elevated levels of carbon monoxide. Catalytic converters, designed to remove carbon monoxide

from the exhaust, work poorly under these conditions due to lower equipment operating temperatures.

Nitric oxide concentrations generally do not reflect engine faults. In addition, nitric oxide is readily converted to nitrogen dioxide in the mine atmosphere, making representative measurement difficult under the final rule's area sampling strategy. Also, in MSHA's experience the TLV® for carbon monoxide will be exceeded before the TLV® for nitric oxide. Sampling for nitric oxide, therefore, is not retained in the final rule.

The final rule also requires sampling for nitrogen dioxide. Nitrogen dioxide is readily detectable and potentially harmful to miners. The TLV® for nitrogen dioxide is 5 parts-per-million (ceiling), which cannot be exceeded at any time. Therefore, the final rule adopts the proposed requirement to sample for nitrogen dioxide.

The final rule addresses the collection of carbon monoxide and nitrogen dioxide samples with performance-based requirements. In response to commenters, the task of sampling is significantly simplified. The sampling requirements also emphasize prompt availability of sample results, consistent with the final rule's emphasis on corrective action to protect miners from the risk of overexposure.

Paragraph (b)(1) provides that monitoring of carbon monoxide and nitrogen dioxide is to be performed in a manner which makes the results available immediately to the person collecting the samples. This aspect of the final rule recognizes that direct-readout sampling instruments are now available that can measure carbon monoxide and nitrogen dioxide. Use of these hand-held instruments requires no specialized technical background so that persons may be easily trained to perform this task. Mine-wide monitoring systems, with properly located sensors, could also be employed to collect the required carbon monoxide and nitrogen dioxide samples.

Paragraph (b)(2) of the final rule generally adopts the proposal, and specifies that samples are to be collected by appropriate instrumentation that has been maintained and calibrated in accordance with the manufacturer's recommendations. These provisions establish sound practices necessary for accurate sample results, while retaining the flexibility for new instrumentation that may be developed in the future.

Paragraph (b)(3) requires that samples be collected during periods that are representative of conditions during normal operations. This aspect of the final rule is consistent with the proposal and serves the underlying purpose of the sampling requirements, which is to gauge the performance of the diesel exhaust control system under normal operating conditions. Like the proposal, the final rule does not prescribe special requirements to measure the performance of the diesel exhaust control system under peak load conditions. As some commenters noted, determining when peak load conditions occur would be difficult to predict. In addition, such an approach would increase the complexity of the final rule unnecessarily.

Regular sampling during on-shift examinations will afford a realistic picture of the performance of the diesel operating system. To meet the requirement that samples be taken during periods that are ''representative of conditions during normal operations,'' MSHA intends that tests for carbon monoxide and nitrogen dioxide be made when diesel-powered equipment is being used as it typically is in the mining process. Thus, for example, sampling is appropriate when diesel haulage equipment is moving coal or diesel-powered roof bolters are installing bolts.

Some commenters noted the need to monitor exhaust concentrations during longwall moves with diesel-powered equipment, expressing concern that moving the component parts of a longwall to a new block of coal for mining can involve heavy usage of diesel equipment over the course of multiple shifts. As a result, miners could be exposed to elevated levels of diesel exhaust gases. The final rule addresses these comments through the increased frequency of samples to monitor diesel exhaust gases. On-shift examinations are required under § 75.362 of this chapter when longwall moves are being performed and, under the final rule, tests of the concentrations of carbon monoxide and nitrogen dioxide are required at the point immediately inby the last piece of diesel equipment on the longwall or shortwall face. If these samples indicate carbon monoxide and/or nitrogen dioxide concentrations greater than the action level, immediate corrective action is required. This approach protects miners through early detection of elevated concentrations of diesel exhaust gases, and prompt adjustments to the mine's diesel exhaust controls.

Paragraph (c) of the final rule is modeled after other MSHA standards for potentially hazardous gases, such as methane, and requires immediate corrective action when sample results indicate gas concentrations exceeding the action level. This change in the proposal is responsive to commenters who pointed out that the proposal gave inadequate attention to corrective action. The final rule retains the proposed action level concept tied to the TLV®'s for carbon monoxide and nitrogen dioxide. The exposure limits incorporated are those already incorporated in existing § 75.322 of this chapter. These exposure standards are based on the 1972 threshold limit values set by the American Conference of Governmental Industrial Hygienists (ACGIH) and have applied to underground coal mines for nearly 25 years. This aspect of the final rule comports with the recommendation of the Advisory Committee that gaseous diesel exhaust components not be treated differently from contaminants generated by other mining sources. The final rule does not adopt updated permissible exposure standards at this time, as referenced in the proposal, because this issue remains in the rulemaking process for Air Quality standards.

Under paragraph (c) of the final rule, the action level is set at 50 percent of the TLV®'s for carbon monoxide and/or nitrogen dioxide for samples collected in the areas identified in paragraph (a). As noted in the proposed rule, an action level is used to minimize the risk that workers will be overexposed. An action level is not a compliance limit for miners' exposure. Instead, an action level is intended to provide a timely trigger for reviewing the mine's diesel exhaust control system. Exceeding an action level under the final rule is not, by itself, a violation.

The 50 percent action level concept is well-recognized in industrial hygiene practice as an effective, practical screening tool for minimizing the risk of workers' overexposure. This approach, based largely on statistical considerations, was developed by the National Institute for Occupational Safety and Health (NIOSH) for regulations promulgated by the Occupational Safety and Health Administration (OSHA), ''Leidel et al., NIOSH Publication No. 77–173.''. It is designed to afford a single value trigger for simplicity of application and to reduce exposure monitoring burdens. ''Patty's Industrial Hygiene and Toxicology, 1994, p. 528.'' Based on the work of Nelson A. Leidel and others, the 50 percent action level is considered a reliable indicator that there is a low probability of worker exposures which exceed the TLV® linked to the action level.

The action level of 50 percent of the TLV®'s for carbon monoxide and nitrogen dioxide is well-suited to the

purposes of this final rule, and will afford miners protection from overexposure to potentially harmful diesel exhaust emissions. Samples collected in accordance with paragraph (a) of this section will yield results showing the concentration of diesel exhaust emissions in key places under representative conditions on a regular basis. Applying the 50 percent action level to these routine sample results will account for sources of variability affecting miners' exposure, such as the diesel activity level, ventilation rates, and duty cycles. The action level also provides a simple means of evaluating the status of the mine's overall diesel exhaust control system. As discussed elsewhere, this operating system approach to the control of diesel exhaust emissions is a key underpinning of the final rule.

The final rule also permits adjustments to the 50 percent action level on a mine-by-mine basis. Under § 75.325(j) of the final rule the MSHA district manager may approve an alternative action level in the mine's ventilation plan. Ventilation plans are required for all underground coal mines by existing standards under § 75.370 of this chapter. Under the final rule, any change in the 50 percent action level must be based on the results of sampling which demonstrate that miners' personal exposure will not exceed the applicable TLV®. Thus, a mine operator may show that a 60 percent action level, for example, is appropriate for the miners working on a section. To do this, the operator must demonstrate through sampling that miners working on the section are not overexposed to diesel exhaust gases when samples in the immediate return air course show that concentrations of carbon monoxide and/or nitrogen dioxide are maintained at 60 percent of the TLV®. Based on this data, the 50 percent action level could be revised, with the approval of the district manager. The higher action level would be made part of the mine's approved ventilation plan and, thereby, become a compliance requirement at the mine. If, with experience, the revised action level was shown to be inappropriate, changes would be made through the mine ventilation plan approval process. Mine ventilation plans are required by existing standards to be reviewed at least every six months.

The sampling necessary to demonstrate that the personal exposure of miners would not exceed the TLV® is not specified by the final rule, recognizing that many approaches can be taken. For approval to revise an action level, however, MSHA will require clear evidence that a proposed change in an action level is appropriate. As discussed above, the purpose of an action level is to trigger a review of the mine's diesel exhaust control system before miners are overexposed to harmful gases. As the action level is raised closer to the TLV®, the reliability of the action level as a timely warning diminishes. Thus, MSHA does not anticipate approval of action levels that provide a nominal margin of protection.

The final rule does not specify what corrective action is required when an action level for carbon monoxide and/or nitrogen dioxide is exceeded. Instead, this determination is to be made by the mine operator, who is in the best position to implement changes appropriate to the situation and sufficient to promptly return carbon monoxide and/or nitrogen dioxide concentrations to or below the applicable action level. Corrective action may involve addressing ventilation deficiencies, controlling the number of diesel machines operating in an area, or correcting engine faults. Elevated levels of carbon monoxide and/or nitrogen dioxide may indicate that appropriate corrective action is revision of the mine's ventilation plan. Modifying the mine's ventilation plan integrates needed controls into the operating system for the mine.

The final rule does not retain the proposed requirement to conduct personal sampling when the action level for gaseous diesel exhaust components is exceeded. Proposed § 70.1901 therefore is not included in the final rule. While the Advisory Committee recommended a two-tiered approach of area sampling which could trigger personal sampling, MSHA believes that the final rule's sampling strategy will better protect miners. As discussed above, the sampling strategy adopted focuses on the performance of the mine's control system for diesel exhaust, rather than measurements of individuals' exposure levels. This approach safeguards miners from overexposure by frequent testing for gaseous diesel exhaust components in key areas, and establishing action levels for initiating corrective action that responds to emerging problems. In addition, MSHA mine inspections will include regular checks on miners' exposure to harmful airborne contaminants, including carbon monoxide and nitrogen dioxide, as part of determining compliance with the TLV®'s in § 75.322 of this chapter. MSHA's current practice is to sample, at least annually, all diesel equipment occupations on each mechanized mining unit. It is MSHA policy to also sample half of the diesel equipment occupations in areas outby the face. As a result, MSHA is confident that miners will be adequately protected.

The final rule changes also respond to commenters who objected to the proposed personal monitoring requirements as fostering excessive sampling. In its guidance comments, the Office of Management and Budget counseled that the criteria for personal monitoring had the potential for an unnecessarily burdensome paperwork loop in which a mine would be required to conduct area sampling one week and personal sampling the next week. Other commenters also foresaw the potential for a cycle of area sampling followed by personal sampling, particularly at mines with naturally occurring high levels of carbon monoxide. These commenters also objected to the proposal that when personal exposure monitoring results indicate levels greater than 75 percent of the permissible exposure limit, such sampling would be required to continue on each operational shift until compliance was established with 95 percent confidence. By focusing the final rule's sampling requirements on monitoring the performance of the mine's diesel exhaust control system and taking timely corrective action, this potential problem is eliminated.

The proposed rule recordkeeping requirements were tied to MSHA's proposed Air Quality standards in §§ 72.200 (d), (e), (f) and (g) of this chapter. Commenters objected to the proposal's reference to MSHA's proposed Air Quality standards concerning exposure monitoring and referenced the comments they had submitted on those proposed rules. Under the proposal, the results of miners' personal samples were to be maintained for 5 years and include personal identification information as well as data about sampling location, duration, and results. The proposed requirements also required a record of the corrective action taken if miners' exposure readings exceeded the permissible limit. In addition, the proposed rule set requirements for access to miners' personal exposure records, provided miners or their representatives with the opportunity to observe monitoring, and called for notification of miners when samples indicate they have had exposures exceeding the permissible limit.

In the Air Quality rulemaking, commenters objected to MSHA's proposal that adjustments to calculations of exposure be made for novel workshifts when a miner worked longer than eight hours. Commenters also objected to mine operators having to take corrective action to reduce

exposures based on one sample showing overexposure. In addition, commenters objected that it was burdensome to include the mine operator's corrective action in exposure monitoring records. Other commenters supported this requirement. These commenters further stated that the period for record retention should be 30 years for epidemiological purposes and to be consistent with the Occupational Safety and Health Administration's general industry requirements.

For the reasons discussed above, the final rule re-focuses sampling for the gaseous components of diesel exhaust on early detection of diminishing performance of the mine's diesel exhaust control system. As a result, personal samples are not required. Certain limited recordkeeping is, however, necessary to support the final rule's objective of tracking the performance of the mine's diesel exhaust control system. To accomplish this objective with the least recordkeeping burden, paragraph (d) of the final rule revises the recordkeeping requirements of the proposal, conforming them to the existing requirements for on-shift examinations. Under the final rule, a record is required to be made of the results of samples taken under this section which exceed the applicable action level for carbon monoxide and/or nitrogen dioxide. Like the proposal, the data to be recorded under the final rule include the location where the sample was taken; the concentration of carbon monoxide and/or nitrogen dioxide measured; and the corrective action taken to reduce the concentration of carbon monoxide and/or nitrogen dioxide to below the applicable action level. A record of the instrumentation used, which would have been required under the proposal, has not been adopted in the final rule, because this is not essential information under the sampling scheme of the final rule.

This aspect of the final rule is intended to minimize recordkeeping by requiring a record only when sample results are over the appropriate action level. This information is key to an effective monitoring system and provides essential data for assessing how the mine's diesel exhaust control system is functioning.

For ease of administration by mine operators, the final rule specifies that recordkeeping under paragraph (d) follow the same requirements contained in existing § 75.363 of this chapter. These standards prescribe the recordkeeping requirements for hazardous conditions found during a shift, including on-shift examinations. Section 75.363 of this chapter requires that the record be kept in a book maintained for the purpose on the surface of the mine, and that the record be completed by the end of the shift. Section 75.363 requires that the record be made by the certified person who conducted the examination, or a person designated by the operator. In the latter case, the certified person must verify the record by the end of the shift. Records made under § 75.363 also must be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. These features of § 75.363 emphasize the importance of mine management using and responding to data about working conditions in the mine.

Section 75.363 also recognizes the use of electronic recordkeeping technology, provided it is made secure and not susceptible to alteration. MSHA encourages the use of such systems to ease recordkeeping burdens and facilitate analysis of this important information.

The final rule does not retain certain proposed recordkeeping requirements which related to personal exposure monitoring. These include notification of miners if they are exposed over permissible limits, the opportunity for miners to observe personal monitoring being conducted, and access to personal exposure records by miners and their representatives. Since personal sampling is not required by the final rule, these provisions of the proposal are no longer appropriate.

The final rule does, however, make results from area samples required by this section available for inspection by miners' representatives and MSHA inspectors through § 75.363 of this chapter. This aspect of the final rule is consistent with the statutory role of miners' representatives and facilitates meaningful mine inspections. The retention period for the records required by paragraph (d) is at least one year, through the existing requirements of § 75.363 of this chapter.

Paragraph (e) of this section of the final rule provides that exhaust gas monitoring be conducted in accordance with § 70.1900 as of 12 months after the publication date of the rule. This compliance deadline should provide mine operators with adequate time to implement the requirements of this section, and corresponds to the 12-month compliance deadline for the new ventilation requirements for diesel-powered equipment in § 75.325 of the final rule. Persons who are qualified to take the required gas measurements should be available at the mine, given the fact that air sampling for other gases, such as methane, is already required.

D. 30 CFR Part 75 Discussion.

Section 75.325 Air Quantity

Diesel engines produce exhaust containing carbon monoxide, the oxides of nitrogen, and particulate matter, presenting potentially serious health risks to miners. Ventilation systems at underground coal mines where diesel-powered equipment is operated must be designed to dilute and carry away diesel exhaust contaminants, to ensure that miners' exposure to contaminants is maintained within acceptable limits. This portion of the final rule establishes minimum air quantity requirements in areas of underground coal mines where diesel-powered equipment is operated. These requirements recognize that effective mine ventilation is a key component in the control of miners' exposure to diesel exhaust contaminants.

Air quantity requirements for diesel equipment were proposed in § 75.390. Under the final rule these requirements have been consolidated with the other air quantity requirements for underground coal mines located in existing § 75.325.

The final rule provides that the minimum air quantity required to ventilate an individual unit of diesel-powered equipment is the quantity listed on the equipment approval plate. The approval plate quantity, which is calculated under § 7.88 of the final rule for each engine model, is the amount of air necessary to dilute carbon monoxide (CO), carbon dioxide (CO_2), nitric oxide (NO), and nitrogen dioxide (NO_2) to the levels set by existing § 75.322 for those gaseous contaminants. This ventilation rate must be displayed on the engine's approval plate. The approval plate air quantity must be maintained: in any working place where an individual unit of diesel equipment is being operated; at the section loading point during any shift the equipment is being operated on the working section; in any entry where equipment is being operated outby the section loading point in areas of the mine developed on or after the effective date of the final rule; and in any air course with single or multiple entries where equipment is being operated outby the section loading point in areas of the mine developed prior to the effective date of the final rule. The district manager may also designate, in the ventilation plan, additional locations where minimum air quantities must be maintained for individual units of equipment.

In areas of the mine where multiple units of diesel-powered equipment are operated, the final rule provides that the minimum air quantity will be the sum of the approval plate air quantities of all of the equipment. The air quantity must be maintained in the last open crosscut of each set of entries or rooms in each working section; in the intake, reaching the working face of each longwall; and at the intake end of any pillar line. The final rule allows certain types of equipment to be excluded from the multiple unit calculation for air quantity, based on the fact that the emissions from those types of equipment would not significantly affect the exposure of miners to contaminants. The final rule also authorizes the district manager to allow reduced air quantities in the ventilation plan for multiple units of diesel-powered equipment, if the mine operator presents evidence that justifies the reduction. Under this section mine operators are also permitted to obtain district manager approval for an action level other than the 50 percent level specified in § 70.1900, if evidence submitted by the mine operator supports such a change.

The Diesel Advisory Committee recommended that MSHA establish minimum ventilating air quantities for areas of the mine where diesel-powered equipment operates, and that these minimum quantities be specified in the mine operator's ventilation plan. The Advisory Committee further recommended that required air quantities be based on the approval plate air quantities, with appropriate provisions made to address multiple units of equipment in the same air course. The Committee also concluded that allowances should be made for adjustment to minimum air quantities, if operating experience and workplace sampling indicate that such an adjustment is appropriate. Finally, the Committee recommended that a particulate index be developed for each piece of diesel-powered equipment and be reported on the engine approval plate.

Under the proposed rule, the minimum quantity of air in any split of air where an individual unit of diesel-powered equipment was operated would have been the approval plate air quantity. The minimum air quantity on any split of air where multiple diesel units were operating would have been calculated using the sum of 100 percent of the highest approval plate air quantity, 75 percent of the second highest approval plate air quantity, and 50 percent of any additional approval plate air quantities. This was referred to as the ''100–75–50'' approach during the public hearings and throughout the rulemaking process. Minimum air quantity requirements would also have applied when face equipment was being installed or removed.

The proposed rule would also have established a minimum ventilation quantity based upon the particulate index determined for each type of diesel engine. The particulate index would have specified the quantity of air needed to dilute the diesel particulate matter generated by the specific engine to 1 milligram per cubic meter of air. In some cases the minimum air quantity derived from the particulate index would have been greater than the air quantity specified on the machine approval plate.

A major concern of many commenters was the use of approval plate air quantities in establishing ventilation requirements for both individual and multiple units of diesel-powered equipment. A number of commenters stated that the air quantities specified on engine approval plates are not always necessary to dilute contaminants generated by the equipment to permissible levels. Several commenters expressed concern that the proposal represented a simplistic approach to complex issues, given the great variety of ventilation systems in underground coal mines.

Some commenters stated that determining minimum air quantities on a mine-by-mine basis was more appropriate than the across-the-board approach taken in the proposal. Most of these commenters stated that if a mine's air quality is acceptable, air quantity should not be an issue, advocating a performance-based approach. These commenters believed that the final rule should give mine operators much more flexibility than the proposal would in designing their ventilation systems.

A number of these commenters recommended that approval plate quantities be used only as a guideline for determining minimum air quantities for diesel equipment, and that a number of other variables be taken into account in determining the quantity of air needed to dilute exhaust contaminants. Commenters stated that such variables should include the minimum volume and velocity of air proposed by the mine operator; the number of diesel-powered units operating on the section; the equipment approval plate quantities; the duty cycles of the equipment; and the duty cycles of equipment that is not typically operating, such as equipment used for longwall moves.

Some commenters recommended the exclusion of certain equipment, such as limited class equipment and equipment that is vented directly into return air courses, from minimum air quantity calculations. Commenters also suggested that administrative and engineering controls designed to maintain contaminant levels within acceptable limits, as well as respiratory protection practices implemented at the mine, should be taken into account in calculating minimum air quantities.

One commenter pointed out that an engine's approval plate air quantity is based on the worst point of the operational range of the engine. The commenter further stated that this engine rating fails to take into account a number of factors that affect the gaseous emissions levels actually discharged into the mine environment, including the equipment power package; the engine duty cycle; the mine's elevation; the fuel used; and equipment maintenance.

Other commenters stated that the proposal would give no credit to mine operators who used low emission technology, and that consideration should be given to calculating approval plate quantities after rather than before exhaust gases are treated. Other commenters stated that approval plate air quantities were well below average ventilation quantities currently provided in any given split of air.

The final rule does not incorporate the approach advocated by several commenters for individual units of diesel-powered equipment. Instead, paragraph (f) adopts the proposed requirement and provides that the minimum ventilating air quantity where an individual unit of diesel- powered equipment is operated is the approval plate air quantity.

Although commenters are correct in stating that the goal of air quantity requirements is to ensure that exhaust contaminants produced by the diesel engine are diluted to within acceptable limits, thereby preventing overexposure of miners, a pure performance-oriented approach, based on sampling to determine whether contaminants are within acceptable limits, is not the best way to achieve this goal. Elimination of minimum air quantities and adoption of the performance-based scheme advocated by some commenters would by necessity demand an extensive and burdensome regimen of personal sampling to ensure that miners are not being overexposed. In contrast, the mandatory minimum ventilating air quantities in the final rule will give reasonable assurance that contaminant levels are being adequately controlled, while the sampling that an operator must perform has been minimized. The

amount of air required by the approval plate quantity to ventilate a diesel engine is a scientifically-based determination of the minimum air needed to maintain gaseous contaminants, particularly NO_2, within acceptable limits and avoid overexposures of miners. The sampling under the final rule confirms that the integrated system of protections—diesel engines that are well maintained and effectively ventilated—continues to function as intended.

The approach taken by the final rule is an effective method of minimizing miners' exposure to unhealthful diesel emissions. As explained above, the approval plate air quantity is derived from a mathematical determination of the amount of air that is needed to dilute CO, CO_2, NO, and NO_2 to the TLV®'s established in existing § 75.322, which have applied in underground coal mines for the last 25 years. The TLV®'s for these contaminants, with the exception of NO_2, are time-weighted averages, which means that the average concentration of the contaminant over an 8-hour period must be within allowable limits, although the levels of these contaminants may spike up significantly in excess of the TLV® in short excursions over the measurement period. In contrast, the NO_2 limit of 5 parts per million is a ceiling limit, which means that concentrations of NO_2 must never exceed the TLV®, even for a brief period of time. This is because elevated concentrations of NO_2 can be very toxic, and even short exposure to high levels of NO_2 can cause inflammation of the lungs, possibly resulting in pulmonary edema and lung hemorrhaging. The only external sign of NO_2 poisoning is shortness of breath. Sufficient dilution by adequate quantities of air of all contaminants, and in particular of NO_2, during the entire period that diesel-powered equipment operates is therefore essential in protecting miners' health.

It is important to note that the approval plate calculation assumes total mixing of the exhaust gases in the ventilating air, and that levels of exhaust gases that are higher than the TLV®'s will likely occur close to the machine's exhaust, before the gases are fully dispersed and diluted by the ventilating air. Essentially, this means that the approval plate air quantity represents the best-case scenario for contaminant dilution. The approval plate air quantity is therefore the smallest amount of air that will ensure that contaminants are within acceptable levels at all points in the engine's duty cycle.

It should also be noted that the oxides of nitrogen (NO and NO_2) have been the controlling gases for engine approval plate quantities for the vast majority of diesel engines that have been approved in the past. This means the approval plate quantity is determined by the air needed to dilute those two gases; a lesser quantity of air is sufficient to dilute the other gaseous contaminants produced by the engine. Although NO does not have the same toxic effects as NO_2, it does convert to NO_2 over time. As mentioned above, sufficient dilution of NO_2 is essential to protect miners from its potentially severe effects.

The approval plate air quantity calculation takes into account the worst operating point of a properly maintained engine tested under laboratory conditions. Some commenters asserted that approval plate air quantities were unnecessarily high, because the quantities were calculated for the worst operating point of the machine, when the machine generated the highest levels of gaseous contaminants. Although commenters are correct in stating that the approval plate calculation represents the air quantity needed to dilute contaminants at the point where the engine produces the highest level of emissions, diesel engine emission levels are high over a range of operating points. See, Report of the Bureau of Mines, U.S. Department of the Interior, ''Relationship of Underground Diesel Engine Maintenance to Emissions'' (December 1983). Contrary to the assertions of some commenters, the engine approval plate quantity does not represent an unrealistically high quantity of air, but is an accurate determination, based on testing, of the ventilating air quantity needed to protect miners working in the vicinity of the equipment over their working shift. Finally, as pointed out by one commenter, the approval plate air quantity is calculated using new engines, whose performance will likely degrade to some extent over time, with the potential for increased emission levels, even if the engines are well maintained.

The performance-based approach advocated by several commenters could provide another method for determining minimum air quantities, but, for the reasons stated earlier, would substitute a rather intricate sampling process that would result in a determination that essentially the same minimum air quantities are needed to ventilate the equipment. Mandating approval plate quantities as the minimum air quantities is not the only approach to ventilation of diesel-powered equipment, but it is the most workable and practical.

The final rule does not adopt the suggestion of commenters who advocated factoring in exhaust after-treatment in determining minimum air quantities. The after-treatment technology currently available is ineffective in reducing the oxides of nitrogen. Consequently, the gases used to determine the approval plate air quantities for the vast majority of diesel engines that have been approved cannot be controlled by existing exhaust after-treatment technology. This recommendation has therefore not been adopted in the final rule.

The locations where minimum air quantities must be maintained for individual units of diesel equipment have been modified in the final rule from what would have been required under the proposal. The proposal would have required minimum air quantities for individual units of equipment to be maintained in any split of air where the equipment was being operated. A number of commenters disagreed with this provision, stating that the term ''split'' was vague and ambiguous, and did not adequately specify areas of the mine where individual units of equipment were likely to operate and generate high levels of diesel exhaust contaminants. Commenters also identified outby areas and section loading points as locations where diesel exhaust levels tended to be a particular problem and where additional ventilating air was needed. Several commenters stated that it was essential to have adequate ventilation across the mine's dumping points to ensure that diesel emissions are swept out of the area. These commenters stated that the rule should also address outby operation of diesel-powered equipment, because excessive diesel emissions occur in idled areas of the mine and during non-production times, when less air is typically required for ventilation because dangerous levels of methane tend to be less of a problem during those periods. Other commenters were of the opinion that the rule should not designate locations where minimum air quantities must be maintained, and supported determining these locations on a mine-by-mine basis.

In response to commenters, the final rule does not adopt the proposed requirement that the air quantity for individual units of equipment be maintained in any ''split'' where the equipment was being operated. Instead, paragraphs (f)(1) through (f)(5) list the specific locations where the minimum air quantity must be maintained, and include those locations identified by commenters where diesel equipment is typically inadequately ventilated and

where levels of exhaust contaminants are likely to be high. These locations include any working place where the equipment is being operated; at the section loading point during any shift the equipment is being operated on the working section; in any entry where equipment is being operated outby the section loading point in areas of the mine developed on or after the effective date of the final rule; in any air course with single or multiple entries where the equipment is being operated outby the section loading point in areas of the mine developed prior to the effective date of the final rule; and at any other location required by the district manager and specified in the approved ventilation plan.

Paragraph (f)(1) provides that the minimum ventilating air quantity for an individual unit of diesel-powered equipment must be maintained in any working place where the equipment is being operated. This responds to commenters' concerns and clarifies the intent of the proposal, which would have required that the minimum air quantity be maintained in the ''split'' where the equipment operates. As discussed above, a number of commenters did not consider the term ''split'' to be sufficiently descriptive, and the final rule has been revised in response. Under the final rule required air quantities must be maintained in the ''working place,'' which is defined in existing § 75.2 as ''The area of a coal mine inby the last open crosscut.'' This location is designed to address ventilation of an individual unit of diesel-powered equipment that is working at an inby location, near the face.

Paragraph (f)(2) adds the specific requirement that the minimum air quantity for an individual unit of equipment be maintained at the section loading point during any shift that the equipment is being operated on the working section. This provision responds to commenters who singled out loading points as one of the locations where excessive levels of diesel contaminants were a particular problem. Commenters pointed out that the ventilating air quantities at these locations were frequently insufficient to dilute exhaust contaminants and protect miners from unhealthful levels of exhaust gases. Because different types of equipment move in and out of a section loading point on a regular basis, the minimum required air quantity will be the greatest approval plate quantity among all of the diesel-powered equipment that is operated at the loading point during the shift. This will ensure that miners are protected from overexposure to contaminants at all times during the shift, regardless of which unit of diesel equipment is at the loading point.

Paragraphs (f)(3) and (f)(4) have been added to the final rule to address the concerns of those commenters who stated that minimum ventilation requirements should apply to diesel-powered equipment that is being operated in outby areas. These two provisions, one of which applies to areas of the mine developed before the effective date of the final rule and the other which applies to areas developed on or after the effective date, recognizes that the ventilation system design at some mines with multiple common haulage entries would make it difficult, if not impossible, to maintain minimum air quantities in a single entry. Consequently, the final rule allows the minimum air quantity to be maintained in the air course rather than in a single entry, in areas of the mine developed before the effective date of the final rule. In areas of the mine developed on or after the effective date, the minimum air quantity must be maintained in a single entry. This means that mines with multiple common entries that use diesel equipment must alter their approach to future mine development no later than the effective date of the final rule.

This two-pronged approach to ventilation of outby diesel equipment recognizes that the location and direction of required air quantities have an impact on how effectively the air will dilute diesel engine emissions. Air that is coursed directly over diesel equipment will dilute contaminants more effectively than air of the same volume and velocity that is dispersed over a wider area. Consequently, providing the air quantity in a single entry rather than over multiple entries is a more desirable method of ventilation. However, this approach also takes into account that a number of mines would be unable to comply with the location requirements of (f)(3) in areas that have already been developed, without significant capital expenditures and substantial disruption of mining operations. This aspect of the final rule therefore strikes a balance between the concerns of commenters regarding adequate ventilation of diesel equipment operated in outby areas, and the economic infeasibility of a complete overhaul of areas of the mine that have already been developed.

It should be noted that § 75.1907 of the final rule does not require diesel equipment used in outby areas to have an engine approved under subpart E of part 7 of the final rule until 3 years after the publication date of this rule. During this transitional period, equipment with unapproved engines that do not have an approval plate will not be subject to the minimum air quantity requirements of the final rule. However, mine operators are under a continuing obligation to ensure that air contaminants are maintained within the limits established in § 75.322, and diesel-powered equipment must be ventilated with sufficient quantities of air to prevent overexposure of miners.

Paragraph (f)(5) has been added to the final rule to give the district manager the authority to require other locations where minimum air quantities for individual units of equipment must be maintained. These locations must be specified in the ventilation plan. This provision has been added in response to commenters who were concerned about inadequate ventilation in areas where diesel-powered equipment was operating, other than those locations specified in paragraphs (f) (1) through (4). These locations could include, for example, underground repair shops, permanent fuel storage facilities or temporary fuel storage areas, or construction sites where diesel-powered equipment is regularly operated and where minimum air quantities are needed to keep contaminant levels within acceptable limits.

The final rule adopts the proposal's approach of using the engine approval plate air quantity to determine the minimum air quantity in areas where multiple units of diesel-powered equipment are being operated. Paragraph (g) provides that the minimum ventilating air quantity where multiple units of diesel-powered equipment are operated on working sections and in areas where mechanized mining equipment is being installed or removed, must be the sum of 100 percent of the approval plate quantities for all of the equipment. As mentioned earlier, this is a change from the 100–75–50 percent approach of the proposal.

The final rule, like the proposal, also specifies certain equipment that may be excluded from the calculation of minimum air quantity, and also permits a mine operator to obtain a reduction in the required minimum air quantity for multiple units if sampling evidence establishes that a lesser ventilating air quantity will maintain continuous compliance with the TLV'S in § 75.322.

Several commenters advocated that approval plate air quantities be used only as guidelines for ventilation of multiple units of equipment, for the same reasons outlined in the discussion of ventilating air quantities for individual units of equipment. These commenters stated that there were a

number of variables that must be considered in establishing ventilation for diesel equipment, and advocated determining minimum air quantities on a mine-by-mine basis.

Some commenters were opposed to the 100–75–50 approach, stating that it would not adequately protect miners. These commenters took issue with the assumption that multiple units of diesel-powered equipment could not be operating at their worst point, i.e., generating the highest levels of emissions—simultaneously. Commenters also pointed out that the 100–75–50 approach assumed that engines perform at a consistent level from the day they are purchased until the end of their useful life, and advocated that the sum of 100 percent of the approval plate air quantities be used instead as the minimum ventilation quantity.

The final rule, like the proposal, specifies that engine approval plate quantities are the minimum ventilating air quantity for diesel-powered equipment. The approval plate quantity is required for multiple units for the same reasons that it is required for individual units: it is an accurate calculation of the amount of air that is needed to dilute gaseous diesel exhaust contaminants to acceptable levels. However, the final rule, like the proposal, allows mine operators to seek reductions in the required air quantities if they are able to demonstrate that contaminant levels will be kept within required limits at reduced ventilating air levels. This provision recognizes that, as stated by commenters, there may be variables of mine design, equipment operation, or ventilation in areas where multiple units operate that may result in less air being needed to keep air quality within healthful limits. For example, if the diesel machines on a section are not operated so that all machines are producing maximum emissions simultaneously, reduced minimum air quantities may be appropriate.

The final rule does not adopt the 100–75–50 approach, in response to commenters' concerns that it would not provide adequate protection for miners, and for several other reasons. First, the 100–75–50 formula was designed to account for differences in duty cycles among the equipment, since the approval plate air quantity is based upon the worst point of the operating range of the equipment relative to gaseous emissions. The 100–75–50 approach assumed, as has been pointed out by commenters, that multiple units of equipment would not have been operating at their worst points at the same time. As discussed above, although the approval plate air quantity is calculated for a worst case engine operating point, research has shown that engines generate high levels of contaminants over a range of engine operating points. The air quantity available on the section should be sufficient to control the engine emissions under all conditions.

The 100–100–100 approach also recognizes that approval plate air quantities will be calculated differently under part 7 than they have been under part 36, prior to the promulgation of this final rule. As discussed in the preamble to subpart E of part 7, an engine's approval plate air quantity under the final rule will be determined by the amount of air needed to dilute contaminants to the TLV®'s in § 75.322. Up until now, approval plate quantities have been determined under part 36 based on the amount of air needed to dilute contaminants to 50 percent of the TLV®'s that were in effect when part 36 was first promulgated in 1961. Although the levels to which CO and NO_2 must be diluted remain the same under the final rule, the dilution levels for NO and CO_2 are twice as high. Consequently, less air will be needed to dilute these two gases to the higher levels, and the approval plate quantity will be lower for most if not all engines. However, the approval plate quantity will now directly correlate to existing TLV®'s. It follows that 100 percent of the approval plate quantity, rather than some fraction thereof, must be provided to adequately dilute the gaseous diesel engine contaminants.

Approval plate quantities determined under the final rule may also be slightly lower than before under old part 36, as a result of the revision in part 36 that requires engines to be tested with 1.0 percent methane injected into the engine air intake, rather than the current 1.5 percent. Because injection of methane into the engine increases engine emissions, the lower concentration of methane used under the final rule will result in lower emissions and will require a lower quantity of air to dilute.

Because of these factors, the 100–100–100 calculation for multiple units of equipment will not result in minimum air quantities that are significantly greater than air quantities currently required in ventilation plans using the 100–75–50 method of calculation. In fact, in some cases, the air quantity required for multiple units may be less than what was required before, depending on the diesel equipment that is being operated.

Under the proposal, air quantities in excess of the 100–75–50 calculation for multiple units of equipment would have been required when the particulate index established for the equipment indicated that a greater air quantity was needed to maintain diesel particulate levels within acceptable limits. The particulate index indicates the quantity of air required to dilute particulate emissions from that specific engine to a concentration of 1 milligram per cubic meter of air. The 1 milligram value was chosen to make the use of a diesel particulate permissible exposure limit with an engine's particulate index a matter of simple multiplication, and is not meant to be an indicator of the level of any diesel particulate standard that may be set by MSHA in the future.

Under the proposal, MSHA intended to apply the particulate index in two phases, before and after the setting of a diesel particulate standard. Before the promulgation of a standard, MSHA intended to take an engine's particulate index into account in approving minimum air quantities in a mine operator's ventilation plan by estimating the contribution of diesel particulate to the total respirable coal mine dust concentration. After the promulgation of a diesel particulate standard, the minimum air quantity would be determined using the particulate index to calculate the air quantity needed to dilute the particulate concentration to whatever level was required.

A number of commenters stated that, because MSHA has not yet established a permissible exposure limit for diesel particulate, a requirement for increased air quantities based upon a diesel particulate index was inappropriate. Other commenters supported the use of a particulate index as a point of comparison among different diesel-powered engines, but they were strongly opposed to the use of the index to require minimum air quantities. Other commenters stated that accurate measurement of diesel particulate is not possible, because diesel particulate matter is indistinguishable from other respirable coal mine dust. One commenter stated that the particulate index fails to take into account that the diesel engine is itself only one factor in how cleanly the machine operates as a whole. This commenter recommended that other factors be considered, including the effectiveness of water scrubbers, dilutors, catalytic convertors, and particulate traps or filters, any one of which could significantly reduce diesel particulate emissions.

Although MSHA is currently developing a proposed rule to control miners' exposure to diesel particulate, MSHA agrees with commenters who believe that the use of the particulate

index for determining minimum ventilation requirements would be premature in the absence of a standard for diesel particulate. The final rule therefore does not adopt the proposal's requirement for increased air quantities based on a diesel engine's particulate index. However, MSHA will still calculate an engine's particulate index as part of the approval process. As was true under the proposal, the particulate index will be determined under part 7 of the final rule. The particulate index for the engine will be reported in the approval letter that MSHA sends to the engine manufacturer notifying the manufacturer that the engine has been approved. A copy of this letter also accompanies the equipment when it is purchased by the mine operator. The particulate index for all MSHA-approved diesel engines will also be included on MSHA's list of approved products, which is issued on a regular basis to the individuals and companies on MSHA's mailing list. MSHA anticipates that, until a diesel particulate standard has been set, mine operators and machine manufacturers will use the engine particulate index in selecting and purchasing engines. During this time mine operators may also use an engine's particulate index to roughly estimate the engine's contribution to the mine's levels of total respirable coal mine dust.

Under the proposal multiple units of equipment would have been required to be ventilated by specified minimum air quantities in the last open crosscut of each working section or in the intake splits of longwall sections. The proposed rule would also have required minimum air quantities to be maintained when face equipment was being installed or removed.

One commenter stated that air on a dieselized section should be coursed throughout the section and should not be concentrated in the last open crosscut. This commenter recommended that the total intake air quantity going into the section intake and the total return air quantity leaving the section should be measured. Another commenter stated that air measurements are more accurate in the immediate return of each split, rather than at the last open crosscut.

Several commenters pointed out that too much air across the face area was detrimental to the effective operation of respirable dust scrubbers on continuous miners. Several commenters identified longwall moves as periods when miners were exposed to high levels of diesel exhaust, due to the increased use of diesel-powered equipment on the sections during these periods and the increased diesel engine loads. These commenters stated that during longwall moves the exhaust from one diesel machine would be ''rebreathed'' by another diesel machine, resulting in a doubling of carbon monoxide levels.

Paragraphs (g)(1) through (g)(3) of the final rule set forth the specific locations where minimum air quantities must be maintained where multiple units of diesel-powered equipment are operating. Under the proposal, as described above, minimum air quantities would have been required in the last open crosscut of each working section or in the intake splits of longwall sections.

The final rule essentially adopts the approach of the proposal, although the term ''split'' used in the proposal has not been adopted in the final rule because, as explained in the discussion under paragraph (a) of this section, commenters considered the term ''split'' to be vague and ambiguous. The final rule provides more specific description of the locations where air quantities must be maintained, although the location requirements themselves are essentially the same as they would have been under the proposal. Paragraphs (g)(1) through (g)(3) of this section require the minimum air quantity in working sections to be maintained: in the last open crosscut of each set of entries or rooms in each working section; in the intake, reaching the working face of each longwall; and at the intake end of any pillar line.

The final rule does not adopt the suggestion of commenters that air measurements be taken at locations other than those specified in the proposal. The recommendation that the total intake air quantity entering a section and the total return air quantity leaving a section be measured has not been adopted because this method of measurement will not provide an indication of the air quantity that is actually reaching the working section. The air could be short-circuited before it reaches the diesel machine, but still be measured as part of the return air quantity. Further, the recommendation that air measurements be taken in the immediate return of each split, rather than at the last open crosscut, has not been incorporated into the final rule because measurement at that location will give a less accurate indication of the air that is actually ventilating the diesel equipment. Finally, the measurement of air quantities at the last open crosscut under the final rule is also consistent with air measurement requirements currently in most underground coal mine ventilation plans.

The final rule does not respond to commenters who stated that too much air across the face area could have a negative impact on the effectiveness of respirable dust scrubbers on continuous miners. While it is true that increased air quantities could in some cases have an adverse effect on dust scrubber effectiveness, this impact must be balanced against the need to control harmful diesel exhaust contaminants. There are other dust control technologies that are available to supplement dust scrubbers if the need arises.

In response to the many commenters who expressed concern about exposure of miners to high levels of diesel exhaust contaminants during installation or removal of longwall equipment, the final rule adopts the proposed requirement that minimum air quantities be maintained in areas where mechanized equipment is being installed or removed.

Paragraphs (h)(1) through (h)(4) of this section of the final rule, like the proposal, allow certain types of equipment to be excluded from the minimum air quantity calculation of paragraph (g). The rationale behind these exclusions is that the specified equipment is operated or ventilated in such a way that it does not significantly affect the exposure of miners to diesel exhaust contaminants. Commenters were generally in favor of allowing certain equipment to be excluded, such as equipment with light-duty cycles or equipment that is only used intermittently. One commenter stated, however, that MSHA should verify information submitted by the operator to support exclusion of equipment, and that the final rule should require mine operators to notify miners or their representatives to allow them to comment on the operator's request for exclusion of equipment from the air quantity calculation.

In response to this comment the final rule, unlike the proposal, requires district manager approval of all exclusions and requires the exclusions to be specified in the ventilation plan. This will allow MSHA review of all equipment that will be excluded from the air quantity calculation, and responds to commenter concerns about MSHA verification of excluded equipment. Additionally, requiring excluded equipment to be specified in the ventilation plan will ensure that miners and their representatives, who are required under existing regulations to be provided with proposed revisions to an operator's ventilation plan, are notified of an operator's intention to exclude certain equipment. This

responds to commenters who advocated that miners' representatives be notified of and be given an opportunity to comment on such matters.

Paragraph (h)(1) allows the exclusion of self-propelled equipment meeting the requirements of § 75.1908(b) of the final rule. The proposal would have allowed the exclusion of the limited class of equipment meeting the requirements of proposed § 75.1908, except diesel-powered air compressors that are regularly used. The requirements of proposed § 75.1908 included specific objective criteria limiting equipment horsepower and weight. In response to commenters and for reasons explained in detail in the preamble to § 75.1908, equipment categories are defined in the final rule by the equipment function rather than by weight or horsepower. Equipment that meets the requirements of § 75.1908(b) is light-duty equipment that does not, among other things, cut or move rock or coal or move longwall components. Because the equipment is not operated under heavy load, it is not expected to produce high levels of exhaust emissions, and may therefore be excluded if specified in the mine operator's approved ventilation plan. Although the proposal did not explicitly limit the exclusion to self-propelled equipment, as does the final rule, the only portable equipment included in the proposed limited class was compressors and welders, and compressors were not eligible for exclusion under the proposal if they were regularly operated. The final rule takes a different approach and only includes self-propelled light-duty equipment in the automatic exclusion under paragraph (h)(1), because some types of non-self-propelled light-duty equipment, such as compressors and generators, can produce high levels of exhaust emissions. However, light-duty equipment that is not self-propelled whose emissions would not significantly affect the exposure of miners may be excluded from the air quantity calculation if approved by the district manager under paragraph (h)(4).

Also eligible for exclusion, under paragraphs (h)(2) and (h)(3), is equipment that discharges its exhaust into an intake air course that is vented directly into a return air course, or that discharges its exhaust directly into a return air course. Paragraph (h)(3), which exempts equipment vented directly into a return air course, has been adopted without change from the proposal. Paragraph (h)(2), which exempts equipment that discharges its exhaust into intake air that is coursed directly to a return air course, has been added to the final rule to be consistent with other MSHA regulations, which require certain equipment, such as electrical equipment, to be vented either directly into a return air course or into an intake air course that is coursed directly into a return air course. The rationale for both of these exceptions in the final rule is the same: that the diesel exhaust of equipment that discharges into a return air course or into an intake air course that goes directly into a return air course will not, in most cases, come into contact with miners because most of them will be working in intake air in the face area where production occurs. Commenters did not indicate any opposition to the reasoning behind these exceptions.

Paragraph (h)(4), like the proposal, allows mine operators to obtain MSHA approval for the exclusion of other equipment from the air quantity calculation in paragraph (g). Equipment may be excluded under this paragraph if its duty cycle is such that the emissions would not significantly affect the exposure of miners. Mine operators who seek to exclude equipment must identify the equipment in the ventilation plan that is submitted to MSHA for approval. Equipment that may be eligible for exclusion under paragraph (h)(4) includes equipment with a very small engine (less than 10 horsepower) or heavy-duty equipment that is operated infrequently, for very short periods of time, or when other diesel equipment normally operated on the section is shut down or not operating. An example of equipment that could be considered for exclusion under this paragraph is a supply vehicle that is driven up to the section, shut down and unloaded, started up and immediately driven off of the section. Equipment that is operated in a location so that its exhaust does not pass over miners could also be eligible for this exclusion. All other equipment, such as nonpermissible heavy-duty equipment and face equipment which discharges its exhaust into an intake air course of the working section, must be included in the minimum air quantity calculation required by paragraph (g).

Paragraph (i) of the final rule, like the proposal, allows the district manager to approve a lesser air quantity than what would otherwise be required under paragraph (g) for multiple units of diesel equipment. The final rule allows such a modification if sampling results demonstrate that miners exposure to diesel contaminants will not exceed applicable TLV®'s at the modified ventilation quantity.

The proposed rule would have allowed the district manager to approve lesser air quantities for multiple units of equipment if the results of a comprehensive personal monitoring program indicated that contaminant exposure levels were below 75 percent of the applicable contaminant standards with 95 percent confidence. The proposed rule also specified the information that mine operators would have been required to submit to MSHA for consideration in reducing minimum air quantities, including the actual sampling plan and an evaluation of the sampling results.

Some commenters were opposed to requiring a 95 percent confidence level for the sampling used to support a reduction in air quantity, stating that this requirement was too technical and unrealistic for practical application. Some commenters strongly opposed allowing reduction of air quantities under the procedure set forth in the proposal, stating that miners and their representatives would not be given sufficient opportunity to participate in the process. One commenter advocated use of petition for modification procedures under section 101(c) of the Federal Mine Safety and Health Act when mine operators seek to revise their ventilation plans, stating that under these procedures miners and miners' representatives would have the right to review and comment on the proposed plan modifications.

The final rule takes a more performance-oriented approach to reduction in minimum air quantities, and requires that samples of contaminants demonstrate that a lesser air quantity will maintain contaminant levels within permissible limits. This is consistent with the streamlined procedures for contaminant sampling in § 70.1900 of the final rule, and also responds to commenters' recommendations that this aspect of the rule should be less technical.

The objective of this aspect of the final rule is the same as that of the proposal: that reduction of minimum air quantities required by the final rule is permitted if a mine operator can establish that miners will not be overexposed to gaseous diesel exhaust contaminants at the lesser ventilating air quantities.

The final rule does not adopt the suggestion of commenters that reductions in air quantity be granted only under the modification procedures of section 101(c) of the Mine Act. Since the time of the submission of these comments, MSHA has issued a final rule governing underground coal mine ventilation, which includes revisions to the existing ventilation plan submission and approval process [61 FR 9764] and addresses several of these commenters' concerns. The revised ventilation rules

provide an increased role for the representative of miners in the ventilation plan approval process. Mine operators are now required to notify the representative of miners at least 5 days before a ventilation plan or plan revision is submitted to MSHA for approval, and make a copy of the proposed plan or plan revision available for inspection to the miners' representative. The representative of miners is given the opportunity to submit written comments to MSHA for consideration during the plan review process. Under this process, operators seeking reduction in the minimum air quantities required under paragraph (g) are required to notify miners' representatives, who then have the opportunity to comment on the reduction. No provisions have therefore been made to address these comments in the final rule, because the comments have already been addressed appropriately in the revised ventilation rule.

Paragraph (j) allows modification of the 50 percent action level specified in § 70.1900(c) if sampling results demonstrate that miners will not be exposed to contaminants that exceed permissible limits at the modified action level. As described in detail in the preamble discussion for § 70.1900, any change to the action level must be based on the results of sampling that demonstrate that miners' personal exposure will not exceed the applicable TLV®.

Paragraph (k) provides that, as of 12 months after the publication date of the final rule, the ventilating air quantity required where diesel-powered equipment is operated shall meet the requirements of paragraphs (f) through (j) of this section. Compliance with the ventilation requirements of the final rule will in some cases require modifications to the mine's ventilation system. These revisions, along with other information required to be specified in the mine ventilation plan under paragraphs (f) through (j) of this section, should be included in a revised ventilation plan submitted to MSHA for review and approval.

Section 75.371 Mine Ventilation Plan; Contents

The requirements for diesel-powered equipment that are included by the final rule in existing § 75.325 identify information that must be specified in the mine operator's ventilation plan. Existing § 75.371, which lists the information that must be provided by mine operators in their mine ventilation plans, is amended by the final rule to conform to the new requirements in § 75.325.

As was true under the proposal, minimum air quantities for individual units of diesel-powered equipment are not required to be included in the ventilation plan, because individual units are required to be ventilated with at least the engine approval plate air quantity while they are operating. The final rule does require that the ventilation plan specify where air quantity will be maintained at the section loading point for individual units of equipment, as well as any additional locations required by the district manager where a minimum air quantity must be maintained for an individual unit of equipment.

The final rule, like the proposal, requires the ventilation plan to specify ventilation quantities for multiple units of equipment, as well as to include a description of equipment that is excluded from the multiple unit calculation of § 75.325(g).

Existing § 75.371(r) is revised by the final rule to include a cross-reference to § 75.325 (d), (g), and (i). Paragraph (r) requires the ventilation plan to identify the minimum quantity and the location of air that will be provided during the installation and removal of mechanized mining equipment, as well as the ventilation controls that will be used. The addition of a cross-reference to § 75.325 clarifies that minimum air quantity requirements for diesel-powered equipment must be considered when determining ventilation quantities during mechanized equipment installation and removal.

New paragraph (kk) has been added to § 75.371 and provides that the ventilation plan shall include any additional areas designated by the district manager under § 70.1900(a)(4) of the final rule for CO and NO_2 sampling. As explained in more detail in the preamble to § 70.1900, the district manager is authorized under the final rule to require sampling in strategic locations on a mine-by-mine basis, in order to address situations involving significant concentrations of diesel exhaust. Paragraph (kk) conforms the content requirements for ventilation plans to this new provision.

New paragraph (ll) provides that the ventilation plan must specify the location where the air quantity will be maintained at the section loading point.

New paragraph (mm) provides that the ventilation plan include any additional locations required by the district manager, under § 75.325(f)(5), where a minimum air quantity must be maintained for an individual unit of diesel-powered equipment.

New paragraph (nn) provides that the ventilation plan must specify the minimum air quantities that will be provided where multiple units of diesel-powered equipment are operated. To comply with this requirement, mine operators should indicate the equipment that is being used in the normal mining cycle, and the minimum air quantities that must be provided to ventilate the specified equipment.

New paragraph (oo) provides that the ventilation plan must specify the diesel-powered equipment excluded from the calculation under § 75.325(g). MSHA does not intend that this provision require the itemization or the serial numbers of specific equipment. Instead, the mine operator should provide a general description that is sufficient to identify the types of equipment that are excluded from the calculation.

New paragraph (pp) conforms ventilation plan content requirements to §§ 70.1900(c) and 75.325(j), and provides that the ventilation plan shall identify any action levels that are higher than the 50 percent level specified by § 70.1900(c). As described in greater detail in the preamble discussion of § 70.1900, mine operators may obtain a higher action level if they are able to demonstrate that miners will not be overexposed to contaminants at the higher level. If a higher action level is approved by the district manager under § 75.325(j), it must be specified in the mine ventilation plan.

Section 75.1900 Definitions

This section of the final rule contains definitions of terms used in subpart T of part 75. These definitions are provided to assist the mining community in understanding and complying with the requirements of the final rule. As a general matter, terms which are unique to the final rule are defined, while those terms that are commonly used and understood in the mining industry have not been included for definition.

The proposed rule defined two terms: ''fixed underground diesel fuel storage facility'' and ''mobile underground diesel fuel storage facility''. The final rule adopts the proposed definition for ''fixed underground diesel fuel storage facility'', although the term itself has been slightly modified, with the substitution of the word ''permanent'' for the word ''fixed'' to more accurately reflect the nature of the facility. A ''permanent underground diesel fuel storage facility'' is defined as a facility designed and constructed to remain at one location for the storage and dispensing of diesel fuel, and which does not move as mining progresses. Such facilities are designed to remain at

one location for an extended period of time. Additionally, the final rule also adopts, with slight modification, the proposed definition for ''mobile underground diesel fuel storage facility'', although that term has been changed in the final rule to ''temporary underground diesel fuel storage area'' to be more accurately descriptive. A ''temporary underground diesel fuel storage area'' is defined as an area of the mine provided for the short-term storage of diesel fuel in a fuel transportation unit, which moves as mining progresses.

The final rule also includes additional definitions for the terms ''diesel fuel tank'', ''diesel fuel transportation unit'', ''noncombustible material'', and ''safety can''.

Several commenters believed that the definitions in the proposal were too narrow in scope and did not accurately reflect the different fuel storage facilities currently in use in underground coal mines or the different applications of mobile diesel-powered equipment. These commenters recommended the definition of two additional categories of underground diesel fuel storage facilities: ''temporary'' and ''self-propelled.'' Commenters offered definitions for these two additional types of facilities, but they have not been adopted in the final rule, although, as mentioned above, the word ''temporary'' has been substituted for the word ''mobile'' in describing areas provided for short-term fuel storage that move as mining progresses. The suggested definition for ''self-propelled diesel fuel storage facility'' has not been included because it is similar in function and definition to a ''diesel fuel transportation unit,'' which has been defined in the final rule.

The definition offered by commenters for ''temporary diesel fuel storage facility'' reflected commenters' concerns that the proposed construction requirements for mobile fuel storage facilities were too extensive, and would make it difficult for the facility to move with the section and keep pace as mining progressed. Commenters therefore recommended the creation of a category of fuel storage facility with more flexibility than the mobile storage facilities under the proposal.

In response to these comments, requirements for temporary fuel storage are addressed separately from those for permanent facilities in the final rule, and reflect a more practical approach to temporary fuel storage, which is explained in detail in the discussion of § 75.1903, below. A definition for ''temporary fuel storage facility'' is consequently unnecessary and has therefore not been adopted in the final rule.

One commenter recommended that several other terms be defined in the final rule, including ''container,'' ''safety can,'' ''tank,'' and ''fuel transportation unit.'' This commenter pointed out that these terms are used throughout subpart T, and definition of these terms would enhance understanding of the requirements of the final rule.

MSHA agrees that definition of certain terms will facilitate compliance with the requirements of subpart T, and has therefore included definitions for ''diesel fuel tank,'' ''diesel fuel transportation unit,'' ''noncombustible material,'' and ''safety can.'' Because the term ''fuel storage container'' is not used in the final rule, a definition for this term is not included in the final rule.

The term ''diesel fuel tank'' is defined in the final rule as a closed metal vessel specifically designed for the storage or transport of diesel fuel. Metal tanks are required based on metal's demonstrated ability to contain diesel fuel in the event of a fire, documented by the Bureau of Mines in a 1985 Report of Investigation entitled ''Fire Tests of Five-Gallon Containers Used for Storage in Underground Coal Mines'' (RI 8946). This type of construction is also consistent with the National Fire Protection Association (NFPA) ''Standards for Portable Shipping Tanks for Flammable and Combustible Liquids'', (NFPA 386).

The term ''diesel fuel transportation unit'' is defined as a self-propelled or portable, wheeled vehicle used to transport a diesel fuel tank. This definition includes diesel-powered vehicles such as lube units, maintenance trucks, tractors, and scoops. This definition also includes locomotives that pull rail-mounted, portable diesel fuel transportation units. Under the final rule fuel transportation units must be wheel-mounted, since skid-mounted units are more likely to be damaged during loading and unloading in a scoop bucket or while being dragged through the mine. Required safety features for these units are contained in § 75.1902 and §§ 75.1904 through 75.1906 of the final rule. Additionally, self-propelled fuel transportation units that are diesel-powered, and diesel-powered equipment used to tow portable fuel transportation units are considered heavy-duty equipment under § 75.1908(a). Heavy-duty equipment must be provided with the safety features specified in § 75.1909, including an automatic fire suppression system and additional specifications for the equipment's braking system.

Under the final rule, permanent underground diesel fuel storage facilities must be constructed of ''noncombustible materials,'' and stationary tanks in those facilities must be placed on 12-inch supports constructed of ''noncombustible material.'' ''Noncombustible material'' is defined in the final rule as a material that will continue to serve its intended function for 1 hour when subjected to a fire test incorporating an ASTM E119–88 time/temperature heat input, or equivalent. This test, contained in the publication ''Standard Test Methods for Fire Tests of Building Construction and Materials'' of the American Society for Testing and Materials, is used to establish fire resistance ratings in minutes or hours for a particular building assembly such as a roof, wall, or beam. This means that a material maintains its integrity under a fire exposure test used by the building industry to classify assemblies for their ability to resist fire. This definition is consistent with the definition of ''noncombustible material'' in existing § 75.301, which applies to the construction of ventilation controls in underground coal mines.

One commenter who recommended that ''noncombustible material'' be defined in the final rule suggested that the definition specify a 2-hour fire rating. The definition in the final rule specifies a 1-hour rating, which will provide protection in the event of a fire in underground fuel storage areas by confining the fire within the area for a sufficient period of time to allow miners to safely evacuate the mine. Additionally, the final rule requires automatic fire suppression systems and audible and visual alarms for permanent underground fuel storage facilities. For these reasons, adequate protection of miners against fire is provided, and a 2-hour fire rating has not been adopted in the final rule.

The term ''safety can'' is defined in the final rule as a metal container with a nominal capacity of no more than 5 gallons used for storage, transport, or dispensing of diesel fuel that is listed or approved by a nationally recognized independent testing laboratory. Commenters supported the use of approved safety cans to transport small amounts of diesel fuel. This definition provides assurance that adequate construction and performance specifications for fire protection are met. The limitation on the capacity of safety cans to no more than 5 gallons will control the amount of diesel fuel being transported and minimize potential fuel

spillage. Such specifications and limitations are necessary in light of accident reports of 10 fires in Canadian mines that resulted from diesel fuel spillage during refueling.

A safety can that meets this definition could be listed by Underwriters Laboratories or approved by Factory Mutual, Inc. Some nationally recognized independent testing laboratories have established specific construction specifications for the type and thickness of materials; material strength, stability and resistance to leakage; and standards for fire exposure that ensure that the can will safely vent if exposed to a heat source such as a fire.

The final rule defines ''safety can'' as a metal container. Thus, a plastic safety can listed or approved by a nationally recognized independent testing laboratory would not be acceptable under the final rule. A metal container is specified because metal is superior to plastic in containing diesel fuel in the event of a fire. The safety advantage provided by metal cans has been documented in the 1985 Bureau of Mines' Report cited earlier. Specific design requirements for safety cans are addressed in § 75.1904 of the final rule.

Section 75.1901 Diesel Fuel Requirements

This section of the final rule establishes specifications for the fuel used in diesel-powered equipment in underground coal mines. Satisfying the requirements of this section will lower diesel engine gaseous and particulate emissions, and will reduce equipment maintenance by limiting the amount of sulfur in the fuel. The risk of fire in underground coal mines is also reduced by the minimum flash point for the fuel required by the final rule. The safety benefits that result from this aspect of the final rule are particularly important in the confined environment of an underground coal mine.

Paragraph (a) of this section requires that diesel fuel used in underground coal mines contain no greater than 0.05 percent sulfur and have a flash point of 100° F (38° C) or greater. The final rule also requires the mine operator to provide an authorized representative of the Secretary, upon request, with evidence that the diesel fuel purchased for use in diesel-powered equipment underground meets these requirements.

The proposed rule would have required ASTM D975 No. 2D diesel fuel, with a flash point of 125° F or greater, at standard temperature and pressure. Many commenters objected to the requirement for ASTM D975 No. 2D diesel fuel, stating that the reference to No. 2D fuel was a manufacturing classification, did not describe a type of diesel fuel that was commercially available, and would unnecessarily limit the use of diesel fuel in underground coal mines.

MSHA agrees with commenters that the proposed fuel specifications do not describe a fuel that is commercially available, and the fuel specifications contained in the final rule respond to these comments. The reference to ASTM D975 No. 2D diesel fuel has been eliminated, and a minimum flash point and maximum sulfur content for diesel fuel have been specified. The fuel described by the final rule is in widespread use throughout the United States, and is easily obtained by mine operators. The fuel specifications in the final rule are based on Environmental Protection Agency on-highway fuel requirements for commercially available diesel fuel.

A number of commenters were concerned that the required flash point of diesel fuel not be set too low, stating that any diesel fuel specifications must keep the fuel within the class of combustible liquids, ensuring that hazards associated with diesel fuel are no greater than those associated with other combustible liquids used underground. Some of these commenters recommended that the flash point for diesel fuel be set at 140° F, stating that lower flash points would increase the risk of vaporization and increased aromatic content, especially at warmer mine temperatures. These commenters stated that increased aromatic content has an effect on particulate emissions.

Other commenters stated that the proposed flash point of 125° F was too high. Some commenters reported that the flash point of diesel fuel is intentionally lowered when fuel suppliers mix it for a winter blend, to depress the cloud point of the diesel fuel and reduce the temperature at which the fuel begins to jell. These commenters believed that a flash point of 125° F would virtually eliminate their ability to use diesel-powered equipment in cold temperatures, unless the rule specifically allowed the use of winter blends of diesel fuel with flash points below 125° F. These commenters pointed out that the ASTM 975 specification for diesel fuel is being changed to lower the minimum flash point of D1 diesel fuel to 100° F (38° C) when the cloud point is lower than 10° F, and that a reduction of the flash point in the final rule was appropriate.

Another commenter believed that the diesel fuel autoignition point does not change in the lower range of flash point for diesel-powered equipment, concluding that the safety of diesel fuel exposed to hot surfaces would not change with changing flash points.

No demonstrated hazard exists to justify raising the flash point of diesel fuel above the proposed flash point of 125° F. However, MSHA acknowledges commenters' concerns that the proposed flash point may unintentionally limit the use of diesel fuel during the winter. To address this issue, the flash point has been lowered in the final rule to 100° F (38° C) or greater.

Several commenters suggested that the terms ''flash point'' and ''combustible liquid'' be defined, with some commenters offering recommended language for the definitions. The final rule does not include definitions for these terms. The term ''flash point'' is commonly understood in the mining industry to mean the lowest temperature at which a liquid will give off sufficient vapor to ignite on application of a flame, and does not need to be defined in this rule. The suggested definition offered by commenters for the term ''combustible liquid'' specifies a flash point temperature. Because the final rule sets a minimum flash point temperature for diesel fuel, such a definition is unnecessary.

The proposal did not set a limit on sulfur content for diesel fuel, but would have required sampling for sulfur dioxide when diesel fuel was used that contained more than 0.25 percent sulfur. This approach was taken because, although the proposal recognized that use of low sulfur fuel was desirable, it was not readily available nationwide at the time the proposal was published in October 1989.

Some commenters stated that the sulfur content of diesel fuel should be limited in all cases to 0.25 percent. Others stated that a sulfur content requirement should be phased in, ultimately reaching the Environmental Protection Agency's maximum sulfur level of 0.05 percent. One commenter stated that a requirement for low sulfur fuel would provide a health benefit to miners by reducing particulate emissions.

MSHA agrees that the sulfur content of diesel fuel should be kept at a low level. Sulfur in diesel fuel contributes to diesel particulate emissions. Additionally, some types of exhaust after-treatment technology designed to lower hazardous diesel emissions work better when the sulfur content in the fuel is low. More effective strategies for after-treatment technology will result in reduced hydrocarbons and carbon monoxide levels. Low sulfur fuel also

greatly reduces the sulfate production from the catalytic converters currently in use in underground coal mines, thereby decreasing exhaust pollutants. Today, low sulfur fuel is readily available and widely used by on-road commercial vehicles. For these reasons, the final rule requires that diesel fuel contain no greater than 0.05 percent sulfur, which fuel is readily available nationwide.

Under § 70.1900 of the proposal, mine operators would have been required to provide MSHA with a certified statement if the sulfur content of the fuel used in their diesel equipment was 0.25 percent or less. This provision was included with exposure monitoring requirements because use of high sulfur fuel under the proposed rule would have triggered weekly area sampling requirements. Specifications for diesel fuel are now addressed in paragraph (a) of this section of the final rule, and the operator's obligation to verify the fuel's sulfur content has also been included in this section.

The final rule requires the mine operator to provide to an authorized representative of the Secretary, upon request, evidence that the diesel fuel purchased for use in diesel-powered equipment underground meets the requirements of paragraph (a). This will not be a burdensome requirement. MSHA anticipates that the mine operator's contract with the mine's fuel supplier will document the type of fuel that is being purchased. The verification required under this paragraph may also be provided by a copy of a fuel analysis, which can be performed by a supplier's quality control laboratory or a private laboratory at minimal or no cost to the operator. MSHA recognizes that purchase orders and invoices may be kept at a mine's administrative office rather than at the mine site. Although the final rule does not specify a location or manner of recordkeeping for the document evidencing diesel fuel content, the mine operator may choose to keep an additional copy of the document to be easily accessible to a representative of the Secretary. A small recordkeeping burden is estimated for this requirement under the Paperwork Reduction Act of 1995.

Paragraphs (b) and (c) of this section of the final rule address additives for diesel fuel used in diesel-powered equipment in underground coal mines. The requirements of these two paragraphs were not part of the proposal but have been added to the final rule in response to commenters' concerns over the types of substances that could be safely added to diesel fuel.

Paragraph (b) prohibits the addition of flammable liquids to diesel fuel. One commenter expressed concern that the proposed rule would not prohibit flammable liquids, such as gasoline, from being mixed with diesel fuel underground to assist in machine starting and operation during cold weather. Because gasoline is highly flammable, adding it to diesel fuel could cause the flash point of the fuel to drop below 100° F (38° C) and transform the fuel into a flammable liquid. Further, use of gasoline as a diesel fuel additive could ruin an engine's fuel system by reducing the lubricating properties of the fuel. In response to these concerns, the final rule prohibits the addition of flammable liquids, such as gasoline, to diesel fuel. This restriction will promote the safe use of diesel fuel underground.

Kerosene, on the other hand, is commonly used as a cutter stock for lowering the cloud point in diesel fuel. Because kerosene has a flash point above 100° F (38° C) it is classified as a combustible rather than a flammable liquid and therefore may be added to diesel fuel under the final rule.

Paragraph (c) permits only diesel fuel additives that have been registered with the Environmental Protection Agency (EPA) under 40 CFR Part 79 [59 FR 33042] to be used in diesel-powered equipment underground. Because the proposed rule was silent on whether the use of diesel fuel additives would be permitted, a number of commenters raised additives as an issue and advocated that the final rule permit them to be used. These commenters stated that additives served to depress the cloud point of diesel fuel during cold weather to prevent jelling of the fuel. A cloud point depressant works by breaking down larger size crystals to smaller crystals, thus allowing the fuel to flow more freely. Several commenters expressed concern about the effect additives may have on diesel exhaust particulate emissions when mixed with diesel fuel. Other commenters wanted to be permitted to use additives, such as barium additives, with diesel fuel used to power equipment underground. One commenter stated that MSHA should encourage further research on the use of additives.

The wide variety of diesel fuel additives currently on the market makes control of the use of these additives difficult. The final rule addresses this issue by limiting fuel additives used underground to those registered under specific EPA regulations.

EPA regulations at 40 CFR Part 79 forbid manufacturers from placing any fuel additive into commerce unless the additive has been registered with the EPA Administrator. The EPA registration process requires the submission of extensive test data for specific health effect endpoints, as well as a general systemic and organ toxicity literature search on the health and welfare effects of the fuel additive emissions, including the characteristics of the emissions. Registered fuel additives are maintained by the EPA on a list that is available to the public.

The requirements of this paragraph do not place an undue burden on mine operators, because operators need only verify with their fuel supplier or distributer that the additive purchased is included on the EPA registration list.

Section 75.1902 Underground Diesel Fuel Storage—General Requirements

This section of the final rule provides general requirements for the safe storage of diesel fuel underground. These requirements are intended to minimize risks associated with fire hazards in the areas where diesel fuel is stored. This section limits the receptacles that may be used for diesel fuel storage underground to diesel fuel tanks and safety cans; allows only one diesel fuel transportation unit in a temporary fuel storage area; places a 1000-gallon limit on the capacity of stationary diesel fuel tanks in permanent fuel storage facilities; and limits the location of permanent fuel storage facilities and temporary fuel storage areas underground.

A number of commenters were concerned about the additional hazards that would be created by the storage of a combustible—diesel fuel—in underground coal mines. Some commenters opposed any type of fuel storage underground, while others believed that diesel fuel can be safely stored. Those commenters who opposed the storage of diesel fuel underground stated that it would present numerous safety hazards, including an increase in the probability of the fuel becoming involved in a mine fire and cutting off the avenue of escape for miners. These commenters recommended that language in existing MSHA regulations at § 31.9 (c)(2) and (c)(3) be incorporated in the final rule. These regulations address refueling of diesel locomotives underground and provide that, whenever possible, locomotive fuel tanks be filled on the surface; contain specific requirements when locomotives are refueled underground; and prohibit underground fuel storage.

Commenters opposed to allowing storage of diesel fuel underground suggested that mine operators could file a petition for modification under Section 101(c) of the Mine Act if they

had a compelling need to store diesel fuel underground. These commenters felt that a case-by-case approach would more effectively address hazards associated with diesel fuel storage.

Commenters were also concerned with maintenance and upkeep of diesel fuel areas. These commenters stated that fuel spills and hose leakage could possibly contribute to fire hazards. Commenters expressed reservations about storage, transport, and dispensing of diesel fuel from 5-gallon cans, particularly during refueling, stating that temporary storage should not be allowed. These commenters wanted assurance that if diesel fuel storage were allowed underground, protections such as fireproof enclosures and pumps and other provisions that address fuel spillage would be provided.

Some commenters suggested that diesel fuel storage should be allowed only if it is tightly controlled, and that fuel spills must not be tolerated in areas of the mine that cannot be cleaned. A number of commenters recommended setting limits on the maximum quantity of fuel allowed on a production section, ranging from a 24- to a 48-hour supply. Other commenters supported permitting diesel fuel storage underground, but raised a number of issues related to fuel storage, such as appropriate construction requirements for underground facilities; fire protection; and the logistics of transporting and dispensing fuel in an underground environment. One commenter cited years of positive industry experience with safe underground storage and transport of diesel fuel. He stated that his own experience in safely operating an underground coal mine, including diesel fuel delivery, storage, transport and transfer, countered the proposition that proliferation of diesel fuel storage facilities would occur in an uncontrolled manner, resulting in unlimited quantities of diesel fuel being stored in underground mines.

MSHA has carefully reviewed all of the comments in determining how to address the storage of diesel fuel underground. Both MSHA and industry experience demonstrate that diesel fuel can be safely stored underground in limited quantities under controlled conditions. Allowing limited storage on the section will minimize other safety concerns cited by commenters, such as fuel leaks and spills. Underground fuel storage will also eliminate the need for frequent fuel trips, thus reducing hazards that are inherent in the transportation of diesel fuel. MSHA does not believe that it is useful or practical to restrict diesel fuel quantities based on projected use. The final rule instead sets specific gallon limits on the capacity of underground fuel storage tanks.

The final rule establishes safety requirements, including design and performance specifications for storage tanks, transportation vehicles, and cans for fuel storage; a limitation on the number of fuel storage units that may be parked on a section; and a limitation on the capacity of underground fuel storage facilities. MSHA believes that these requirements will provide a significant measure of additional protection from the hazards associated with the storage and handling of diesel fuel, and permit efficient and safe transportation and refueling of diesel equipment in underground coal mines. Under the final rule, miners are afforded protections that are equal to or greater than the protections of existing standards.

Paragraph (a) of this section provides that diesel fuel shall be stored in: (1) Diesel fuel tanks in permanent underground diesel fuel storage facilities; (2) diesel fuel tanks on diesel fuel transportation units in permanent diesel fuel storage facilities or temporary diesel fuel storage areas; or (3) safety cans. The proposal did not explicitly limit fuel storage underground to tanks and safety cans, and would have required that diesel fuel be transported in containers specifically designed for the transport of diesel fuel.

MSHA recognizes that large quantities of diesel fuel must be used in some mines. However, to protect against fires, spills, and other hazards, large quantities can only be stored in permanent facilities under this final rule.

The final rule permits fuel storage in tanks on fuel transportation units, but only under certain conditions and in limited quantities spelled out in other requirements in this section. A number of commenters recommended that the rule accommodate the need for fuel supplies to move as the production section moves. Other commenters expressed concerns that multiple mobile storage tanks might be located on the section at the same time, exposing miners to hazards, particularly from fire. The final rule also allows diesel fuel to be stored in safety cans.

The restrictions contained in paragraph (a) respond to commenters' concerns that storage of diesel fuel underground would lead to prolific, uncontrolled storage practices, and strictly limit the locations and receptacles for diesel fuel storage.

Paragraph (b) of this section limits the capacity of stationary diesel fuel tanks in permanent underground fuel storage facilities to 1,000 gallons. It is important to note that, while the total capacity of the fixed tanks is set, there is no limit on the number of stationary tanks that may be located in the facility. This means that the 1,000 gallons may be stored, for example, in two 500-gallon tanks or four 250-gallon tanks.

Like the final rule, the proposal prohibited storage of more than 1,000 gallons of diesel fuel in a permanent facility. Commenters' opinions of this provision varied, from those who opposed any kind of fuel storage underground, those who recommended limited storage, to those who believed that diesel fuel could be safely stored underground. The final rule balances the concerns raised by those opposed to storage against the need to store fuel underground to minimize other fuel handling hazards. The fire protection and construction requirements for fixed storage tanks and permanent storage facilities in §§ 75.1903 and 75.1904 of the final rule appropriately and adequately address fire and other hazards involving diesel fuel, and, when satisfied, will afford safe storage of the fuel quantities allowed under this section.

Under the final rule, the storage of safety cans and parking of fuel transportation units in permanent storage areas would also be permitted. The 1,000-gallon limit applies to the total capacity of stationary tanks in the fuel storage facility, and the quantity of fuel in safety cans stored or fuel transportation units parked in the facility would not be counted as part of the 1,000-gallon limitation under this paragraph.

The final rule permits storage of diesel fuel on a working section or in an area of the mine where equipment is being installed or removed, but places specific restrictions on such storage in paragraphs (c)(1) through (c)(4) of this section.

The proposal did not separately address storage of diesel fuel on a working section. MSHA received many comments both opposing and supporting section fuel storage. Those opposed stated that storage on the section would present fuel leakage and spillage hazards, creating fire and escape hazards for miners. Those supporting fuel storage on the section stated that, because the production section advances rapidly, the final rule must permit diesel fuel storage on the section. These commenters further stated that properly designed fuel transportation units should be allowed on mining sections, as long as they are parked within reasonable proximity to

the work area and comply with specific safety requirements.

MSHA agrees with commenters who supported allowing mobile fuel storage on the section, which can move as mining progresses, but also agrees with commenters who believe that such storage must be carefully controlled. In response to these concerns, paragraph (c)(1) permits only one temporary diesel fuel storage area for each working section or in areas of the mine where equipment is being installed or removed. Paragraph (c)(2)(i)–(iii) requires that the temporary fuel storage area be located within 500 feet of the loading point; within 500 feet of the projected location of the future loading point where equipment is being installed; or within 500 feet of the location of the last loading point where equipment is being removed. This requirement will ensure that the fuel storage area will be located close enough to miners to allow any hazards that may develop to be quickly addressed. This provision is a logical outgrowth of the rulemaking because it addresses commenters' concerns that fuel storage be allowed in close proximity to the mining section, while at the same time recognizing that safety concerns dictate limitations on where fuel may be stored.

Consistent with the final rule's approach of allowing limited storage on the section, paragraph (c)(3) prohibits more than one diesel fuel transportation unit at a time to be parked in a temporary diesel fuel storage area. This requirement is consistent with sound fire protection engineering principles for the storage and handling of diesel fuel, and is supported by experiences in the field and applicable NFPA standards. It should be noted, however, that a ''parked'' diesel fuel transportation unit under this paragraph would not include a unit that is in the process of refueling equipment or that is itself being refueled. This means, for example, that a temporary fuel storage area could contain more than one diesel fuel transportation unit at one time, so long as only one unit is parked. Any other units in the area must be in use and attended.

The proposal would have allowed fuel to be stored in free-standing tanks in mobile diesel fuel storage facilities. The final rule allows fuel to be stored in temporary fuel storage areas, but only in tanks on diesel fuel transportation units. These units are specially designed to provide both mobility and protection for the fuel tanks. Protection is provided by requiring the tank to be permanently affixed to the transportation unit. The construction and design requirements for fuel tanks are contained in § 75.1904 of the final rule.

Paragraph (d) of this section of the final rule imposes limitations on the location of permanent fuel storage facilities and temporary fuel storage areas, and has been revised from the proposal for clarity. This aspect of the final rule requires diesel fuel to be kept out of areas where the potential for fire is greatest. The final rule prohibits permanent storage facilities and temporary storage areas from being located within 100 feet of shafts, slopes, shops, or explosives magazines, or within 25 feet of trolley wires or power cables, or electric equipment not necessary for the operation of the storage facilities. The fuel storage facilities or areas must also be in a location protected from damage by other mobile equipment.

Some commenters stated that the proposed requirement that diesel fuel storage facilities be located at least 100 feet away from shafts, slopes, or shops was not adequate in light of the amount of diesel fuel involved and the amount of spillage that could occur. Another commenter stated that requiring shops to be located at least 100 feet away from fuel storage facilities was inconsistent with proposed § 75.1903(c), which would have prohibited welding and cutting within 50 feet of storage facilities. The commenter also noted that in some cases it may be best to locate the fuel storage facility within 100 feet of the shop near a return, because this would provide the best direct ventilation to the return for both the shop and storage facility, but that the proposed 100-foot requirement could prevent this. The final rule, like the proposal, adopts separation distances that are consistent with the National Fire Protection Association 123 Standard for Fire Prevention and Control in Bituminous Coal Mines. NFPA 123 requires fixed combustible liquid storage areas to be located a minimum of 100 feet from explosive magazines, electrical substations, shaft stations, and shops. MSHA disagrees with commenters who considered a 100-foot separation distance insufficient in light of the amount of diesel fuel that could be stored. The design, construction, and fire suppression system requirements in the final rule that apply to permanent fuel storage facilities provide adequate protection to miners with a 100-foot separation distance.

MSHA also disagrees with the commenter who believed that requiring shops to be located at least 100 feet away from fuel storage facilities, where cutting and welding are likely to occur, was inconsistent with a prohibition against welding and cutting within 50 feet of storage facilities. The high volume of vehicle traffic in and out of the area of the shop warrants a greater separation distance than for cutting and welding alone.

Finally, the final rule does not adopt the recommendation of the commenter who advocated allowing a permanent fuel storage facility closer to a shop than 100 feet, to allow better ventilation of both the shop and the storage facility. The fire protection afforded by the 100-foot separation distance outweighs any advantage in ventilation that would result from allowing a lesser distance.

Paragraph (d)(3) provides that permanent fuel storage facilities and temporary fuel storage areas must be in a location that is protected from damage from other mobile equipment. Under the proposal, fuel storage facilities would have been required to be at least 25 feet away from haulageways, which are entries where miners and materials are normally transported. The rationale for this requirement was that areas where diesel fuel is stored should be out of the line of mine traffic, where tanks would be exposed to damage from collision with other mine vehicles. Instead of adopting the proposed requirement, the final rule takes a performance-oriented approach by providing that storage facilities and areas be located where they are protected from damage. This responds to a commenter who indicated the importance of keeping fuel storage facilities out of the line of traffic.

Paragraph (e) prohibits permanent fuel storage facilities from being located in the primary escapeway, which provides miners with a route of escape from the mine in the event of an emergency. This restriction was not included in the proposal, but has been added to this section of the final rule in response to commenters' concerns relative to diesel fuel storage facilities' impeding miners' ability to escape in the event of a mine fire, explosion, or other emergency. This prohibition recognizes that the primary escapeway should be kept clear of obstructions and potential hazards, to ensure that miners are able to safely evacuate the mine in the event of an emergency.

Section 75.1903 Diesel Fuel Storage Facilities And Areas; Construction And Safety Precautions

This section of the final rule establishes construction and design requirements for permanent diesel fuel storage facilities and temporary diesel fuel storage areas. These requirements are intended to minimize fire hazards associated with storage of diesel fuel

underground, and provide safety protections for miners during the storage, transportation, and dispensing of diesel fuel.

The proposal did not distinguish between construction and design requirements for those diesel fuel storage facilities that are fixed and remain in one location indefinitely, and those that move as the production section advances. A number of commenters stated that the proposed requirements were suitable for permanent facilities but were unnecessary and impractical for facilities that would be temporary. Some commenters were concerned that some mine operators would not be able to complete construction of the temporary facility before the facility would have to be moved to keep pace with the advancing section. In support of this position, commenters stated that compliance with the proposed requirements would be impractical and would force mine operators to transport fuel to the section to refuel equipment on a shift basis, creating increased hazards due to transportation.

Another commenter voiced similar concerns, noting that the rapid advance of mining in modern underground coal mines makes it more practical for fuel stations to be advanced with mining activity, and that properly designed transportation units should be allowed on mining sections as long as they are parked in accordance with specific safeguards in reasonable proximity to the working area. The commenter stated that a specific parking requirement with proper safeguards would be much safer than the requirements in MSHA's proposal. Another commenter stated that the Diesel Advisory Committee made general recommendations for permanent and temporary storage facilities that were not intended to eliminate fuel trailers and their use. On the other hand, several commenters believed that the fact that the proposal would not have required mobile storage facilities to have a drain system and sump would provide no incentive for operators to construct fixed facilities, and that the construction of an unlimited number of mobile facilities would result.

In response to the comments, the final rule reflects a clear distinction between construction and design requirements for permanent underground diesel fuel storage facilities and temporary underground diesel fuel storage areas. MSHA recognizes that temporary diesel fuel storage areas move frequently as mining advances, and that construction specifications must take this fact into account. Requirements for permanent storage facilities have therefore been addressed separately from those for temporary facilities in the final rule. The final rule provides a more practical approach for the construction and design of areas designated for temporary fuel storage, and eliminates several proposed construction requirements that are unnecessary from a fire protection engineering standpoint. Specifically, the final rule does not adopt the proposed requirements that temporary fuel storage areas be constructed of noncombustible material, be provided with a self-closing door, and be provided with a fire suppression system. Because construction of temporary storage areas with these features would make it extremely difficult for these facilities to be built as fast as mining progressed, transportation of fuel between permanent storage facilities and the section would increase significantly. The risk of an accident involving a fuel transportation unit would also increase, and with it the risk of fuel spillage and the risk of fire. The final rule therefore reduces the construction requirements for temporary fuel storage areas, to provide better control of the fire hazards inherent in fuel transportation and storage.

Paragraphs (a)(1) through (a)(7) of this section establish construction and design requirements for permanent underground diesel fuel storage facilities. Consistent with basic fire protection engineering principles, the final rule requires permanent storage facilities to be constructed of noncombustible materials; provided with self-closing doors or a means for automatic enclosure, and with a means for entry and exit after closure; ventilated with intake air; equipped with an automatic fire suppression system; and provided with a means to contain diesel fuel and with a concrete floor or equivalent to prevent spills from saturating the mine floor. These requirements are intended to reduce the fire hazards inherently present in areas where diesel fuel is stored and increase protection in the event of a fire.

The proposal contained requirements similar to those in the final rule, but the final rule has been modified in response to commenters. Some commenters were generally opposed to the proposed requirements, stating that diesel fuel systems currently in use do not pose the degree of hazard that would warrant such extensive requirements. One commenter stated that the requirements of the proposal suggested that the hazards of diesel fuel storage exceed the hazards of the storage of explosives underground by several-fold. Other commenters stated that the proposed requirements for construction of storage facilities with noncombustible materials and with a means for automatic enclosure were too vague and not stringent enough. These commenters recommended that MSHA require at a minimum that diesel fuel be stored in an enclosure with at least a 2-hour fire-resistance rating.

Paragraph (a)(1) provides that permanent underground fuel storage facilities shall be constructed of noncombustible materials, including floors, roofs, roof supports, doors, and door frames. Exposed coal within the fuel storage areas is required to be covered with noncombustible material. If they are used, bulkheads are required to be built of or covered with noncombustible material.

The proposal would have required that the storage facility be constructed of noncombustible material, a term that was not specifically defined. As discussed above, the term ''noncombustible materials'' is defined in § 75.1900 of the final rule as materials meeting the equivalent of a one-hour fire resistance rating test. Paragraph (a)(1) also incorporates NFPA 123 requirements. These requirements clarify which components of the facility must be noncombustible, including floors, roofs, roof supports and door frames, and specify that exposed coal must be covered with noncombustible material and bulkheads either built of or covered with noncombustible materials.

MSHA's Approval and Certification Center has established guidelines to determine the suitability of trowelable or sprayable coatings for protecting coal surfaces against fire, which meet the requirements of paragraph (a)(1). In addition, textile-type thermal barriers may also be used to provide isolation of the combustible surfaces within the storage facility. Materials meeting the ''Performance Criteria for Materials used for Welding and Cutting Curtains and/or Thermal Barriers in Underground Coal Mines'' (Luzik, MSHA Report No. 01–098–92) may also be used. MSHA has also established guidelines for noncombustible doors. Additionally, MSHA has tested certain designs of high-temperature silica fabric curtains and published the results in *Coal Magazine,* June 1993, pp. 102–104, ''MSHA Develops New Fire Resistant Check Curtains''. For purposes of the final rule, MSHA will accept as doors the curtain constructions described in this article. Facilities constructed to meet these requirements will afford protection to miners working in the production areas inby in the event of a fire and should provide ample time for miners to exit.

Paragraph (a)(2) of the final rule requires that permanent fuel storage facilities be provided with either self-closing doors or a means for automatic enclosure. This paragraph provides mine operators with flexibility in the method used to comply with the final rule. The proposal would have required that the facility be provided with a means for automatic enclosure, which suggests that the door must be closed by powered means, such as electrically or pneumatically. The proposal did not specifically include non-powered self-closing doors as an alternative, although they were not intended to be excluded. Self-closing doors serve the same function in containing a fire as automatic-closing doors, and the final rule clarifies that they are permitted.

Paragraph (a)(3) requires that permanent fuel storage facilities be provided with a means for personnel to enter and exit the facility after closure. This provision has been added to the final rule to ensure that miners who are inside the fuel storage facility when the automatic enclosure activates will be able to exit from the facility. This requirement is also intended to allow miners to gain access to the facility to suppress an incipient fire that may develop. This paragraph also requires a means for exit and entrance when self-closing doors are used. Self-closing doors that are specifically designed to be manually opened would be in compliance with this paragraph. This aspect of the final rule is necessary to prevent miners from being trapped in the facility, and is a logical outgrowth of the rulemaking.

Paragraph (a)(4) of this section of the final rule requires that permanent fuel storage facilities be ventilated with intake air that is coursed into a return air course or to the surface and that is not used to ventilate working places, using ventilation controls meeting the requirements of existing § 75.333(e). The proposal would have required that both fixed and mobile fuel storage facilities be ventilated directly into a return air course using noncombustible materials for ventilation controls. Some commenters stated they were already venting fuel storage areas in their mines directly to the return.

The final rule adopts the proposed requirement only for permanent fuel storage facilities, with some modification. The final rule requires that the facility be ventilated with intake air coursed to a return air course or to the surface that is not used to ventilate working places. This language, which is consistent both with existing requirements at § 75.340 for the ventilation of underground electrical installations and with the current definition of ''return air'' in existing § 75.301, is intended to eliminate the confusion caused by the phrase ''directly to a return air course''. The final rule clarifies that the intake air ventilating the fuel storage facility may not be used to also ventilate active working places. Thus, the air may be coursed into other entries before being coursed into a return, so long as the air is not used to ventilate a working place.

Temporary underground diesel fuel storage areas are not required to be vented directly to the return in the final rule, in response to commenters who advocated more flexibility and less restrictive requirements for temporary fuel storage that moves as mining progresses.

If the permanent facility is equipped with self-closing doors that would normally be closed, an opening will have to be provided in the doors to allow intake air to flow through the facility. This opening will prevent the build-up of diesel fuel vapors in the facility and prevent smoke generated during the incipient stages of a fire from entering the intake air courses. The opening is not intended to prevent smoke and other products of combustion from backing up into the intake airway if the fire is not extinguished in its incipient stages. For automatic closing doors, which would normally be open, a vent in the doors may not be needed since enclosure is required to seal the facility to cut off oxygen to the fire after the doors have closed.

The requirements of paragraph (a)(4) are also intended to ensure that, if an enclosure has self-closing doors that are normally closed, precautions are taken to adequately vent diesel exhaust emissions from the facility. Such precautions could include the use of a regulator in the door to bring air into the facility that would then be vented to the return. In the case of a diesel fuel transportation unit that must have its engine running to dispense fuel, the unit's exhaust could be vented either directly to the return, if it incorporates a power package approved under subpart F of part 7, or into intake air which is coursed directly to a return air course. A fuel transportation unit that is equipped with a subpart F-approved power package will have fire and explosion prevention features that would permit the engine to exhaust directly into the potentially methane-rich atmosphere of the return. When the unit is exhausted into intake air, the fire and explosion prevention features of a subpart F power package are not required. However, the emissions from the engine must be vented directly to return air to prevent unnecessary exposure of miners to diesel exhaust.

Paragraph (a)(5) adopts the requirements of the proposal and provides that permanent fuel storage facilities must be equipped with an automatic fire suppression system that meets the requirements of § 75.1912 of the final rule. This paragraph also includes an additional requirement, not included in the proposal, that actuation of the automatic fire suppression system shall initiate the means for automatic enclosure. One commenter stated that the proposed requirement for automatic enclosure was not sufficiently stringent, that these storage facilities should be designed with fire containment capability, and that automatic enclosure should be triggered by actuation of the automatic fire suppression system. MSHA agrees, and the final rule enhances the capabilities of the automatic fire suppression system by requiring that initiation of the system will activate closure of the doors to the facility if self-closing doors are not used. Operation of the system in an environment with minimal air movement, which would exist when the doors are closed, will improve the effectiveness of fire suppressant agents in extinguishing a fire.

Paragraph (a)(6) requires that permanent fuel storage facilities be provided with a means of containment capable of holding 150 percent of the maximum capacity of the fuel storage system. This provision is intended to address hazards associated with diesel fuel spillage and leakage—both slip and fall and fire hazards. The proposal would have required that permanent facilities be equipped with a drain system and a sump capable of holding 150 percent of the maximum capacity of the fuel storage system. Instead of requiring a drain system and sump, the final rule requires a ''means of containment''. This change acknowledges that a suitable drain system is generally considered overly difficult to design and install, and will also allow more flexibility in design of fuel containment systems. Additionally, spilled diesel fuel is best left confined in the facility where the fire suppression system is located. One commenter offered a case that illustrates this principle where the fuel escaped into the mine during a fuel spill because the drain valve at the bottom of the remote sump that serviced the storage area was left partially open.

It is important to note that, in cases where fuel is piped from the surface to an underground fuel storage facility, the containment capacity must account for

the total fuel capacity. This means that the capacity of the containment must equal at least 150 percent of the surface tank's capacity, plus 150 percent of the underground tank's capacity, plus 150 percent of the volume of the piping system connecting the surface tank to the underground tank. In cases where there is no underground tank, the maximum capacity includes the surface storage tank and the piping system from the surface. Where a stationary tank is located in a permanent facility and is not connected to a surface tank, the means of containment must account for 150 percent of the capacity of the largest stationary tank. If the underground fuel storage facility is not equipped with a stationary tank but is used for the storage of only diesel fuel transportation units, the single largest transportation unit tank would be counted in the maximum capacity for purposes of this paragraph. However, diesel fuel transportation units that may be parked in permanent fuel storage facility where a piping system from the surface terminates or where a larger stationary tank is housed would not be considered part of the ''fuel storage system'', and the capacity of the transportation unit tank would not be included. The rationale behind this is that only one component in a fuel storage facility would be expected to fail at one time, such as a burst piping system or a leak in a stationary tank or in a transportation unit tank.

In support of the requirement of this paragraph, one commenter noted that a fuel spill occurred when valves in the piping system from the surface storage tank failed, allowing the static head pressure to be imparted on the dispensing hose which caused it to rupture and fuel to escape.

Commenters stated that it is important that the storage location be designed to contain fuel spills and tank ruptures to stop the spread of fuel. The final rule's containment capacity requirement of 150 percent of the capacity of the fuel system will provide a prudent safety factor in view of the potential fire hazard created by the release of large amounts of diesel fuel into an underground mine.

Paragraph (a)(7) has been added to the final rule and requires that permanent fuel storage facilities be provided with a competent concrete floor or equivalent to prevent fuel spills from saturating the mine floor. This provision is intended to ensure that spilled diesel fuel can be easily cleaned up and will not accumulate, creating a fire hazard. This requirement is added in the final rule in response to commenters who suggested that the floor of the storage facility should be noncombustible and impermeable to oil and diesel fuel. These commenters argued persuasively that a requirement for a concrete floor would preserve the integrity of a noncombustible facility.

Under the requirements of this paragraph a permanent fuel storage facility must be provided with a competent floor made of concrete or an equivalent material. The term ''competent'' is used to make clear that a cracked concrete floor or a porous mine floor would not satisfy this requirement. A brattice-type lining or rubber membrane would not be considered equivalent because it could easily be torn during refueling of vehicles, and diesel fuel could leak through and accumulate underneath. This provision has been added to the final rule in direct response to commenters, many of whom testified at the Agency's public hearings on the proposal. MSHA believes that this provision constitutes a logical outgrowth of the proposal because of commenters' stated concerns in ensuring that spilled fuel will not saturate the mine floor and create a fire hazard.

The requirements of paragraph (b) of this section of the final rule apply to both permanent underground fuel storage facilities and temporary underground fuel storage areas. This paragraph requires that these storage facilities or areas be: equipped with a 240 pounds of rock dust and at least two fire extinguishers, or, in the alternative, with at least three fire extinguishers; be conspicuously marked; and be maintained to prevent the accumulation of water. These basic requirements address potential fire hazards in these facilities and ensure that mine personnel are aware of the presence and location of such facilities.

Paragraph (b)(1) requires that permanent fuel storage facilities and temporary fuel storage areas be equipped with at least 240 pounds of rock dust and provided with two portable multipurpose dry chemical type (ABC) fire extinguishers that are listed or approved by a nationally recognized independent testing laboratory and have a 10A:60B:C or higher rating. Both extinguishers must be easily accessible to personnel, and at least one must be located outside of the facility or area, upwind of the facility in intake air. Paragraph (b)(2) provides, as an alternative to the requirement of paragraph (b)(1), that three fire extinguishers may be provided.

The proposal would have required fixed and mobile fuel storage facilities to be equipped with at least two 20-pound multipurpose dry chemical type fire extinguishers, and would not have required that rock dust be provided. One commenter recommended that foam generating machines or fire extinguishers of 150 pounds or more be required. The final rule does not adopt the suggestion of this commenter, because MSHA considers it too hazardous to fight a diesel fire underground that cannot be extinguished in its incipient stages. The fire extinguishers and fire suppression equipment required by this section are intended to be used to extinguish small fires, such as could occur on equipment in the facility.

The final rule redefines the type of dry chemical extinguishers that are required, based on specifications recommended by the National Fire Protection Association for the particular hazard involved. The rating of the fire extinguishers has been adopted from NFPA 123 and is in accordance with NFPA 10–Standard for Portable Fire Extinguishers. Also, extinguishers must be listed or approved by a nationally recognized independent testing laboratory, which provides assurance that the extinguishers will perform effectively in the event of a fire emergency. The final rule requires that the fire extinguishers be located so that miners will have quick access to them in the event of a fire. To allow flexibility in complying with the requirements of this paragraph, the final rule addresses the location of only one fire extinguisher. The location of the other extinguisher should be determined based on mine conditions and the particular usage of the facility. The final rule specifies that the fire extinguisher be located upwind of the facility, which has been added to ensure that if a fire occurs miners will be able to reach the fire extinguisher without being exposed to the heat or smoke of the fire.

The final rule adds a requirement for 240 pounds of rock dust to be kept in the storage facility in response to comments concerning the effectiveness of rock dust in fighting diesel fuel fires and the ability of rock dust to contain spills. The requirement for 240 pounds of rock dust is consistent with § 75.1100–2(f), which requires 240 pounds of rock dust to be provided at permanent underground oil storage stations, and is included in the final rule as an added measure of fire protection in response to the concerns of commenters. However, paragraph (b)(2) allows an additional fire extinguisher to be substituted for the rock dust required under paragraph (b)(1), which is consistent with provisions in existing petitions for

modification for fire protection at electrical installations. The requirements of the final rule strike a balance between those commenters concerned about the need for additional fire protection provided by rock dust in locations where diesel fuel is stored, and those who were concerned that the storage of rock dust in those locations was inadvisable in mines that tended to be wet.

Paragraph (b)(3) adopts the requirement of the proposal that permanent diesel fuel storage facilities and temporary fuel storage areas be identified with conspicuous markings designating diesel fuel storage. The proposal would have required the facilities to be designated as ''combustible liquid storage,'' but MSHA has concluded that precise identification as areas of diesel fuel storage is more appropriate, and will ensure that mine personnel are aware of the locations where diesel fuel is stored underground.

Paragraph (b)(4) requires that fuel storage facilities or areas be maintained to prevent the accumulation of water. The proposal would have required that fixed and mobile underground storage facilities be located in an area as dry as practicable, a concept which several commenters considered to be vague and potentially difficult to comply with. This requirement has therefore been revised to require that permanent underground diesel fuel storage facilities and temporary fuel storage areas be maintained to prevent the accumulation of water. This provision recognizes that tanks or other components of the storage facility may corrode as a result of exposure to water. Additionally, accumulated water can increase the fire hazard present by a fuel spill, because diesel fuel will float on top of water and may be spread more easily throughout the storage facility. The requirement of this paragraph addresses these hazards.

Paragraph (c) adopts the proposed prohibition on welding or cutting, except as provided in paragraph (d) of this section, from being performed within 50 feet of a diesel fuel storage facility or area. This requirement is intended to minimize fire hazards and is consistent with National Fire Protection Association requirements (NFPA 123). No comments were received on this aspect of the proposal.

Paragraphs (d)(1) and (d)(2) adopt the requirements of the proposal and set forth specific precautions to be followed when welding, cutting, or soldering pipelines, tanks, or other containers that might have contained diesel fuel. MSHA received only a few comments on this aspect of the proposal, which is consistent with NFPA requirements. A review of MSHA's accident data reveals that a fatal accident occurred when the victim was welding a diesel fuel storage tank. The victim had drained the tank, which had been filled with water, and attempted to repair a small leak which remained in the tank. Vapors from the residual fuel were ignited by the heat of welding, and the tank exploded. The requirements of this paragraph are intended to address such hazards, and recognize that welding can be performed safely underground as long as appropriate safeguards are followed. Additionally, the large size of certain vessels used for the storage of diesel fuel underground would make it impractical to restrict welding of such containers to the surface. The precautions in paragraph (d)(1) include thoroughly purging and cleaning or inerting the pipelines, containers, or tanks before welding or cutting, with a vent or opening provided in the container or tank to release pressure before heat is provided. The final rule also prohibits diesel fuel from entering pipelines, tanks, or other containers that have been welded, soldered, brazed, or cut until the metal has cooled to ambient temperature. A slight change has been made in the language of this requirement to conform the references to the diesel fuel containers that are the subject of these requirements. The phrase ''pipelines, tanks, or other containers'' is used throughout. Additionally, the reference in proposed paragraph (d)(1) to containers or tanks that ''have contained combustible or flammable materials'' has been changed in the final rule to pipelines, tanks or other containers ''that have contained diesel fuel,'' to eliminate the inconsistency that existed between this provision and other language in this paragraph and to clarify the scope of these requirements.

One commenter recommended that a cleanup program be required for underground fuel storage facilities and areas. This recommendation has not been adopted in the final rule, because existing § 75.400–2 already requires mine operators to establish and maintain programs for regular cleanup of accumulations of coal and other combustibles. MSHA will require that underground diesel fuel storage facilities and areas be covered by the cleanup program under § 75.400–2, which will ensure that these locations are kept clear of any combustible materials.

Section 75.1904 Underground Diesel Fuel Tanks And Safety Cans

This section includes requirements for the design of diesel fuel tanks and safety cans and for emergency venting devices for diesel fuel tanks for venting vapors to protect against the buildup of pressure in the tank, which could lead to its rupture if the tank is exposed to fire. The requirements of this section are responsive to comments and are consistent with NFPA, Underwriters Laboratories, and American Petroleum Institute standards for storage tanks for combustible liquids. A number of commenters suggested restructuring and reorganizing the proposed design requirements for diesel fuel tanks, and the final rule is revised in response to these comments.

Paragraph (a) of this section of the final rule contains construction and location requirements for underground diesel fuel tanks in permanent underground fuel storage facilities and temporary underground fuel storage areas. These requirements are intended to guard against leakage of diesel fuel and to minimize fire hazards.

Paragraph (a)(1) requires that underground diesel fuel tanks have steel walls of a minimum 3⁄16-inch thickness or walls made of other metal of a thickness that provides equivalent strength. This specification has been added to the final rule to ensure that diesel fuel storage tanks are properly designed for their intended purpose, and in response to commenters who were concerned that diesel fuel tanks be durably constructed. MSHA explored alternatives for an objective measurement of durable construction. The requirement of this paragraph is consistent with prevailing industry standards, and is intended to serve as a minimum design standard for substantially constructed tanks. This requirement is derived from Department of Transportation (DOT) Spec. 51 Section 178–245–2(b), and is consistent with DOT requirements for over-the-road vehicles that transport diesel fuel. This specification is also recognized by the National Fire Protection Association in many of its fire protection standards as a design guideline for tanks used for storage of combustible liquids. Manufacturers of fuel transportation units currently produce diesel fuel storage tanks with 3⁄16-inch thick steel walls, and this specification will allow mine operators to buy diesel fuel tanks off-the-shelf.

Paragraph (a)(2) requires diesel fuel tanks to be protected from corrosion. The proposal would have required these tanks to be constructed of ''noncorrosive

material.'' The language of the final rule will allow mine operators the option of either using a tank that has been constructed of noncorrosive material, such as galvanized or stainless steel, or of protecting a tank from corrosion that has been constructed of an oxidizing material, such as common steel. Protection from corrosion can be achieved by applying a protective coating.

Paragraph (a)(3) requires diesel fuel tanks to be of seamless construction or fabricated with liquid tight welded seams. MSHA has added this requirement to the final rule in response to comments raising concerns about the durability of fuel tanks in use underground, to provide an objective measurement of substantial construction. Bolted and crimped joints are not allowed under the final rule because they are prone to leakage. The requirement of this paragraph is consistent with DOT Spec. 51 Section 178–245–2(b), and is intended to ensure that diesel fuel tanks are well constructed and designed not to leak.

Paragraph (a)(4) requires that diesel fuel tanks not leak, and has been added in the final rule in response to commenters' concerns that tanks not contribute to a fire. Under the final rule, all attachments to the tank, such as vents, caps, hoses, pumps, valves, and nozzles, must also be free from leaks. Many commenters were concerned with leakage hazards presented by the storage of diesel fuel underground. These commenters were particularly concerned about leakage in temporary diesel fuel storage areas. MSHA believes that the requirement of this paragraph, in conjunction with the other provisions in this final rule, will greatly minimize hazards associated with storage of diesel fuel underground.

Paragraph (a)(5) requires stationary tanks in permanent underground diesel fuel storage facilities to be placed on noncombustible supports so that tanks are at least 12 inches above the floor. Under the proposal such tanks would have been required to be supported by concrete, masonry, protected steel, or equivalent supports. Steel supports, except for steel saddles less than 12 inches from the floor, would have been required to be protected by materials having a fire resistance rating of not less than two hours. The proposal did not specify the minimum distance the tank must be from the floor. Commenters stated that positioning tanks at least 12 inches off the floor would allow for proper cleaning, rock dusting and quick detection of leaks. MSHA agrees with these comments and has revised the final rule accordingly. Additionally, the final rule provides that the tank supports must be made of noncombustible material, which is defined in § 75.1900 of the final rule, making unnecessary the reference in the proposal to ''concrete, masonry, protected steel, or equivalent supports''. The reference has therefore not been adopted in the final rule.

Paragraph (b)(1) requires diesel fuel tanks to be provided with devices for emergency venting that are designed to open at a pressure that does not exceed 2.5 pounds per square inch. Under this requirement, the venting devices must also meet minimum size requirements based on the capacity of the tank. The rule provides minimum vent device specifications for two ranges of tank sizes: tanks with a capacity of 500 gallons or less and tanks with a capacity of more than 500 gallons. The requirements of this section are incorporated in NFPA standards for portable tanks for transporting and storage of combustible liquids, as well as in American Petroleum Institute design standards. These vents are designed to activate at a pressure which is below the expected yield point of the tank and to provide the necessary volumetric flow rate to maintain safe internal pressure if the tank shell were to heat up as a fire develops. Opening of the device will allow the vapors to be safely vented and will prevent the tank from rupturing under this condition. Some commercially available emergency vents have been listed or approved by nationally recognized independent testing laboratories and can be expected to provide adequate pressure relief in a fire situation. The vent sizes required in the final rule were determined by design calculations outlined in National Fire Protection Association, Underwriters Laboratories, and American Petroleum Institute standards for a range of tank sizes typical for underground diesel fuel storage. These calculations take into account the probable maximum rate of heat transfer per unit area; the size of the tank and the percentage of the area likely to be exposed; the time required to bring the tank contents to a boil; the time required to heat unwet portions of the tank shell or roof to a temperature where the metal will lose strength; and the effect of drainage, insulation and the application of water in reducing the fire exposure and heat transfer. MSHA believes that specifying the minimum size of vent for two ranges of tank sizes is preferable to a requirement that would require the operator to design vents for a given size. The types of emergency vents required under this paragraph are commercially available and relatively inexpensive. The requirement of this paragraph respond to concerns of commenters regarding the hazards of fuel storage underground.

Paragraph (b)(2) requires tethered or self-closing caps for stationary tanks in permanent underground diesel fuel storage facilities, and self-closing caps for diesel fuel tanks on diesel fuel transportation units. The proposed rule would have required self-closing caps for all diesel fuel storage tanks, and did not include the alternative of a tethered cap for stationary tanks. One commenter suggested that self-closing caps are not needed on fixed tanks since they are unlikely to incur fuel spillage. The final rule permits the optional use of a tethered cap for stationary tanks, which adds flexibility and provides the same degree of protection as a self-closing cap.

Paragraphs (b)(3), (b)(4), (b)(5), and (b)(6) are unchanged from the proposal, with the exception of paragraph (b)(6) which has been revised to reflect commenters' concerns with respect to the location of shutoff valves. Paragraph (b)(3) addresses the size of vents, and will permit the free flow of fuel out of the tank without creating a vacuum in the tank that could damage its shell. Paragraph (b)(4) addresses requirements for liquid tight connections, and will minimize the risk of leaks and the resulting risk of fire. Paragraph (b)(4)(i) requires that liquid tight connections for all tank openings be identified by conspicuous markings that specify the function. Because this provision is performance-oriented and allows the mine operator to choose the manner in which markings identify connections, MSHA anticipates the burden time under the Paperwork Reduction Act of 1995 to be minimal.

Paragraph (b)(5) addresses requirements for vent pipes, and will minimize the possibility of fuel leaking from vent lines.

Paragraph (b)(6) is derived from proposed § 75.1906(c)(5) and requires that shutoff valves be located as close as practicable to the tank shell. The proposal would have required shutoff valves to be located within 1 inch of the tank shell. Because shutoff valves that extend for any distance from the fuel tank can be inadvertently damaged or broken off, making it impossible to shut off the flow of liquid from the fuel tank, the valves must be located close to the tank where they are protected from damage. However, one commenter was concerned that the proposal was too restrictive because it may not always be possible from a practical standpoint to locate the shutoff valve within 1 inch of

the tank shell. The final rule responds to this commenter's suggestion by allowing greater flexibility, and provides that the valve be located as close as practicable to the tank shell.

Paragraph (b)(7) adopts the requirement of the proposal for an automatic closing, heat-actuated valve on each withdrawal connection below the liquid level. The final rule does not adopt the proposed exception for connections used for emergency disposal, because this exception is not relevant to underground coal mines. The proposed rule required the installation of heat-actuated shutoff valves only on tanks in fixed storage facilities. The final rule extends this requirements to all diesel fuel tanks used underground, which would include tanks on diesel fuel transportation units. Automatic closing, heat-actuated valves shut the flow of fuel off when exposed to high temperatures. These valves prevent additional fuel from being discharged from the tank in the event of a fire. This requirement has been extended to tanks on transportation units, and is warranted in light of the scaling back of construction requirements for temporary fuel storage areas in the final rule in response to commenters' concerns that the requirements were impractical.

Paragraph (c) addresses tanks with openings for manual gauging, and requires that liquid tight, tethered or self-closing caps or covers be provided and be kept closed when not open for gauging. The alternative of tethered caps or covers has been added to the final rule for flexibility. MSHA believes the use of self-closing or tethered caps will provide necessary protection against overflow.

Paragraph (d) requires that surfaces of the tank and its associated components be protected against collision. This provision has been added to the final rule in response to commenters who were concerned about protecting the tanks from moving equipment. MSHA agrees that it is essential that diesel fuel storage tanks be protected from damage by collision with other equipment. Stationary tanks in permanent fuel storage facilities may need guards or barricades, depending upon their location, to prevent moving equipment from colliding with the tank.

Paragraph (e) sets forth requirements for leakage tests for tanks and their associated components, except that tanks and components connected directly to piping systems must be properly designed for the application. The final rule requires a leakage test at a pressure equal to the working pressure. The proposed rule would have required both a strength test and a leakage test, at a pressure equal to the static head, for diesel fuel storage tanks before the tanks were placed in service. Commenters recommended that tanks and their connections be tested at a pressure twice the working pressure.

The final rule does not require testing at twice the working pressure, in light of the detailed construction and design requirements for diesel fuel storage tanks in the final rule. The term ''static head'' in the proposed rule has been replaced with the term ''working pressure'' in the final rule. Although the meanings are the same in this context, the term ''working pressure'' is more widely used and more commonly understood in the mining industry. Compliance with the requirement of this paragraph will provide protection from hazards associated with leakage of diesel fuel underground. Under the final rule, mine operators are expected to verify that no leaks exist after installing the tank underground and connecting all of the tank's associated components before placing the tank in service. All components must be rated for the working pressures in the system. Both the static head and the maximum pump pressure, if applicable, must be considered when designing and selecting tanks and associated components connected to a piping system. For tanks connected to a piping system from the surface, the static head pressure could easily exceed several hundred pounds per square inch (psi), either during normal operation or because of a fault in the system. For these systems, MSHA advises mine operators to plan for a worst-case (highest pressure) scenario and select a tank and tank components that are designed for use at this pressure.

MSHA has concluded that the strength test for tanks that was included as part of the proposal is unnecessary, given the other specifications for tanks. This proposed requirement has therefore not been included in the final rule.

The proposal would have imposed additional requirements on tanks in underground diesel storage facilities that were not located in ''dry areas.'' Such tanks would have been required under the proposal to be placed on noncombustible supports so that the tanks were at least 6 inches above water or wet bottom, and such tanks would also have been required to be constructed of noncorrosive material. Commenters stated that the concept of ''dry areas'' was ambiguous and should not be adopted. MSHA agrees with these comments, and this aspect of the proposal has therefore not been included in the final rule. However, under the final rule, stationary tanks in permanent underground storage facilities must be placed on noncombustible supports at least 12 inches above the floor to allow for proper cleaning, rock dusting and quick detection of leaks. Tanks will also be protected by this requirement from wet floors. Further, the final rule requires all diesel fuel storage tanks to be protected from corrosion. These requirements will ensure that tanks are sufficiently shielded from water damage.

Paragraph (f) establishes design and size requirements for safety cans. These requirements have been added to the final rule to ensure that small amounts of diesel fuel can be transported and stored in a safe manner. Although the proposed rule contemplated the use of safety cans to transport small amounts of diesel fuel underground, the proposal would not have set design requirements for safety cans. Commenters were concerned that widespread and uncontrolled use of safety cans underground would result in fuel spills and accumulations on mine equipment and mine floors. The provisions of this paragraph are intended to address commenters' concerns about the hazards presented by safety cans used to store and transport diesel fuel in the underground mine environment.

The final rule establishes specific design requirements for safety cans. As indicated in the discussion of § 75.1900, the term ''safety can'' is defined in the final rule as a metal container intended for storage, transport or dispensing of diesel fuel with a nominal capacity of no more than 5 gallons, listed or approved by a nationally recognized independent testing laboratory. Paragraph (f)(1) of this section reiterates the 5-gallon capacity limitation, and paragraph (f)(2) requires that safety cans be equipped with a flexible or rigid tubular nozzle attached to a valved spout. Paragraph (f)(3) requires that safety cans be provided with a vent valve designed to open and close simultaneously and automatically with the opening and closing of the pouring valve. Finally, paragraph (f)(4) requires that safety cans be designed so that they will safely relieve internal pressure when exposed to fire. These requirements will reduce the likelihood of diesel fuel spills and afford appropriate protection for miners, in response to commenters who were concerned about the use of safety cans to store and transport diesel fuel.

Section 75.1905 Dispensing of Diesel Fuel

This section addresses the dispensing of diesel fuel, and has been revised from the proposal to clarify the various ways that diesel fuel may be safely dispensed. Paragraph (a) provides that diesel-powered equipment may be refueled only from safety cans, from tanks on diesel fuel transportation units, or from stationary tanks. These requirements are intended to control the circumstances under which diesel fuel is dispensed underground, minimizing the opportunities for spills or leakage, and in response to commenters who expressed concern about fuel spillage underground.

Paragraph (b) contains requirements for the dispensing of diesel fuel from tanks, except for the dispensing of fuel from safety cans. Design specifications for safety cans are included in § 75.1904(f) of the final rule, which requires nozzles, spouts, and vent valves on safety cans.

The requirements of paragraph (b)(1) apply when gravity feed is used as a means of dispensing diesel fuel. Although in developing the proposed rule MSHA contemplated that gravity feed would be used as a method for dispensing fuel, the proposal did not specifically refer to it. Some commenters questioned whether this omission should be interpreted as a prohibition of gravity feed fuel dispensing. In response to these comments, MSHA has clarified that gravity feed is a permissible method of dispensing fuel. However, because gravity feed presents the same potential as a powered pump for a loss of fuel from an unattended hose, the final rule prohibits a latch-open device when gravity feed is the method of dispensing.

Paragraph (b)(2) is identical to the proposal and requires that a manual pump used to dispense diesel fuel have a hose equipped with a nozzle containing a self-closing valve. No comments were received on this aspect of the proposal, and it has been adopted unchanged.

Paragraphs (b)(3) (i) through (iii) require that, when a powered pump is used to dispense fuel, it be equipped with an accessible emergency shutoff switch for each nozzle, and that the hose be equipped with a self-closing valve without a latch-open device, and with an anti-siphoning device. These requirements have been adopted, with some minor changes, from the proposal. Specifically, the final rule clarifies that an accessible emergency shutoff switch be provided for ''each nozzle'', and adds a requirement for an anti-siphoning device. These modifications recognize that fuel piping systems may be installed underground that do not transport fuel from the surface, but from one location to another in the mine itself. These additional requirements are intended to prevent the leakage or pumping of the contents of a tank into the mine in the event of a broken or leaking pipe or hose. An accessible emergency shutoff switch is required for each nozzle under the final rule to permit quick action by mine personnel in the case of a leaking pipe or hose or in the event of fire during refueling. An anti-siphoning device prevents the inadvertent siphoning of fuel from a tank connected to the piping system, and is responsive to commenters' concerns regarding the hazards of fuel leaks and spills underground.

Commenters recommended that an inline fuse be required as near as possible to the pump's power source to deenergize the electrical system in the event of an electrical short circuit. This comment has not been adopted in the final rule, because the circuit protection specified in existing § 75.518 is sufficient to prevent or detect a short circuit. In addition, other existing electrical safety requirements in part 75 apply to electrical components associated with diesel fuel handling and storage, and provide adequate protection from electrical hazards.

Paragraph (c) prohibits the use of compressed gas in dispensing diesel fuel. This prohibition is identical to what was proposed and received no comments. The use of compressed gas to dispense diesel fuel would require not only a special tank but also an emergency venting system for pressurized tanks, and would still present a hazard. If a leak developed in the pressurized tank or its associated piping, relatively large amount of fuel could be spilled onto the mine floor, creating a serious fire hazard. This prohibition has therefore been retained in the final rule.

Paragraph (d), like the proposal, prohibits diesel fuel from being dispensed to the fuel tank of diesel-powered equipment while the equipment engine is running. This prohibition is derived from MSHA's review of Canadian fire accident data, which reveals that 10 fires occurred during refueling. Failure to shut off the engine may have contributed to these fires. This prohibition is also consistent with § 75.1916(d) of the final rule, which forbids unnecessary engine idling, and reduces exposure of miners to exhaust emissions.

Several commenters recommended that permissible diesel equipment be excluded from this prohibition because it is designed to be explosion-proof. These commenters also stated that shutting down the equipment should be avoided because of the difficulty in restarting it, and that in some cases a trained mechanic would be needed to restart the engine.

MSHA does not agree that permissible equipment should be excluded from this requirement. Although permissible diesel equipment is equipped with engine surface temperature controls that would prevent the ignition of diesel fuel if it is spilled on the equipment, air quality considerations support the adoption of this requirement for permissible as well as nonpermissible equipment. Not shutting down a machine engine during refueling serves no purpose other than convenience, and the diesel exhaust produced contributes unnecessarily to contaminant levels. The fact that engines may be difficult to restart does not justify exempting permissible equipment from this requirement. Equipment that is difficult to restart is in need of service or repair. The final rule therefore does not exempt permissible equipment from the prohibition against refueling of diesel equipment while the equipment engine is running.

Paragraph (e), which requires that powered pumps be shut off when fuel is not being dispensed, has been added to the final rule to address concerns about loss of fuel as a result of broken or leaking pipes. This requirement is intended to minimize the likelihood of fuel spills in the underground mine environment.

Section 75.1905–1 Diesel Fuel Piping Systems

Section 75.1905–1 has been added to the final rule to address requirements for diesel fuel piping systems. The requirements in the proposal governing fuel piping systems were included in the same section as proposed requirements for fuel transfer. MSHA has concluded that dispensing requirements and design and construction requirements for piping systems are sufficiently unique that they are more appropriately addressed in a separate standard.

Underground fuel piping systems can be very complex and may require specialized expertise for their design and installation. Mine operators should ensure that an engineering evaluation, including a fault analysis, is performed in developing a fuel piping system.

One commenter recommended that piping of diesel fuel should be allowed only in shaft mines, from the surface vertically to permanent underground

storage areas, and that the piping should be contained in its own borehole to isolate it from ignition sources. Safety considerations do not warrant restricting fuel piping systems to shaft mines. MSHA and industry experience, including an analysis of accident reports, does not reveal any increased hazard with the use of piping systems in slope mines. In the final rule, MSHA has removed the reference to vertical pipelines to clarify that this section applies to all mines.

Paragraph (a) of this section of the final rule adopts the proposed requirement that diesel fuel piping systems from the surface to be designed and operated as dry systems, unless an automatic shutdown is incorporated that prevents accidental loss or spillage of fuel and that activates an alarm system. The phrase ''from the surface'' has been added to the final rule to clarify that only piping systems from the surface are governed by the requirements of this paragraph. MSHA is aware that some mines have installed horizontal piping systems that do not originate at the surface. Because these horizontal systems typically cannot be operated as dry systems, the rule specifies that these systems would not be affected by this requirement. No location is specified for the alarm in the final rule, to allow mine operators flexibility in determining where the alarm will be most effective in alerting mine personnel.

Compliance with the requirement of this paragraph mandates a well designed piping system, and may require a double wall system. Except for the comment suggesting that piping of diesel fuel underground be limited to shaft mines, MSHA received no other comments on this provision, and the proposed requirement has been adopted in the final rule without change.

Paragraphs (b)(1) through (b)(4) address requirements for piping, valves, and fittings. These requirements are unchanged from the proposal, and constitute generally accepted design specifications. This standard requires that all piping, valves, and fittings be: (1) Capable of withstanding working pressures and stresses; (2) capable of withstanding four times the static pressure; (3) compatible with diesel fuel; and (4) maintained in a manner which prevents leakage.

Paragraph (c) requires pipelines to have manual shutoff valves installed at the surface filling point, and at the underground discharge point. This requirement is the same as the proposal, except that the proposal used the term ''vertical'' to describe pipelines. For the reasons discussed in the introduction to this section, the term ''vertical'' has been eliminated to clarify that this section applies to all underground coal mines.

Paragraphs (d) and (e), like the proposal, include requirements for shutoff valves on fuel lines. Paragraph (d) provides that if fuel lines are not buried in the ground, shutoff valves must be located every 300 feet. Paragraph (e) requires that shutoff valves be installed at each branch line where the branch line joins the main line. One commenter recommended that automatic shutoff valves be required in these two situations, stating that they provide for minimal loss of fuel and maximum safety in the case of a pipeline rupture or leak. MSHA does not believe that automatic shutoff valves are necessary when the additional benefits are balanced with other provisions in this final rule. The commenter's suggestion has therefore not been adopted in the final rule.

Paragraph (f) is a new provision in the final rule and requires that an automatic means be provided to prevent unintentional transfer of fuel from the surface into the permanent underground diesel fuel storage facility. This requirement has been added to address the concerns of some commenters that were prompted by a specific diesel fuel spill caused by malfunctioning components in a diesel fuel piping system. Additionally, many commenters were generally concerned about possible fire and other hazards that could result from diesel fuel spills and leaks, particularly when piping systems are used. This paragraph responds to those comments by requiring a fail-safe piping system, ensuring that necessary protection is provided to miners.

Paragraph (g) provides that diesel fuel piping systems from the surface can only be used to transport fuel directly to stationary tanks or diesel fuel transportation units in a permanent underground diesel fuel storage facility. This requirement has been renumbered and has been revised from the proposal to respond to commenters who recommended strict control of the use of safety cans and stated that dispensing fuel from a piping system directly into diesel equipment fuel tanks would create a fire hazard. This paragraph is intended to prohibit filling safety cans and equipment fuel tanks directly from a piping system and further minimize hazards associated with fuel spills.

Under this paragraph a fuel piping system from the surface may terminate underground only in a permanent fuel storage facility, which must be equipped with features such as a fire suppression system and a means of containing a fuel spill. Because temporary fuel storage areas are not required to have these features, they would not provide adequate fire protection for a situation where a significant amount of fuel is lost in a spill from a piping system.

Paragraph (h), like the proposal, requires that when boreholes are used the diesel fuel piping system cannot be located in a borehole with electric power cables. This will minimize the likelihood of fire by diesel fuel coming into contact with potential ignition sources.

Paragraph (i) requires that diesel fuel piping systems located in entries not be located on the same side of the entry as electric cables or power lines. It also requires that guarding be provided when piping systems cross electric cables or power lines. The final rule has been modified from the proposal to acknowledge that, in some cases, a pipeline must cross over power lines, depending upon the mine's layout. The standard addresses any hazards presented by the intersection of pipelines and electric cables or power lines by requiring that guarding be provided.

Paragraph (j) requires that piping systems be protected to prevent physical damage. Commenters supported this provision, and it is unchanged from the proposal.

Section 75.1906 Transport of Diesel Fuel

This section of the final rule has been retitled and reorganized to reflect MSHA's approach to diesel fuel storage and handling in this final rule. The word ''containers'' is removed from the title to reflect that only two types of vessels are allowed to transport and dispense diesel fuel—safety cans and tanks. This section of the final rule is responsive to commenters who: expressed concerns about the wide and uncontrolled use of safety cans in underground coal mines; recommended limited section storage of diesel fuel; stated that fire suppression systems were not needed on the tank used to transport fuel; and noted the need for clarification of the requirement for portable fire extinguishers on diesel fuel transportation units.

Several commenters stated that the proposed rule was vague and confusing. Their comments were directed to the use of the terms ''containers,'' ''safety cans,'' ''tanks,'' and ''fuel transportation units.'' As indicated in the preamble discussion for § 75.1900, MSHA has included definitions in the final rule for the terms ''safety cans,'' ''diesel fuel tank,'' and ''diesel fuel transportation unit'' to provide additional clarification

for the fuel handling and storage requirements in the final rule. The term ''container'' has not been defined because it has been eliminated from the final rule.

Several commenters recommended that the use of small containers and cans be restricted because they are prone to leak when transported or used to dispense fuel. In support of their recommendation, these commenters cited instances of mine floors being saturated with fuel. Other commenters urged that safety cans be allowed for transport of small quantities of diesel fuel, and stated that prohibiting their use would be unwarranted. As stated earlier in the discussion for this section, the final rule has been revised to require that safety cans be listed or approved by a nationally recognized independent testing laboratory. This aspect of the final rule will provide miners with protection against leakage and spillage during dispensing operations, while recognizing the practical need to transport small quantities of diesel fuel.

Paragraph (a) of this section of the final rule requires diesel fuel to be transported only by diesel fuel transportation units or in safety cans. This requirement is intended to ensure that diesel fuel is transported only in vessels designed for that purpose. The proposal would have required diesel fuel to be transported in specially designed containers. A commenter recommended substituting the term ''combustible liquid'' in place of the term ''diesel fuel'', stating that there are Department of Transportation specifications for containers that transport combustible liquids. The final rule responds to commenters by limiting the transport of diesel fuel to safety cans, which must be listed or approved by a nationally recognized independent testing laboratory, or by diesel fuel transportation units, which must be equipped with a tank designed for the transport of diesel fuel.

MSHA recognizes that safety can use must be carefully controlled. Paragraph (b) of this section of the final rule allows only one safety can to be transported on a vehicle at any time, and the can must be protected from damage during transport. All other safety cans must be stored in permanent underground fuel storage facilities. This provision is revised from the proposal to be responsive to commenters who cited problems with misuse of small cans and recommended that they be strictly controlled. Commenters further stated that in some mines there was no designated area for storage of safety cans. The requirements that have been added to the final rule are intended to ensure safe transport of safety cans. The final rule does not require that single safety cans, which are secured and protected on a vehicle, be removed for storage in permanent facilities when the vehicle is left unattended. This aspect of the final rule will allow for emergency refueling, while at the same time provide a degree of control over the use of safety cans.

Paragraphs (c) and (d) require that leaking safety cans be promptly removed from the mine, and that safety cans and tanks on diesel fuel transportation units be conspicuously marked. These marking requirements are consistent with marking requirements for permanent fuel storage facilities and temporary fuel storage areas in § 75.1903(b)(3) of the final rule. The inclusion of marking requirements for safety cans and tanks in the final rule is responsive to several commenters who suggested that signs should be placed on mobile equipment identifying tanks and cans used for diesel fuel storage. This is also a prudent fire protection practice.

Paragraphs (e) and (f) establish requirements for the transportation of tanks on fuel transportation units. As mentioned earlier, the final rule does not use the term ''container''. Paragraph (e) provides that diesel fuel transportation units must not transport more than 500 gallons of diesel fuel at one time. Paragraph (f) requires tanks on diesel fuel transportation units to be permanently fixed to the units and have a total capacity of no greater than 500 gallons. Under the proposal, containers used for the transport of diesel fuel could not exceed a capacity of 500 gallons, and would have been required to be permanently fixed to the transportation unit. One commenter recommended that the maximum tank capacity be limited to 250 gallons, reasoning that less fuel would reduce the fire hazard. The interrelated precautions of the final rule are designed to protect against a fire involving a diesel fuel transportation unit. Reducing the unit's fuel capacity to 250 gallons would not add significantly to the protection against fire, and would increase the frequency with which the unit would need to be refilled. However, paragraph (e) is intended to limit the amount of fuel transported by a single trip, either on rails or rubber tires, to 500 gallons. Paragraph (f) will ensure that the fuel tank is not removed from the vehicle for transport separately, thereby exposing the tank to possible damage, and also offers some protection for the tank from the vehicle frame.

Paragraph (g) requires non-self-propelled diesel fuel transportation units equipped with electric components for dispensing fuel that are connected to a source of electrical power be provided with a fire suppression device that meets the requirements of existing §§ 75.1107–3 through 75.1107–6, §§ 75.1107–8, and § 75.1107–16. The proposed requirement would have required a fire suppression system meeting the requirements of proposed § 75.1911 on all diesel fuel transportation units, not only on those with electrical components.

Commenters were opposed to a requirement for fire suppression systems on all diesel fuel transportation units, stating that a trailer-mounted fuel tank did not need a fire suppression system since it had no ignition source, and should not be treated any differently than tanks transporting other combustible materials. These commenters believed that the fire extinguishers required under the proposal would provide adequate fire protection in temporary fuel storage areas.

MSHA agrees with commenters that fuel tanks alone, without an ignition source, do not present a significant fire hazard. However, fire protection for fuel tanks must be provided when a potential ignition source exists. An ignition source is present on the diesel fuel transportation unit when electrical power is provided to the dispensing pump on the unit from either an electric-powered machine or the mine electrical system. The final rule therefore requires fire protection for non-self-propelled diesel fuel transportation units with electrical components for dispensing fuel that are connected to a source of electrical power. Diesel fuel transportation units with electrical devices other than those used for dispensing fuel, such as lights, do not present a significant fire hazard and do not need to be protected by a fire suppression system. This fire suppression device requirement would also apply when the transportation unit's dispensing pump is powered by its own batteries or an off-board generator.

The final rule requires a fire suppression device meeting the requirements of existing § 75.1107, instead of § 75.1911 under the proposal, because the fire protection provided by § 75.1107 is suitable for electrical installations, and therefore appropriate for electrical components of fuel transportation units. A fire suppression system under § 75.1911 is designed to protect diesel-powered equipment, and,

unlike existing § 75.1107, does not require that the mine electric power supply to the fuel transportation unit be shut off when the fire suppression system is actuated, an important safety feature that prevents reignition of the fire.

Paragraph (h) requires diesel fuel transportation units and vehicles transporting safety cans to have at least two multipurpose, dry chemical type (ABC) fire extinguishers. The fire extinguishers must be listed or approved by a nationally recognized independent testing laboratory, and have a 10A:60B:C or higher rating. There must be at least one fire extinguisher located on each side of the vehicle. The proposal would have required that fire extinguishers be provided on each end of a fuel transportation unit when diesel fuel was transported in containers other than safety cans. Locating fire extinguishers on the side is consistent with the requirements of § 75.1911(e) of the final rule for the location of fire suppression system actuators. The type and size of extinguisher are the same as required by § 75.1903(b)(1) and (b)(2) for permanent underground diesel fuel storage facilities and temporary underground diesel fuel storage areas.

Paragraph (i) requires that diesel fuel transportation units be parked in permanent underground diesel fuel storage facilities or temporary underground fuel storage areas when not in use. Under the proposal, ''unattended'' diesel fuel transportation units would have been required to be parked only in fixed or mobile fuel storage facilities. Some commenters objected to this requirement, and urged MSHA to provide a more workable rule that would allow transportation units to be parked, consistent with the Advisory Committee's recommendation that MSHA establish requirements for the temporary parking of diesel transportation vehicles. Some commenters also stated that ''unattended'' was an ambiguous term.

The term ''unattended'' has been eliminated from the final rule. Instead, the final rule provides that diesel fuel transportation units that are ''not in use'' must be parked either in permanent storage facilities or temporary storage areas. The phrase ''not in use'' means that the unit is not being trammed or used to dispense fuel or lubricants or waiting to refuel another piece of equipment. It does not mean that the unit operator must be within 500 feet or within the line of sight of the fuel transportation unit, as long as the operator is performing an activity associated with the operation of the unit. This may occur, for example, while the operator is locating the next unit of equipment to be refueled. This requirement is intended to control the locations of diesel fuel transportation units to minimize fire hazards associated with their use.

Paragraph (j), like the proposal, applies the requirements of existing § 75.1003–2 when the distance between a diesel fuel transportation unit and an energized trolley wire at any location is less than 12 inches. Section 75.1003–2 sets forth specific precautions to be followed when off-track equipment is being moved in areas where energized trolley wires are present. MSHA received no comments on this aspect of the proposal and it has been adopted into the final rule unchanged. This requirement is intended to minimize the risk of ignition and fire when a diesel fuel transportation unit is in close proximity to a bare energized trolley wire. The sparks and heat from an electrical short circuit could ignite residual fuel on the transportation unit and fire may then spread to the larger volume of fuel stored on the transportation unit.

Paragraph (k) prohibits the transport of diesel fuel on or with mantrips, or on conveyor belts. This requirement has been revised from the proposal, which would have prohibited transport of diesel fuel on conveyor belts, to include within the prohibition the transport of diesel fuel on mantrips, in response to several commenters who expressed concern about transportation of diesel fuel on personnel carriers because of the inherent hazards associated with that practice. This requirement applies to equipment being used as personnel carriers, but does not apply to such equipment when it is used for purposes other than transporting miners in the mine. This requirement also does not apply to diesel fuel contained in the fuel tank of a diesel-powered personnel carrier.

Paragraph (l) requires that, as of 12 months after the publication date of the final rule, diesel fuel must be stored and handled in accordance with the requirements of §§ 75.1902 through 75.1906 of this part. Twelve months will provide sufficient time for mine operators to make any necessary changes to their fuel handling, transportation, and storage practices underground, such as fuel tank retrofits or construction of fuel storage facilities. The requirements of § 75.1903 (c) and (d) take effect sooner, because they address safe welding practices in or near diesel fuel storage areas, and mine operators should not need any additional time to come into compliance with these provisions.

Section 75.1907 Diesel-Powered Equipment Intended For Use In Underground Coal Mines.

This section establishes a schedule for compliance with the final rule's equipment-related requirements, including requirements for approved engines and power packages, fire suppression systems, and safety-related requirements for nonpermissible equipment in §§ 75.1909 and 75.1910. The concept of a time schedule to allow for conversion or replacement of diesel-powered equipment currently in use to comply with the new requirements of the final rule was recommended by the Diesel Advisory Committee. The Committee also recommended that equipment newly introduced underground after a fixed date meet the new requirements.

Under the compliance schedule of this section, 30 days after the rule's publication date all diesel-powered equipment used where permissible electric equipment is required must be approved under part 36. This section also establishes a compliance schedule for Part 36-approved equipment, to comply with certain surface temperature limits within 6 months, and be provided with a fire suppression system and brakes that meet certain standards within 36 months of the rule's publication. Part 36-approved equipment is also required to have a particulate index and a dilution air quantity determined under subpart E of part 7 within 12 months of the rule's publication date. Permissible diesel-powered equipment that is manufactured 3 years after the date of publication of the final rule or later and used in underground coal mines must incorporate a power package approved under subpart F of part 7 of the final rule. This section of the final rule also requires nonpermissible diesel-powered equipment, with the exception of the special category of ambulances and firefighting equipment under § 75.1908(d), to be equipped with the machine safety features set forth in §§ 75.1909 and 75.1910 within 36 months of the publication date of the final rule.

The overall approach taken in the final rule for equipment safety features is different from that of the proposal, in response to commenters and for reasons explained in detail in the preamble for parts 7 and 36. The proposed rule would have required approval of fully assembled permissible equipment under subpart H of part 7, and approval of fully assembled nonpermissible

equipment under subpart I of part 7. A limited class of light-duty nonpermissible equipment would have been established that did not require fully assembled machine approval, but which would have been equipped with specific machine safety features set forth as mandatory standards in proposed § 75.1909. Under proposed § 75.1907, specific deadlines, up to 60 months after the rule's effective date, would have been set for compliance with the equipment-related requirements of the final rule for both permissible and nonpermissible equipment, including limited class and stationary unattended equipment. Additionally, the proposal would have allowed a mine operator to apply for MSHA approval for continued use of diesel-powered locomotives without required subpart F or G power packages. MSHA would have been authorized to grant such approval if approved power packages suitable for specific mine conditions and locomotive design were not available, recognizing that the current state of technology might make compliance difficult or impossible.

The proposed rule took the approach of phasing in the different equipment-related requirements, depending on how long MSHA determined mine operators and manufacturers would need to obtain the necessary equipment or make the necessary retrofits, including time needed to obtain MSHA approval for the appropriate machine components. Specifically, the proposed rule would have allowed a longer period of time for equipment to be provided with approved engines and power packages than it would have allowed for other equipment-related requirements, for such features as brakes, fuel systems, and electrical components. Different time frames would have been allowed under the proposal to take into account the time needed for the MSHA approval process as well as the technical difficulties associated with retrofitting equipment with approved power packages and engines.

As discussed in the preamble to part 7 of the final rule, the final rule does not adopt the approach of fully assembled machine approval under subparts H and I of part 7 contemplated by the proposal and addressed in the concurrent advance notice of proposed rulemaking. Instead, part 36 has been expanded to specifically provide for approval of diesel-powered equipment used in areas of underground coal mines where permissible electric equipment is required. Fully assembled machine approval is not required under the final rule for any category of nonpermissible equipment. The compliance time frames of this section of the final rule reflect this change in approach.

The time frames in this section are based on an estimation of the useful life of existing diesel-powered equipment, the reasonable time needed to convert or retrofit existing equipment, and the commercial availability of suitable replacement equipment. The time frames in this section are intended to provide mine operators with a reasonable period of time to make determinations of the expected remaining useful life of diesel-powered machines in use in their mines and the cost of necessary machine modifications, and to compare this information with the replacement cost of equipment that complies with the requirements of the final rule.

One commenter rebuilt a diesel-powered truck to convert it to a personnel carrier that met the equipment safety requirements of the proposed rule for self-propelled limited class nonpermissible equipment, and submitted a written summary documenting the conversion into the rulemaking record. This information generally demonstrated that compliance would be facilitated if equipment-related requirements were phased in by equipment type, rather than phasing in specific requirements across all equipment types. In short, once an equipment rebuild is initiated, it is easier to perform all machine feature modifications at the same time.

One commenter asserted generally that mine operators and equipment manufacturers could bring diesel-powered equipment into compliance with the requirements of the final rule within 12 months. Although MSHA agrees, and the final rule reflects, that some requirements can be met within a year, compliance with other requirements, will reasonably involve more time.

As explained in greater detail elsewhere in the preamble, the final rule requires specific safety features on both permissible and nonpermissible diesel-powered equipment. These requirements apply to nonpermissible diesel-powered equipment in §§ 75.1909 and 75.1910, and will be applied to permissible diesel-powered equipment during the MSHA approval process under part 36.

The final rule does not require nonpermissible equipment to be provided with power packages, which would have been required under the proposal. Neither does it require fully assembled machine approval for nonpermissible equipment. Power packages would have provided this equipment with, among other things, surface temperature controls for the equipment. As discussed elsewhere in the preamble, commenters were divided on this issue. Some commenters believed not only that temperature controls were necessary to adequately address the fire hazards presented by diesel-powered equipment underground, but also recommended that all diesel-powered equipment be approved under part 36 as permissible, and provided with the explosion-proof features required on such equipment. Other commenters strenuously opposed a requirement for approved power packages on nonpermissible equipment, stating that surface temperature controls were not needed on equipment operated outby the face, and that fire protection features, such as fire suppression systems, in conjunction with other machine safety features would provide an appropriate margin of safety. These commenters stated that a power package requirement for nonpermissible equipment would have the effect of eliminating many useful pieces of equipment from mines that could not be retrofitted with power packages or would not be manufactured with them.

The final rule does not require approved power packages on outby equipment, except when the equipment discharges its exhaust directly into a return air course, as provided under § 75.1909. Proposed subpart G, which would have established an approval program for power packages for nonpermissible equipment, has not been adopted in the final rule. Instead, nonpermissible equipment is required under § 75.1909(a)(10) to be provided with a means to prevent the spray from ruptured hydraulic or lubricating oil lines from being ignited by contact with engine exhaust system component surfaces. This requirement recognizes that the hazards of high surface temperatures on diesel-powered equipment can be controlled in a number of ways in addition to the methods contemplated under proposed subpart G. MSHA has concluded that the requirement of paragraph (a)(10), along with the other safety features required for control of fuel sources on diesel-powered equipment, provides effective fire prevention on nonpermissible diesel-powered equipment. The approach of the final rule allows mine operators and manufacturers the flexibility to improve existing methods and to develop new methods of meeting the performance goals of the final rule requirements.

Paragraph (a) of this section of the final rule adopts the proposed requirement that within 30 days of the date of publication of the final rule, all

diesel-powered equipment used where permissible electrical equipment is required be approved under part 36. Part 36 approval ensures that the equipment is explosion-proof, and that equipment used in areas of the mine where methane is likely to accumulate and where there may be combustible quantities of coal dust and other materials will not cause a fire or an explosion. All underground coal mines using diesel equipment already have the approved equipment necessary to comply with this requirement, in most cases because the mine's ventilation plan specifically requires it. This requirement therefore goes into effect 30 days after publication of the final rule, providing necessary protections for miners working underground.

Paragraph (b) establishes a time schedule under which equipment approved under part 36 is required to be provided with additional safety features. Paragraph (b)(1) requires the equipment to be provided with a safety component system that limits surface temperatures to those specified in subpart F of part 7. This requirement is essentially identical to that of the proposal, which would have required that part 36-approved equipment be provided with a power package that limits surface temperatures to those specified in subpart F. In the final rule, the equipment is required to have a ''safety component system'' that limits the surface temperatures rather than a ''power package'' specified under the proposal. Existing permissible equipment has been approved under the current version of part 36, which uses the term ''safety component system'' to refer to those devices added to the engine to control surface temperatures of the exhaust system. The term ''power package'' used in the final rule includes those devices, which, with the engine, comprises the ''power package.'' Power packages are approved under subpart F of part 7 of the final rule. As discussed elsewhere in this preamble, part 36 has been specifically revised to provide for approval of diesel-powered machines used in underground coal mines. Part 36 now references subparts E and F of part 7 of the final rule, and requires equipment approved under part 36 for use in coal mines to be equipped with a power package approved under subpart F. Subpart F limits the maximum surface temperature to less than 302° F (150° C). Until promulgation of this final rule, the maximum surface temperature of the engine and exhaust system components under part 36 was 400° F (204° C). To date, only one engine and safety component system used in part 36-approved equipment has a surface temperature above 302° F, and the equipment on which the system is installed is not used in coal mines. Consequently, compliance with this requirement within six months of the publication of the final rule should present no compliance difficulties for mine operators or manufacturers. This requirement will ensure that permissible equipment in underground coal mines will have surface temperatures below 302° F, minimizing the chance that combustibles such as diesel fuel, float coal dust, and hydraulic fluid will be ignited by high surface temperatures.

Paragraph (b)(2) requires that, as of 36 months after the final rule is published, equipment approved under part 36 be provided with an automatic or manual fire suppression system that meets the requirements of § 75.1911, and be provided with a portable fire extinguisher. A fire suppression system is required on permissible equipment in addition to surface temperature controls to address fire hazards created by other machine system malfunctions. The fire suppression system on permissible equipment may be either manual or automatic. Under the proposal, part 36-approved equipment would have been required to have a fire suppression system that met the requirements of § 75.1911. The requirements of proposed § 75.1911 provided only for automatic fire suppressions systems. For reasons explained in greater detail in the preamble discussion to § 75.1911, automatic fire suppression is not required on permissible diesel-powered equipment. This is because all equipment approved under part 36 is provided with surface temperature controls, which reduce the risk of fire. The final rule includes the additional requirement that the equipment be provided with at least one portable multipurpose dry chemical type ABC fire extinguisher having a 10A:60B:C rating or higher. The fire extinguisher must be located within easy reach of the equipment operator and be protected from damage by collision. This requirement has been added in response to the recommendation of a commenter. MSHA has concluded that requiring equipment to be provided with a portable fire extinguisher is a good fire prevention practice, and this recommendation has therefore been adopted in the final rule, superseding the requirement in part 36 for a fire extinguisher with a much lower firefighting rating. This requirement is consistent with the fire extinguisher requirements for nonpermissible equipment in the final rule.

MSHA had proposed a 6-month compliance deadline for installation of fire suppression systems on part 36-approved equipment, but has concluded that a 36-month time frame is needed for mine operators to obtain MSHA approval of field modifications on approved equipment, and for equipment manufacturers to process approval applications to permit installation of fire suppression systems on permissible equipment. The Agency intends to promptly process approval applications for modification of machines to aid compliance with this requirement.

Paragraph (b)(3) has been added to the final rule to require that, as of 36 months after the publication date of the final rule, equipment approved under part 36 be provided with brake systems that meet the requirements of § 75.1909(b)(7), (b)(8), (b)(9), (c), (d), and (e). These brake requirements have been added to ensure that permissible equipment meets at least the same braking requirements as nonpermissible equipment under the final rule. All existing part 36 equipment is already equipped with service brake systems that meet the requirements of § 75.1909(b)(8), (b)(9), and (d). The requirements of § 75.1909(c) have been developed from requirements for automatic emergency parking brakes on electric equipment in § 75.523–3. A number of commenters supported the application of these requirements to diesel-powered equipment, and they have been applied to permissible equipment under the final rule. Some existing part 36-approved equipment will require minor modifications to comply with the requirements of § 75.1909(c). Section 75.1909(b)(7) essentially requires independent service brake systems for the front and rear wheels of vehicles. This is a well-recognized safety feature that is warranted for part 36-approved diesel-powered equipment as well as for nonpermissible equipment covered by § 75.1909. Although the majority of part 36-approved equipment is already provided with this feature, a limited number of machines will require modification. Because some mine operators will need to obtain field modifications and equipment manufacturers must obtain MSHA approval of design modifications, a 36-month compliance time is appropriate and is provided for in the final rule.

Section 75.1909 of the final rule requires that nonpermissible diesel-powered equipment be equipped with a supplemental brake system, which provides substantially the same features as would be provided by the automatic emergency parking brakes specified in

§ 75.523–3. Section 75.1909(e) requires setting of the supplemental brake system when the operator is not at the controls of the equipment, except during the movement of disabled equipment. Because part 36-approved equipment is provided with a supplemental brake system under the final rule, the requirement for setting of the supplemental brake has also been applied to this equipment.

Paragraph (b)(4) requires that equipment approved under part 36 have a particulate index and a dilution air quantity determined in accordance with part 7, subpart E within 12 months of the publication date of the final rule. The types of engines that are affected by this requirement are installed in permissible face equipment that is currently approved under part 36. Because of where and how this equipment is used, it significantly affects the air quality where miners work and travel. Diesel-powered face equipment includes haulage equipment and roof bolters, which are typically used in the confined environment in the production area of the face and operated almost continuously over the course of a shift. The contribution of diesel exhaust from this equipment into the mine atmosphere can be significant and can adversely affect the health conditions for miners working in and around the area where the equipment is being operated. Under new requirements in § 75.325 of the final rule, minimum ventilating air quantities are established for areas where diesel-powered equipment operates. These minimum quantities are derived from the approval plate ventilating air quantity for the equipment that is operating. Consequently, ventilating air quantities must be calculated for these engines so that the minimum air quantity requirements can be implemented. As mentioned elsewhere in this preamble, the particulate index will not be used to determine the minimum ventilating air quantity for the engine, but will be available for informational purposes.

There are only four engines models used in the majority of part 36-approved equipment used in underground coal mines. These engines are typically of older design, and it is uncertain whether the engine manufacturers will seek approval for their engine designs under subpart E of part 7. As a result, MSHA intends to determine dilution air quantities and particulate indices for these engines in accordance with part 7, subpart E, whether or not the manufacturers seek a subpart E approval for their engines. MSHA will make this information available to mine operators, which must be applied and implemented within 12 months of the date of the final rule's publication. This time frame is consistent with the 12-month effective date for compliance with the ventilation requirements of § 75.325(k) of the final rule that apply where diesel-powered equipment is operated.

Paragraph (b)(5) requires that permissible diesel-powered equipment that is manufactured 36 months or more after the publication date of the final rule and used in an underground coal mine incorporate a power package approved under part 7, subpart F. Under the proposal, only ''new'' diesel-powered equipment approved under subpart H or I or meeting the requirements of §§ 75.1909 and 1910 could be introduced into underground coal mines 60 months after the effective date of § 75.1907. This meant that both new permissible and nonpermissible equipment (that did not fall into the limited class or was not used as stationary unattended equipment) introduced in an underground coal mine after the deadline would have had to receive a full machine approval. One commenter recommended that the proposed 60-month delayed effective date be changed to 12 months. Another commenter suggested that the language be clarified to state that existing part 36 approvals remain valid.

The time frame for compliance has been reduced to 36 months in recognition of the fact that the final rule does not require full machine approval of all permissible and nonpermissible equipment, as contemplated by the proposal. Three years should be sufficient for equipment manufacturers to obtain approval for and incorporate subpart F power packages into the permissible diesel-powered equipment they manufacture. Part 36-approved equipment manufactured before the relevant date may continue to be used in accordance with its approval indefinitely.

Paragraph (c) requires nonpermissible diesel-powered equipment to comply with §§ 75.1909 and 75.1910 within 36 months of the publication date of the rule. Under the final rule nonpermissible equipment, which is used in areas where permissible electric equipment is not required, does not need full machine approval by MSHA. However, under § 75.1909(a)(1) nonpermissible equipment must be equipped with an engine approved under subpart E of part 7. The final rule did not adopt the proposed establishment of a limited class of nonpermissible light-duty equipment, for reasons explained in detail in the preamble to § 75.1908. Instead, the final rule establishes two categories of nonpermissible equipment, heavy-duty and light-duty. Under paragraph (c) of this section of the final rule, equipment in both categories must be provided with the safety features set forth in §§ 75.1909 and 75.1910. These features include engines approved under subpart E of part 7, fire suppression systems, brakes, and electrical protections. Several commenters stated that approved engines, power packages, or surface temperature controls are unnecessary for nonpermissible equipment, while other commenters considered surface temperature controls necessary.

The final rule's equipment safety requirements for nonpermissible diesel-powered equipment are intended to ensure that the equipment will not present a fire hazard and that gaseous diesel exhaust emissions and particulate emissions are addressed.

A compliance time of 24 months was proposed, and one commenter recommended a 12-month compliance time. The final rule allows 36 months for nonpermissible equipment to comply with the requirements of §§ 75.1909 and 75.1910. Included in these sections is a requirement that nonpermissible equipment be provided with an engine approved under subpart E of part 7. It is expected that this requirement will require the longest time period for compliance, as engine manufacturers must first obtain MSHA approval of appropriate engines. The 36-month time frame allows some models of nonpermissible equipment currently in use in underground coal mines to reach the end of its useful life and to be replaced with equipment that meets these requirements, rather than being retrofitted with a new engine and the other features required by §§ 75.1909 and 75.1910.

The final rule does not adopt the proposed provision allowing mine operators to seek MSHA approval for the extended use of diesel-powered locomotives because of the unavailability of approved power packages suitable for the mine conditions or for the locomotive's design. This provision recognized that certain types of diesel locomotives might not have been able to be retrofitted to meet all of the applicable equipment-related requirements. Because the final rule does not require approved power packages for nonpermissible equipment, a process for MSHA approval of extended use of nonpermissible locomotives without approved power packages is no longer

necessary, and has consequently not been adopted in the final rule.

Section 75.1908 Nonpermissible Diesel-Powered Equipment; Categories

This section of the final rule establishes three categories of nonpermissible diesel-powered equipment: heavy-duty equipment, which is defined as equipment that is used for such tasks as cutting or moving rock or coal, drilling or bolting, or moving longwall components; light-duty equipment, which includes any other nonpermissible equipment that is not heavy-duty; and a special category for ambulances and fire fighting equipment. Because nonpermissible equipment is used in areas of the mine where methane is not likely to accumulate, it is not required to be explosion-proof. However, all nonpermissible equipment, with the exception of ambulances and other emergency equipment described under paragraph (d), is required to have an engine approved under subpart E of part 7, which sets engine performance and exhaust emissions requirements.

The requirements that apply to nonpermissible equipment under the final rule vary according to the equipment's category. Most importantly, the equipment category determines which equipment safety features are required under §§ 75.1909 and 75.1910 of the final rule. One of the most important distinctions between heavy- and light-duty equipment under the final rule is that heavy-duty equipment is required to have an automatic fire suppression system under § 75.1909, while light-duty equipment may be provided with either a manual or automatic system. Additionally, heavy-duty nonpermissible equipment is subject to the weekly undiluted exhaust emissions test under § 75.1914(g) of the final rule, and must also be included in the air quantity calculation for multiple units of diesel-powered equipment under § 75.325(g). These provisions do not apply to light-duty equipment.

The final rule is a significant departure from the proposal, in response to a majority of commenters who were opposed to the proposed criteria for the equipment categories. The proposal would have established a special category of nonpermissible ''limited class'' equipment. Limited class equipment under the proposal would have been equipment weighing less than 6,000 pounds and equipped with an engine of less than 90 horsepower. Equipment with a hydraulic system could not be included in the limited class, although MSHA stated in the preamble to the proposal that this restriction was not intended to apply to hydraulic systems used in brake units or automotive-style power assist units. Additionally, the equipment engine could not be turbocharged. Portable equipment that fell into this class was limited to welders and compressors. The proposal also allowed altitude compensation devices to be used with limited class equipment.

Although limited class equipment under the proposal would have been required to have an engine approved under subpart E of part 7, the machine as a whole would not have been approved by MSHA. Instead, limited class equipment would have been required to be equipped with the safety features in proposed § 75.1909. All other nonpermissible equipment would have been required to have a subpart F or G approved ''power package,'' which would have included an approved engine with additional components to prevent the ignition of methane or combustible materials, such as surface temperature controls. Additionally, it was MSHA's intention, reflected in the advance notice of proposed rulemaking published with the proposal, to require whole machine approval of all nonpermissible equipment, except equipment that fell into the limited class defined under the proposal.

The equipment categories in the proposed rule were based upon the Diesel Advisory Committee recommendation that fire prevention features, including surface temperature controls and fire suppression systems, be required on all outby equipment. However, the Committee recognized that much of the light-duty equipment in use in mines was not specifically designed for mining and might not be available with surface temperature controls. The Committee therefore concluded that a limited class of light-duty equipment could be safely operated if it was equipped with fire prevention and protection features in lieu of surface temperature controls, such as fire suppression devices, reduction of the potential for fuels to contact hot surfaces, and reduction of potential ignition sources. Equipment in this limited class would be expected to operate on a light-duty cycle, and would not reach high temperatures or would reach high temperatures for a limited period of time, with a significantly reduced potential for fire.

Commenters expressed widely varying views on this aspect of the proposal. Most commenters supported the concept of a distinct class of equipment with less extensive safety requirements, but many stated that the criteria in the proposal for limited class equipment were unnecessarily restrictive, and that the class should be significantly broadened to include many more types of equipment, such as light-duty manned personnel and material haulage equipment. A number of commenters indicated that the equipment that they would consider light-duty equipment in their mines exceeded either the weight or horsepower restrictions of the proposal.

Other commenters were of the opinion that fire suppression systems were an acceptable substitute for surface temperature controls, and strongly supported a significant expansion of the equipment falling into the limited class and therefore not required to have a power package that would provide such controls. A number of commenters also indicated that much of the equipment currently in use in mines that did not fall into the proposed limited class would have to be replaced, because it would be impossible to retrofit the equipment to provide the required surface temperature controls. Other commenters were concerned that limitations based on existing equipment designs could discourage the development of new technology.

One commenter was generally opposed to the creation of a limited class that was not required to have surface temperature controls, because the commenter believed that this would present an unacceptable fire hazard. This commenter stated that heat sensors that triggered engine shutdown or fire suppression were not acceptable substitutes for surface temperature controls.

A number of commenters were opposed to the limitation on equipment weight, stating that weight had no relationship to the hazards presented by the equipment, and that the 6,000-pound restriction was arbitrary. One commenter stated that although weight in some cases could be an indicator of duty cycle and the potential for higher equipment operating temperatures and resulting fires, requirements for fire suppression and automatic engine shutdown when engine temperature reaches a specified limit would adequately address these concerns. Another commenter stated that most diesel equipment that exceeds 6,000 pounds is not used in heavy-duty applications such as coal production but is considered light-duty equipment.

Some commenters were particularly concerned about the safety impact of the weight limitation on railmounted equipment, pointing out that weight is needed to provide traction. These commenters stated that although some

rail-mounted equipment would fall below the proposed horsepower limitation, the weight of most rail-mounted equipment significantly exceeds 6,000 pounds, and that it would be neither practical nor feasible to modify existing outby track equipment to meet the proposed limited class criteria. Because of this concern, one commenter suggested that outby rail-mounted equipment be addressed in a separate category, without a weight restriction.

Several commenters also stated that the safety features that would be required on limited class equipment under proposed § 75.1909 would add to the vehicle weight, making the 6,000-pound restriction even more unrealistic in those commenters' opinion. One commenter estimated that equipment retrofits for safety features and for mine-worthiness would increase equipment weight by at least 50 percent. Another commenter suggested that the proposed weight limitation would result in overloading equipment units because of light construction. Some suggested that the weight limitation for limited class equipment be increased to 7,500 or 8,500 pounds; others recommended that the limit be increased to 14,000 to 15,000 pounds, to permit units to be manufactured with heavy steel to withstand collisions. One commenter recommended that the weight limitation be reduced to 4,000 pounds for self-propelled equipment.

A number of commenters were also opposed to the 90-horsepower limitation, stating that engine horsepower was no more an indication of whether equipment was heavy-duty or light-duty than was equipment weight. However, one commenter recommended that the limitation be reduced to less than 70 horsepower.

Commenters were also concerned about the prohibition against hydraulic systems on limited class equipment. Several commenters stated that there was no basis for excluding equipment with hydraulic systems from the limited class, except for the fact that hydraulic fluid could present a fire hazard. These commenters suggested that equipment with hydraulic systems that utilized fire-resistant hydraulic fluid should be permitted. Some of these commenters also suggested that equipment with hydraulic systems should be eligible for the limited class category if the equipment is equipped with a fire-suppression system. Other commenters stated that equipment with hydraulic systems had not been shown to be less safe than equipment without such systems. Some pointed out that hydraulic systems facilitate the handling of supplies and materials, making the job easier and safer. These commenters also believed that prohibiting hydraulic systems on limited class equipment would preclude other equipment features that enhance safety, such as power take-offs, automatic transmissions, and hydrostatic drive units.

Commenters were also opposed to the prohibition against turbocharged engines for limited class equipment. This restriction was included in the proposal because of the concern about the potential ignition of combustible materials on the hot exhaust system surfaces that are characteristic of turbocharged engines. Commenters stated that turbochargers have served as an effective means of yielding greater horsepower from smaller engines and should be allowed on limited class equipment, and that the exhaust components could be encased in protective insulating material to eliminate any fire hazard.

A number of commenters expressed concern that manufacturers of equipment that was not specifically designed for use in mines would not seek MSHA approval for their equipment because the share of the market for mining applications was too small to warrant the expense of developing power packages.

A number of commenters stated that inclusion of equipment in a limited class should depend on how the equipment is being used rather than on factors such as size and weight. Some of these commenters suggested that light-duty equipment include equipment that does not move rock, coal, or longwall shields. Other commenters advocated that all diesel-powered equipment, including limited class equipment, be designed to be explosion-proof and be approved by MSHA under part 7. These commenters felt that establishing a limited class of light-duty equipment would allow mine operators to use equipment with inferior means of fire prevention.

One commenter recommended that a determination of the equipment included in the limited class should be based on MSHA's evaluation of diesel equipment fire experience in other industries and in other countries as to which types of equipment do and do not pose a significant fire hazard. In response to this comment, MSHA acquired accident reports from the Ministry of Labor, Province of Ontario, Canada, containing detailed information of fires on diesel-powered equipment in underground mines in Ontario for the years 1984 through 1992. This information was carefully analyzed to determine which machine safety features and what type of equipment design are needed to prevent fires on diesel-powered equipment used in underground coal mines. An analysis of the Ontario fire data reveals that equipment used in heavy-duty type activities, such as hauling rock or coal or moving longwall components, presents a significant fire hazard and requires suitable fire prevention and protection features.

Consistent with these conclusions and also with the recommendations of a number of commenters, paragraphs (a)(1) through (a)(5) of this section of the final rule specify what constitutes heavy-duty equipment. Heavy-duty nonpermissible equipment includes equipment that cuts or moves rock or coal; equipment that performs drilling or bolting functions; equipment that moves longwall components; self-propelled diesel fuel transportation units and lube units; and machines used to transport portable fuel transportation units or lube units. These machines are intended to move rock or coal or other heavy loads, such as longwall components, or move large quantities of combustible diesel fuel as a normal part of their duty cycle. Locomotives used to transport rock or coal and portable diesel fuel transportation units or lube units would also be in the heavy-duty equipment category under the final rule. Graders would also be considered heavy-duty equipment, because they are used to move rock or coal.

Equipment falling within the heavy-duty equipment category under paragraph (a) is typically used for extended periods during a shift on a continuous, rather than intermittent, basis. This is in contrast to equipment that is used for limited periods during a shift, such as mantrips or supply vehicles. Heavy-duty equipment under the final rule also moves heavy loads or performs considerable work as in the case of drilling machines. Equipment used to haul longwall components is typically operated at a consistently accelerated pace under an extremely heavy load. Fuel transportation units and lube units generally are larger machines specially designed to transport and dispense diesel fuel, hydraulic fluid, grease, oil, and other combustible materials. This equipment also operates under a heavy load and typically moves constantly around a section during the course of a shift, refueling equipment as needed. Equipment that performs drilling and bolting functions generally has an engine that runs at a high rate of speed and powers large hydraulic systems. Under the final rule heavy-duty

equipment must be provided with an automatic fire suppression system, addressing the additional fire risks resulting from the way this equipment is used. Heavy-duty equipment also produces greater levels of gaseous contaminants, and under the final rule is therefore subject to weekly undiluted exhaust emissions tests under § 75.1914(g), and is included in the air quantity calculation for ventilation of diesel-powered equipment under § 75.325(g).

Under paragraph (b) light-duty equipment is defined as any other diesel-powered equipment that does not meet the criteria of paragraph (a). This is in contrast to the approach taken in the proposed rule establishing a limited class of light-duty equipment. Light-duty equipment under the final rule may include, but is not limited to, forklifts used to carry supplies, rock dusting machines, tractors not used to move rock or coal, supply trucks, water trucks, personnel carriers, jeeps, scooters, golf carts, and pickup trucks. The equipment may be rubber-tired, crawler-mounted, or rail-mounted.

Under the final rule two machines of the same model could fall into different equipment categories, depending on how they are used. For example, a load-haul-dump unit used to move rock or coal would be considered heavy-duty equipment, while an identical machine used exclusively to move supplies would be a light-duty machine, subject to different requirements. Although these machines are of the same design, they do not present the same risk of fire because of the way they are used. They also do not produce the same quantities of exhaust contaminants: machines that are operated for extended periods of time under heavy load generate more contaminants than machines that are not.

Equipment that is classified as light-duty may not be used, even intermittently, to perform the functions listed in paragraphs (a)(1) through (a)(5). This is because equipment that performs heavy-duty functions poses an increased fire risk, resulting in the need for an automatic fire suppression system, as required under § 75.1909 for heavy-duty equipment. On the other hand, heavy-duty equipment may be used to perform light-duty work.

The proposed restriction of portable limited class equipment to compressors and welders has not been adopted in the final rule. Although one commenter did support this restriction, most commenters were opposed to it, stating that it was arbitrary and unjustified as well as impractical. One commenter stated that the proposed restriction would require major replacement of diesel-powered portable equipment, either by electric-powered machines or by diesel equipment furnished with power packages. Other commenters suggested that attended diesel generators be added to the limited class because they presented safety concerns that were no greater than for welders and compressors.

In response to these comments, any type of attended portable diesel-powered equipment may be light-duty under the final rule, so long as it does not perform any of the functions listed in paragraph (a). As discussed more fully above, the distinction between light-duty and heavy-duty equipment has less significance under the final rule than it would have had under the proposal, since neither light-duty nor heavy-duty nonpermissible equipment will be required to have a surface temperature-controlled power package or be subject to fully assembled machine approval.

One commenter suggested that the term ''attended'' be defined in the final rule, and paragraph (c) specifies that attended diesel-powered equipment for purposes of subpart T includes: any machine or device that is operated by a miner; and any machine or device that is mounted in the direct line of sight of a job site located within 500 feet of such machine or device, which job site is occupied by a miner.

This definition of ''attended'' is largely derived from the definition of ''attended'' in existing § 75.1107–1 applicable to electric-powered equipment, although it has been tailored to address safety concerns unique to diesel-powered equipment, such as the fact that fires on diesel-powered equipment, unlike fires on electrical equipment, do not smolder for a very long time and therefore are less likely to be discovered before flaming and spreading. For this reason and unlike equipment under § 75.1107–1, attended equipment under paragraph (c) must be continuously attended while it is operating, regardless of whether it is during a production shift. Also unlike equipment under § 75.1107–1, attended equipment under paragraph (c) does not need to be attended by the person assigned to operate it. The definition of ''attended'' in this section permits prompt operator action in the event of a fault or fire on a diesel-powered machine. As discussed elsewhere in this preamble, the category of ''stationary unattended'' equipment has not been adopted in the final rule, and under § 75.1916(e) all diesel-powered equipment must be attended when operated.

Paragraph (d) establishes a special equipment category for diesel-powered ambulances and fire fighting equipment, which may be used underground only in accordance with the fire fighting and evacuation plan required under existing § 75.1101–23. This special category was included in the proposal under § 75.1907(b), but has been included in this section of the final rule with the other categories of nonpermissible equipment. Equipment that falls into this category is not required to have an approved engine or power package, or to comply with the requirements of §§ 75.1909 and 75.1910. Instead, such equipment must be used in accordance with the fire fighting and evacuation plan required under existing § 75.1101–23.

This provision was addressed by only a few commenters, who supported the establishment of a special class of diesel-powered equipment for emergency use, and has been adopted essentially unchanged from the proposal. The equipment under this paragraph may be used only during emergencies and the fire drills specified in the fire-fighting and evacuation plan. Very little equipment that is currently in use falls into this category. Mines that do have such equipment must provide MSHA with revised fire fighting and evacuation plans that adequately address the use of this equipment.

Sections 75.1909 and 1910 Design and Performance Requirements for Nonpermissible Diesel-Powered Equipment

Overview. Sections 75.1909 and 75.1910 of the final rule set forth the design and performance requirements that apply to nonpermissible diesel-powered equipment, except for the special category of emergency equipment established under § 75.1908(d) of the final rule. Section 75.1909 requires, among other things, nonpermissible diesel-powered equipment to be provided with engines approved under subpart F of part 7, fire suppression systems, fuel systems, and brakes. For ease of reference, electrical system requirements, which were proposed under § 75.1909, have been adopted in the final rule in § 75.1910.

As explained in greater detail in the preamble discussion for § 75.1908 of the final rule, the proposal would have established a ''limited class'' of light-duty equipment, which, although required to have an approved engine, was not otherwise subject to MSHA approval. Instead, limited class equipment would have been governed by the design and performance requirements set forth in proposed

§ 75.1909. This scheme was consistent with the recommendations of the Diesel Advisory Committee. Nonpermissible equipment that did not meet the criteria of the limited class would have been subject to fully assembled machine approval under subpart I of part 7, and would also have been required to be equipped with a power package approved under subpart G of part 7. Power packages provide the equipment with safety features such as surface temperature controls, exhaust temperature controls, and safety shutdown capability.

Although the proposal anticipated fully assembled machine approval of both permissible and nonpermissible diesel-powered equipment, MSHA specifically solicited comments on whether nonpermissible diesel-powered equipment should be approved by MSHA in an advance notice of proposed rulemaking published on the same day as the proposed rule. Many commenters to the proposal and to the advance notice were strongly opposed to fully assembled machine approval for nonpermissible equipment, stating that it was neither necessary for safety nor consistent with MSHA's approach to electrical equipment. These commenters stated that approval of nonpermissible diesel equipment would create significant technical hurdles and place unnecessary financial burdens on mine operators, without any justification from a safety perspective. These commenters recommended that the final rule set performance-oriented safety requirements for nonpermissible equipment in mandatory standards in part 75, and that the safety features that were proposed for the limited class of light-duty equipment in § 75.1909 be applied to all nonpermissible equipment.

Many commenters were also opposed to the proposed requirement that most nonpermissible equipment have a power package approved under subpart F or G of part 7. Commenters stated that the protections afforded by a power package were unnecessary for equipment operated in areas of the mine where methane is not likely to accumulate, and that much of the nonpermissible diesel-powered equipment currently in use would have to be either scrapped or significantly retrofitted to comply with the proposed requirements, at tremendous expense. Several commenters pointed out that it would be impossible to retrofit some types of equipment because of design limitations.

Other commenters supported full machine approval and power packages for all nonpermissible equipment, and further recommended that all diesel-powered equipment in underground mines be permissible and equipped with the explosion-proof equipment features required in areas of the mine where coal is extracted and where higher methane levels are a concern.

The final rule responds to commenters opposed to full machine approval for nonpermissible equipment, and does not adopt the proposed requirement for power packages on most nonpermissible equipment. It should be noted, however, that all nonpermissible equipment, with the exception of emergency equipment under § 75.1908(d), is required to have an engine approved under subpart E of part 7.

In evaluating whether an approval program for nonpermissible diesel-powered equipment was warranted in the final rule, MSHA considered whether the machine safety features set forth in proposed § 75.1909 for the limited class of light-duty equipment could be modified to provide adequate protection for heavy-duty equipment. This review revealed that many requirements in proposed § 75.1909 could be applied directly to heavy-duty equipment without revision, while other proposed requirements could be made suitable with slight revisions.

The safety features proposed in § 75.1909 for limited class equipment have been adopted in the final rule in §§ 75.1909 and 75.1910 to cover equipment that is larger and more powerful than what would have been covered under the proposed rule. This is in response to a number of commenters who believed that these proposed requirements should be applied to both heavy-duty and light-duty equipment, in lieu of a full machine approval program. In general, the proposed requirements have not been substantially changed in the final rule, although the final rule does adopt several additional requirements for heavy-duty equipment based on requirements in part 36 or developed from existing part 75 requirements applicable to electric-powered machines. Other additions or revisions have been made in response to comments received on proposed § 75.1909 and in response to the advance notice of proposed rulemaking.

Section 75.1909 Nonpermissible Diesel-Powered Equipment—Design and Performance Requirements

Section 75.1909 establishes design and performance requirements for diesel-powered equipment used where nonpermissible electric equipment is permitted, with the exception of the special category of equipment under § 75.1908(d). The requirements of this section are consistent with the recommendation of the Advisory Committee that such equipment be provided with fire suppression system and fuel and electrical system protection. All nonpermissible equipment, with the exception of the special category of emergency equipment under § 75.1908(d), is also required to be provided with an approved engine within the time frames established in § 75.1907 of the final rule.

Paragraph (a)(1), like the proposal, requires that nonpermissible diesel-powered equipment be equipped with an engine approved under subpart E of part 7. The final rule also requires that the engine be equipped with an air filter and an air filter service indicator. The air filter must be sized and the service indicator set in accordance with the engine manufacturer's recommendations.

Some commenters stated that approved engines were not necessary on outby equipment. Other commenters recommended that all equipment used in outby areas be provided not only with an approved engine, but also with a permissible power package approved under subpart F of part 7.

The final rule adopts the proposed requirement that nonpermissible equipment be provided with an approved engine. Engines approved under subpart E of part 7 must meet specific gaseous emission standards and be provided with an approval plate indicating the quantity of ventilating air needed to dilute gaseous contaminants to acceptable levels. These requirements not only place limits on the quantity of gaseous contaminants that an approved engine may produce, they also provide a scheme for control of those contaminants through effective ventilation. Commenters expressed serious concern over unhealthful exhaust emissions from diesel equipment in outby areas that may significantly affect the quality of air that miners breathe. In response to these concerns, the final rule takes a comprehensive approach in addressing health hazards presented by diesel exhaust, and requires clean-burning engines, approved by MSHA under subpart E of part 7, on all diesel-powered machines, including nonpermissible equipment. Engines installed in this equipment must therefore meet the emissions standards established in subpart E of part 7.

The final rule does not adopt the suggestion of commenters who supported requiring all diesel equipment in underground coal mines

to be permissible. The explosion- proof features provided by a subpart F power package are not needed for outby equipment, because the equipment operates in areas of the mine where methane is not expected to accumulate. Electrical equipment without explosion-proof features has been operated safely in outby locations for many years.

The requirement that the engine be equipped with an air filter and an air filter service indicator has been added in response to commenters'' statements that clogged air filters were the single most frequent cause of smoky engines, resulting in the production of disproportionate quantities of carbon monoxide and diesel particulate. These components are typically supplied as part of the equipment, and the air filter service indicator will enable the equipment operator and maintenance personnel to ensure that the air filter is in good condition. Both the size of the air filter and the setting of the air filter service indicator are best determined by the engine manufacturer, and the final rule requires that these be determined in accordance with the engine manufacturer's recommendations.

Paragraph (a)(2) has been added to the final rule and requires that nonpermissible equipment be provided with at least one portable multipurpose dry chemical type (ABC) fire extinguisher, listed or approved by a nationally recognized independent testing laboratory, and having a 10A:60B:C or higher rating. The extinguisher must be located within easy reach of the equipment operator and be protected from damage. This requirement has been added to the final rule in response to a commenter who supported requiring two chemical fire extinguishers accessible to each end of the unit and protected from external damage. MSHA agrees with this recommendation, which is consistent with good fire prevention practices and which will provide additional fire protection on diesel-powered machines. One rather than two fire extinguishers has been required, however, because one extinguisher, accessible to the operator and protected from damage, is adequate for virtually all diesel-powered equipment. As discussed elsewhere in the preamble, this equipment is also required to be equipped with either an automatic or manual fire suppression system, depending on the equipment category.

Paragraph (a)(3) has been adopted from the proposal, and requires that the equipment's fuel system be specifically designed for diesel fuel, and that it meet specific additional criteria. One commenter recommended that this provision be revised to require a fuel system ''specifically designed and constructed to minimize the possibility of a fire in case of a collision or refueling''. The commenter stated that fuel tanks on most light-duty equipment, such as pickup trucks, already meet certain standards, and that it would be unwise from a safety standpoint to modify these tanks. The final rule has not been revised in response to this comment. The fuel system requirements in the final rule are designed to address safety hazards presented by the use of diesel equipment in the underground mine environment, and nonspecific concerns about retrofitting equipment do not outweigh the protections afforded by the fuel system criteria included in the final rule. However, a fuel system that meets applicable industry standards would be acceptable so long as it also meets the criteria in paragraphs (a)(3)(i) through (xi).

Paragraph (a)(3)(i) provides that the fuel system must have a fuel tank and fuel lines that do not leak. The proposed rule, unlike the final rule, would have required that the fuel tank be of ''leakproof construction.'' Several commenters stated that the term ''leakproof construction'' was ambiguous and needed to be defined in the final rule, or be revised to provide for construction that was ''designed to prevent leaks''. Rather than providing a definition for ''leakproof construction'' and specifying design or construction requirements to protect against leakage, the final rule sets a performance standard and simply requires that the fuel tank and fuel lines not leak, allowing mine operators the flexibility to determine how to best comply with this requirement. Fuel lines have been included in this requirement under the final rule, in response to commenters who were concerned about fire hazards presented by leaking fuel lines on diesel-powered equipment coming into contact with hot engine surfaces.

Paragraph (a)(3)(ii) adopts the proposed requirement that the fuel tank be substantially constructed and protected against damage by collision. Commenters generally supported this requirement. The tank may be protected from damage by collision by being located within the frame components of the machine, or be constructed of material that is sufficiently sturdy so that the tank will not be damaged by collision with other vehicles or with the mine roof, rib, or floor. It should be noted that although the term ''tank'' is used in the singular here and in other paragraphs of this section, the final rule is not intended to limit the number of tanks on equipment. Several models of pickup trucks are manufactured with dual fuel tanks, and this configuration is acceptable under the final rule.

Paragraph (a)(3)(iii) requires that the fuel system be provided with a vent opening that maintains atmospheric pressure in the tank, and which is designed to prevent fuel from splashing out. The proposed rule would have required that the size of the vent prevent fuel from splashing out of the vent opening. This requirement has been modified slightly in the final rule to specify that the design rather than the size of the vent opening must prevent fuel from splashing out, in response to commenters who advocated requirements that were more performance-oriented. This minor revision will allow mine operators increased flexibility in satisfying this requirement. MSHA anticipates that the vent provided in the fuel filler cap will satisfy this requirement.

Paragraph (a)(3)(iv) requires a self-closing filler cap on the fuel tank. The proposed rule would have required either a tethered cap or a self-closing cap. The final rule requires a self-closing fuel cap that will serve to minimize fuel spillage, and responds to commenters'' serious concerns about the hazards of fuel spillage.

Paragraph (a)(3)(v) requires that the fuel tank, filler and vent be located so that any leaks or spillage during refueling will not contact hot surfaces. This requirement has been revised from the proposed rule, which would have required that these components be located to prevent fuel from contacting hot engine surfaces. The final rule has been revised from the proposal because of the application of the requirements of this section to all nonpermissible diesel-powered equipment, not just equipment falling in the proposed limited class. This modification recognizes that there are additional machine components, particularly on larger heavy-duty equipment, now falling under this requirement that reach temperatures that could ignite diesel fuel. For example, brake components can reach temperatures that are as high as engine temperatures.

Paragraph (a)(3)(vi) requires that fuel line piping be either: steel-wire reinforced; synthetic elastomer-covered hose suitable for use with diesel fuel that has been tested and has been determined to be fire-resistant by the manufacturer; or metal. The proposal would have required metal fuel line piping. Several commenters stated that requiring fuel line piping to be made of metal was too restrictive. Several of these commenters stated that metal fuel

lines could deteriorate over time as a result of machine vibration, and that there were fuel lines made of other materials that were superior in strength and performance to metal lines. The final rule has been revised from the proposal to address these concerns. Synthetic elastomer-covered hose must be of a type that is suitable for use with diesel fuel, and must have been tested and determined to be fire-resistant by the manufacturer, using any one of a number of fire-resistance tests. Such tests have been developed by a number of organizations, including Underwriters Laboratories, The Society of Automotive Engineers, and the U.S. Coast Guard. MSHA's tests for flame-resistance specified in regulations at part 18 would also be appropriate. This will ensure that material used for diesel fuel lines will have adequate fire-resistance in the underground coal mine environment.

Paragraph (a)(3)(vii) adopts the proposed requirement that fuel line piping be clamped. One commenter stated that this requirement, along with the requirement that primary fuel lines be located so that fuel line leaks do not contact hot surfaces, would limit machine design flexibility. This commenter recommended that these requirements be revised to provide that the manufacturer's design provide maximum protection from damage. The final rule does not adopt this suggestion. The requirements identified by the commenter are intended to address potential hazards on diesel equipment, particularly fire hazards. The fact that there may be some resulting limitations on machine design, alone, does not warrant the elimination of requirements that address specific hazards.

Paragraph (a)(3)(viii), like the proposal, requires primary fuel lines to be located such that leaks do not contact hot surfaces. The fuel lines referred to in this paragraph are the supply and return lines connecting the fuel tank to the engine, not those lines that are integral to the engine and installed by the engine manufacturer, such as the lines connecting the injector pump to the injectors. Several commenters supported this requirement, pointing to the potential for fire resulting from leaking fuel dripping on hot exhaust components. One commenter recommended that the engine be designed to shut down in the event of a leaking fuel line. This comment has not been adopted in the final rule, in part because MSHA is unaware of any existing technology that would provide such a function. Additionally, such a requirement is not necessary, given the fuel system design criteria under this section in conjunction with the weekly equipment inspections required by § 75.1914 of the final rule. These requirements together adequately address the potential hazard created by leaking fuel lines.

Paragraph (a)(3)(ix) requires fuel lines to be separated from electrical wiring and protected from damage in ordinary use. This requirement has been adopted from the proposal, and was supported by several commenters, who mentioned incidents where fuel lines were exposed to damage. Separation of fuel and electrical lines can generally be easily accomplished. On machines where both electrical lines and fuel lines are routed through a machine articulation joint, fuel lines must be bundled separately from electrical lines and must be positioned so that fuel leaks will not contact electrical lines.

Paragraph (a)(3)(x) requires that a manual shutoff valve be installed in the fuel system as close as practicable to the tank. The language of the final rule has been modified from the proposal, which would have required the valve to be located ''near'' the tank. This change is made in response to a commenter who stated that valves located ''near'' the tank would not necessarily be easily accessible to the equipment operator or other mine personnel when the fuel supply needs to be shut off in an emergency or for maintenance. The commenter recommended that this aspect of the proposal be revised to require shutoff valves as close as practicable to the tank, and the final rule adopts this comment.

Paragraph (a)(3)(xi) adopts the proposed requirement that equipment be provided with fuel filter(s) and a water separator. The final rule substitutes the term ''water separator'' for the term ''water strainer'' used in the proposal. The terms mean the same thing, but ''water separator'' is more commonly used and more widely understood. Although commenters generally supported this requirement, one commenter stated this requirement should be eliminated because fuel filters and water separators were not necessary. MSHA disagrees with this commenter, and the proposed requirement has been included in the final rule. Fuel filters filter out particulate matter in fuel, thereby reducing diesel exhaust emissions as well as slowing engine wear. Water separators filter out water in the fuel, and minimize fuel system corrosion. Several commenters recommended that the proposed requirement be revised to permit the use of a single device that functions as both a fuel filter and a water separator. Such combination devices will satisfy the requirements of this section. The final rule has not been revised, however, because the language as proposed and as adopted in the final rule does not preclude the use of a combination fuel filter/water separator.

The proposed requirement for a fuel tank drain plug has not been adopted in the final rule. Although the drain plug is usually provided on larger mining equipment, it is typically not provided on light-duty equipment such as pickup trucks. Although a drain plug is a convenient feature for persons performing equipment maintenance, it is not necessary from a strict safety standpoint. For these reasons, a fuel tank drain plug is not required under the final rule.

Paragraph (a)(4) adopts the requirement of the proposal for a sensor to monitor the temperature and provide a visual warning of an overheated cylinder head on air-cooled engines. This feature is necessary because it reduces potential fire hazards on air-cooled engines. While such sensors do not completely eliminate the hazards of hot surface temperatures, they do provide additional protection by warning the equipment operator of overheating. The proposed rule would have required a temperature sensor to be located in the engine compartment that would automatically activate an intake air shutdown device to stop the engine before the engine compartment temperature exceeded the actuation temperature of the fire suppression system. This requirement has not been adopted in the final rule. Although commenters generally supported the concept behind this requirement, they had varied concerns about its application and impracticality from a technological standpoint. One commenter stated that this requirement could create a safety hazard because the engine could be shut off unexpectedly. Since loss of steering and braking could result, this commenter recommended that the engine be shut off only upon actuation of the fire suppression system. Several commenters stated that use of manual fire suppression systems on equipment was incompatible with this requirement.

MSHA agrees that this proposed requirement could have resulted in the equipment losing control of the machine in the case of unexpected engine shutdown, and the engine should only be shut down upon actuation of the fire suppression system. The automatic engine shutdown under the proposal would have been triggered before the engine temperature exceeded the actuation temperature of the fire suppression system. Section 75.1911(d)

of the final rule already requires fire suppression systems for diesel-powered equipment to provide for automatic engine shutdown, and a redundant requirement for automatic engine shutdown at a lower temperature is not necessary. An increase in the engine compartment temperature may reflect an engine malfunction, such as loss of engine coolant, but does not necessarily indicate a safety hazard. Linking engine shutdown to the engine compartment temperature would have provided protection against engine damage rather than addressing a discrete safety hazard. Equipment manufacturers routinely provide gauges in the equipment operator's compartment that indicate engine faults. Equipment operators will be alerted by this warning system and will then be able to shut the engine down, if appropriate. For these reasons, the proposed requirement for automatic engine shutdown based on engine compartment temperature has not been adopted in the final rule.

Paragraph (a)(5) requires that guarding be provided to protect fuel, hydraulic, and electric lines when such lines pass near rotating parts and to protect the lines in the event of shaft failure. This requirement is intended to prevent leaks and short circuits caused by fuel, hydraulic, and electric lines abrading against rotating parts. Rotating parts include machine components such as pulleys, belts, fans, and shafts. This requirement is similar to that of the proposal, although the proposed rule had specified that ''adequate guarding'' be provided and did not include protection for hydraulic lines or protection in case of shaft failure. The word ''adequate'' is redundant in this context and has not been adopted in the final rule. The reference to ''hydraulic lines'' was not included in the proposal because no hydraulic systems were permitted on the limited class of equipment for which the requirement was proposed. Under the final rule these requirements apply to larger equipment with hydraulic systems, and protection for hydraulic lines has therefore been added. Guarding to protect against shaft failure has also been added to the final rule to address the design features of the larger equipment now governed by these requirements. MSHA has received reports of several fires ignited by broken shafts that damaged hydraulic and electrical lines.

One commenter supported this requirement, while another commenter believed that it was unnecessary. A third commenter recommended that the engine compartment be shielded by metal from hydraulic components. Protection for fuel, hydraulic, and electrical lines is an essential element in preventing fires. The final rule does not specify what method must be used to comply with this requirement, because a number of different methods, including guarding, shielding as recommended by the commenter, or relocation of fuel, hydraulic or electrical lines, can provide adequate protection.

Paragraph (a)(6) has been added to the final rule and requires that hydraulic tanks, fillers, vents, and lines be located so that any spillage or leaks will not contact hot surfaces. This requirement has been added to the final rule to supplement the guarding of hydraulic lines in paragraph (a)(5) and is supported by the Ontario fire accident data, which show that leaking hydraulic lines contribute to fires. This requirement was not included in the proposal because, as explained in the discussion of paragraph (a)(5), hydraulic systems would not have been permitted on the limited class of light-duty equipment to which the requirement would have applied under the proposal. This requirement will ensure that spills and leaks of combustible hydraulic fluid do not contact hot equipment surfaces. This requirement can be satisfied by relocation of machine components, or by directing spills and leaks away from hot surfaces by means of splash guards or other such devices.

Paragraph (a)(7) requires that reflectors or warning lights which can be readily seen in all directions be mounted on equipment. This requirement was generally supported by commenters and is adopted unchanged from the proposal. A determination of whether the reflectors or warning lights can be ''readily seen'' must be based on the unique mine conditions, and must take into account such things as equipment size in relation to the mine entry and undulating mine terrain.

Paragraph (a)(8) has been added to the final rule in response to comments, and requires that a means be installed on the equipment to direct exhaust gas away from the equipment operator and persons on board the machine. This requirement is intended to provide for the discharge of exhaust gases away from persons on the machine to the greatest extent practicable, minimizing their exposure to excessive levels of unhealthful diesel exhaust contaminants. The exhaust pipe must direct the flow away from any area where a machine operator or a passenger could be located. Exhaust pipes that extend straight up and that would allow the exhaust to flow back over the equipment operator as the machine moves forward, such as on some agricultural and commercial equipment, are unacceptable under the final rule. This requirement is added to the final rule in response to the recommendation of two commenters, one of whom noted that exhaust gases can build up in the operator's compartment of a machine.

Paragraph (a)(9) has been added to the final rule in response to a commenter and as a result of the expansion of the class of equipment subject to the requirements of this section. This paragraph requires that a means be provided to prevent unintentional free and uncontrolled descent of personnel-elevating work platforms. Personnel-elevating work platforms normally are equipped with hydraulic systems and would consequently not have been eligible for inclusion in the category of limited class equipment under the proposed rule. This requirement is currently applied to equipment approved under existing part 36. Hydraulically operated personnel-elevating platforms meeting the applicable American National Standards Institute criteria for personnel-elevating platforms (i.e., ANSI A92.2 and A.92.5) would be acceptable. This requirement also applies to work platforms which utilize other methods to raise the platform, such as wire ropes. The machine must be provided with a specific feature that prevents the free and uncontrolled descent of the platform in the event of a failure in the lifting system, such as a ruptured hydraulic hose or broken wire rope. In such a situation, the platform must descend at a rate which will not endanger miners located on or below the platform.

Paragraph (a)(10) has been added to the final rule and requires that all nonpermissible equipment be provided with a means to prevent the spray from ruptured hydraulic or lubricating oil lines from being ignited by contact with engine exhaust system component surfaces. This requirement achieves the goal of the limitation of surface temperatures in proposed subpart G of part 7, which is not adopted in the final rule, and recognizes that high surface temperatures on diesel-powered equipment can be controlled in ways other than the water-jacketing of hot engine components contemplated under proposed subpart G. The requirement of this paragraph, in conjunction with other requirements in the final rule for control of fuel sources on diesel-powered machines, will provide effective fire prevention on nonpermissible diesel-powered equipment used underground.

The requirements of this paragraph are performance-oriented, and are

intended not only to allow flexibility in compliance but also to accommodate new technology developed in the future. One method of achieving compliance with this requirement is through the use of a water-cooled manifold. A safety component system certified under part 36 or a power package approved under subpart F of part 7 of the final rule also satisfies the requirement of this paragraph.

Non-absorbent insulating materials are also available for use on mining equipment to reduce the surface temperature of diesel exhaust system components. Such materials, which were first developed for diesel-powered military vehicles, are impervious to hydraulic fluid, lubricating fluids, and diesel fuel, and have been successfully used on mining equipment in the United States and Canada. Use of these materials can reduce surface temperatures of exhaust components to less than 300 °F, and may also be used to prevent contact of hydraulic fluid and lubricating oil with hot surfaces. The goal of applying the insulating material is to substantially reduce the surface area of the exhaust system that is at elevated temperatures, because of the direct relationship between the area of a hot surface and the likelihood of ignition of a spray of hydraulic fluid. A large area of exhaust component, which includes the turbocharger, at a high temperature is more likely to ignite a spray.

The use of shielding or partitions to isolate hydraulic components from the engine would also satisfy the requirement of this paragraph, preventing the fluid from contacting the engine in the event of a leak. One commenter retrofitted a diesel-powered machine to provide shielding of the engine.

Paragraph (b) sets forth additional requirements for self-propelled nonpermissible diesel-powered equipment, which are specifically designed for equipment that moves under its own power, as opposed to equipment that is towed. Paragraph (b)(1) has been added to the final rule and requires a means to ensure that no stored hydraulic energy that will cause machine articulation is available after the engine is shut down. As discussed elsewhere in the preamble, requirements relating to hydraulic systems were not included in the proposal because the affected equipment could not have hydraulic systems. This requirement is intended to eliminate accidents where an equipment operator inadvertently activates the steering controls on articulated vehicles when entering or exiting the operator's compartment. In many articulated machine designs, personnel must enter the equipment operator's compartment through the articulation area. If the articulation joint were to close as the operator entered the compartment, the operator could be crushed. This requirement will also protect miners who encounter a machine that has been shut down and who may accidentally activate the control levers. Under the final rule, the stored hydraulic energy does not have to be dissipated instantly. The time permitted for dissipation of the stored energy will depend on the machine design and the amount of movement the machine is capable of after shutdown.

Paragraph (b)(2) has been added to the final rule in response to a specific comment that equipment should only be able to start in neutral. This paragraph requires equipment to be provided with a neutral start feature which ensures that engine cranking torque will not be transmitted through the powertrain and cause machine movement on vehicles utilizing fluid power transmissions. MSHA agrees with the commenter that this requirement is necessary, because some types of diesel-powered equipment may be started with the transmission in gear. This could result in power being delivered to the driving wheels of the machine before the equipment operator is in control of the vehicle, endangering both the operator and miners working in the vicinity of the equipment. Equipment must be designed such that its transmission is in either neutral or park before the starter will crank the engine.

For machines with steering wheels, brake pedals, and accelerator pedals, paragraph (b)(3) requires that the controls be arranged consistent with standard automobile orientation. This requirement has been added in response to a commenter who was concerned that equipment operators could become confused in the operation of equipment controls. Under this paragraph the brake pedal must be on the left and the accelerator must be on the right when the operator is facing the controls. Clockwise rotation of the steering wheel must turn the machine to the right, and counter-clockwise rotation of the steering wheel must turn the machine to the left. For machines with seating perpendicular to the direction of travel, the forward direction of travel and the automobile orientation of the controls are to be defined with respect to the front end of the equipment. For machines where the operator changes seats depending on the direction of travel, the machine control movements should also change accordingly, to retain the automobile orientation.

Paragraph (b)(4), like the proposal, requires self-propelled equipment to be provided with an audible warning device conveniently located near the operator. Such a device could be a horn or bell, and must be capable of being heard over the operation of the machine by miners in the area. Commenters were generally supportive of this provision.

Paragraph (b)(5) requires that lights be provided and maintained on both ends of the equipment. Equipment normally operated in both directions must be equipped with headlights for both directions. The proposal would have required self-propelled equipment to be provided with headlights, tail lights, and back-up lights. The requirement in the final rule is derived from the proposal but has been revised to better address typical lighting configurations on all types of nonpermissible equipment, not only the limited class of equipment that would have been affected under the proposal. For equipment such as ramcars, headlights on each end of the machine would be required, but not tail lights or back-up lights. For pickup trucks, headlights and back-up lights installed as original equipment would satisfy this requirement. The lights required by this paragraph are in addition to the warning lights or reflectors required by paragraph (a)(7) of this section.

Under the proposal lights would have been required to be ''protected from accidental damage''. The final rule requires instead that lights be ''maintained'', in response to a commenter who questioned what was meant by ''protected from accidental damage.'' Under the final rule equipment lights must be kept in working order, and replaced if they burn out or are damaged.

Although most commenters generally agreed with the proposed requirement, one commenter supported a requirement for back-up alarms or other means to alert miners to a change in the direction that equipment is moving. Although a back-up alarm may be appropriate on some equipment, an alarm on equipment that normally operates in both directions is not advisable because the alarm would be set off on a regular basis, defeating its effectiveness as a warning system. This suggestion has therefore not been adopted in the final rule.

Paragraph (b)(5) also requires equipment that normally operates in both directions to be equipped with headlights for both directions. One commenter recommended that lights be designed for operation in both

directions at once. This commenter noted that normally the light switch allows the lights to be on in only one direction and that it would be beneficial to observe the load while traveling in the other direction. Although this feature may be appropriate under some circumstances, it would provide no significant safety benefit and is not warranted for inclusion as a general machine feature. In many mines, the fact that lights are illuminated in only one direction at a time allows other miners in the vicinity to determine the equipment's direction of movement and provides some safety benefit. Illumination of both sets of lights at the same time would eliminate this capability, and this suggestion has therefore not been adopted in the final rule.

Paragraph (b)(6) requires that self-propelled nonpermissible equipment be provided with service brakes that act on each wheel of the vehicle and that are designed such that failure of any single component, except the brake pedal or similar actuation device, does not result in a complete loss of service braking capability. This paragraph requires two separate brake systems and ensures that, in the event of the failure of one braking system, the other system can bring the machine to a controlled stop. The only common component permitted in the two systems is the brake pedal or a similar device, such as a lever or button that is actuated by the equipment operator. This requirement has been adopted from the proposal with slight revisions to specify that the service brakes ''act on each wheel'' instead of ''for each wheel''. This will allow the use of axle brakes, which act on all of the wheels on that axle. This requirement prohibits drive line brakes in which failure of a single drive shaft or chain results in the loss of all braking capability. A split brake system with two completely independent hydraulic circuits with an automotive-type dual piston master cylinder complies with this requirement.

The proposal provided that failure of one ''brake line'' must not result in a complete loss of service braking capability. This language has been changed to provide that failure of any ''single component'' must not result in a complete loss of service braking capability, to conform the requirement to the expanded range of equipment that is governed by this requirement under the final rule.

The brake pedal or other interface between the equipment operator and the braking system is excluded from this requirement. If the pedal is connected to more than one link to activate the brake systems, those links must provide for independent actuation of the brake systems in the event of the failure of one of the links. Drive line brakes are not adequate because of the frequent failure of universal joints. The failure of the universal joint could result in the loss of all braking ability if a second brake system is not provided. Most agricultural equipment and some commercial equipment used in mines, such as high lifts or backhoes, may need a retrofit of their braking systems to comply with this requirement.

Several commenters supported this requirement and recommended two braking systems independent of each other in all working aspects. Other commenters noted that a single brake system would be adequate for tractor-type vehicles because they travel at speeds of less than 15 mph. MSHA disagrees that the low speeds of this type of equipment eliminates the need for two brake systems. Failure of an equipment's brake system in the confined area of an underground coal mine could result in serious injury or death, even at speeds of 15 mph or less. The final rule therefore does not incorporate this comment. Other commenters were of the opinion that the brake systems should not be separate for each wheel. This recommendation has been incorporated into the language of the final rule.

Paragraph (b)(7) has been adopted unchanged from the proposal and requires self-propelled nonpermissible equipment to be provided with service brakes that can safely bring the fully loaded vehicle to a complete stop on the maximum grade on which it is operated. No stopping distance or braking force is specified in the final rule, to allow flexibility in equipment design and usage. Compliance with this requirement is highly site-dependent because of the variation in mine grades. The mine operator is responsible for ensuring that equipment with adequate grade-holding ability is used at a particular location. Commenters generally supported this requirement.

Paragraph (b)(8) has been added to the final rule and requires that no device that traps a column of fluid to hold the brake in the applied position be installed in any brake system, unless the trapped column of fluid is released when the operator is no longer in contact with the brake activation device. This requirement prohibits the installation of ''park'' brakes devices which rely on a trapped column of fluid, and has been included in response to the suggestion of commenters. The use of such devices can present serious hazards, and are prohibited. Because the temperature of hydraulic brake fluid increases due to usage, a column of fluid trapped at a sufficient pressure will initially apply the brakes sufficiently to hold the machine stationary. However, as the fluid cools it contracts, lowering the pressure and possibly releasing the brakes. These devices are not permitted even as supplemental devices, because of the risk that equipment operators would use them as park brakes even if another park brake is provided. Several fatal accidents have been attributed to use of these devices, also called ''mico lock braking systems''.

This requirement does not apply to normal automotive-type service brakes which trap a column of fluid, as long as the operator is applying pressure to the foot pedal. This requirement also does not preclude the use of hydrostatic drive wheel motors that are designed and maintained to function as service brakes. These wheel motors do not necessarily lose their service braking ability if the fluid cools or if minimal leakage occurs. The wheel motors can act to maintain continuous pressure in the braking circuit. Although hydrostatic wheel motors can function as adequate service brakes, these systems do not provide adequate parking brake capability. For the wheel motor to maintain pressure in the braking circuit, the wheel must turn slightly, thereby permitting the machine to move very slowly down the grade. This movement is insignificant during the short period of time the service brakes are applied. However, if wheel motors are used as parking brakes, the machine can move a significant distance when the equipment operator is away from the machine. This can endanger miners who may be working near the machine in the confined area of the mine.

Paragraph (c) has been added to this section of the final rule to specifically address self-propelled nonpermissible heavy-duty diesel-powered equipment meeting the requirements of § 75.1908(a), except rail-mounted equipment. These requirements have been added to the final rule in response to the additional types of equipment that are now subject to the requirements of this section. Heavy-duty equipment that hauls rock, coal, or longwall components or transports large quantities of diesel fuel are governed by these safety requirements, and must be provided with a supplemental braking system that meets specified criteria. The criteria for these braking systems were developed from the criteria contained in § 75.523–3, applicable to automatic emergency parking brakes on similar

types of electrical equipment. There was widespread support for applying these braking requirements to diesel-powered equipment, in comments submitted in response to the advance notice of proposed rulemaking addressing equipment approval and machine safety features. Although there was a difference of opinion among these commenters as far as whether these braking requirements should be incorporated as part of an equipment approval program, commenters did agree that they be included as machine features either in an approval program or as mandatory safety standards in part 75. Commenters also recommended that there should be separate brake requirements for rail-mounted equipment. The Agency agrees with these comments, and has concluded that existing brake requirements in §§ 75.1404 and 75.1404–1, which apply to both electric and diesel-powered rail-mounted equipment, provide sufficient protection. Rail-mounted equipment has therefore been specifically excluded from this requirement under the final rule.

Existing § 75.523–3 specifies different requirements for two types of electric-powered equipment: haulage equipment and all other equipment. Electric-powered haulage equipment is very similar in function to the heavy-duty diesel-powered equipment subject to this requirement. Paragraphs (c)(1) through (c)(5) of this section of the final rule closely track the brake system requirements for electric haulage equipment in existing § 75.523–3, with the exception of the requirement that the brake be engaged by an emergency deenergization device or panic bar. A panic bar is appropriate for only some types of permissible diesel-powered equipment, and will be addressed during the part 36 approval process. Panic bars are not required for nonpermissible diesel-powered equipment. Under the final rule, self-propelled nonpermissible heavy-duty diesel-powered equipment, except rail-mounted equipment, is required to have a supplemental braking system that: (1) Engages automatically within 5 seconds of shutdown of the engine; (2) safely brings the equipment when fully loaded to a complete stop on the maximum grade where it is operated; (3) holds the equipment stationary, despite any contraction of brake parts, exhaustion of any nonmechanical source of energy, or leakage; (4) releases only by a manual control that does not operate any equipment function; (5) has a means in the equipment operator's compartment to apply the brakes manually without the engine operating, and a means to release and reengage the brakes without the engine operating; and (6) has a means to ensure that the supplemental braking system is released before the equipment can be trammed, and is designed to ensure that the brake is fully released at all times when the equipment is trammed.

Paragraph (c)(6) has been added to the final rule and requires that the supplemental braking system have a means to ensure that the system is released before the equipment can be trammed. It further requires that the system be designed to ensure the brake is fully released at all times while the equipment is trammed. This requirement is added to the final rule to address the hazard of dragging brakes, which were the cause of numerous fires reported in the Ontario fire data analyzed by MSHA in response to a commenter's recommendation. Some manufacturers install a lever on the transmission gear selector to ensure that the supplemental brakes are released. This lever automatically releases the brake when the operator shifts the transmission into gear.

Paragraph (d) applies to self-propelled nonpermissible light-duty diesel-powered equipment meeting the requirements of § 75.1908(b), except rail-mounted equipment. This provision, which has been adopted from the proposal, requires that the equipment be provided with a parking brake that holds the fully loaded equipment stationary on the maximum grade on which it is operated despite any contraction of the brake parts, exhaustion of any nonmechanical source of energy or leakage. This requirement was developed from existing § 75.523–3(d), which addresses parking brakes for electric-powered equipment other than haulage equipment, which is similar to the equipment in the light-duty category under § 75.1908(b) of the final rule.

A parking brake meeting the requirements of paragraph (d), rather than the supplemental brake system required for heavy-duty equipment under paragraph (c), is adequate for light-duty equipment, which is typically used for transportation or moving of supplies on an intermittent basis.

Paragraph (e) has been added to the final rule as a result of the inclusion of requirements for supplemental and park brake systems under paragraphs (c) and (d) of this section. This paragraph requires that the supplemental and park brake systems required by paragraphs (c) and (d) be applied when the equipment operator is not at the controls of the equipment, except during movement of disabled equipment. This requirement was developed from existing § 75.523–3(e), and requires the machine operator to set the brakes when not at the controls. However, this provision is not intended to suggest that it would be a safe practice for the operator to apply the brake and leave the machine with the engine running.

Paragraph (f) has been added to the final rule as a result of MSHA's review of the Ontario fire data, and requires self-propelled personnel-elevating work platforms be provided with a means to ensure that the parking braking system is released before the equipment can be trammed, and that the platforms be designed to ensure the brake is fully released at all times while the equipment is trammed. MSHA's review of the Ontario fire data revealed a high number of personnel-elevating vehicle fires caused by dragging brakes. The final rule applies the same requirement to personnel-elevating vehicles in this paragraph as applies to self-propelled heavy-duty nonpermissible equipment under paragraph (c)(6).

Paragraph (g) has been added to the final rule and requires that any nonpermissible equipment that discharges its exhaust directly into a return air course be provided with a power package approved under subpart F of part 7. The basis for this requirement is the possibility that the return air course may contain high levels of methane, which could be drawn into the machine's exhaust system as it cools after engine shutdown. This creates the potential for ignition of the methane by the hot surfaces of the diesel engine. As a result, the final rule requires equipment which discharges its exhaust directly into the return to be furnished with the fire and explosion protection provided by a subpart F power package. Equipment without a subpart F power package must discharge its exhaust into intake air.

Under the proposed rule all nonpermissible equipment, with the exception of a limited class of light-duty equipment, would have been required to be equipped with a power package approved under either subpart F or G of part 7. Subpart F power packages are equipped with spark arresters and flame arresters, which significantly reduce the likelihood that equipment will ignite explosive levels of methane. Because the final rule does not require power packages on nonpermissible equipment, this requirement has been added to the final rule to ensure that nonpermissible equipment that discharges it exhaust directly into a return air course, which could contain explosive levels of

methane, will not create an explosion hazard.

Paragraph (h) requires that self-propelled nonpermissible heavy-duty equipment meeting the requirements of § 75.1908(a) be provided with an automatic fire suppression system meeting the requirements of § 75.1911. Paragraph (i) requires that self-propelled nonpermissible light-duty equipment meeting the requirements of § 75.1908(b) be provided with a manual or automatic fire suppression system meeting the requirements of § 75.1911. Under the proposed rule, all nonpermissible equipment would have been required to be provided with an automatic fire suppression system.

As explained in greater detail in the preamble discussion for § 75.1911 of the final rule, some commenters supported automatic fire suppression systems for all types of equipment, while others expressed support for automatic fire suppression systems on portable or unattended equipment but were strongly opposed to requiring automatic fire suppression on all types of nonpermissible diesel-powered equipment. These commenters stated that automatic fire suppression systems were much more difficult to maintain, and were unnecessary for equipment that was attended by an equipment operator. These commenters suggested that mine operators should have the option of installing either manual or automatic systems on self-propelled equipment, stating that the equipment operator is in the best position to detect machine fires, and would be able to actuate a manual fire suppression system more easily than an automatic system. Other commenters stated that it might be difficult for an equipment operator to actuate a manual system depending on the size and type of the fire, expressing concern that an equipment operator could be overcome by the effects of a fire or explosion and not be able to manually extinguish the fire.

As discussed more fully under § 75.1911 of the preamble, the Ontario fire accident data indicates that heavy-duty diesel-powered equipment, such as the type specified in § 75.1908(a) of the final rule, presents a much greater fire hazard than light-duty equipment. Although light-duty equipment still presents some fire risk, a manually-actuated fire suppression system provides adequate protection if the equipment is attended and provided with additional safety features for protection of fuel, hydraulic, and electrical systems under this section and § 75.1910 of the final rule. As noted elsewhere in this preamble, § 75.1916(d) of the final rule requires all diesel-powered equipment to be attended while it is being operated.

An automatic fire suppression system is needed on equipment that presents a greater fire risk. Good fire fighting practice demands that a fire be suppressed as early as possible, and several reports of fire indicate that the rapid growth of a fire prevented the equipment operator from actuating the manual fire suppression system. Automatic systems respond quickly to fire without operator intervention, and are needed on equipment that operates frequently for long periods of time under high load, presenting an increased fire risk. Compressors and other non-self-propelled equipment also operate for long periods of time under high load. This results not only in high engine temperatures but also increases the possibility of mechanical failure, presenting ignition and fuel sources. To address these hazards, automatic fire suppression systems meeting the requirements of § 75.1911 of the final rule are required under paragraph (h) for self-propelled heavy-duty nonpermissible equipment, and under paragraph (j)(3) for both heavy-duty and light-duty equipment that is not self-propelled. Paragraph (i) provides that self-propelled light-duty nonpermissible equipment may be provided with either a manual or an automatic system that meets the requirements of § 75.1911.

Paragraph (j) requires nonpermissible diesel-powered equipment that is not self-propelled to be provided with features in addition to those listed in paragraph (a). These features include a means to prevent inadvertent movement of the equipment when parked, safety chains or other suitable secondary connections on equipment that is being towed, and, as discussed above, an automatic fire suppression system meeting the requirements of § 75.1911. A requirement for automatic fire suppression for non-self-propelled equipment has been retained in the final rule in recognition of the fact that non-self-propelled equipment is typically operated under load for extended periods of time, resulting in the need for automatic rather than manual fire suppression to address the additional fire risks. MSHA intends that automatic fire suppression systems be provided for those machines, such as compressors, welders, and generators, that may have some limited capacity for self-propulsion but which essentially function as portable equipment, i.e., where the equipment operator performs a function some distance from the machine while the equipment is running.

The proposal would have required a means to prevent inadvertent movement as well as safety chains or other connections for equipment being towed, but would have required a fire extinguisher instead of an automatic fire suppression system. The proposal would also have required the equipment to be provided with a sensor to monitor equipment operation that would stop the engine when an equipment malfunction would result in the creation of a hazard.

The proposed requirement for sensors to monitor the operation of portable equipment has not been adopted in the final rule. Several commenters expressed confusion as to what these devices were intended to monitor, and suggested that this requirement be eliminated because it was vague and ambiguous. The proposed requirement was intended to ensure that general safety devices supplied as original equipment features, such as low oil sensors or high temperature sensors, were maintained in proper working condition. However, MSHA has concluded that it would be extremely difficult to develop a standard that is any more specific than what was proposed that would be suitable for the variety of monitors and sensors that may be installed on equipment. In light of these circumstances, and in light of the fact that all equipment used in underground coal mines is required to be maintained in safe operating condition under existing § 75.1725, this requirement has not been adopted in the final rule.

A number of commenters recommended that additional equipment safety features be required in the final rule that were not included in the proposal. Several commenters expressed concern about limited visibility from the operator's compartment on certain types of large diesel-powered equipment. The final rule does not adopt these commenters' recommendations. Although this concern is addressed to some extent by § 75.1916 of the final rule, which requires that mines using diesel-powered equipment establish and follow standardized traffic rules, MSHA has concluded that the issue of operator equipment design and visibility should be addressed in the context of all types of equipment, not only diesel-powered equipment. Specific provisions on operator visibility have therefore not been included in the final rule.

Section 75.1910 Nonpermissible Diesel-Powered Equipment; Electrical System Design and Performance Requirements

This section addresses electrical system requirements for nonpermissible diesel-powered equipment. These requirements were proposed in § 75.1909 with other equipment safety requirements that would have applied to a limited class of nonpermissible light-duty equipment, but in the final rule are included separately in § 75.1910.

Faulty equipment electrical systems have frequently been the cause of equipment fires, and the requirements of this section address the hazards associated with these systems. Although commenters generally supported the proposed requirements, one commenter suggested that these requirements not be adopted in the final rule, because some equipment is designed for highway use and meets safety standards that have been developed by the industry over many years. The commenter asserted that changing the design of those machines' electrical systems would have an adverse impact on machine safety. MSHA is aware that electrical systems on certain types of diesel-powered equipment, such as utility vehicles, personnel carriers, and ambulances, are designed to meet safety standards for highway use. However, this final rule expands the scope of the limited class of equipment to include types of equipment that would not meet the requirements for highway use. Additionally, because of the significant hazards presented by a fire in an underground mine, additional safeguards for electrical systems on equipment employing storage batteries and integral charging systems are warranted, given the fact that a number of electrical accidents have been attributed to faults in these systems. The analysis of the Ontario fire accident data revealed that 43 percent of the fires were attributable to electrical system faults. Almost half of these were related to the engine starting and charging systems. Changes in machine design to comply with the requirements in this section are necessary to enhance safety. For these reasons, the final rule retains these special provisions.

The requirements included under this section of the final rule apply only to those electrical circuits and components associated with, or connected to, electrical systems utilizing storage batteries and integral charging systems. It should be noted, as indicated in the rule itself, that these requirements do not apply to equipment that falls within the special category of emergency equipment under § 75.1908(d) of the final rule. The requirements in this section would apply, for example, to circuits for instrument panel gages and machine lights on most equipment utilizing storage batteries and integral charging systems. Accordingly, electrical systems on nonpermissible diesel-powered equipment without storage batteries and charging systems are not governed by the requirements of this section. Additionally, the requirements of this section do not apply to electrical circuits and components on equipment that is not directly connected to or otherwise powered from a separate electrical system utilizing storage batteries and an integral charging system. Both types of systems should be designed and maintained in compliance with existing safety standards in part 75 for underground coal mines.

Several commenters suggested that the proposed electrical system requirements not be adopted in the final rule, and instead that the final rule provide that electrical systems on diesel-powered equipment comply with existing part 75 electrical safety standards for nonpermissible equipment. Some of these commenters also suggested that more performance-oriented standards be developed for electrical circuits and components associated with storage batteries and charging systems.

Performance-oriented requirements have been adopted where appropriate in the final rule to allow flexibility in design and to facilitate future development of new and improved technology. Instead of simply applying existing requirements to this equipment, as suggested by some commenters, many of the requirements of this section have been derived from existing MSHA electrical safety standards in part 75 but have been tailored to apply to diesel-powered equipment.

It should be noted that MSHA does not consider the continuous on-board recharging of the battery on this equipment, which typically power auxiliary features such as headlights, to be the type of battery-charging contemplated by existing § 75.340.

Paragraph (a) addresses overload and short circuit protection of electric circuits and components and, like the proposal, requires that such protection be provided in accordance with existing §§ 75.518 and 75.518–1. The references to the existing sections have been retained in the final rule in response to commenters' suggestions that such references would minimize confusion over what the standard requires.

Paragraphs (b) and (c) are adopted from the proposal and were developed from existing approval requirements for electrical systems on other types of diesel-powered equipment. Paragraph (b) requires that each electric conductor from the battery to the starting motor be provided with short circuit protection, and requires that the short circuit protective device be placed as near as practicable to the battery terminals. Paragraph (c) requires that each branch circuit conductor connected to the main circuit between the battery and the charging generator be provided with circuit protection. When complied with, these requirements will provide all electric conductors and circuits with circuit protection and will minimize the hazards of fire due to circuit failure.

Paragraph (d), like the proposal, requires that a main circuit-interrupting device be provided in the electrical system so that power may be disconnected from the equipment, at or near the battery terminals, in the event of an emergency. The device must be located as close as practicable to the battery terminals and be designed to operate within its electrical rating without damage. This paragraph also requires that the device not automatically reset after being actuated, and that magnetic devices be mounted in such a manner to preclude closing by gravity. This requirement reduces the possibility of a fire in the event of a short circuit protective device malfunction. The proposal would have provided that a manually operated controller, such as a rheostat, would not be acceptable as a service switch. This provision has not been included in the final rule because it is redundant and adds nothing of substance to the paragraph. Manually operated controllers are not typically used on diesel-powered equipment, and would be prohibited in any case by the language in the final rule.

Under the final rule circuit-interrupting devices must be designed not to automatically reset after being actuated. If the circuit has been interrupted it is most likely due to some fault in the system, and an automatic reset would defeat the purpose behind the device. These devices must also be operational within their electrical rating without damage, because otherwise they could self-destruct. Magnetic circuit-interrupting devices are required to be mounted in a manner that prevents gravity from closing the contacts to prevent a premature or undesirable activation of electric circuits. The requirements of this paragraph ensure proper design and installation of circuit-interrupting devices.

The proposed rule would have included the additional requirement that circuit-interrupting devices and other controls be designed so that they could be operated without opening any compartment in which they were enclosed. This proposed provision has not been adopted in the final rule, in response to commenters who advocated performance-oriented requirements. The proposal would also have required that circuit-interrupting devices meet the requirements of existing § 75.520, which simply requires that all electric equipment be provided with switches or other controls that are safely designed, constructed, and installed. This reference adds little or nothing of substance to the requirements of this paragraph, and has not been adopted in the final rule.

Paragraph (e) adopts the proposed requirement that each motor and charging generator be protected from overload by an automatic overcurrent device. This requirement is necessary to ensure proper deenergization of circuits and equipment in the event of overcurrent conditions such as arcing and motor overheating, and, when complied with, will minimize resulting fire hazards. The final rule also adopts the proposed provision that one device will be acceptable when two motors of the same rating operate simultaneously and perform virtually the same duty.

The requirements of paragraph (f), like the proposal, address conductor size and capacity. Proper selection of circuit conductors of adequate size and current carrying capacity and with insulation compatible with the circuit voltage depends on the environmental conditions under which the conductors will be used. Conductor size and capacity are also important in minimizing overload and short circuit conditions which could cause a fire. The final rule adopts the proposed requirements that each ungrounded conductor have insulation compatible with the impressed voltage, and that insulation materials be resistant to deterioration from engine heat and oil. The final rule, like the proposal, also requires that electric conductors meet the requirements of existing §§ 75.513 and 75.513–1, except for electrical conductors for starting motors, which must only comply with the performance-oriented requirements of § 75.513. Existing § 75.513 provides that all electric conductors shall be sufficient in size and have adequate current carrying capacity and be of such construction that a rise in temperature resulting from normal operation will not damage the insulating material. Existing § 75.513–1 provides that an electric conductor is not of sufficient size to have adequate current carrying capacity if it is smaller than provided for in the National Electric Code of 1968.

Existing §§ 75.513 and 75.513–1 were developed for electrical equipment used in outby locations, but they are also suitable for application to all nonpermissible diesel- powered equipment. Greater flexibility is provided for electric conductors for starting motors, which are not required to meet the size and carrying capacity requirements under § 75.513–1, but must only comply with the performance requirements of § 75.513. This is because the conductor size requirements in the 1968 National Electric Code are determined based on the motor running at maximum load, with no allowance for the type of duty. The conductor sizes specified in the Code would therefore not be appropriate for starting motors, which typically run for only a very short period of time.

Several commenters objected to the requirement in the proposed rule that conductors for equipment or accessories added to a vehicle's electrical system after manufacture not be smaller than No. 14 AWG in size, stating that some components were not readily available with wire sizes compatible with this requirement. In response to this comment and in light of the requirements that have been adopted in the final rule, which will provide adequate protection, the proposed size restriction on certain conductors is not adopted in the final rule.

Since damaged or defective conductors or components may present potential fire hazards, paragraphs (g) and (h) address the protection of electric circuits and components. Paragraph (g), like the proposal, requires all wiring to have adequate mechanical protection to prevent damage to the cable that might result in short circuits. Paragraph (h) adopts the proposed requirement that sharp edges and corners be removed at all points where there is a possibility for damaging wires, cables, or conduits by cutting or abrasion. The insulation of the cables within a battery box is also required to be protected against abrasion. These paragraphs ensure that circuits are physically protected and secured from movement or displacement caused by vibration, as well as from cutting or abrasion. The proposed rule would have included the additional requirements that wiring have adequate electrical protection to prevent cable damage, and that wiring be installed in accordance with existing § 75.515, as applicable. The reference to electrical protection in the proposal was determined to be redundant, and has not been adopted in the final rule. The reference to existing § 75.515 in the proposal has also not been adopted in the final rule, because it simply restates requirements already included in the final rule.

Paragraph (i) requires electrical connections and splices to be electrically and mechanically efficient, in addition to having adequate insulating properties. Insulating material would be required in applications where space is limited and where the possibility exists of arcs striking metal walls or parts. These precautions minimize fire hazards from improper or loose connections and splices as well as insufficient electrical clearances, which could cause a fire due to conductor overheating or electrical arcing. In response to comments, specific references to bolted connectors and to existing § 75.514 have been deleted and replaced with more performance-oriented requirements.

Paragraph (j) of the final rule, like the proposal, requires storage batteries to be secured in place to prevent undue movement and protected from external damage. Batteries not protected from damage by their location on the equipment are required to be housed in a battery box.

Paragraphs (k) through (o) of the final rule set forth requirements for battery box construction, and are adopted from the proposal with slight revision. These requirements provide for a substantially constructed battery enclosure and address battery insulation, ventilation, and chemical reaction from electrolyte. A number of commenters suggested that more performance-oriented requirements be adopted for battery box construction. However, the proposed design specifications have been retained in the final rule because they set forth the minimum construction requirements needed to protect a battery from external damage. One commenter related an incident where a battery case had deteriorated, resulting in arcing and sparking between the battery terminal and the frame of the machine. Other reports of fires from the Ontario fire accident data indicate that a number of fires had been caused by batteries that were not secured in place or adequately protected from external damage. The minimum design and construction requirements for battery boxes in the final rule are necessary to reduce these types of hazards.

Paragraph (k) provides that the battery box, including the cover, must be constructed of steel with a minimum thickness of ⅛ inch, or of a material other than steel that provides equivalent strength. One commenter specifically

cited the proposed 3/16-inch thickness requirement as an example of an unnecessary design requirement. This requirement has been changed to 1/8-inch minimum thickness to conform to existing part 7 requirements for battery boxes containing batteries no greater than 1,000 pounds. Thinner battery box cross sections would not provide adequate protection for the battery and could result in a fire or explosion.

Paragraph (l) provides that battery-box covers must be lined with a flame-resistant insulating material permanently attached to the underside of the cover, unless equivalent protection is provided. Battery-box covers must also be provided with a means for securing them in a closed position. At least ½-inch of air space must be provided between the underside of the cover and the top of the battery, including terminals. Paragraph (m) requires battery boxes to be provided with ventilation openings to prevent the accumulation of flammable or toxic gases or vapors within the battery box. The size and locations of openings for ventilation must prevent direct access to battery terminals. Paragraph (n) requires the battery to be insulated from the battery-box walls and supported on insulating materials. Insulating materials that may be subject to chemical reaction with electrolyte must be treated to resist such action. Finally, paragraph (o) requires drainage holes in the bottom of each battery box.

Stationary unattended diesel-powered equipment. The Diesel Advisory Committee recommended that stationary unattended diesel-powered equipment be prohibited where permissible electric equipment is required, and that stationary unattended equipment used elsewhere in the mine be provided with the fire prevention features required for electrical installations and mobile diesel-powered equipment. The Committee recommended that stationary unattended equipment be equipped with specific machine features, such as surface temperature controls, an automatically and manually actuated fire suppression system, an engine shutdown device, and a means to shut down the engine from the surface. The Committee also recommended that stationary unattended equipment be housed in a fireproof enclosure ventilated to a return air course.

Section 75.1910 of the proposed rule incorporated the recommendations of the Advisory Committee for stationary unattended equipment. Specifically, proposed § 75.1910 would have prohibited stationary unattended diesel-powered equipment in areas of the mine where permissible electric equipment was required or in the primary escapeway. Stationary unattended equipment located in other areas of the mine would have been required to have a diesel power package approved under subpart F or G of part 7. Additional safety features were proposed for this equipment, including fuel system requirements, limitations on storage of the equipment fuel supply, and a methane monitor that would shut down the engine in the presence of 1.0 percent concentration of methane.

A number of commenters were concerned that the proposed rule dealt with stationary unattended diesel-powered equipment differently than existing standards addressed unattended electrical equipment, and imposed unnecessary restrictions. These commenters stated that it was excessive to require approved power packages on equipment when the equipment is already housed in a noncombustible enclosure, vented to a return air course, protected by an automatic fire suppression system, and equipped with a device that shuts down the equipment and sounds an alarm at an attended surface location. Several commenters stated that unattended electric equipment, which they believed presented similar ignition sources, was not required to have methane monitors, and that such monitors were not necessary, given the outby locations where stationary nonpermissible equipment would operate.

Other commenters favored a complete prohibition of unattended diesel equipment in underground coal mines, stating that diesel equipment presented too great a fire hazard to allow it to be operated unattended, even with the imposition of rigid safety requirements. One commenter referred to the 1984 Wilberg Mine disaster, where a fire started by an unattended electrical compressor killed 27 miners. In the alternative, these commenters recommended that extensive additional requirements be imposed on stationary unattended equipment, including a requirement that the equipment be permissible, and that the enclosure housing the equipment meet a 2-hour fire resistance test.

One commenter stated that there should be clarification of what constitutes ''stationary'' versus ''portable'' equipment. The commenter pointed out that some types of equipment, such as compressors, are portable because they are capable of being transported by rail or otherwise carried, but that the equipment can also be placed in a remote location and operated there for an indefinite period of time.

In considering these comments, MSHA reviewed data to determine the types of equipment that would be affected by the proposed requirements for stationary unattended equipment. This review revealed that there were approximately 200 pieces of equipment that were currently being operated either as stationary unattended equipment or as portable attended equipment. Equipment such as air compressors, generators, mine sealant machines, hydraulic power units, rock dusters, water spray units, and welders fell into this category. Water spray units are used to wash mining equipment; mine sealant machines apply sealants to stoppings or mine surfaces; hydraulic power units are used to operate certain special purpose tools; rock dusters are used to apply rock dust to mine surfaces; and diesel-powered welders are used where electric power is not readily available. An operator must be present to perform the main function of all of these types of equipment, i.e., welding, rock dusting, etc.

MSHA's review also revealed that diesel-powered generators are typically used to provide electrical power to move equipment with electric motors from place to place in the mine. An equipment operator is also in attendance when this type of equipment is being used. Finally, MSHA's review also indicated that diesel-powered compressors are used in a manner similar to hydraulic power units, with an operator in attendance, to provide a source of compressed air to operate tools such as pneumatic hammers and drills.

From this review, MSHA has concluded that diesel-powered equipment is not commonly operated unattended in a permanent location, but instead is operated with a person in close proximity. The final rule includes a definition of what constitutes attended diesel-powered equipment in § 75.1908, which provides that the equipment must either be operated by a miner, or located within 500 feet of a job site where a miner is located. Essentially all of the diesel-powered equipment currently operated in underground coal mines is ''attended'' under the final rule's definition. In light of this determination, and also in light of the serious concerns expressed by some commenters about the possible fire hazards presented by unattended diesel-powered equipment operating underground, § 75.1916(d) of the final rule prohibits the operation of unattended diesel-powered equipment in underground coal mines.

Consequently, the proposed requirements addressing the operation of stationary unattended diesel-powered equipment are not adopted in the final rule.

As a result of the final rule's prohibition against operation of unattended diesel-powered equipment in underground coal mines, conforming amendments are necessary to several existing standards, primarily to delete unnecessary references to unattended diesel-powered equipment. Existing § 75.360 lists the locations where preshift examiners must examine for hazardous conditions, test for methane and oxygen deficiency, and determine if the air is moving in the proper direction. The final rule deletes from these locations the reference in § 75.360(b)(7) to ''where unattended diesel equipment is to operate.'' Additionally, existing § 75.380(f)(3)(i) included a prohibition against operation in the primary escapeway of unattended diesel equipment without an automatic fire suppression system. This reference is deleted by the final rule.

Finally, existing § 75.344 deals with the use of air compressors underground, including unattended diesel compressors. The final ventilation rule that was published in October 1989 made clear that the application of the requirements of § 75.344 to diesel compressors would be removed when the final rule for diesel equipment was promulgated. [54 FR 40950]. The reference to diesel compressors in paragraph (d) of § 75.344 is therefore removed by the final rule.

Section 75.1911—Fire Suppression Systems For Diesel-Powered Equipment And Fuel Transportation Units

Section 75.1911 of the final rule establishes requirements for the design, installation, and maintenance of fire suppression systems used on diesel-powered equipment and fuel transportation units in underground coal mines. Under the final rule, both permissible and nonpermissible diesel-powered equipment is required to be equipped with fire suppression systems. The requirement for installation of fire suppression systems on permissible diesel-powered equipment is contained in the final rule at § 75.1907(b)(2),and for nonpermissible equipment at § 75.1909 (h), (i), and (j)(3). Nonpermissible diesel-powered equipment typically includes scoops, personnel carriers, and pickup trucks.

The Diesel Advisory Committee recommended that fire suppression systems be required on certain types of diesel-powered equipment, in addition to surface temperature controls, to address fire hazards created by other machine system malfunctions such as brake components overheating, severing of a fuel line or hydraulic line, and electric component short-circuiting. The Committee made a number of recommendations regarding the application of fire suppression systems to specific types of equipment such as nonpermissible equipment, limited class equipment, and stationary equipment. The proposed rule included design, installation and maintenance requirements for fire suppression systems on diesel-powered equipment and fuel transportation units. These requirements would have been applicable to approved equipment, limited class equipment, and fuel transportation units, both self-propelled and towed.

Commenters to the proposed rule generally accepted the need for fire suppression systems on diesel-powered equipment operated in underground coal mines. However, comments varied on what the requirements for fire suppression systems should be. Some commenters recommended that only manufacturer's requirements for design, installation and maintenance be used. Other commenters suggested a more detailed approach and recommended that the final rule outline specific requirements for fire suppression systems.

Fire suppression systems are necessary on diesel-powered equipment, including fuel transportation units, because of the numerous fuel sources, including diesel fuel, hydraulic fluid, and combustible material, and several potential ignition sources, such as hot exhaust components, dragging brakes, and electrical wiring on this type of equipment. Accident reports describe machine fires caused by hot exhaust components, dragging brakes and shorted electrical components igniting diesel fuel, hydraulic fluid, brake fluid, lube oil, and other combustible materials, such as electrical insulating material.

Fire suppression systems are designed to extinguish fires quickly, in their incipient stage, and to reach all locations where a fire may occur. This is important for diesel-powered equipment because a fire must be extinguished quickly before fuel sources can further propagate a fire. For example, if a fire is not extinguished at an early stage, leaking diesel fuel or hydraulic fluid can fuel a fire and result in an increase in the intensity and size of the fire. Also, promptly extinguishing a fire prevents reignition through the contact of hot surfaces created by the fire with leaked or spilled diesel fuel or hydraulic fluid. Fixed fire suppression systems also offer two advantages over portable fire extinguishers: fast attack and application of the suppressant to difficult-to-reach areas on and under diesel machines where fires may occur.

An automatic fire suppression system uses a supplemental detection device to sense an early warning of a fire. The fire detection system, which is generally actuated by either smoke or heat, automatically sends a signal to the system for the discharge of suppressant agent. Manual fire suppression systems require a person to actuate the fire suppression system by either pushing a button or throwing a switch to discharge the fire suppressant agent to the hazard. Both automatic and manual fire suppression systems utilize a network of piping and nozzles to allow suppressant agent to be released and distributed directly at a predetermined fire hazard.

Under the final rule, fire suppression systems are required to provide fire suppression and, if an automatic system is installed, fire detection for the engine, transmission, hydraulic pumps and tanks, fuel tanks, exposed brake units, air compressors, battery areas and other areas as necessary. The final rule also requires that automatic fire suppression systems include audible and visual alarms to warn of fires or system faults and automatic engine shutdown in the event of a fire. In addition, the final rule requires all fire suppression systems to be tested and maintained in accordance with manufacturer's recommendations. Finally, the rule establishes certain recordkeeping requirements for faulty fire suppression systems that are found during inspection and testing.

Paragraph (a) of this section of the final rule provides that the fire suppression system required by §§ 75.1907 and 75.1909 must be a multipurpose dry chemical type (ABC) fire suppression system listed or approved by a nationally recognized independent testing laboratory and appropriate for installation on diesel-powered equipment and fuel transportation units.

The proposed rule would have required an automatic multipurpose dry powder type fire suppression system suitable for its intended application and listed or approved by a nationally recognized independent testing laboratory on diesel-powered equipment and portable diesel-powered equipment and fuel transportation units. The proposal would have further established fire suppression requirements for approved equipment, limited class equipment, and fuel transportation units, both self-propelled and towed.

Commenters expressed support for automatic fire suppression systems on portable or unattended diesel-powered equipment. A number of commenters, however, stated that automatic fire suppression systems are not needed on self-propelled diesel-powered equipment, because this type of equipment is attended by an equipment operator. These commenters suggested that mine operators should have the option of providing either manual or automatic fire suppression systems on self-propelled diesel-powered equipment, stating that the equipment operator is in the best position to detect incipient fires on the machine and is able to actuate a manual fire suppression system more easily than an automatic system. Some commenters stated that automatic fire suppression systems are not necessary on mobile diesel-powered equipment because this type of equipment will already be required to have fire protection and shutdown features. Commenters also stated that automatic systems can require extra maintenance and are susceptible to vibration, which can cause them to discharge unexpectedly. In addition, commenters stated that automatic fire suppression systems should not be required on vehicles with surface temperature controls, such as permissible vehicles, because compatible permissible systems were not available at the time of the proposal.

Other commenters supported the proposal for automatic fire suppression systems on all types of diesel-powered equipment. In testimony before the Diesel Advisory Committee, equipment manufacturers and mine operators endorsed the use of automatic fire suppression systems on several types of diesel-powered equipment and gave examples of current applications. Other commenters to the proposal observed that it might be difficult for an equipment operator to actuate a manual system depending on the type and size of a fire. These commenters expressed concern that an equipment operator could be overcome by the effects of a fire or explosion and not be able to manually extinguish the fire. Some commenters also expressed concern that a manually-actuated system would be ineffective for a fire that started after the equipment had been shut off and the equipment operator had left the area.

Paragraph (a) of this section of the final rule does not adopt the proposed requirement for installation of an automatic fire suppression system on all mobile diesel-powered equipment. Instead, the final rule establishes requirements for both manual and automatic fire suppression systems. The type of fire suppression system required for installation on diesel-powered equipment is specified in § 75.1907(b)(2) for permissible equipment, and § 75.1909 (h), (i), and (j)(3) for nonpermissible equipment.

The Ontario fire accident data indicated that heavy-duty diesel-powered equipment of the type defined in the final rule at § 75.1908(a) presents a much greater fire hazard than light-duty equipment defined under the final rule at § 75.1908(b). The data showed that heavy-duty diesel-powered equipment, which includes equipment that cuts or moves rock or coal, equipment that performs drilling or bolting functions, and fuel transportation units, had 247 fires (85 percent) of the total number of fires. Heavy-duty equipment frequently works under load and can develop large areas of hot engine surfaces. This equipment is prone to mechanical breakdown, especially hydraulic hose and electrical cable failure, creating a serious risk that the equipment will develop both an ignition source and provide a source of fuel for a fire.

By contrast, light-duty diesel-powered equipment, which under the final rule includes supply vehicles, maintenance vehicles, personnel carriers, and other equipment not used to move rock or coal, accounted for 43 (15 percent) of the total number of fires. Light-duty equipment is not used in the actual mining process and is generally not worked very hard and typically used only intermittently during a shift. While over a third of the fires on heavy-duty equipment were started by hot engine surfaces, fewer than 10 percent of the fires on light-duty equipment were started by hot engine surfaces. Fires related to the electrical system accounted for 60 percent of the light-duty equipment fires. Electrical fires tend to smolder and provide more time for action to be taken to extinguish the fires than do diesel fires.

Although light-duty equipment still poses a fire risk, this risk can be adequately addressed by fire suppression systems which take into account the manner in which light-duty equipment is used and the types of fires that typically occur on it. The final rule, therefore, does not adopt the proposal that automatic fire suppression systems be installed on all diesel machines.

A manually-actuated fire suppression system provides adequate protection on light-duty self-propelled equipment. This type of equipment is attended by its operator at all times that it is operating as required by § 75.1916(d) of the final rule. As discussed by several commenters to the proposal, it has been their experience that a well-maintained manually-actuated fire suppression system is appropriate if the equipment is attended. These commenters stated that manually-actuated fire suppression systems are adequate in conjunction with additional protective features for fuel, hydraulic, and electrical systems, to provide fire protection on outby diesel-powered equipment. In addition to a manual fire suppression system, protective features for fuel, hydraulic, and electrical systems are required on both heavy-duty and light-duty nonpermissible equipment under §§ 75.1909 and 75.1910 of the final rule.

Automatic fire suppression systems are necessary on equipment that poses a higher fire risk. This includes heavy-duty equipment, which presents an increased fire hazard as discussed above. It also includes equipment for which the operator is not immediately present at the controls of the machine at all times it is operated, such as compressors. Good fire fighting practice requires that the fire be attacked as early as possible. Further, several reports indicate that the rapid growth of fire prevented the equipment operator from actuating the manual fire suppression system. Automatic systems provide a fast response without operator intervention. Compressors and other non-self-propelled equipment frequently operate for long periods of time under high load. This results in sustained high engine surface temperatures, which can provide an ignition source for a fire and increase the likelihood of a a mechanical failure providing a fuel source for a fire. Also, the individual operating the compressor may be some distance from the machine, and would not be able to promptly actuate the fire suppression system. To address these hazards, the final rule adopts the proposed requirement for automatic fire suppression systems for heavy-duty and non-self-propelled equipment.

One commenter to the proposal stated that the requirement in paragraph (a) that the ''system be suitable for the intended application'' was ambiguous and could be subject to different interpretations. This commenter stated that the term ''suitable'' could refer to a system that is suitable for a particular type of fire (class B flammable or combustible liquid fire) or it could mean that the system has a sufficient capacity to extinguish a fire on a particular piece of equipment. Other commenters recommended that the final rule specify the capacity of the fire suppression system.

The final rule responds to commenters' concerns by requiring that

fire suppression systems be multipurpose dry chemical type (ABC) fire suppression systems listed or approved by a nationally recognized independent testing laboratory, and appropriate for installation on diesel-powered equipment. The final rule does not adopt the language ''suitable for the intended application.''

The capacity and suitability of fire suppression systems for protecting against specific fire hazards are specified as part of the listing or approval by the nationally recognized independent testing laboratory. The nationally recognized independent testing laboratory system listing or approval does not necessarily designate the system for a specific type of equipment, such as fuel transportation units or even diesel-powered equipment. Instead, the listing or approval uses a more general description such as mobile mining equipment or vehicle protection. Listing or approval by a nationally recognized independent testing laboratory ensures that a fire suppression system is properly designed for a particular type of fire protection hazard by putting the system through a series of specific performance tests. The system must also meet rigid design requirements in order to gain approval or listing.

Fire suppression systems should be installed by a qualified individual following the installation and maintenance instructions in the system manufacturer's installation manual. The sizing of a fire suppression system is dependent on the number of nozzles needed to adequately cover all of the fire hazard areas that have been identified. The number of dry chemical canisters required will be proportional to the number of hazard areas that must be covered by the nozzles. This information can be obtained from the installation manual that is part of the listing or approval documentation. Other installation considerations, such as proper location and guarding of nozzles and other system components to prevent damage, are addressed in the system's installation manual. In addition to the installation requirements in the manual, follow-up maintenance and inspection procedures are provided.

Also modified in this section from the proposal is the term ''chemical'' replacing the term ''powder'' and the addition of the letter references ''ABC'' for the three classes of fire. These modifications are made in response to commenters' requests for clarification and to incorporate more appropriate terminology.

A multipurpose dry chemical type system is capable of suppressing the three classes (ABC) of fires on diesel-powered equipment. A class A fire refers to fires of combustible solid materials such as paper, rubber, textiles, and cloth, and would typically involve such items as tires, hosing or seats on diesel-powered equipment. A class B fire on diesel-powered equipment would involve diesel fuel. Class C fires involve electrical components, and could include such components as lights, pumps, and components of the control panel on diesel-powered equipment. A multipurpose dry chemical type agent is specifically designed to extinguish ABC class fires.

Paragraph (a)(1) of the final rule, like the proposal, requires that the fire suppression system be installed in accordance with the manufacturer's specifications and the limitations of the nationally recognized independent testing laboratory listing or approval. Commenters generally expressed support for this aspect of the proposal. This requirement ensures that the system is installed within the limits defined by the listing or approval organization and as specified by the fire suppression system manufacturer. Since the system already is performance-tested to a specific standard and in certain configurations, it must be installed within these parameters to be effective.

Paragraph (a)(2) adopts the requirement from the proposal that the fire suppression system be installed in a protected location or guarded to minimize physical damage from routine vehicle operations. No specific comments were received on this aspect of the proposal. In order for fire suppression systems to work properly, they must not be subjected to damage from the mining environment. Damage to any part of the fire suppression system can result in a malfunction of the entire system and in the system not responding to a fire. For example, a rock fall can pinch a hose or crush a sensor and create faults that can disable either the entire system or a portion of the system that covers a certain area of the machine.

Paragraph (a)(3), like the proposal, requires that the suppressant agent distribution tubing or piping be secured and protected against damage, including pinching, crimping, stretching, abrasion, and corrosion, and that the discharge nozzles be positioned and aimed for maximum fire suppression effectiveness in the protected areas. No specific comments were received on this aspect of the proposal. During the normal operation of diesel-powered equipment in the confined space of a coal mine, a fire suppression system can become damaged from collision or nozzles positioned at a specific predetermined location can be redirected away from a fire hazard.

Paragraph (a)(4), like the proposal, requires that fire suppression nozzles also be protected against the entrance of foreign materials. No specific comments were received on this aspect of the proposal. The openings in the nozzles used on multipurpose dry chemical fire suppression systems can be as small as ⅛ of an inch. If material such as mud, coal dust, or rock dust enters the nozzle, it can prevent the chemical agent from discharging entirely, or alter the pattern and coverage of fire suppressant.

Paragraph (b) of the final rule requires fire suppression and, if the system is automatic, fire detection for certain coverage areas on diesel-powered equipment. Under the final rule, the coverage areas include the engine (including the starter), transmission, hydraulic pumps and tanks, fuel tanks, exposed brake units, air compressors and battery areas on diesel-powered equipment and electric panels or controls used on fuel transportation units. This requirement ensures that fire detection and fire suppression are provided with coverage for key areas of diesel-powered equipment and fuel transportation units.

Although the listing or approval generally describes areas on equipment that pose a fire hazard, it does not specifically identify which hazards must be covered by fire suppression. The final rule's requirement for specific fire suppression coverage for certain areas on diesel-powered equipment is supported by the Ontario fire data. The data showed that engine fires accounted for 99 (34 percent) of the total number of fires on diesel-powered equipment. Included in engine fires were 10 compressor fires, 27 hydraulic system fires, 11 transmission fires, and 7 fuel tank fires. The Ontario fire data also indicate 32 battery fires and 55 brake fires.

The scope of paragraph (b) is expanded to include the starting mechanism on diesel-powered equipment. This responds to commenters' recommendations that foreign fire data be evaluated to establish criteria for fire protection on diesel-powered equipment. The Ontario fire accident data indicate that starters, starter solenoids, and the wiring associated with these components present a fire hazard. The data showed 21 (17 percent) of the electrical fires on self-propelled diesel-powered equipment were caused by starter circuits. Also, the proposal included the engine compartment as an area to be

covered by the fire suppression system. The specific reference to the starter area in the final rule clarifies that the starter area of the engine compartment be covered by the fire suppression system.

The proposed rule specified fire suppression system coverage areas for various types of limited class equipment. Because of the different fire hazards presented by the various types of equipment listed in the proposal, separate provisions in proposed paragraph (b)(1) were included. In the final rule the limited class category of light-duty equipment is expanded to include a range of equipment types, beyond the types defined in the proposal, and the requirements for coverage areas have been combined.

Proposed paragraph (b)(2) has not been adopted in the final rule to the extent that it would have specified coverage areas around fuel transportation units in response to commenters' statements that fuel tanks by themselves do not constitute a fire hazard, and only need coverage if an associated ignition source is present. Proposed paragraph (b)(3), which would have required fire suppression coverage for fuel containers and electric panels or controls used during fuel transfer operations on fuel transportation units, has not been adopted because the term ''container'' is no longer used in the final rule. The phrase ''during fuel transfer operations'' was not adopted from the proposal to eliminate the inference that only electric panels or controls used during fuel transfer operations must have coverage. Under the final rule, electrical components installed on fuel transportation units must be covered by fire suppression systems. However, a vehicle's instrument panel located in the operator's compartment of the machine would not be considered ''electrical panels and controls.'' Expelling fire suppressant in the operator's compartment would create other hazards for the equipment operator such as a cloud of fire suppressant which could limit visibility.

Paragraph (c), like the proposal, requires that automatic fire suppression systems include audible and visual alarms to warn of fires or system faults. No specific comments were received on this aspect of the proposed rule. This requirement provides a means for immediate notification of the equipment operator, both audibly and visually, when the system detects a fire on the machine or a problem with the fire detection device. The audible and visual indication of fire detection can alert the equipment operator of the imminent discharge of the chemical agent and the engine shutdown required by paragraph (d).

Paragraph (d) of the final rule adopts the proposed requirement that the fire suppression system provide for automatic engine shutdown. The final rule also provides that if the fire suppression system is automatic, engine shutdown and discharge of suppressant agent may be delayed for a maximum of 15 seconds after the fire is detected by the system. Commenters expressed support for this aspect of the proposed rule.

The engine shutdown requirement is intended to prevent an engine from continuing to run once the system has been actuated, either automatically or manually. This will prevent the engine from pumping diesel fuel or hydraulic fluid through a leaking fuel line or hydraulic hose, fueling the fire that the fire suppression system is attempting to extinguish. Since fire suppression systems are designed to suppress fires in their incipient stages, the contribution of additional fuel to the fire may render the system ineffective. The Ontario accident data included a number of machine fires where the engine continued to feed the fire with diesel fuel or hydraulic fluid, reducing the effectiveness of the system's ability to suppress the fire. In addition, the engine shutdown feature prevents the engine cooling fan from dispersing the fire suppressant agent before it extinguishes the fire. A maximum of 15 seconds delay between the time of fire detection and actuation provides a limited period of time for the equipment operator to stop and exit the machine before the machine engine shuts down.

Paragraph (e) of the final rule adopts the proposed requirement that the fire suppression system be operated by at least two manual actuators. One actuator must be located on each side of the equipment, and if the equipment is provided with an operator's compartment, one actuator must be located in the compartment within easy reach of the equipment operator.

Several commenters expressed the opinion that two manual actuators were unnecessary on small units of diesel equipment, such as tractors, when the second actuator would have to be installed in close proximity to the engine. Another commenter urged that actuators be separated from each other by a means of a check valve or other device to allow the system to operate even if there is an open line in the actuation circuit.

Two actuators for a fire suppression system are important to afford ample opportunity to initiate the system, even on small units of diesel-powered equipment. For example, if only one actuator were located on the side of a piece of equipment, the equipment operator might be unable to access the actuator due to the confined spaces in an underground coal mine, or because the fire ignited in the same location as the actuator. The final rule requirement for two manual actuators is also consistent with existing § 75.1107 for dry chemical fire suppression systems for electric equipment.

The final rule does not include a requirement for a check valve between the actuators for fire suppression systems. This is part of the system design and is more appropriately addressed by the system manufacturer and the listing or approving nationally recognized independent testing laboratory.

Paragraph (f) adopts the proposed requirement that the fire suppression system must remain operative in the event of engine shutdown, equipment electrical system failure, or failure of any other equipment system. No specific comments were received on this aspect of the proposed rule. This requirement is intended to ensure that the functioning of the system is not dependent on any external power source, such as an engine-driven alternator, vehicle battery, or the proper operation of any other machine system.

Paragraph (g), like the proposal, requires that the electrical components of each fire suppression system installed on diesel-powered equipment used where permissible electric equipment is required be permissible or intrinsically safe, and that such components be maintained in permissible or intrinsically safe condition. This provision requires that automatic fire suppression systems be certified or approved by MSHA under part 18.

A number of commenters to the proposal stated that intrinsically safe vehicle-type automatic fire suppression systems were not available. Currently, however, two fire suppression system manufacturers have obtained approval under part 18 for their automatic fire suppression systems.

Paragraph (h) adopts the requirement from the proposal that electrically operated detection and actuation circuits be monitored and provided with status indicators showing power and circuit continuity. If the system is not electrically operated, a means must be provided to indicate the functional readiness status of the detection system. These features notify the equipment operator or maintenance person of the functional readiness status of both the detection and actuation circuit and the power source. No specific comments

were received on this aspect of the proposed rule.

Currently at least one manufacturer is marketing an automatic fire suppression system with these electrical features on both permissible and nonpermissible systems. There is also an automatic system which is not electrically operated and employs a pressurized cylinder to disperse the suppressant. A pressure gauge on the cylinder is considered sufficient to indicate the condition of the system.

Paragraph (i) requires that each fire suppression system be tested and maintained in accordance with the manufacturer's recommended inspection and maintenance program and as required by the nationally recognized independent testing laboratory listing or approval. It also requires fire suppression systems to be visually inspected at least once each week by a person trained to make such inspections.

The proposed rule would have required each fire suppression device to be visually inspected at the same interval by a person qualified to make such inspections. The proposal also would have required that each fire suppression device be tested and maintained in accordance with applicable requirements in § 75.1100.

Commenters to the proposal generally expressed support for required maintenance of fire suppression systems installed on diesel-powered equipment. Some commenters, however, recommended that a maintenance program specifically designed for fire suppression systems be developed at each mine. One commenter stated that a visual inspection of fire suppression systems on diesel-powered equipment would not be adequate and recommended that fire suppression systems be maintained in accordance with the manufacturer's guidelines by either outside entities qualified by the equipment manufacturer or through a program to qualify individuals at the mine. Another commenter to the proposal recommended that the manufacturer's inspection and maintenance program be referenced in lieu of the requirements in § 75.1100. One commenter stated that automatic fire suppression systems are more difficult to maintain than manual systems, but that both types of systems should be inspected monthly and maintained semi-annually as a minimum. Another commenter expressed concern that certain critical internal components of a fire suppression system could be checked simply by a visual inspection.

Under the final rule, the weekly visual inspection is not intended to be an in-depth inspection. The weekly visual inspection is intended to be a quick check to determine if defects, such as disconnected hose lines or altered nozzles, are readily apparent. The in-depth inspection takes place as part of the manufacturer's recommended testing and inspection procedure also required under the final rule. Fire suppression system manufacturers are most familiar with the design and operation of their systems and are best able to identify the components that need maintenance as well as the type and frequency of maintenance. Adequate maintenance is essential because of the importance of these systems in suppressing machine fires. Maintenance and testing requirements for fire suppression systems are included in the final rule in addition to the requirement for a weekly visual inspection.

The manufacturer's inspection and maintenance procedures are typically spelled out in great detail in the manufacturer's manual and, depending on the operating environment, include the recommended inspection intervals. In addition, these inspection and maintenance procedures are evaluated as part of the system's approval or listing by a nationally recognized independent testing laboratory.

The requirement in this paragraph is identical to the requirement in existing § 75.1107–16(a). However, the fire suppression system requirements in §§ 75.1107–3 through 75.1107–16 cannot be directly applied to diesel-powered equipment for several reasons. Any modification of these existing requirements by inserting the term ''diesel-powered'' in the regulatory language would result in an extremely confusing regulation. Also, the fire hazards presented by diesel-powered equipment are different from those on electric-powered equipment, due to the close proximity of large quantities of hydraulic oils and fuels to the heated diesel engine exhaust. The single modification made to this paragraph was replacing the term ''device'' with the term ''system''. This was done because MSHA intends that the whole system be inspected and not just individual components of the system.

Although automatic systems have additional components that must be inspected and maintained, properly trained maintenance personnel should have little difficulty satisfying these requirements. It is anticipated that the training of the personnel assigned to perform the testing and maintenance of fire suppression systems will be provided by the system manufacturer or distributor. Additionally, automatic fire suppression systems under the final rule are required to have a status monitoring feature to tell the equipment operator or maintenance personnel that a problem exists.

Section 75.1915(b)(3)(iv) of the final rule requires that the training and qualification program for qualified persons working on diesel equipment address tests and maintenance of fire suppression systems. The qualified person conducting maintenance on fire suppression systems on diesel-powered equipment should have sufficient familiarity with the elements of the fire suppression system. A person ''trained'' to perform inspections and tests required by paragraph (i) of this section of the final rule is not required to be a person qualified under § 75.1915. However, the final rule intends that the person performing tests and inspections of fire suppression systems have sufficient knowledge to determine whether a fire suppression system is functioning properly. MSHA anticipates that since fire suppression systems are common to both electric and diesel equipment, the mine operator will work with either the fire suppression system manufacturer or distributor to ensure that personnel responsible for the maintenance of fire suppression systems are adequately trained.

Paragraphs (j) of the final rule establishes recordkeeping requirements which address the inspection and maintenance requirements for fire suppression systems set forth in paragraph (i). Paragraph (j) of the final rule requires that persons performing inspections and tests of fire suppression systems record results of tests and inspections only when a fire suppression system does not meet the installation or maintenance requirements of this section. Under these circumstances, the person performing the inspection or test is required to record the equipment on which the fire suppression system did not meet the installation or maintenance requirements of this section, the defect found, and the corrective action taken. The final rule also requires that these records be kept either manually or electronically in a secured manner that is not susceptible to alteration. Paragraph (j)(3) requires that records be maintained at a surface location at the mine for one year and made available for inspection by an authorized representative of the Secretary and miners' representatives.

The proposal would have required that a record be kept of all inspections and tests of fire suppression systems

and maintained at an appropriate location for each fire suppression device. One commenter to the proposal recommended that, in order to provide adequate maintenance of fire suppression systems, interested parties be allowed to view the results of visual inspections recorded in approved books. Another commenter recommended that records of inspections be maintained on the surface by the operator so that they would be available for MSHA verification. This commenter stated that maintaining separate records for inspections of fire suppression systems is an unnecessary burden for the mine operator. This commenter stated that records kept on computers, as pre-shift examinations and by normal maintenance inspections, would be adequate for documenting the inspections conducted on fire suppression systems.

Office of Management and Budget guidance comments directed MSHA to reexamine the recordkeeping requirements in the proposal and recommended that the final rule require paperwork that was the least burdensome necessary. MSHA has done so, and the final rule does not adopt the proposal that all fire suppression system test and maintenance results be recorded. In response to commenters and consistent with other provisions of the final rule, paragraph (j) requires that records of inspections and tests be made only when a fire suppression system does not meet the installation or maintenance requirements of this section. This requirement is important because if a fire suppression system does not meet the installation or maintenance requirements of this section, the defect could be sufficiently serious to cause the system to fail in the event of a fire. This requirement is intended to ensure that records are maintained and made available to interested parties when a defect is found, and that the appropriate level of mine management is made aware of defects requiring corrective action.

The final rule does not specify a particular way of recording the test and maintenance data, only that the records be located at the surface of the mine. The records of the inspections and tests must be made in a secure media not susceptible to alteration. A detailed discussion of the subject of acceptable record books and electronic records can be found under the heading ''Recordkeeping Requirements'' in the General Discussion section of this preamble.

The final rule does not adopt the requirement from the proposed rule that records of inspections be maintained at an appropriate location near each fire suppression system. Instead, paragraph (k) of the final rule establishes the requirement recommended by a commenter that records of inspections and tests be maintained at a surface location at the mine. Storing records on the surface at the mine makes them more accessible to interested parties. Also in response to commenters, the final rule provides access to not only miners' representatives but to authorized representatives of the Secretary. This provision ensures that test and inspections of fire suppression systems are being made and, when a defect is found, that corrective action is taken.

Records for inspection of diesel-powered equipment are also required under § 75.1914(f)(2) of the final rule. However, the recordkeeping requirement under paragraph (j) is not intended to be duplicated. While § 75.1914(f)(2) applies to diesel-powered equipment, some diesel fuel transportation units may be portable trailers with only electrical components and therefore would need to be covered under the recordkeeping requirement under paragraph (j) of this section. The only records required for fire suppression systems under this section of the final rule are for tests and maintenance required under paragraph (i).

Paragraph (k) adopts the proposed requirement that all miners normally assigned in the active workings of the mine be instructed about the hazards inherent to the operation of fire suppression systems, and where appropriate, the safeguards available for each system. This requirement is intended to ensure that all miners working in areas where fire suppression systems operate are instructed in any inherent hazards and necessary precautions associated with the operation of these systems. The final rule modifies the proposal in that the term ''device'' has been replaced by the term ''system'' to clarify that this requirement applies to the entire fire suppression system, not merely a component of it.

One commenter to the proposal agreed with the requirement that miners be trained in the hazards and safeguards of fire suppression systems, but recommended that such training be incorporated in the annual refresher training required under existing § 75.1101–23 for the program of instruction, location and use of fire fighting equipment. Under the final rule, it is anticipated that the instruction on the hazards of fire suppression systems required by this paragraph will be part of the § 75.1101–23 instruction.

Paragraph (l) of this section of the final rule provides that, for purposes of existing § 75.380(f), a fire suppression system installed on diesel-powered equipment and meeting the requirements of § 75.1911 is equivalent to a fire suppression system meeting the requirements of §§ 75.1107–3 through 75.1107–16.

Section 75.380 addresses requirements for escapeways in bituminous and lignite mines. Section 75.380(f) specifies the equipment that can be used in the primary escapeway and the type of fire suppression system required to be installed on this equipment. Section 75.380(f)(4) requires that each piece of mobile equipment operated in primary escapeways, except for continuous miners and as provided in paragraphs (f)(5), (f)(6) and (f)(7) of the section, be equipped with a fire suppression system installed according to §§ 75.1107–3 through 75.1107–16 that is: (1) manually operated and attended continuously by a person trained in the system's function and use; or (2) a multipurpose dry chemical type capable of both automatic and manual activation. The requirement in § 75.380(f)(4) for installation of a fire suppression system that meets the requirements of §§ 75.1107–3 through 75.1107–16 on equipment operating in the primary escapeway presents a potential conflict with the requirement for installation of a fire suppression system on diesel-powered equipment in § 75.1911.

As noted earlier, several commenters to the proposed rule believed that the requirements for fire suppression systems in §§ 75.1107–3 through 75.1107–16 should be made applicable to diesel-powered equipment. However, the requirements in §§ 75.1107–3 through 75.1107–16 make specific reference to electric equipment and components and are not practical for diesel-powered equipment. Any modification of these existing requirements by inserting the term ''diesel-powered'' in the regulatory language would result in an extremely confusing regulation.

After a review of the issue, MSHA has determined that fire suppression systems installed on diesel-powered equipment meeting the requirements of § 75.1911 afford at least equivalent protection to fire suppression systems meeting the requirements of §§ 75.1107–3 through 75.1107–16. Many of the requirements contained in §§ 75.1107–3 through 75.1107–16 are similar to those in § 75.1911. Both sections include requirements for: listed or approved fire

suppression systems; the capacity and size of fire suppression system hardware; a system design that will withstand the normal rigors of mining; compatibility of the extinguishing agent with the mine atmosphere; the system's ability to operate independently of an equipment power supply; sensor operability status indication; and the inclusion of manual actuators. Consequently, the final rule makes clear that fire suppression systems meeting the requirements of § 75.1911 will satisfy the requirements of § 75.380(f)(4).

Section 75.1912 Fire Suppression Systems for Permanent Underground Diesel Fuel Storage Facilities

This section of the final rule establishes requirements for the design, installation and maintenance of fire suppression systems at permanent underground diesel fuel storage facilities. Under the final rule, a permanent underground diesel fuel storage facility is defined as a facility designed and constructed to remain at one location for the storage or dispensing of diesel fuel, which does not move as mining progresses. Section 75.1903(a)(5) of the final rule requires that permanent underground diesel fuel storage facilities be equipped with an automatic fire suppression system that meets the requirements of § 75.1912.

The Diesel Advisory Committee recommended that automatic fire suppression systems be used to address potential fire hazards from ignition and fuel sources at permanent underground diesel fuel storage facilities. The proposed rule included design, installation and maintenance requirements for automatic fire suppression systems for diesel fuel storage areas and stationary diesel-powered equipment.

Commenters to the proposed rule generally accepted the need for fire suppression systems at permanent underground diesel fuel storage facilities. However, comments varied on what the requirements for fire suppression systems should be. Some commenters recommended that only manufacturer's requirements for design, installation and maintenance be used. Other commenters recommended a more detailed approach and suggested that the final rule outline specific requirements for fire suppression systems.

The storage of diesel fuel at permanent underground facilities presents a limited fire hazard when fuel is contained in diesel fuel tanks and safety cans constructed of noncombustible material. However, diesel fuel does present a fire hazard when it is spilled from a tank or leaked from a hose and comes into contact with an ignition source. Spills and leaks of diesel fuel at permanent underground storage facilities can occur when machinery is being refueled, when diesel fuel is being placed in or taken out of storage tanks, or when tanks are damaged or not properly maintained. Potential ignition sources at permanent underground storage facilities include a running diesel vehicle with hot surfaces or hot brake components, malfunctioning electric valves, or pumps used to dispense diesel fuel.

Fire suppression systems are designed to extinguish fires quickly, in their incipient stage, and to reach all locations where a fire may occur. This is important at permanent underground diesel fuel storage facilities because a fire must be extinguished quickly before fuel can further propagate a fire. For example, if a fire is not extinguished at an early stage, leaking diesel fuel can fuel a fire and result in an increase of the intensity and size of the fire.

Fixed fire suppression systems also offer two advantages over portable fire extinguishers: fast attack and application of the suppressant to difficult-to-reach areas where fires may occur. In addition, an automatic fire suppression system has the advantage of detecting and suppressing fires without a person in attendance. Because permanent underground diesel fuel storage facilities will not always be attended, it is necessary to require a means of electrically or mechanically detecting a fire as well as electrically or mechanically activating the fire suppression system upon fire detection. This is important since the potential hazard for mine personnel throughout the mine is significant if a fire in a diesel fuel storage facility could burn unnoticed.

The proposed rule would have established requirements for fire suppression devices for permanent underground diesel fuel storage areas and stationary unattended diesel-powered equipment. Because § 75.1916(d) of the final rule requires all diesel-powered equipment to be attended while operating, and because proposed requirements for stationary unattended equipment have not been adopted in the final rule, § 75.1912 of the final rule has been modified to apply only to permanent underground diesel fuel storage facilities.

A number of commenters to the proposal expressed concern with the requirements for fire suppression systems at permanent underground diesel fuel storage facilities. One commenter stated that since diesel fuel is a Class II combustible liquid, a diesel fuel storage station used and moved with a working section should be treated similar to a lubricating oil or grease storage station. This commenter expressed the view that requirements for limiting the quantity of diesel fuel in temporary storage and requiring portable fire extinguisher protection would be adequate safeguards. Another commenter expressed concern with the ability of a dry compound to suppress a fire over a long enough period of time to prevent re-ignition. This commenter stated that high volumes of ventilating air in a mine can blow dry compound away from the area it is attempting to protect before it can cool down a hot surface created by a fire.

MSHA agrees with the commenter who stated that diesel fuel stored on and moved with a section should be treated as a Class II combustible liquid. The final rule addresses this comment by establishing the allowance for one temporary underground diesel fuel storage area for the short-term storage and dispensing of diesel fuel on each working section, which can move as mining progresses. A temporary underground diesel fuel storage area is defined under § 75.1900 of the final rule as an area of the mine provided for the short-term storage of diesel fuel in a fuel transportation unit, which moves as mining progresses. These temporary underground diesel fuel storage areas are required to meet the requirements in §§ 75.1902, 75.1903 and 75.1906 of the final rule. All other diesel fuel storage areas will be treated as permanent storage facilities and must comply with all of the requirements for such facilities. Permanent diesel fuel storage facilities pose a higher risk of fire than oil and grease storage areas because diesel fuel is generally stored in much greater quantities in underground coal mines. In addition, diesel fuel has a lower flash point than either lubricating oil or grease and can be more easily ignited by a hot surface.

Although permanent diesel fuel storage facilities are provided with ventilating air during normal operations, these facilities are required under § 75.1903(a)(2) of the final rule to be equipped with either a self-closing door or a means for automatic enclosure upon actuation of the fire suppression system. This feature should prevent any ventilating air from affecting the suppressant agent.

An automatic fire suppression system uses a supplemental detection device to provide an early warning of a fire. The fire detection system, which is generally activated by either smoke or heat,

automatically sends a signal to the system for the discharge of suppressant agent. Automatic fire suppression systems activate a network of piping and nozzles to allow suppressant agent to be released and distributed directly at a predetermined fire hazard.

Under the final rule, automatic fire detection and fire suppression systems are required to provide fire suppression for all areas of a permanent underground diesel fuel storage facility. The final rule also requires that the system include audible and visual alarms to warn of fires or system faults and automatic electrical system shutdown in the event of a fire. In addition, the final rule requires all fire suppression systems to be tested and maintained in accordance with manufacturer's recommendations. Finally, the final rule establishes certain recordkeeping requirements for fire suppression systems that are found not to meet required specifications during inspection and testing.

Paragraph (a) of this section of the final rule requires that a fire suppression system required by § 75.1903(a)(5) be an automatic multipurpose dry chemical type (ABC) fire suppression system listed or approved as an engineered dry chemical extinguishing system by a nationally recognized independent testing laboratory and appropriate for installation at a permanent underground diesel fuel storage facility.

The proposed rule would have required an automatic multipurpose dry powder type fire suppression system suitable for the intended application and listed or approved by a nationally recognized independent testing laboratory.

A commenter to the proposal stated that this paragraph should require that ''an automatic fire suppression system suitable for the intended application shall be installed to protect the entire area inside the fire proof enclosure.'' This commenter believed that all of the necessary requirements for fire suppression systems were already addressed in existing part 75, and that it was unnecessary to identify protected coverage components inside the storage facility if the entire area is required to be protected. Another commenter stated that the requirement in the proposal that the ''system be suitable for the intended application'' was ambiguous and could be subject to different interpretations. This commenter stated that the term ''suitable'' could refer to a system that is suitable for a particular type of fire (class B or combustible liquid fire) or it could mean that the system has a sufficient capacity to extinguish a fire. This commenter also recommended that the final rule specify the capacity of fire suppression systems installed at permanent underground diesel fuel storage facilities.

In response to commenters, MSHA evaluated whether the requirements for fire suppression systems in existing § 75.1107 should be extended to apply to permanent underground diesel fuel storage facilities, but has concluded that such an extension would not be appropriate. The fire hazards that exist at permanent underground diesel fuel storage facilities are different from those on electric-powered equipment, due to the storage of large quantities of diesel fuel in close proximity to ignition sources at these facilities. Additionally, because existing § 75.1107 makes specific reference to electrical controls and components on electric-powered equipment, a modification of the existing requirements by inserting the term ''permanent underground diesel fuel storage facility'' in the regulatory language would result in an extremely confusing regulation. Existing fire suppression requirements in part 75 have therefore not been applied to permanent underground fuel storage facilities.

In response to commenters' suggestions, the final rule does not adopt the phrase ''suitable for the intended application'' from the proposal. Instead, the final rule includes the more specific language ''listed or approved as an engineered dry chemical extinguishing system approved by a nationally recognized independent testing laboratory.'' This modification is intended to clarify that an automatic fire suppression system installed at a permanent underground diesel fuel storage facility must be listed or approved by a nationally recognized independent testing laboratory specifically for a fixed engineered dry chemical extinguishing system unit.

The capacity and suitability of fire suppression systems for protecting against specific fire hazards are specified as part of the listing or approval by the nationally recognized independent testing laboratory. The listing or approval ensures that a fire suppression system is properly designed for a particular type of fire protection hazard by putting the system through a series of specific performance tests. The system must also meet rigid design requirements in order to gain listing or approval.

Fire suppression systems should be installed by a qualified individual following the installation and maintenance instructions in the system manufacturer's installation manual. The sizing of a fire suppression system is dependent upon the number of nozzles needed to adequately cover the entire area of a permanent underground diesel fuel storage facility. The number of dry chemical canisters required will be proportional to the amount of area that must be covered by the nozzles. This information can be obtained from the installation manual that is part of the listing or approval documentation. Other installation considerations, such as proper location and guarding of nozzles and other system components to prevent damage, are addressed in the system's installation manual. In addition to the installation requirements, the manual includes provisions for follow-up maintenance and inspection procedures.

One commenter to the proposal recommended that the term ''dry powder'' be deleted from paragraph (a) because this commenter believed that there were many equally effective systems, such as foam/water spray systems, available to protect against fire hazards. Another commenter stated that the terms ''listed'' and ''approved'' were not strong enough. This commenter stated that there was no way of verifying whether a system had been ''listed'' or ''approved'' and recommended that the term ''tested'' replace the term ''listed''.

Although dry chemical is the most commonly used type of suppressant agent in the mining environment and is specifically referenced in paragraph (a) of the final rule, paragraph (a)(1) of the final rule allows for alternate types of fire suppression systems that are no less effective. In addition, the requirement that a system be listed or approved by a nationally recognized independent testing laboratory is more stringent than using the term ''tested''. Under the final rule, when a system is listed or approved by a nationally recognized independent testing laboratory, it means that the system has met performance and design requirements outlined in an industry standard in a certain configuration and for a specific function. Also, if a system has been listed or approved by a nationally recognized independent testing laboratory, it means that the system has met other requirements for inspection, maintenance, and quality control assurances.

Also modified in this paragraph from the proposal is the term ''chemical'' replacing the term ''powder'' and the addition of the reference ''ABC'' for the three classes of fire. These modifications were made in response to commenters' request for clarification and to incorporate more appropriate terminology.

A multipurpose dry chemical type agent is the most commonly used and successfully applied type of suppressant agent in fire suppression systems in underground coal mines. This type of agent is specifically designed to extinguish ABC class fires. A class A fire refers to a fire of combustible solid materials such as paper, rubber, textiles, and cloth, and would involve such items as hosing at a permanent underground diesel fuel storage facility. A class B fire would include diesel fuel. Class C fires involve electrical components and could include such components as lights, pumps, and valves at permanent underground diesel fuel storage facilities.

The term ''engineered'' was added to the final rule in response to commenters' concerns regarding the adequacy of a fire suppression system to address all of the fire hazards at a permanent underground diesel fuel storage facility. An engineered fire suppression system will ensure that all of the fire hazards are addressed since a representative from a fire suppression system manufacturer will go to the facility and evaluate all of the fire hazards. The evaluation by the system manufacturer representative also includes determining the appropriate coverage areas for the fire suppression system, the number and size of dry chemical canisters, the length of piping, and the number of nozzles.

The proposed rule would have allowed the use of inert or halogenate gas suppressant agents in unoccupied and enclosed areas where the use of such suppressants would not pose a toxic hazard. One commenter to the proposal recommended that the use of inert or halogenate gas suppressant agents be prohibited because they create a toxic hazard. This requirement has not been included in the final rule because inert or halogenated gas fire suppression systems are considered an alternate type of fire suppression system that are addressed in paragraph (a)(1) of this section of the final rule. The potential toxic hazard presented by inert or halogenated gas suppressant agent will be evaluated by MSHA on a case-by-case basis as an alternate type system. In addition, typical inert gas agents such as halon 1211 and 1301 are no longer being marketed due to their reported contribution to the ozone depletion of the environment.

Paragraph (a)(1) of the final rule adopts the provision from the proposal that alternate types of fire suppression systems be approved in accordance with § 75.1107–13 of this part. This paragraph of the final rule is intended to allow the use of fire suppression systems other than dry chemical systems, so long as they provide substantially equivalent protection. Under the final rule, MSHA will evaluate alternate types of fire suppression systems, such as foam/water sprinkler-based systems, using the criteria set forth in existing § 75.1107–13.

One commenter to the proposal objected to this provision and stated that only the manufacturer who designs and constructs these systems will know the exact capabilities and limitations of the system. This commenter also stated that this requirement would result in the installation of inadequate fire suppression systems at permanent underground diesel fuel storage facilities, because the requirements in existing § 75.1107–13 are applicable to fire suppression systems installed on equipment.

Existing § 75.1107–13 establishes criteria for the approval of alternate fire suppression devices. Under § 75.1107–13, the appropriate MSHA district manager may approve any fire suppression system or device which provides substantially equivalent protection to what would be achieved through compliance with the standard.

The final rule does not intend to allow alternate types of fire suppression systems that do not adequately address fire hazards at permanent underground diesel fuel storage facilities. Instead, all types of alternate fire suppression systems must be installed and operated in strict accordance with the system manufacturer's recommendations as specified in paragraph (a)(2) of this section of the final rule. Any type of fire suppression system that is not designed and constructed in accordance with industry standards for fire protection will be unacceptable.

Paragraph (a)(2) of the final rule adopts the requirement from the proposal that the suppression system be installed in accordance with the manufacturer's specifications and the limitations of the nationally recognized independent testing laboratory listing or approval. One commenter to the proposal expressed the view that the term ''listing'' was not specific enough and recommended that the language ''independent testing'' be added. As explained earlier, a listing or approval by a nationally recognized independent testing laboratory is more stringent than the use of the term ''testing''. This comment has therefore not been adopted in the final rule.

This requirement ensures that the system is installed within the limits defined by the listing or approval issued by the nationally recognized independent testing laboratory and as specified by the fire suppression system manufacturer. Since the system is performance-tested to a specific standard and in certain configurations, it must be installed within these parameters to be effective.

Paragraph (a)(3) adopts the requirement from the proposal that the fire suppression system be installed in a protected location or guarded to prevent physical damage from routine operations. Damage to any part of the fire suppression system can result in a malfunction of the entire system and in the system not responding to fire hazards. For example, a rock fall can pinch a hose or crush a sensor and create faults that can disable the entire system or a portion of the system.

One commenter stated that the proposed rule did not define what protections were necessary on fire suppression systems and suggested that the systems be fully protected from physical elements, including rib and roof falls. This commenter further stated that this protection is already provided for electrical circuit breakers under existing § 75.901, and that this type of protection is even more vital for the protection of fire suppression systems.

This comment has not been adopted in the final rule because the construction requirements for permanent underground diesel fuel storage facilities at §§ 75.1902 and 75.1903 ensure that fire suppression systems will be protected from the general hazards of the mine environment. The installation requirements in this paragraph ensure that additional protection will be provided for specific system components.

Paragraph (a)(4), like the proposal, requires that the suppressant agent distribution tubing or piping be secured and protected against damage, including pinching, crimping, stretching, abrasion, and corrosion. No specific comments were received on this aspect of the proposal. During the normal mining activity in and around a permanent underground diesel fuel storage facility, a fire suppression system can become damaged from collisions with mining equipment or from daily mining operations. This requirement ensures that fire suppression system components are kept in proper working order and that the entire system remains ready to discharge fire suppressant to the entire area of a permanent underground diesel fuel storage facility.

Paragraph (a)(5) adopts the requirement from the proposal that fire suppression nozzles be protected against the entrance of foreign materials.

No specific comments were received on this aspect of the proposal. The nozzles used on multipurpose dry chemical fire suppression systems can be as small as ⅛ of an inch. If material such as mud, coal dust, or rock dust enters the nozzle, it can prevent the chemical agent from discharging entirely, or alter the pattern and coverage of fire suppressant.

Paragraph (b) of this section of the final rule requires that the fire suppression system provide automatic fire detection and automatic suppression for all areas within a permanent underground diesel fuel storage facility. The proposal would have required automatic fire detection and fire suppression for fuel storage tanks, containers, safety cans, pumps, electrical panels and control equipment in fuel storage areas. The requirement in the final rule responds to commenters'' recommendations that automatic fire detection and suppression be provided for all areas within a permanent underground diesel fuel storage facility enclosure.

Although the listing or approval generally describes certain areas that may pose a fire hazard, it does not specifically identify which hazards must be covered by fire suppression. Fire suppression coverage for the entire area of a permanent underground diesel fuel storage facility is necessary because of the potential fire hazard created by numerous ignition and fuel sources. The proposed coverage of only certain specific hazards within a diesel fuel storage facility would have resulted in other potential hazards not being addressed. Under the proposal, it would have been possible for a fire to begin in one area of the facility that was not specifically covered by fire suppression. Under these circumstances, a fire could be difficult to contain if large quantities of leaked diesel fuel are present throughout the facility. The final rule requires the entire area of a diesel fuel storage facility to be covered because of the likely spread of a fire if a diesel fuel leak develops.

Paragraph (c) of the final rule requires that audible and visual alarms to warn of fire or system faults be provided at the protected area and at a surface location which is continually monitored by a person when personnel are underground. The final rule also requires that, in the event of a fire, personnel be warned in accordance with the provisions set forth in § 75.1101–23. This requirement is intended to provide a means for immediate notification of personnel in the area of a permanent underground diesel fuel storage facility when the fire suppression system detects a fire or identifies a problem with the system. The audible and visual indication of fire detection is important because it alerts personnel in and around the area of a permanent underground diesel fuel storage facility that a fire exists and that a chemical agent is being discharged. The requirement for audible and visual indication of fault detection is established in order to alert personnel working in and around diesel fuel storage facilities that a problem exists with the fire detection system so that the defect can be addressed.

The proposal would have required that audible and visual alarms to warn of fire or system faults be provided at the protected area and at a surface location which is always staffed when personnel are underground who could be endangered by a fire. In addition, the proposal would have required that a means also be provided for warning all endangered personnel in the event of a fire.

Several commenters to the proposal expressed concern over this requirement, stating that the requirement for visual and audible alarms at a surface location would be impractical for many small operators because it would result in operators maintaining a monitoring system to detect fires. These commenters recommended that fire suppression systems be examined regularly to determine system faults, and that audible and visual alerts should only be required at locations where miners are present. Another commenter stated that mines have become lax in responding to fire warnings. One commenter recommended that a formal procedure be established to warn personnel in the event of a fire, and that this procedure should be submitted to MSHA for approval and be included in the mine emergency fire fighting and evacuation plan and in the miners'' annual refresher training. Other commenters stated that the proposed phrase ''always staffed'' does not ensure that a qualified or responsible person will be designated to alert mine personnel underground in the event of a fire. One commenter suggested that the language ''always staffed'' be changed to ''someone who is qualified.''

The continual monitoring by a person on the surface of fire detection and fire suppression system faults is not a burdensome requirement given the chance that a fire or system fault may otherwise go unnoticed. The early warning of a fire at a permanent underground diesel fuel storage facility is critical, due to the presence of numerous ignition sources and large quantities of diesel fuel. If communication is not available, fire fighting efforts can be hampered and the fire can spread. Also, if a program is not instituted to warn of a fire, personnel located in other areas of the mine can be put at risk of being cut off from escape. In addition, faults in fire suppression systems need to be identified and communicated to maintenance personnel so that system defects can be corrected. If an automatic fire suppression system is not functioning properly and a fire breaks out, it could result in a serious hazard since the fire would not be extinguished in its incipient stage. The inspection and maintenance requirements for fire suppression systems specified under the final rule should ensure the reliability of the system and minimize the occurrence of false alarms.

The final rule responds to commenters by providing flexibility in the method used to alert mine personnel that a fire exists at a permanent underground diesel fuel storage facility. Under the final rule, when a fire is detected, personnel are to be warned in accordance with the provisions set forth in existing § 75.1101–23. Section 75.1101–23 requires that each operator of an underground coal mine adopt a program for the instruction of all miners in fire fighting and evacuation. The program of instruction is submitted to the appropriate MSHA district manager for approval on a mine-by-mine basis. By including the requirement for early warning of fires at permanent underground diesel fuel storage facility in § 75.1101–23, the final rule allows this important communication provision to be developed by taking into consideration mine-specific conditions.

This section of the final rule also requires that a person be assigned on the surface whose duties include receiving notification of fire detection and alerting underground personnel that a fire has been detected. The final rule does not specify any qualification or training for the person designated on the surface. However, the instruction of all mine personnel, including the designated person staffed at a surface location, is a critical element of an early warning fire response strategy and is the responsibility of the mine operator under § 75.1101–23.

Paragraph (d) of this section of the final rule requires that the fire suppression system deenergize all power to the diesel fuel storage facility when actuated except that required for automatic enclosure and alarms. This requirement was added to the final rule in response to commenters' concerns regarding reignition of fires caused by electrical failures. As stated earlier, fire

suppression systems are designed to suppress fires in their incipient stage. If the ignition source and fuel sources remain present after the fire suppression system has been actuated, the fire can reignite. Shutting off any unnecessary electrical power to the facility will remove a potential ignition source and reduce the likelihood that the fire will reignite.

The Ontario accident data for fires on diesel equipment supports the need for shutting off ignition sources to prevent reignition. This hazard is just as significant for diesel fuel storage facilities, since potential electrical ignition sources are present with large quantities of diesel fuel. The final rule is also consistent with existing § 75.1107–4, which requires that the electric power source to the protected equipment be disconnected when the fire suppression system is actuated.

This requirement also applies to any fuel transportation unit located in a permanent diesel fuel storage facility that is equipped with an electric panel and controls directly connected to an electrical power source.

Paragraph (e) of the final rule, like the proposal, requires that fire suppression systems at permanent underground diesel fuel storage facilities be equipped with two manual actuators. The final rule requires that at least one actuator be located within the fuel storage facility and at least one actuator be located a safe distance away from the facility in intake air, upwind of the storage facility. The final rule is intended to ensure that at least two manual actuators be provided in locations that are accessible to mine personnel working in or around a permanent diesel fuel storage facility. This requirement is similar to the fire extinguisher location requirements for underground fuel storage facilities and areas in § 75.1903(b)(1) and (b)(2) of the final rule, which provide that at least one portable fire extinguisher be located outside of the storage facility or area upwind of the facility, in intake air, to enable miners to reach the actuator in the event of fire. To allow flexibility in complying with the requirements of this paragraph, what constitutes a ''safe distance from the facility'' has not been specified in the final rule. The location of the actuator outside the facility should be determined based on mine conditions and the particular usage of the facility.

Commenters generally expressed support for this aspect of the proposal. One commenter recommended that a requirement be added to address manual application of water in lieu of manual actuators when sprinkler systems are used. Another commenter suggested that actuators be separated from each other, and specifically recommended that a check valve be used to ensure that one faulty actuator does not circumvent or defeat the use of the other actuator.

The final rule specifically addresses only requirements for dry chemical fire suppression systems, and a water sprinkler type fire suppression system would be considered an alternate type of fire suppression system under paragraph (a)(1) of this section. As a result, the final rule does not adopt the suggestion that an additional requirement be added to address manual application when water sprinkler systems are used. In addition, the final rule does not include a requirement for a check valve between the actuators for fire suppression systems. This is considered part of the system design and is more appropriately addressed by the system manufacturer and the listing or approving nationally recognized independent testing laboratory.

Paragraph (f) of the final rule adopts the requirement from the proposal that the fire suppression system remain operational in the event of an electrical system failure. No specific comments were received on this aspect of the proposal. This requirement is intended to ensure that the system will be functional if power from external sources is lost. The phrase ''engine shutdown'' has not been adopted from the proposal, because the phrase would have applied to fire suppression system requirements for unattended diesel-powered equipment. Because the final rule does not permit the operation of unattended diesel-powered equipment, this phrase is no longer necessary.

Paragraph (g) adopts the requirement from the proposal that electrically operated detection and actuation circuits be monitored and provided with status indicators showing power and circuit continuity. The final rule also requires that automatic detection systems be provided with a means to indicate the functional readiness status of the detection system. This paragraph requires that the fire suppression system provide a means of notifying miners and maintenance personnel of the functional readiness status of both the detection and actuation circuit and the power source. This paragraph also requires that automatic systems not electrically operated provide a means of notifying the operator or maintenance person of the functional readiness of the system.

This requirement is included in the final rule to ensure the continuity of electrical systems used to detect faults on fire suppression systems. This requirement will serve to alert miners and maintenance personnel when a fire suppression system is not in a state of readiness due to an electrical system fault. The continuity of the electrical system used to detect fires and actuate the system is important since an automatic system is based on early detection and automatic actuation.

One commenter to the proposal stated that the fire suppression system should also be protected as specified in § 75.1101–17, which requires that each dry powder chemical system be adequately sealed to protect all components of the system from moisture, dust, and dirt.

The protection of the fire suppression system components from moisture and dust is adequately addressed by the requirements of paragraphs (a)(3), (a)(4) and (a)(5) of this section of the final rule. In addition, the listing or approval typically includes requirements for a dust shield and checks of the powder for dryness.

Paragraph (h) of the final rule adopts the requirement from the proposed rule that each fire suppression system be tested and maintained in accordance with the manufacturer's recommended inspection and maintenance program and as required by the nationally recognized independent testing laboratory listing or approval, and be visually inspected at least once each week by a person trained to make such inspections.

The proposed rule would have required each fire suppression device to be visually inspected at least once each week by a person qualified to make such inspections. The proposal also would have required that each fire detection device be tested and maintained in accordance with applicable requirements in § 75.1100.

Commenters to the proposal generally expressed support for maintenance of fire suppression systems installed at permanent underground diesel fuel storage facilities. A number of commenters, however, recommended that a maintenance program specifically designed for fire suppression systems be developed at each mine. One commenter to the proposal expressed concern over the requirement for weekly visual inspections of fire suppression systems at permanent underground diesel fuel storage facilities. This commenter recommended that there be frequent functional testing of the suppression systems to ensure that lines are not blocked or pinched. Another commenter stated that the proposal did not specify the types of tests that should be conducted on fire suppression systems at permanent underground

diesel fuel storage facilities. Other commenters expressed concern over the frequency of tests and inspections. These commenters recommended that detailed inspections and functional tests be conducted semiannually or quarterly. One commenter recommended that fire suppression systems be treated in the same manner as portable fire extinguishers and that inspections be conducted once a week and physically tested twice a year.

Under the final rule, the weekly visual inspection is not intended to be an in-depth examination. The weekly visual inspection is intended to be a quick check to verify that there are no obvious defects, such as disconnected hose lines or altered nozzles. An in-depth inspection takes place as part of the manufacturer's recommended testing and inspection procedure also required under the final rule. Fire suppression system manufacturers are most familiar with the design and operation of their systems and are best able to identify the components that need maintenance, the type of maintenance needed, and the frequency of maintenance. Adequate maintenance is essential because of the importance of these systems in fire protection. The maintenance and testing requirements for fire suppression systems are in addition to the requirement set forth for a weekly visual inspection.

The manufacturer's inspection and maintenance procedures are spelled out in great detail in the manufacturer's manual and include the recommended inspection intervals, which depend on the environment in which the system operates. In addition, these inspection and maintenance procedures are evaluated as part of the system's approval or listing by a nationally recognized independent testing laboratory.

This paragraph is identical to the requirement in § 75.1107–16(a). As stated earlier, the fire suppression system requirements in §§ 75.1107–3 through 75.1107–16 cannot be directly applied to diesel equipment because the fire hazards presented by diesel fuel are different from those on electric-powered equipment, due to the close proximity of large quantities of diesel fuel to potential ignition sources.

Also modified in this paragraph is the replacement of the term ''device'' with the term ''system''. This was done because MSHA intends that the whole system be inspected, not just individual components of a system.

A person ''trained'' to perform the inspections and tests required by paragraph (h) of this section of the final rule is not required to be a qualified person under § 75.1915. However, the final rule intends that the person performing tests and inspections of fire suppression systems have sufficient knowledge to determine whether a fire suppression system is functioning properly. MSHA anticipates that since fire suppression systems are common to both electric and diesel equipment, the mine operator will work with either the fire suppression system manufacturer or distributor to ensure that persons responsible for the maintenance of fire suppression systems are adequately trained.

Paragraph (i) of the final rule establishes recordkeeping requirements for the inspection and maintenance requirements for fire suppression systems set forth in paragraph (h), and requires that persons performing inspections and tests of these systems record results of tests and inspections only when a system does not meet the installation or maintenance requirements of this section. Under these circumstances, the person performing the inspection or test is required to indicate the fuel storage facility where the fire suppression system did not meet the installation or maintenance requirements of this section, the defect found, and the corrective action taken. The final rule also requires that these records be kept either manually or electronically in a secured manner that is not susceptible to alteration. In addition, the final rule requires that records be maintained at a surface location at the mine for one year and made available for inspection by an authorized representative of the Secretary and by miners representatives.

The proposal would have required that a record be kept of all of the inspections of fire suppression systems and maintained at an appropriate location for each fire suppression device. One commenter to the proposal recommended that the records required by this section be made available to all interested parties and that this information be centrally located on the surface of the specific mine.

Office of Management and Budget guidance comments directed MSHA to reexamine the recordkeeping requirements in the proposal and recommended that the final rule require paperwork that was the least burdensome necessary. MSHA has done so, and the final rule does not adopt the proposal that all fire suppression system test and maintenance results be recorded. In response to commenters and consistent with other provisions of the final rule, paragraph (i) requires that records of inspections and tests be made only when a fire suppression system does not meet the installation or maintenance requirements of this section. This requirement is important because if a fire suppression system does not meet its listing or approval, the defect can be of a nature and seriousness that the system can fail when a fire begins. This requirement is intended to ensure that records are maintained and made available to interested parties when a defect is found, and that the appropriate level of mine management is made aware of defects requiring attention.

The final rule does not specify a particular way of recording the test and maintenance data, only that it be located at the surface of the mine. The records of the inspections and tests must be made in a secure media not susceptible to alteration. A detailed discussion of the subject of acceptable record books and electronic records can be found under the heading ''Recordkeeping Requirements'' in the General Discussion section of this preamble.

The final rule does not adopt the requirement from the proposed rule that records of inspections be maintained at an appropriate location near each fire suppression system. Instead, paragraph (i)(3) of this section of the final rule establishes the requirement recommended by a commenter that records of inspections and tests be maintained at a surface location at the mine. Storing records on the surface at the mine makes them more accessible to interested parties. Also in response to commenters, the final rule provides access not only to miners representatives but to authorized representatives of the Secretary. This provision ensures that test and inspections of fire suppression systems are being made and, when a defect is found, corrective action is taken.

Paragraph (j) adopts the proposed requirement that all miners normally assigned in the active workings of the mine be instructed about the hazards inherent to the operation of fire suppression systems, and where appropriate, the safeguards available for each system. This requirement is intended to ensure that all miners working in areas where fire suppression systems operate are instructed in any inherent hazards and necessary precautions associated with the operation of these systems. The final rule modifies the proposal in that the term ''device'' has been replaced by the term ''system'' to clarify that this requirement applies to the entire system rather than to system components.

One commenter to the proposal agreed with the requirement that miners be trained in the hazards and safeguards

of fire suppression systems, but recommended that such training be incorporated in the annual refresher training required under existing § 75.1101–23 for the program of instruction, location and use of fire fighting equipment. Under the final rule, it is anticipated that the instruction on the hazards of fire suppression systems required by this paragraph will be part of the § 75.1101–23 instruction.

Section 75.1913—Starting Aids

This section addresses the storage and use of volatile fuel starting aids for diesel-powered equipment. The requirements of the final rule are similar to the requirements contained in the proposal, with some minor modifications. This section places limitations on the use and storage of volatile fuel starting aids underground, to minimize the risks of fire or explosion. Under the final rule, volatile fuel starting aids must be used in accordance with recommendations of the starting aid manufacturer, the engine manufacturer, and the machine manufacturer. The final rule also includes requirements for the storage of volatile fuel starting aids, and prohibits the use of starting aids under certain circumstances, such as in areas where permissible equipment is required or where 1.0 percent or greater concentration of methane is present. Connection of compressed oxygen or compressed flammable gases to diesel air-start systems is also prohibited.

The Diesel Advisory Committee recognized that improper storage and handling of starting aids could present fire and explosion hazards in underground coal mines. The Committee therefore recommended that MSHA regulate the storage and use of starting aids. The proposed rule set forth limitations on the use of starting aids, to minimize the hazards associated with their use in the underground coal mine environment. The requirements of the final rule reflect MSHA's determination that volatile fuel starting aids can be safely used underground if appropriate precautions are taken.

Volatile fuel starting aids, normally ethyl ether, facilitate the starting of diesel engines in cold temperatures. In very cold weather the compression ignition of diesel engines cannot easily reach the high temperature necessary to ignite diesel fuel. This makes it difficult, and in some cases impossible, to start the engine without special measures, such as the use of volatile fuel starting aids. Volatile fuel starting aids sprayed into a cold diesel engine help to start the engine because they ignite at a much lower temperature than diesel fuel. Starting aids that are ignited in a diesel engine will both heat up the cylinder walls of the engine and start the engine spinning, resulting in easier ignition of the diesel fuel.

The use and storage of volatile fuel starting aids in underground coal mines present safety hazards, due to the starting aids' high volatility. When these substances are stored or used improperly, they can present a very real danger of fire or explosion, particularly in the underground coal mine environment.

Commenters were divided on whether the use of starting aids should be permitted in underground coal mines. Some commenters recommended a complete prohibition of the use of volatile fuel starting aids underground, stating that starting aids are extremely flammable, have a very low flash point, and can be ignited by any source of heat in the mine. These commenters believed that there were already numerous potentials for fire in the underground coal mine environment, and that permitting the use of starting aids would introduce another unnecessary hazard into that environment. Some commenters believed that starting aids were used at some mines as a substitute for effective maintenance of diesel engines, and that a properly maintained engine should be able to start on its own, without the boost that a starting aid provides.

Other commenters advocated allowing the use of starting aids but strictly controlling their use. Several commenters stated that starting aids were currently being used safely and effectively in their mines, and that any hazards arising from their use could be controlled by careful handling. These commenters stated that proper maintenance of diesel engines does not prevent starting difficulties in cold temperatures. One commenter observed that air temperatures at mines located at elevations of 9,000 or 10,000 feet can fall well below 0° F. Several commenters observed that a diesel-powered machine that has been shut down and has been sitting in cold weather, such as over a weekend, can be virtually impossible to start without the use of a starting aid.

Some of the commenters who favored prohibiting the use of volatile fuel starting aids underground stated that starting aids sometimes were used as a substitute for effective maintenance. Although an engine that has not been properly maintained could in some cases be started more easily with starting aids, this fact alone does not compel the prohibition of volatile fuel starting aids in underground coal mines. The final rule requires regular maintenance and testing of diesel-powered equipment, designed to ensure that the equipment is kept in good operating condition. Compliance with these requirements should eliminate any need to use starting aids as a replacement for effective equipment maintenance.

Paragraph (a) of this section requires that volatile fuel starting aids be used in accordance with the recommendations of the starting aid manufacturer, the engine manufacturer, and the machine manufacturer. The proposed rule would have required that volatile fuel starting aids be used in accordance with the specific recommendations in the engine manufacturer's maintenance and operations manual.

Several commenters noted that the written documentation from machine or engine manufacturers does not always address correct use of volatile fuel starting aids, and expressed their concern that starting aids could create serious hazards if not used in conformance with specific recommendations. In response to these comments, the final rule provides that starting aids must also be used in accordance with the recommendations of the starting aid manufacturer, ensuring that mine operators will at a minimum be guided by those instructions. Starting aid manufacturers are already required by Occupational Safety and Health Administration regulations to develop Material Safety Data Sheets (MSDS) for their products. To comply with this provision the mine operator should obtain an MSDS and any other product safety and use information prepared by the starting aid manufacturer on the safe use of that particular starting aid, and use the starting aid in accordance with those instructions.

Because engine and machine manufacturers are in the best position to determine whether volatile fuel starting aids can be safely and effectively used with a particular engine or machine, the final rule also requires mine operators to use starting aids in accordance with any available recommendations from the engine and machine manufacturers on the safe use of starting aids. This requirement recognizes that volatile fuel starting aids can damage engine or machine components and result in the failure of machine safety devices or increase exhaust emissions. For example, a buildup of the starting aid in intake or exhaust components could result in an explosion. Use of starting aids in accordance with the recommendations of engine and machine manufacturers will minimize

any safety hazards and avoid damage to the engine or machine, such as damage to intake or exhaust components, especially on permissible equipment.

Although the final rule is not intended to prohibit the use of starting aids if such information has not been developed by the machine or engine manufacturer, MSHA encourages diesel-powered engine and machine manufacturers who do not already do so to develop recommendations on the use of volatile fuel starting aids with the engines and machines they produce.

Paragraph (b) requires that containers of volatile fuel starting aids be conspicuously marked to indicate their contents. This paragraph further requires that containers of volatile fuel starting aids that are not in use be stored in metal enclosures that are used only to store starting aids. The metal enclosures themselves are required to be conspicuously marked, secured, and protected from damage.

The requirement that starting aid containers be conspicuously marked was not included in the proposal, but has been incorporated in the final rule in response to commenters' concerns over the serious dangers that could result if starting aids containers were damaged in any way. The container marking requirement is intended to prevent inadvertent damage to containers by ensuring that mine personnel are aware of the containers' contents. Labels that are affixed to the starting aid can by the starting aid manufacturer will satisfy the requirement for container marking.

The final rule also requires that enclosures for containers of starting aids be made of metal, marked, secured, and protected from damage, and used only for the storage of starting aids. The proposed rule would have required only that starting aids be stored in a fire proof enclosure when not in use. The final rule includes additional requirements to address commenters' concerns that starting aid containers could be inadvertently damaged, resulting in the unintentional release of the highly flammable starting aid. These additional requirements are similar to the requirements in the final rule that apply to safety cans containing diesel fuel that are transported on vehicles. Because both volatile fuel starting aids and diesel fuel present a possible fire hazard, the final rule imposes similar precautions for the handling and storage of these substances. The final rule also prohibits any other items, such as tools, from being stored with volatile fuel starting aids. This prohibition responds to commenters' concerns that containers of volatile fuel starting aids could be damaged through contact with other items, resulting in the release of the starting aid and the creation of a potentially hazardous situation.

Some commenters noted that the term ''fire proof enclosure'' used in the proposed rule was not defined anywhere in the regulations, and recommended the substitution of the term ''noncombustible''. Other commenters opposed the use of the term ''noncombustible'' because of their concern that a container that is simply noncombustible may not be substantial enough to protect starting aid containers. MSHA agrees with commenters who believe that the term ''fire proof'' is ambiguous, and also with commenters who oppose the substitution of the term ''noncombustible'' for the term ''fire proof'' because containers that are ''noncombustible'' may not be sufficiently durable. The final rule therefore requires that containers of starting aids be stored when not in use in metal enclosures, which are not only noncombustible but also sturdy enough to protect the starting aid containers that are stored there.

Paragraph (c) adopts the requirements of the proposal, and imposes specific restrictions on where and under what circumstances volatile fuel starting aids may be used in underground coal mines, to minimize any hazards presented by their use. Paragraph (c)(1) prohibits volatile fuel starting aids from being taken into or used in areas where permissible equipment is required. Volatile fuel starting aids can create flames that flame arresters, which are designed to provide protection against methane ignitions, cannot stop. Use of volatile fuel starting aids in an area where permissible equipment is required could lead to an ignition of any methane in the area. Use of starting aids in those areas is therefore forbidden in the final rule.

Paragraph (c)(2) prohibits the use of volatile fuel starting aids in the presence of open flames or burning flame safety lamps, or when welding or cutting is taking place. As noted by several commenters, vapors from volatile fuel starting aids are easily ignited. The final rule requires that volatile starting aids be kept away from the potential ignition sources of open flames or welding or cutting. Starting aids are also prohibited in the presence of burning flame safety lamps. The gauze in a flame safety lamp, although safe for use in the presence of methane, will not prevent the propagation of the flame by the ether vapors given off by the starting aid. The final rule is intended to prohibit these ignition sources in the immediate vicinity of any area where volatile fuel starting aids are being used.

Paragraph (c)(3) adopts the proposal to prohibit the use of volatile fuel starting aids in any area of the mine where 1.0 percent or greater concentration of methane is present. This requirement minimizes the possibility that starting aid vapors that have accidentally been ignited would spread to methane in the surrounding area. Permissible equipment may not prevent a flashback of fire that could ignite a methane atmosphere.

The proposed rule would have prohibited the use of starting aids in areas of the mine where 1.0 percent or greater of methane is detected. The final rule has been clarified to reflect that volatile fuel starting aids must not be used where 1.0 percent or greater of methane is ''present'', thereby placing on the mine operator the responsibility of ensuring that methane levels are within acceptable limits before volatile fuel starting aids are used.

Paragraph (d) imposes limitations on the use of compressed gases as starting aids for diesel-powered engines. The final rule adopts the proposal's prohibition of the connection of compressed oxygen or compressed flammable gases to diesel air-start systems. Commenters generally supported this restriction. The use of compressed oxygen in the presence of engine lubricants, which are normally in diesel air start-systems, presents an immediate danger of a fire. The final rule consequently forbids the use of compressed oxygen for this purpose. Additionally, the introduction of compressed flammable gases into the machine's compressed air system presents not only the same fire hazard as compressed oxygen, but also a danger of explosion from flammable gases being placed in close proximity to possible sparks from the diesel engine. The final rule therefore also prohibits the use of compressed flammable gases in diesel air-start systems. Nonflammable gases, such as nitrogen, are permitted for this purpose.

Section 75.1914 Maintenance Of Diesel-Powered Equipment

Section 75.1914 sets forth maintenance, repair and testing requirements for diesel-powered equipment, and also indicates the level of training or qualification a person must have to perform these important tasks. The rule generally requires that diesel-powered equipment be maintained in safe and approved condition, and specifically requires weekly equipment examination, weekly testing and evaluation of gaseous

emissions, flushing and draining of scrubbers, and changing of air filters. A person must be qualified under § 75.1915 to perform maintenance and repairs of approved and other specified features on diesel-powered equipment, and to conduct weekly equipment tests and examinations. However, the rule allows other functions required under this section to be performed by a person not qualified under § 75.1915, so long as the person has been trained in the task.

This section of the final rule recognizes that effective equipment maintenance is an indispensable element in reducing the health and safety hazards of diesel-powered equipment, and that adequate training of maintenance personnel is an important part of ensuring that such work is performed correctly. The purpose of the requirements of this section is to ensure that diesel-powered equipment is properly maintained so that it does not deteriorate through neglect, abuse, or normal use and result in a safety or health hazard to miners.

Virtually all commenters to the proposed rule supported the need for maintenance requirements for diesel-powered equipment used in underground coal mines. Commenters agreed that regular maintenance and routine examination of equipment is essential, as the performance of even the best-designed equipment will decline over time without proper maintenance. Inadequate maintenance of diesel equipment can result in the creation of fire or explosion hazards, and the levels of harmful gaseous and particulate components in diesel exhaust can increase when equipment is poorly maintained.

Several commenters to the proposed rule provided specific examples of the problems and hazards that result when maintenance personnel are poorly trained. Some commenters stated that inadequately trained personnel frequently failed to maintain diesel equipment in approved condition, causing the engines to deteriorate and resulting in increased levels of harmful exhaust gases. Commenters also reported that untrained persons were more likely than properly trained persons not only to allow safety systems to malfunction in the first place, but also to bypass the malfunctioning safety system in order to continue operating the machine, rather than to repair the system.

Paragraph (a) of this section retains the language of the proposed rule and requires that all diesel-powered equipment used in underground coal mines be maintained in approved and safe condition or removed from service. Several commenters recommended that the word ''approved'' be deleted, in the belief that it would be acceptable to use permissible equipment in non-approved condition when the machine was being operated in an outby location.

Paragraph (a) of the final rule prohibits the use of diesel equipment that is not in approved and safe condition. This prohibition includes the operation of permissible diesel-powered equipment in outby areas when an approved feature has been disabled. There are several reasons that this requirement has been adopted in the final rule. Many types of approved diesel equipment are extremely mobile, moving easily from areas of the mine where permissible equipment is required to areas where it is not, and there is nothing to distinguish a piece of diesel-powered equipment that has not been maintained in permissible condition from one that has. Both bear MSHA approval plates. Additionally, temperature sensors and other safety system components on diesel-powered equipment can be permanently damaged by exposure to high temperature exhaust gas when the equipment is not maintained in approved condition and a safety system is bypassed. The final rule therefore requires that equipment be maintained not only in safe condition but also in approved condition.

Paragraph (b) requires that maintenance and repairs of approved features, and the features required by §§ 75.1909 and 75.1910, be made only by a person qualified under § 75.1915. The final rule retains the concept of the proposal that the maintenance and repair of certain features of diesel-powered equipment be performed by a qualified person. The majority of commenters supported mandatory training and some form of qualification for those individuals performing these functions because it would help to ensure that diesel equipment is adequately maintained and kept in good operating condition. The Diesel Advisory Committee also recommended that qualified persons be responsible for the more complicated systems on the machine, such as the approved components.

A more extensive level of training is needed to ensure that persons working on more complex equipment features are adequately skilled. Additionally, MSHA machine approval requirements are largely performance-oriented, and equipment manufacturers consequently have significant latitude in designing their equipment to satisfy MSHA's permissibility requirements. Because a variety of equipment designs could accomplish the safety objectives mandated by an MSHA approval, approved equipment does not always conform to easily recognizable standards, and the ability to perform maintenance and repair work on the more complex features of diesel-powered equipment requires a comprehensive understanding of the equipment's design. The final rule therefore adopts the requirement of the proposal that persons performing work on certain specified features of diesel-powered equipment be qualified under § 75.1915, which requires completion of a training program developed by the mine operator.

The proposed rule specified only that ''approved features'' must be maintained and repaired by a person qualified under § 75.1915, and did not include within its scope ''features required by §§ 75.1909 and 75.1910'' as does paragraph (b) of the final rule. However, the scope of this requirement under the final rule is essentially the same as it would have been under the proposed rule. Under the proposed rule, all nonpermissible equipment, with the exception of a limited class of light-duty equipment and stationary unattended equipment, would have been subject to a whole machine approval under part 7. Because the final rule does not require whole machine approval of nonpermissible equipment, and instead requires that this equipment be provided with the safety features set forth in §§ 75.1909 and 75.1910, essentially the same features must be maintained and repaired by a qualified person under the final rule as would have been required under the proposal.

Paragraph (c) of the final rule requires that the water scrubber system on diesel-powered equipment be drained and flushed, by a person who is trained to perform this task, at least once during each shift that the equipment is operated. The proposed rule contained the same requirement for flushing scrubbers, but did not specify what type of training was required for the person performing the task.

The rationale behind the requirement for flushing and draining is that routine cleaning of scrubbers, which cool equipment exhaust gases and act as flame arresters, is essential to prevent a buildup of solid exhaust particles and sludge in the scrubber. This condition can eventually block internal passages of the scrubber, impairing the scrubber's effectiveness and compromising safety in the mine. The Advisory Committee also recommended that MSHA require mine operators to change scrubber water on a regular basis.

Commenters generally supported regular draining and flushing of

scrubber systems, although some commenters questioned whether the rule should specify the point in the shift when draining and flushing must be done. Commenters also questioned what level of qualification was necessary as a prerequisite to performing this task. The consensus of the Advisory Committee was that routine maintenance, such as changing scrubber water, could be performed by a person who is not certified, and that task training would be sufficient in those situations.

MSHA agrees that draining and flushing of the scrubber is a relatively straightforward task, and that the comprehensive training required for qualification under § 75.1915 is unnecessary to ensure that persons perform this task competently. The final rule therefore clarifies MSHA's intention that scrubber draining and flushing need not be done by a person qualified under § 75.1915, only that the person be trained to perform the task. MSHA expects that the draining and flushing of the water scrubber system will typically be performed by the machine operator.

In response to the proposed requirements for scrubber maintenance, some commenters stated that the final rule should specify that scrubber systems must be drained and flushed at the beginning of the shift. These commenters were concerned that if the rule did not specifically require draining and flushing at the beginning of the shift, MSHA could not issue a citation for violation of this standard until the end of the shift, making enforcement difficult. Other commenters advocated that the final rule require the scrubber system to be drained and flushed at the end of the shift, allowing mine operators to perform the task as part of the routine maintenance to prepare the machine for the next shift.

MSHA has carefully considered the comments on this issue, and has chosen to retain the language of the proposed rule in the final rule, which simply requires scrubber systems to be flushed and drained once during each shift that the equipment is operated, without specifying when during the shift the task must be performed. This is consistent with MSHA's intention to afford mine operators reasonable flexibility in performing the maintenance required by the final rule. However, MSHA recommends that mine operators perform scrubber maintenance at about the same point during every shift, thereby ensuring that scrubbers are flushed and drained every 8 to 10 hours (depending on the length of the shift) during the equipment's operation.

Paragraph (d) requires that the intake air filter be replaced or serviced either when the intake air pressure drop device indicates that it is necessary, or when the engine manufacturer's maximum allowable air pressure drop level is exceeded. The final rule also requires that this replacement or servicing be done by a person who is trained to perform the task.

Maintenance of diesel machine air filters is an important element of overall equipment maintenance. Air filters screen the air taken in by the machine for combustion. Over time, the filters load up with dust and dirt, restricting air flow and making the engine work harder to pull in the same amount of air. As the engine works harder, greater quantities of engine emissions are produced, adversely affecting the quality of the air that miners breathe. Research and experience indicate that air restrictions have a negative effect on emission generation, specifically carbon monoxide and diesel particulate.

The proposed rule would have required filter replacement or servicing when the filter was ''dirty'' as well as when the machine's intake air pressure drop device indicated that it was necessary. The proposed rule would not have required, as does the final rule, filter maintenance when the manufacturer's maximum allowable air pressure drop level is exceeded.

Commenters generally supported the requirements of this paragraph, and several stated that dirty air filters were frequently to blame when engines began to produce increased levels of carbon monoxide. However, several commenters objected to mandatory filter replacement and servicing when the filter was ''dirty'', pointing out that the term ''when dirty'' was ambiguous. Commenters stated that air filters catch dirt continually, and are therefore ''dirty'' to some degree at all times. MSHA agrees with commenters on this issue, and has concluded that the use of the term ''when dirty'' could create uncertainty for mine operators in complying with the provision. The requirement that filters be replaced or serviced ''when dirty'' has therefore not been adopted in the final rule.

The final rule does adopt the requirement of the proposed rule that air filters be replaced or serviced when the intake air pressure device indicates that it is necessary. Intake air pressure devices monitor the air pressure across the filter. As the air filter loads up with dust and dirt the pressure drop across the filter will increase, and at a certain point the intake air pressure device will signal that the filter is sufficiently blocked by dirt to require servicing or replacement.

Not all types of diesel-powered equipment are presently equipped with intake air pressure devices. Under the proposed rule, air filters without air pressure devices would have been required to be changed or serviced ''when dirty''. However, as discussed above, that provision has not been included in the final rule. One commenter to the proposed rule stated that service indicators specified by the manufacturer are sufficient for determining when an air filter should be changed. A service indicator is simply the manufacturer's specification of the drop in pressure across the air filter, reflected by the air pressure gauge on the machine, indicating that the air filter must be serviced or replaced. MSHA agrees that service indicators provide an objective and measurable method of determining the need for air filter servicing for machines without intake air pressure devices. The final rule has therefore been modified to provide that air filters must be replaced or serviced when the engine manufacturer's maximum allowable air pressure drop level is exceeded.

The proposal did not specify the level of training or qualification required for the person performing air filter maintenance under this paragraph, and commenters questioned whether MSHA intended that this task be performed by a person qualified under § 75.1915. Commenters generally stated that air filter maintenance did not need to be conducted by a qualified person, only by someone who has been trained to perform the task. This view is consistent with the consensus of the Advisory Committee that simple maintenance activities, such as changing air filters, could be performed by miners who are not qualified or certified. Accordingly, the final rule specifies that air filter maintenance must be performed by a person who has received training in the task.

Paragraph (e) requires that mobile diesel-powered equipment that is to be used during a shift be visually examined by the equipment operator before being placed in operation, and that equipment defects that affect safety be reported to the mine operator. This requirement is identical to that of the proposed rule, and was supported by commenters.

MSHA intends that the examinations required under this paragraph consist of the equipment operator conducting a check of the equipment before operating it to verify that the machine has no obvious safety defects, such as fuel leaks, loose batteries, or accumulations of combustible materials on the

machine. The language of the final rule has been changed slightly to require that the equipment be ''visually examined'' rather than ''inspected'', to better convey the nature of the examination. Such an examination will provide a regular check on some of the more conspicuous equipment problems. This paragraph also requires that observed defects be reported promptly to the mine operator, which could be a responsible management official, such as a superintendent or foreman. The word ''promptly'' has been included in the final rule to clarify that safety defects observed during this check should be directed to a responsible management official in a timely manner.

Paragraph (f) provides that all diesel-powered equipment must be examined and tested weekly by a person qualified under § 75.1915. Commenters generally agreed with the concept of mandatory equipment examination at regular intervals, although several commenters stated that only diesel equipment that was in use should be subject to required examinations, advocating revision of the rule to reflect that only equipment ''in service'' is subject to weekly examination.

Although MSHA understands the basis for these commenters' concerns, MSHA has concluded that inserting the term ''in service'' in the final rule could be misinterpreted by some mine operators to exclude equipment from the weekly examination requirement that the Agency does not intend to exclude. For example, some operators may consider equipment to be out of service if it has not been operated for an extended period, even though the equipment remains in the mine and could be operated at any time. MSHA takes a very broad view of what equipment is ''in service,'' regarding all equipment not located in maintenance shops or surface storage areas as being ''in service'' and subject to weekly examination and testing. MSHA has therefore not adopted the change advocated by commenters.

Although commenters supported the concept of regular examination and testing of diesel-powered equipment, there was no clear consensus on how regularly equipment must be examined. A few commenters who raised the issue of the frequency of required equipment examinations referred to maintenance schedules for diesel-powered equipment in place at their mines, with examination intervals of one week, two weeks, or every 150 hours of equipment operation. Other commenters stated that examination requirements for diesel-powered equipment should be similar to those for electrical equipment. The latter comment is consistent with the unanimous recommendation of the Advisory Committee that diesel-powered equipment be maintained on the same basis as electrical equipment.

MSHA has concluded that testing and examination of diesel-powered equipment on a weekly basis will ensure that equipment is being maintained in safe and healthful condition. Weekly examination of electrical equipment in underground coal mines has been required and has served as an effective check for adequate equipment maintenance for more than 20 years. Weekly examinations have consequently become an accepted element of routine equipment maintenance in the coal mining industry. Diesel equipment and electrical equipment in the underground coal mine environment present many of the same hazards. Paragraph (f) therefore provides for weekly testing and examination of diesel-powered equipment by a person qualified under § 75.1915.

Several commenters stated that the weekly examinations under paragraph (f) should be required only for approved components. Neither the proposed rule nor the final rule contains this limitation. The proposal would have specified that the weekly examinations be conducted in accordance with approved checklists, which are lists developed, with the assistance of MSHA, by an equipment manufacturer who is seeking MSHA approval. The proposal would have required fully assembled machine MSHA approval of all diesel-powered equipment, except for a ''limited class'' of light-duty nonpermissible equipment and stationary unattended equipment. The final rule requires full machine approval only for permissible equipment; nonpermissible equipment must only be provided with an approved engine. MSHA nonetheless believes that certain machine features, although not subject to MSHA approval, should be inspected as part of the regular examination.

Paragraph (f)(1) requires that examinations and tests be conducted in accordance with approved checklists and manufacturers' maintenance manuals. These checklists are to be used in conjunction with checklists and instructions included in manufacturers' maintenance manuals.

Commenters supported the use of checklists for examinations and tests of diesel-powered equipment. One commenter advocated that maintenance requirements be stated in general terms to accommodate new equipment design and improved technology in the future. MSHA agrees with this comment, and the use of equipment-specific permissibility/approval checklists and equipment manufacturers' maintenance manuals should achieve this result. MSHA would also consider a mine operator to be in compliance with this provision if the operator developed its own checklist format based on and consistent with the manufacturers' maintenance manuals.

Equipment manufacturers, with the assistance of MSHA, currently develop such checklists as part of the MSHA approval process. These checklists are designed to provide specific guidance to mine operators in verifying that approved equipment is in approved condition. Permissibility checklists are used to determine whether maintenance or repair is needed to bring the equipment back into approved condition; manufacturers' maintenance manuals complement these checklists by providing mine operators with specific instructions on how to conduct the necessary maintenance or repair. MSHA intends that the approved checklists referred to in this paragraph for diesel-powered equipment under part 7 will be similar to the permissibility checklists used for part 36-approved machines.

Commenters supported the use of checklists for examinations and tests of diesel-powered equipment. One commenter advocated that equipment maintenance requirements be stated in general terms to accommodate new equipment design and future technological improvements. MSHA believes that the use of equipment-specific permissibility/approval checklists should achieve this result, and has included language in the final rule that provides for the use of equipment-specific manufacturers' maintenance manuals in conjunction with the approved checklists in conducting necessary maintenance. MSHA would also consider a mine operator to be in compliance with this provision if operators developed their own checklist formats based on and consistent with the manufacturer's maintenance manuals.

Paragraph (f)(2) requires that persons performing weekly examinations and tests of diesel-powered equipment under this paragraph shall make a record when the equipment is not in approved or safe condition. The record must include the equipment that is not in approved or safe condition, the defect found, and the corrective action taken. This requirement has been adopted with modification from the proposed rule. Under the proposed rule, a record of all weekly equipment examinations would have been required, and recordkeeping

would not have been limited to those examinations that disclosed a defect. Under the final rule the recordkeeping burden has been reduced, consistent with efforts to reduce the paperwork burdens placed on the regulated public.

Commenters generally supported the concept of recording of examinations, and a number of commenters provided information on the type of records of equipment examination that were maintained at their mines. The record required by this paragraph may be entered or recorded by the qualified person who performed the examination, or by a responsible mine official, such as a foreman or superintendent.

Paragraph (g) requires the mine operator to develop and implement written standard operating procedures for weekly testing and evaluation of undiluted exhaust emissions from diesel-powered equipment used where permissible electrical equipment is required, and from heavy-duty diesel-powered equipment as defined in § 75.1908(a), in use underground. The paragraph also requires that specific aspects of the testing and evaluation process be addressed in the procedures. The final rule differs from the proposal in that the proposal would have required emission testing of all diesel-powered equipment underground, while the final rule narrows the requirement for such testing to permissible and heavy-duty nonpermissible equipment. The final rule also differs slightly from the proposal in the type of training required for the person who tests and evaluates the exhaust emissions.

The proposed emission testing requirements elicited the most controversy among commenters of all of the requirements in this section. Some commenters acknowledged that emission testing could be useful in monitoring the general operating condition of a diesel engine in identifying diesel equipment that needs maintenance. These commenters nonetheless expressed serious concern that a standardized in-mine test for undiluted exhaust emissions had not yet been devised, and until such a test was developed there would be no consistency in test results. These commenters recommended that emission test requirements not be included in the final rule. In response to these comments, the final rule limits required undiluted exhaust emission testing to permissible equipment and to heavy-duty nonpermissible equipment, as defined under § 75.1908(a). In-mine tests for diesel exhaust emissions have in fact been developed for these types of equipment. Permissible equipment and heavy-duty nonpermissible equipment are also typically the types of equipment that operate under load for extended periods of time, and consequently generate high levels of emissions relative to other types of equipment. Regular testing of the exhaust emissions of this equipment will help to ensure that this equipment is properly maintained.

A number of commenters supplied extensive information on emissions tests that had been developed and were being conducted at their mine, stating that such tests provided a valuable indication of engines that were in need of maintenance. Some commenters who supported the requirement for emissions testing in the proposed rule nonetheless recommended different testing intervals, ranging from two times per shift to once a month. One commenter stated that an emissions test frequency of one time per month was appropriate for light-duty equipment, while another commenter recommended that emissions be tested each week by a person qualified under § 75.1915, and during each shift by the equipment operator. The final rule adopts the proposed requirement for weekly exhaust emissions testing, consistent with the weekly examinations and testing requirement of paragraph (f). A weekly testing interval is of sufficient frequency to ensure that deteriorating engines are identified and serviced before they create a potential health hazard for miners in the area.

A number of commenters questioned where the exhaust gas should be sampled, some stating that they sampled diluted exhaust gas either in the equipment operator's compartment or at a significant distance from the tailpipe, such as 2 or 3 feet, and in one case 10 feet away. Several commenters stated that emissions test should be taken no more than 3 inches from the exhaust pipe if a particulate probe is not provided, because greater distances will not provide meaningful results. One commenter found that testing 2 feet away from the exhaust was very unreliable, and that the test results would depend on which way the machine was facing. Another commenter believed that test procedures used by some mine operators were intended to circumvent the goal of testing, which is to gauge engine performance and identify equipment that needs maintenance. Other commenters stated that while samples taken in the operator's compartment or away from the tailpipe can provide valuable information, inconsistent dilution prevents such samples from giving the most accurate indication of engine condition. One commenter's experience has shown that samples taken directly from the exhaust tailpipe provide a more accurate analysis of engine performance, and that samples drawn further away are influenced too much by the variables of mine ventilation. MSHA agrees with the commenters who are concerned about these variables, not least among them mine ventilation, that can dilute and distort emission samples that are taken any distance away from the machine tailpipe. A significantly diluted sample may fail to indicate declining engine performance and may not trigger the necessary corrective maintenance, thereby exposing miners to unhealthy levels of gaseous emissions. In response to these concerns, MSHA has concluded that adopting the requirement in the proposal for sampling of the undiluted exhaust emissions is the best way to ensure that the measurements will provide an accurate indication of deteriorating engine performance. The final rule specifically requires the testing of undiluted exhaust emissions, which means that emission samples required must be taken directly from the tailpipe, not at any distance away.

Paragraph (g) specifies that the person performing the weekly testing and evaluation of exhaust emissions be trained to perform the task. The person is not required to be qualified under § 75.1915, but does have to be adequately trained. This is a slight modification from the proposed rule, which would have required the person conducting emissions tests to demonstrate to a person qualified under § 75.1915 the capability to perform the tests. MSHA has concluded that the requirement in the proposed rule that the training be conducted by a qualified person is an unnecessary limitation. Mine operators have the responsibility of ensuring that persons who perform such tasks are adequately instructed in the activity. An important part of carrying out that responsibility is making sure that the persons conducting task training have the requisite knowledge and experience. Accordingly, the final rule simply requires that persons who test and evaluate emissions receive the necessary task training.

Paragraph (g)(1) requires that the emissions testing procedures developed by the mine operator include a method for achieving a repeatable loaded engine operating condition for each type of equipment, and is identical to what was proposed. Most commenters stated that a loaded engine test was not feasible for all types of equipment, specifically diesel machines equipped with clutches. Several commenters emphasized the difficulty of analyzing

the exhaust emissions of a loaded engine without exposing miners to the danger of sudden equipment movement. Other commenters stated that valid samples could not be obtained if the engine were not under load. In response to these commenters, and as discussed above, the final rule limits the requirement for exhaust testing to permissible equipment and heavy-duty nonpermissible equipment. These types of equipment are generally not equipped with clutched transmissions, and therefore do not present the problems identified by commenters that would exist with loaded engine tests for diesel equipment with clutches. As mentioned earlier, MSHA has developed loaded engine test procedures for the equipment subject to testing under the final rule.

Paragraph (g)(2) requires that the procedures for weekly testing and evaluation of the undiluted exhaust emissions of diesel engines specify sampling and analytical methods that include calibration of instrumentation capable of accurately detecting carbon monoxide in the expected concentrations. Commenters indicated that instruments are available and currently being used for accurate emissions testing. Several commenters stated that testing should not be limited to carbon monoxide, stating that they were currently testing for other gases, such as sulfur dioxide and the oxides of nitrogen. Other commenters were of the opinion that carbon monoxide concentrations were the best indicator of engine performance.

After consideration of all comments, MSHA has concluded that sampling for carbon monoxide alone is sufficient for determining a change in engine performance that may reflect a need for maintenance. Data indicates that carbon monoxide increases the most among the exhaust gases when an engine is poorly maintained, and is the best indicator that an engine needs attention. See, Report of the Bureau of Mines, U.S. Department of the Interior, ''Relationship of Underground Diesel Engine Maintenance to Emissions'' (December 1983). Sampling for nitrogen dioxide is required by § 70.1900 of the final rule. This will ensure that miners are not exposed to contaminants at levels above the applicable limits.

Paragraph (g)(3) requires that the procedures for emissions testing and evaluation include evaluation and interpretation of the emission test results. Commenters generally supported this requirement, and several commenters provided information on their evaluation and interpretation of results. This provision has been adopted unchanged from the proposed rule.

Paragraph (g)(4), like the proposal, requires that the testing procedures developed by the operator specify the concentration or changes in concentration of carbon monoxide that will indicate a change in engine performance. The paragraph also provides that concentrations of carbon monoxide shall not exceed 2500 parts per million, which is the limit for carbon monoxide established in the test procedures for Category B engines in subpart E of part 7 of the final rule. This aspect of the proposal received little comment, and has been adopted without change in the final rule.

Paragraph (g)(5) requires that the testing and evaluation procedures address the maintenance of records that are necessary to track engine performance. Commenters supported this requirement and indicated that some mines are already maintaining emissions records. The proposed rule would have required that the procedures address ''maintenance and retention of necessary records''. MSHA has added language to this paragraph to eliminate any ambiguity that might have been created by the term ''necessary records'', by specifying the purpose of the records required under this paragraph. MSHA has also eliminated the reference in the proposed rule to the ''retention'' of records, and has chosen instead to address retention of records in a new paragraph (h) in this section, discussed below.

Paragraphs (h)(1) and (h)(2) provide that records required by paragraphs (f)(2) and (g)(5) of this section must be recorded in a secure book that is not susceptible to alteration, or recorded electronically in a computer system that is secure and not susceptible to alteration. The records must be retained at a surface location for at least 1 year and made available for inspection by an authorized representative of the Secretary and by miners' representatives.

The proposed rule did not address the availability of or access to records under this section. One commenter recommended that records of weekly examination be accessible to miners' representatives. MSHA agrees with this comment, and has revised the paragraph to provide miners' representatives with access to records. The final rule also requires such access for authorized representatives of the Secretary, to allow MSHA inspectors to review records to verify that examinations and tests required under this section have been conducted.

The final rule does not specify a particular way of making records, only that they are to be recorded in a manner that is not susceptible to alteration. A detailed discussion on the issue of recordkeeping and electronic records can be found under ''Recordkeeping Requirements'' in the General Discussion section of this preamble.

The proposed rule would have required that the emission testing procedures under paragraph (g) include the designation of training of the individual who performs the tests. This requirement has not been adopted in the final rule. Instead, as discussed earlier, the rule imposes a performance-based requirement that emissions testing and evaluation under this paragraph be conducted by a person who has been trained to perform the task. Mine operators are consequently responsible for ensuring that individuals who test and evaluate emissions receive the training necessary to ensure their competence. The ability of these persons to discharge their responsibilities is of much greater concern to MSHA than the training they receive to achieve it, and the final rule reflects this emphasis.

Finally, several commenters recommended that this section include a requirement for regular examination of fire suppression systems. Examination of fire suppression systems is not addressed here, but instead is dealt with in § 75.1911 of the final rule, which provides that equipment fire suppression systems be visually inspected at least once each week, and be tested and maintained in accordance with the manufacturer's recommended inspection and maintenance program.

Paragraph (i) provides that diesel-powered equipment must be maintained in accordance with this part beginning 12 months after the date of publication of the final rule. This time is allowed for the development of a training and qualification program under § 75.1915 and for the training of individuals who perform work on diesel-powered equipment. MSHA recognizes that the resources available for training in particular geographical areas may be limited in some cases, and that competent trainers may be in significant demand as mine operators prepare to comply with the requirements of the final rule. A one-year delayed effective date for the requirements of this section should afford the mining community sufficient time to prepare for compliance.

Section 75.1915 Training And Qualification Of Persons Working On Diesel-Powered Equipment

This section of the final rule requires a training and qualification program for persons who perform maintenance, repairs, examinations and tests on diesel-powered equipment, as required by § 75.1914. These critical tasks must be performed correctly for diesel equipment to be maintained in safe condition with acceptable levels of emissions. The final rule sets minimum, performance-based requirements for training and qualification programs, and requires successful completion of such a program for a person to be qualified to perform diesel maintenance, repairs, examinations, and tests.

The final rule differs from the proposed rule in several respects: it does not require the training and qualification programs to be approved by MSHA; it does not specify an interval for retraining; it clarifies that the rule does not require MSHA approval of instructors who provide training; and it eliminates the use of the term ''diesel mechanic''.

Paragraph (a) of this section of the final rule provides that in order to be qualified to perform maintenance, repairs, examinations, and tests on diesel-powered equipment, as required by § 75.1914, a person must complete a training and qualification program which meets the requirements of the section. A qualified person is required to be retrained when necessary to maintain the ability to perform all assigned maintenance, repairs, examinations, and tests. The final rule does not require, as would have the proposed rule, that MSHA approve training and qualification programs developed under this section.

Although there was virtually universal agreement among commenters that some form of training was essential for persons working on diesel equipment, commenters disagreed about the need for a formal training and qualification program and the necessity of MSHA review and approval of such programs. Some commenters were of the opinion that persons working on diesel equipment should be formally qualified, and that diesel training programs for qualification should meet strict minimum standards and be subject to approval by MSHA. One commenter stated that if strict training requirements were not included in the standard, the necessary training would not be provided.

Other commenters opposed requiring a formal program with specific requirements, advocating as an alternative performance-oriented standards that could be adapted to a mine's specific needs. One commenter stated that a formal qualification scheme was unnecessary, and that diesel maintenance training should be provided on an as-needed basis in the same manner as task training under part 48. Another commenter maintained that the benefits realized from a formal qualification program would not justify the additional administrative burdens of such a program. The Office of Management and Budget guidance comments directed MSHA to reexamine whether all of the information proposed to be submitted to MSHA for approval of training and qualification programs had practical utility and imposed the least burden on mine operators.

Numerous other commenters, while supporting the establishment of procedures to qualify persons to perform work on diesel equipment, were opposed to the proposed requirement that MSHA approve training and qualification programs. Many commenters indicated that very good diesel equipment maintenance training is already being provided by mine operators as well as equipment manufacturers, without MSHA review or approval. In contrast, other commenters maintained that training programs should meet the approval of all interested parties, including MSHA and the representative of miners, to ensure that the training is adequate. The Diesel Advisory Committee had unanimously recommended that MSHA require persons performing work on approved diesel equipment features be trained and tested for competency, and that the training and testing be approved by MSHA.

After careful consideration of all of these views and comments, MSHA has concluded that a basic structure for training and qualification programs for persons performing certain work on diesel equipment is necessary. Properly trained persons are fundamental to adequate maintenance of diesel-powered equipment. To meet this objective, MSHA believes minimum criteria for the training and qualification of these persons are essential. Paragraph (a) therefore provides that to be qualified to perform diesel equipment maintenance, repairs, examinations, and tests, as required by § 75.1914, a person must successfully complete a training and qualification program meeting the requirements of the section.

The proposal that MSHA review and approve training and qualification programs is not adopted in the final rule. MSHA's paper review of training and qualification programs, as proposed, could provide an initial check of the quality of the program. Such a review would not, however, ensure that the program is successful in its implementation. Rather than expending Agency resources on the review and approval of diesel training programs, MSHA will direct those resources toward verification of the effectiveness of training and qualification programs in their execution. Similarly, mine operators and training providers can focus on the development and administration of their training and qualification programs rather than on procedures to gain MSHA approval. The rulemaking record contains a number of well-designed diesel training plans already in effect, demonstrating that the mining community has the expertise needed to develop and implement effective training programs. MSHA will closely monitor the effectiveness of the training programs implemented under this section.

Paragraph (a) also requires retraining when needed. The proposed rule would have required qualified persons to undergo retraining every 12 months. Some commenters to the proposed rule opposed the establishment of a specific requirement for annual retraining, stating that the mining industry needed performance-oriented standards that could be adapted to mine-specific needs for maintenance and training. Other commenters stated that an annual retraining requirement was necessary to ensure that persons working on diesel-powered equipment maintained the necessary knowledge and expertise over time.

MSHA considers retraining to be an important part of any training program. The final rule, however, does not mandate retraining at specified intervals. MSHA has concluded that mine operators should tailor the frequency of retraining to the conditions and practices at each mine, to ensure that all persons who work on diesel-powered equipment maintain the requisite level of expertise. Factors that could affect the timing of retraining include the frequency with which the qualified person works on specific pieces of diesel equipment; newly developed techniques for performing the required inspections and tests; and any modifications that may have been made to the equipment since the last training. Frequent retraining may be necessary at some mines to ensure that qualified persons retain sufficient skill and knowledge to perform their jobs effectively. At other mines where conditions are less changeable, retraining at greater intervals may be appropriate.

Paragraph (a) of the final rule also eliminates the term ''diesel mechanic'', was used in the proposal to identify those persons qualified to perform maintenance and repairs of approved features of diesel equipment. Many commenters to the proposed rule objected to the use of the term, stating that it would result in the creation of a new job title or classification. MSHA did not intend to establish a new job classification through the use of the term ''diesel mechanic'', and concludes from the comments that its use would result in confusion. The term ''diesel mechanic'' has therefore not been adopted in the final rule.

Finally, the phrase ''examinations and tests'' has been included in paragraph (a) of the final rule, reflecting that a person qualified under this section would be authorized to conduct weekly examinations and tests of diesel-powered equipment under § 75.1914(f), in addition to maintenance and repairs of such equipment under § 75.1914(b).

Paragraph (b) provides a basic structure for training and qualification programs, but is intended at the same time to provide mine operators with sufficient latitude in developing their programs. MSHA believes that training and qualification programs will be most effective if they are tailored to specific mining conditions and equipment in use at the mine, as well as to the skill levels and experience of the persons being trained.

A number of commenters reported that they already have training and qualification programs in place at their mines, and provided descriptions and documentation of these programs. Many of these programs utilize training at off-site facilities, such as community colleges and technical and trade schools. Commenters also indicated that mining equipment manufacturers are typically called upon to provide training. These programs generally include classroom training modules as well as hands-on in-mine training on specific pieces of equipment. Commenters stated that the duration of training programs could be from three days to eight weeks. The length of the program was generally dependent upon how much diesel-powered equipment was used at the mine, as well as on the previous experience and skill level of the persons being trained.

MSHA anticipates that local community colleges and technical schools will assist mine operators in developing the training and qualification programs required under this section. Commenters indicated that this type of assistance is already being provided to mine operators in a number of areas of the country.

Paragraph (b)(1) requires that training courses be presented by a competent instructor, in contrast to the proposed rule, which would have required that courses for training and retraining be conducted by either a qualified diesel mechanic or ''other instructor determined by MSHA to be qualified.'' Several commenters objected to this aspect of the proposal, based on their belief that the proposal required some type of formal approval by MSHA before anyone other than a qualified person could conduct diesel training under this section. A number of other commenters believed that such approval would only add an unnecessary procedural hurdle to providing training. Contrary to the understanding of such commenters, MSHA did not intend by the proposal to approve training instructors. The language of the final rule has been clarified to provide that courses may be presented by a competent instructor. A competent instructor under paragraph (b)(1) could be a person qualified under § 75.1915, an instructor from a trade school or college, or a person experienced in diesel maintenance, such as a representative of an equipment or engine manufacturer, or even the chief of maintenance at the mine, provided that the instructor has the necessary technical expertise.

Paragraph (b)(2) of the final rule provides that the training and qualification program must be sufficient to prepare or update a person's ability to perform all assigned tasks with respect to diesel-powered equipment maintenance, repairs, examinations, and tests. This paragraph incorporates the requirements of proposed paragraphs (e)(2) and (e)(3), except that it substitutes the term ''person'' for the term ''diesel mechanic,'' for the reasons stated in the discussion of paragraph (a) of this section. Several commenters were opposed to the requirement in proposed paragraph (e)(3) that courses in the training program address each piece of diesel-powered equipment in use at the mine, stating that this could be an unnecessary burden at mines that operate a variety of types of diesel-powered equipment. These commenters stated that if an individual never worked on certain pieces of equipment, requiring that individual to receive training on all equipment in use at the mine would be unnecessary.

MSHA did not intend proposed paragraph (e)(3) to require that each qualified person be trained on all types of diesel-powered equipment in use in the mine, only those pieces of diesel-powered equipment the qualified person actually works on. However, the language of proposed paragraph (e)(3) could be interpreted to require that the courses in the training program cover all pieces of diesel equipment in use at the mine.

MSHA agrees with the commenters that training should be tailored to the duties and responsibilities of the individual qualified person. The language in the final rule has therefore been clarified to reflect this concept. A qualified person is not required to be trained on a particular type of equipment, unless he or she performs work on it. However, a person who is untrained on a particular type of equipment is not a qualified person with respect to that equipment, and may not perform maintenance, repairs, and tests required to be conducted by a qualified person. Finally, MSHA anticipates that training will address equipment by model and not by individual machine, unless machines at the mine with the same model number differ because of field changes or other special features. In such cases training would need to take into account any significant differences among machines.

While MSHA's intent is to promote flexibility in the implementation of training and qualification programs, the final rule does specify minimum topics of instruction for these programs. Paragraphs (b)(3)(i) through (b)(3)(vii) of the final rule set forth the specific areas of instruction that must be covered by a training and qualification program. Commenters were generally in agreement with the areas of instruction required under the proposed rule, and the language of the final rule is virtually the same as what was proposed''.

Paragraph (b)(3)(i) requires that training programs address the ''requirements of subpart T of this part''. Several commenters recommended that the phrase ''as applicable'' be added to this requirement, to eliminate the need for training to address requirements that may not be directly applicable at the specific mine. This recommendation is not adopted in the final rule. MSHA believes that a person qualified under this section should have, at a minimum, basic familiarity with the scope of subpart T and the diesel-powered equipment safety standards. However, MSHA does not intend that this aspect of the final rule require exhaustive coverage of requirements that have no application to the mine in question. The well-designed, mine-specific training program contemplated by this section will focus on the requirements that are the most relevant. For example, if a mine does not store diesel fuel underground, qualified persons working

at that mine would not be expected to have extensive knowledge of the requirements of the standards governing fuel storage. Qualified persons should nonetheless be aware that subpart T contains provisions that address underground fuel storage.

Paragraph (b)(3)(ii) is virtually identical to proposed paragraph (e)(4)(ii), and requires that the training program address the use of power package or machine checklists to conduct tests to ensure that diesel equipment is in approved and safe condition, with acceptable emission levels. Some commenters reported that maintenance of the permissibility features of approved equipment was often neglected, and emphasized the importance of using only trained personnel to evaluate these features. This requirement is intended to ensure that training addresses the evaluation of the equipment's permissibility features. Several commenters also questioned the meaning of the term ''safe operating condition''. The term has been changed to ''safe condition'' to conform to the terminology in § 75.1914. MSHA intends that ''safe condition'' used in this paragraph means that the equipment has been maintained in compliance with subpart T of this part and does not present a hazard to miners. Finally, the language of this paragraph has been slightly revised to delete the term ''appropriate'' from the phrase ''to conduct appropriate tests'', because it is unnecessary and redundant.

Paragraph (b)(3)(iii) of this section is identical to proposed paragraph (e)(4)(iii), and requires that the training program cover the proper maintenance of approved features and the correct use of appropriate maintenance manuals, including machine adjustments, service, and assembly. Paragraph (b)(3)(iii) is different from paragraph (b)(3)(ii) in that it addresses proper maintenance of equipment, while paragraph (b)(3)(ii) addresses tests to ensure permissibility.

Paragraph (b)(3)(iv) of the final rule requires that training under this section address tests and maintenance of fire suppression system on diesel-powered equipment. The final rule uses the phrase ''fire suppression system'' rather than ''fire protection system,'' which was used in the proposed rule, to conform the language of the final rule to terminology that is more commonly in use. The purpose of this requirement is to ensure that a qualified person has sufficient familiarity with the elements of fire suppression systems used on diesel equipment.

Paragraph (b)(3)(v) of this section requires that fire and ignition sources and their control and elimination, including cleaning the equipment, be addressed by the training program. The phrase ''including cleaning of the equipment'' has been added in response to comments emphasizing the importance of frequent cleaning of equipment to prevent the accumulation of combustible materials such as oil, grease and float coal dust and thereby reduce the risk of fire. This requirement is consistent with and is intended to reinforce compliance with § 75.400, which has been revised in this final rule to specifically prohibit accumulations of combustible material on diesel-powered equipment.

Paragraph (b)(3)(vi) of this section requires that the training program address safe fueling procedures and maintenance of the equipment's fuel system. The importance of proper refueling procedures is illustrated by the analysis of the Canadian fire accident data in the discussion of § 75.1908. These data show that the failure to follow proper refueling procedures resulted in several fires.

Paragraph (b)(3)(vii), like the proposal, requires that the training program address maintenance and testing of the engine's intake air system. A number of commenters reported that failure to replace dirty intake air filters was the most frequent cause of excessive levels of smoke and carbon monoxide from otherwise properly adjusted engines.

Proposed paragraph (e)(4)(viii) would have required the training course to address tests and maintenance of the engine shutdown device. Because engine shutdown devices are in fact components of permissible equipment, training covering these devices will already be required by paragraphs (b)(3)(ii) and (iii) of this section, discussed above. The language of proposed paragraph (e)(4)(viii) has therefore not been included in the final rule.

Proposed paragraph (e)(4)(ix) would have given the district manager the authority to require the training program to cover additional subjects necessary to address specific health and safety needs. This provision has not been adopted in the final rule, which is designed to be more performance-oriented. As discussed above, the requirements of this section are intended to result in the development of training programs that are tailored to the specific needs of each mine, including the equipment being used and the skill levels of the persons receiving the training. Failure to address mine-specific health and safety needs in the training program may result in MSHA determining that a mine operator is not in compliance with § 75.1915. Additionally, the proposed rule would have required MSHA approval of training programs and would have provided a framework for the exercise of district manager authority under proposed paragraph (e)(4)(ix). As discussed above, the final rule does not require MSHA approval of training programs. For these reasons, this proposed provision has not been adopted in the final rule.

Paragraph (b)(4) requires the training and qualification program to include an examination that requires demonstration of the ability to perform all assigned tasks with respect to diesel equipment maintenance, repairs, examinations, and tests. There is no specific requirement that the examination be in writing, although an examination that effectively assesses competence will most likely include a written test as well as a practical portion that allows a hands-on evaluation of a person's abilities. Under the proposed rule, a minimum score of 80 percent would have been required on any written portion of a qualification examination. Although some commenters supported the concept, MSHA has concluded that mandating a minimum score is unnecessary when a written portion is not a required part of the examination. Further, such a specific requirement is at odds with the performance-oriented approach of this paragraph. The requirement for a minimum score has therefore been omitted from the final rule.

Paragraph (b)(5) requires that the training and qualification program be in writing, and contain a description of the course content, materials, and teaching methods to be used for initial training and retraining. The language of this paragraph is substantially the same as proposed paragraph (d)(1), except that the word ''approved'' has been omitted. As discussed above, the program will not be subject to MSHA approval under the final rule.

The requirements of proposed paragraphs (d)(2) and (d)(3) have not been adopted in the final rule. Specifically, proposed paragraph (d)(2) would have required that the training and qualification program include a copy of the examination, to allow MSHA to review the examination as part of the approval process. Because the final rule does not require MSHA approval, and also because a written examination is not required, a copy of the examination does not need to be included as part of the program.

Proposed paragraph (d)(3) would have required that the program include a description of the evaluation program to be used for retraining to assess the knowledge, skills, and ability of the

qualified person. This requirement has not been included in the final rule, consistent with MSHA's intention to measure the effectiveness of training and qualification programs by how well diesel-powered equipment is being maintained at the mine, rather than by the adequacy of a written program. Consequently, the final rule does not require a retraining evaluation program, but MSHA expects that mine operators will closely monitor the maintenance of diesel equipment at their mines, and will ensure that qualified persons receive the necessary retraining.

Paragraph (c) of this section requires the mine operator to maintain a copy of the training and qualification program required by this section and a record of the names of all persons qualified under the program. Paragraph (c)(1) requires that the record of the names of qualified persons be made in a manner that is not susceptible to alteration or recorded electronically in a computer system that is secure and not susceptible to alteration. Under paragraph (c)(2), the training and qualification program and the record of qualified persons must be kept at a surface location of the mine and made available for inspection by an authorized representative of the Secretary and by miners' representatives. Paragraph (c) incorporates, with certain revisions, the requirements originally proposed in §§ 75.1916 (i) and (j). Proposed §§ 75.1916 (i) and (j) would have required a list of current instructors also to be included in the training and qualification program and, in addition to the names of all qualified persons, the dates of qualification and the date of the last retraining. MSHA has removed these additional recordkeeping requirements from the final rule, consistent with the Agency's intention to gauge the adequacy of training and retraining by how effectively diesel-powered equipment at the mine is maintained. The final rule does not specify a particular method for maintaining the record of qualified persons, only that it is not susceptible to alteration. A detailed discussion of recordkeeping and electronic records can be found under the heading ''Recordkeeping Requirements'' in the General Discussion section of this preamble.

Finally, the proposed rule specified procedures in § 75.1916 for MSHA's administration of training and qualification programs. Among other things, the proposed rule set forth a process for MSHA review and approval of the training and qualification program required under § 75.1915, and established procedures for the revocation of individual qualifications. Because MSHA will not be formally reviewing and approving training and qualification programs, procedural requirements for review and approval are unnecessary. Consequently, the provisions proposed in § 75.1916 have not been retained in the final rule, with the exception of the requirements of proposed §§ 75.1916(i) and (j), as discussed above.

Section 75.1916 Operation Of Diesel-Powered Equipment

Section 75.1916 addresses speed limits and other traffic restriction on roadways in underground coal mines where diesel-powered equipment is operated. This section also prohibits unnecessary idling of diesel-powered equipment, as well as the operation of unattended diesel-powered equipment.

The Diesel Advisory Committee advocated MSHA regulation of operating conditions of diesel-powered equipment, recommending proposal of a rule that addressed speed limits, road conditions, and operator control of vehicles. This section is intended to ensure that diesel-powered equipment underground is operated in a safe manner, and requires that operating speeds of diesel-powered equipment be consistent with conditions in the mine, and that operators of diesel-powered equipment maintain full control of the equipment when it is in motion. Standardized traffic rules, including speed, signals, and warning signs, are required to be established at each mine and followed.

The final rule recognizes that the safe operating speed for a particular piece of diesel-powered equipment depends greatly on the specific mining conditions and the type of equipment being operated, and as a result the final rule does not establish a universal speed limit for diesel-powered equipment operated in underground coal mines. Finally, idling of mobile diesel-powered equipment is prohibited, except as required in normal mining operations. Operation of unattended diesel-powered equipment is also prohibited under this section.

Several commenters recommended elimination of the requirements of this section, stating that the proposed standards were too vague and could result in inconsistent enforcement. Some of these commenters suggested reducing the proposed requirements of this section to a single requirement that the mine operator establish traffic rules, appropriate for the specific mine conditions at each mine, that address speed and operator control of equipment. A number of commenters also pointed out that existing § 75.1403 gives MSHA the authority to regulate hazards arising from the transportation of men and materials at underground coal mines. These commenters believed that transportation hazards were already adequately covered under § 75.1403, and that additional regulation was therefore unnecessary.

The existing authority to issue safeguards under § 75.1403 does not make the requirements of this section unnecessary. Section 75.1403 authorizes an MSHA inspector to issue a ''safeguard notice'' when the inspector determines that a transportation hazard exists at a mine and the hazard is not already addressed by a mandatory standard. The ''safeguard notice'', issued by an MSHA inspector to the mine operator, identifies the nature of the hazard and establishes requirements based on the actual conditions or practices that constitute a transportation hazard at the particular mine. After the mine operator is given a reasonable time to come into compliance with the requirements set forth in the safeguard notice, the safeguard has the force and effect of a mandatory standard at the mine and can be enforced as such. Sections 75.1403–1 through 75.1403–11 contain criteria to guide inspectors in issuing safeguards, covering a wide range of potential transportation hazards, such as clearance distances on belt conveyors and track haulage roads, brakes on hoists and elevators, and safety gates for entrances to shafts and slopes.

Safeguards are not a substitute for the mandatory requirements in § 75.1916. Although some of the topics covered in this section, such as speed limits and roadway conditions, are included as safeguard criteria in §§ 75.1403–1 through 75.1403–11, the criteria are not enforceable unless and until they have been incorporated in a safeguard notice, after an MSHA inspector has determined that a hazard exists. In contrast, the requirements of this section of the final rule apply at all underground coal mines where diesel-powered equipment is used. In addition, safeguard criteria are intended to be tailored to the unique conditions and practices at an individual mine, while the requirements in this section are general in nature, although mine operators are given the flexibility to set traffic rules appropriate for the conditions at their mines. The final rule therefore does not reflect the opinion of some commenters that the requirements under this section are unnecessary.

The requirements of this section specifically govern the manner and conditions under which diesel-powered

equipment operates in underground coal mines, and recognize that diesel-powered equipment tends to be much larger and more powerful, and to have the ability to travel at much greater speeds than electric-powered equipment. Some types of diesel-powered equipment used in underground coal mines, such as pickup trucks, are designed for use on highways, and can travel at speeds in excess of 60 miles per hour (mph). In comparison, a typical piece of mobile rubber-tired battery-powered equipment will have a top speed of less than 10 mph. The potential traffic hazards are therefore significantly greater in the operation of diesel-powered equipment, and there is a resulting need for the minimum requirements set by the final rule at mines where diesel-powered equipment is operated.

Paragraph (a) of this section adopts the requirements of the proposal and provides that operating speeds of diesel-powered equipment must be consistent with the type of equipment being operated, the conditions of roadways, grades, clearances, visibility, and other traffic. Under this paragraph diesel-powered equipment must be operated at all times at safe speeds, which in many cases will be slower than the maximum speed limit set in the mine-wide traffic rules established under paragraph (c).

Some commenters recommended that the rule specify a maximum speed limit, such as 15 mph or 25 mph, that would apply at all underground coal mines. These commenters stated that a standardized speed limit would promote compliance because the rules would be the same at all mines everywhere. A few of these commenters recommended that equipment be fitted with gear reduction ratios that would make it mechanically impossible for equipment to be operated at speeds above the limit. Other commenters opposed the establishment of a universal speed limit for all mines, stating that safe speeds were highly dependent on variable mining conditions, and that a speed that is prudent under one set of circumstances could be quite unsafe, even reckless, under another.

The requirements of this paragraph recognize that certain mine conditions and equipment characteristics must be taken into account in determining the speed at which equipment can be safely operated. Mine conditions have been a contributing factor in many traffic accidents. Adverse conditions that can negatively impact equipment safety include steep grades and slippery mine surfaces, which decrease the effectiveness of equipment brakes. Particularly large diesel-powered machines, which can take up nearly an entire mine entry, can present significant limitations in visibility for the equipment operator, whose line of vision is below the machine frame. Consequently, the equipment operator has several large blind spots where other pieces of equipment and mine personnel cannot be seen. Large haulage units operating in the same area as small pieces of diesel-powered equipment can create particularly dangerous traffic patterns. The proposed rule would have required roadways to be kept as free as practicable from bottom irregularities or other conditions that could affect control of the equipment. A number of commenters recommended elimination of this paragraph, noting that the proposed rule would require standardized traffic rules and could be used to address concerns about roadway conditions. Other commenters supported this proposed requirement, citing the dangers that can result from poorly maintained roads.

Although MSHA agrees that keeping mine roads free from bottom irregularities, debris, and wet or muddy conditions is important to safe operation of diesel-powered equipment, the requirements of paragraphs (a), (b), and (c) of this section of the final rule are sufficient to address concerns about adverse road conditions. The requirements of proposed paragraph (a), which would have required roadway maintenance, have therefore not been adopted in the final rule.

Under the requirements of the final rule, vehicle speed must take into account roadway conditions and other factors that affect safe equipment operation. Equipment operators are required to maintain full control of their equipment, and traffic rules must be established and followed at each mine where diesel-powered equipment is operated.

Paragraph (b) also adopts the requirements of the proposal and provides that equipment operators must maintain control of mobile diesel-powered equipment while it is in motion. Commenters generally supported this requirement, which recognizes that there may be cases where the roadway conditions, posted operating speed, and traffic rules are adequate but other factors interfere with the equipment operator's ability to exercise full control over the equipment. For example, the rule would prohibit the operator from carrying tools or supplies in the operator's compartment that interfere with the operator's ability to control the equipment. Additionally, equipment controls must be free of any debris which could obstruct safe operation. Operator inattention could also constitute a violation of this requirement if the inattention causes unsafe operation of the equipment.

Paragraph (c) requires that standardized traffic rules, including speed limits, signals, and warning signs, be established and followed at each mine. Under this provision, the mine operator must develop mine-wide traffic rules to address hazards arising from the operation of diesel-powered equipment, and ensure that mine employees are aware of the rules and comply with them. This is consistent with the suggestions of several commenters, who supported simplifying the proposed rule requirements by a single provision that mine operators establish safe operating rules appropriate for mine conditions. The requirements in the final rule are similar to those of the proposal, except that the final rule provides that traffic rules must be ''followed'', and does not adopt the proposed requirement that the rules be ''posted.'' Mine operators have the responsibility to take whatever steps are necessary to ensure that their employees are familiar with the mine's traffic rules and follow them. Although posting of traffic rules can serve as a means for mine operators to facilitate compliance, it is not specifically required under the final rule.

Commenters who advocated a standardized maximum speed limit at all underground coal mines, in response to proposed paragraph (b), renewed this recommendation in their comments to this paragraph. For the reasons discussed above, the final rule does not impose a universal speed limit. Some commenters suggested that simply requiring the establishment of a mine-wide speed limit would eliminate the need for other traffic rules. MSHA disagrees that restrictions on speed alone will eliminate potential traffic hazards. The traffic rules required under this paragraph are intended to address other factors that affect safe operation of diesel-powered equipment, such as changes in mining conditions.

Some commenters recommended that MSHA provide criteria for mine operators to use in establishing mine traffic rules, and that operators develop traffic plans, consistent with these criteria, that are reviewed and approved by MSHA. The final rule does not adopt this recommendation. Although MSHA's review of a mine's traffic rules could provide a preliminary check on the adequacy of the rules, such a review will not ensure that they have been effectively implemented. The final rule reflects MSHA's conclusion that both mine operator and Agency resources are

better spent ensuring that traffic rules are being followed. However, if an MSHA inspector determines that an operator's traffic rules fail to adequately address the mine's traffic hazards, MSHA will require revision of the traffic rules.

This paragraph also requires that the traffic rules be followed. The language in the proposed rule did not specifically require that the rules be ''followed,'' although MSHA believes that most commenters understood that the rules must be obeyed. To eliminate any possible ambiguity or misunderstanding, the rule has been clarified to specifically require that the rules be complied with.

One commenter recommended that mine operators be required to investigate and file reports of mine traffic accidents in specific circumstances, such as where an injury occurs or where a certain amount of damage is sustained. MSHA regulations at part 50 already require mine operators to investigate and report certain accidents to MSHA, as well as to report to MSHA all occupational injuries and illnesses. MSHA has concluded that there is no compelling reason why traffic accidents and injuries should be treated differently from other types of mining accidents and injuries. The final rule therefore does not adopt this comment.

Paragraph (d) prohibits idling of mobile diesel-powered equipment, except as required in normal mining operations. This prohibition has been added to the final rule in response to the concerns of some commenters, who observed that engines are excessively idled most frequently in areas where it is impractical to increase air quantities. This results in high levels of exhaust contaminants in these areas of the mine, and increases the risks of miner overexposure. The final rule addresses this problem by prohibiting unnecessary engine idling. The intent of this provision is that equipment parked at any location, including the loading point, will be shut down if it is not being used to do work.

Paragraph (e) has been added to the final rule and prohibits the operation of unattended diesel-powered equipment. The proposal would have prohibited portable limited class equipment from being operated unattended. This prohibition is consistent with the decision not to adopt the proposed requirements for stationary unattended equipment into the final rule, and is explained in detail in the preamble discussion of stationary unattended equipment.

Amendment of Certain Part 75 Standards

MSHA's part 75 sets forth mandatory safety standards for each underground coal mine. The final rule amends existing §§ 75.342, 75.400, 75.1710 and 75.1710–1 to extend their application to diesel-powered equipment, requiring the installation of methane monitors on certain types of diesel-powered equipment, prohibiting accumulation of combustible materials on diesel-powered equipment in active workings of underground coal mines, and requiring diesel-powered face equipment and shuttle cars to be equipped with substantially constructed cabs or canopies. Although these existing standards specifically apply to electric equipment, the hazards that these standards are designed to address are independent of the power source of the equipment.

The requirements of these four mandatory safety standards have applied to electric-powered equipment for a number of years, and have been extremely effective in protecting miners from the hazards of fires, explosions, and roof falls. The Diesel Advisory Committee recommended that MSHA review its existing standards to determine whether any existing safety requirements should be made applicable to diesel-powered equipment.

In the preamble to the proposed rule, MSHA solicited comments on extending the applicability of certain listed standards to diesel-powered equipment. The standards listed in the proposal included § 75.313 (now § 75.342, methane monitors); § 75.400 (accumulation of combustible materials); § 75.400–2 (cleanup programs); §§ 75.523, 75.523–1, and 75.523–2 (emergency deenergization of self-propelled equipment); § 75.1107–1 (fire suppression devices); and §§ 75.1710 and 75.1710–1 (cabs and canopies on face equipment). MSHA also solicited comments on whether any other part 75 standards that were not listed should be made applicable to diesel-powered equipment.

Commenters expressed general support for extending requirements for methane monitors, brakes, and cabs and canopies to diesel-powered equipment. Some commenters expressed the view that all equipment safety features on diesel-powered equipment should be addressed under part 75. One commenter suggested that all requirements in part 75, particularly §§ 75.500 through 75.524 (applicable to battery- and electric-powered equipment), be applied to diesel-powered equipment. Other commenters stated that all necessary equipment safety features should be required as part of the equipment approval process, rather than as standards under part 75.

The final rule retains MSHA's longstanding approach of including in part 75 general equipment safety requirements such as methane monitors, prohibitions against accumulation of combustible materials, and cabs and canopies. The approach of requiring general safety features in part 75 has been effective in protecting miners in underground coal mines where electric-powered equipment is in use. As discussed below, the safety hazards addressed by the standards amended in the final rule are the same regardless of the equipment's power source.

By including these equipment safety requirements in part 75, mine operators will have the flexibility to improve safety by making machine modifications based on specific conditions at each mine. For example, the selection of an appropriate cab or canopy for a machine is dependent on mine height and entry width.

Section 75.342 Methane Monitors.

Methane monitors automatically shut down permissible electric mining equipment used to extract or load coal when methane concentrations around the equipment reach 2.0 percent. Permissible diesel equipment can create the same explosion hazard as permissible electric equipment if operated in the presence of high concentrations of methane. Also, under certain conditions, a diesel engine can ingest methane from the mine atmosphere, resulting in uncontrolled acceleration of the diesel engine during start up or operation, and produce an ignition of methane in the area.

Methane monitors are recognized as a critical link in the safety protections designed to prevent mine explosions. These monitors are normally mounted on equipment that operates in the face area, providing the first warning that methane gas is accumulating in potentially dangerous quantities.

The final rule requires methane monitors on all diesel-powered face cutting machines, continuous miners, longwall face equipment, loading machines, and other diesel-powered equipment used to extract or load coal in the working place. By applying the methane monitor requirements of existing § 75.342 to diesel-powered equipment, miners working around such equipment will be protected from fire and explosion hazards to the same degree as miners working in areas where similar electric-powered equipment is in use.

Section 75.400 Accumulation of Combustible Materials

The final rule requires that coal dust, loose coal, and other combustible materials be cleaned up and not permitted to accumulate in active workings or on electric equipment therein. The hazards of a mine fire or explosion in an underground coal mine are similar for diesel-powered and electric-powered equipment. Coal dust can produce a ready fuel source when combined with the lubricating and hydraulic oils used in diesel-powered equipment and can start a fire if it comes into contact with ignition sources on the equipment. As discussed elsewhere, diesel-powered equipment that is not equipped with surface temperature controls, such as outby equipment, may have engine and exhaust surfaces above the ignition temperature of coal dust. Accumulations of coal dust can also contribute to the propagation and severity of mine fires and explosions. Because diesel equipment uses large quantities of diesel fuel and hydraulic fluid, once a fire starts it can quickly spread due to the close availability of these fuel sources on a diesel machine. A large fire can then ensue and spread in the mine. By adding the term ''diesel-powered'' to § 75.400, MSHA intends that the longstanding prohibition against the accumulation of combustible materials will now be explicitly applied to diesel-powered equipment.

Sections 75.1710 and 75.1710–1—Cabs and Canopies.

The final rule amends § 75.1710 to require diesel-powered face equipment and shuttle cars to be equipped with substantially constructed cabs or canopies to protect miners operating such equipment from roof falls and rib and face rolls. The final rule also applies the installation requirements for cabs and canopies in § 75.1710–1 to diesel-powered equipment.

Cabs and canopies provide very effective protection to equipment operators from the hazards of roof and rib falls and in collisions with the mine roof and ribs. Since 1972, approximately 250 miner fatalities have been prevented by cabs and canopies installed on electric equipment. Some mine operators have recognized the clear safety benefits of cabs and canopies and have installed these devices on the diesel-powered self-propelled face equipment in their mines. By specifically extending the existing requirements in these sections to diesel-powered self-propelled face equipment, including shuttle cars, the operators of all such equipment will be afforded the same protection that is currently provided for operators of electric equipment.

Several standards identified in the proposal as possible subjects for revision have not been amended in this final rule. Section 75.400–2, which requires the establishment of a cleanup program for the removal of accumulations prohibited under § 75.400, has not been specifically amended to include the term ''diesel-powered equipment.'' Existing § 75.400–2 does not make reference to a particular type of equipment, either diesel- or electric-powered. The standard simply requires that a program be established for the cleanup and removal of combustible materials. Therefore, § 75.400–2 already applies to diesel-powered equipment and amending the standard is unnecessary.

MSHA also solicited comments in the proposed rule on whether the requirements of §§ 75.523, 75.523–1 and 75.523–2 should be applied to diesel-powered equipment. These standards protect equipment operators from pinning and crushing injuries by requiring self-propelled electric face equipment to be equipped with panic bars, which quickly deenergize the tramming motors in the event of an emergency. The existing standards do not require panic bars if the equipment is provided with a substantially constructed cab or canopy in accordance with § 75.1710–1, or if other devices approved by MSHA are installed to quickly deenergize the tramming motor in the event of an emergency.

Because §§ 75.523, 75.523–1, and 75.523–2 make specific reference to the interrelationship among electric motors, electrical control components, cabs, emergency parking brakes, and panic bars, these standards cannot be readily adapted to diesel-powered equipment. An MSHA study of diesel-powered face equipment accidents occurring from 1984 to 1995 found that this type of equipment is manufactured with a substantially constructed operator's compartment which provides the same protection as a cab. The study also found no pinning or crushing accidents of the type that would have been prevented by a panic bar on diesel equipment. Since this type of diesel equipment will be evaluated under part 36, the approval process can ensure that the protection features provided on diesel equipment will provide at least the same protection as that provided by a panic bar on electrical equipment. The final rule, therefore, does not amend § 75.523 to require panic bars or the equivalent on diesel-powered equipment.

The proposed rule also solicited comment on the applicability of existing § 75.1107–1, which requires fire suppression devices on certain attended and unattended underground electric equipment, to diesel-powered equipment. The fire hazards presented by diesel-powered equipment are different from those on electric-powered equipment, due to the close proximity of large quantities of hydraulic oils and fuels to the heated diesel engine exhaust. Because effective fire suppression systems are essential for the safe operation of diesel-powered equipment, specific requirements for fire suppression systems on diesel-powered equipment are addressed in the final rule at § 75.1911.

Derivation Table

The following table lists final standard section numbers and corresponding section numbers of existing standards from which they are derived.

New sections	Existing sections
Part 7—Subpart E	New, Parts 7, 32, 36
7.81	New
7.82	New, 36.2, 7.2
7.83	New, 36.6, 7.3
7.84	New, 32.4(f), 36.26(b), 36.44, 75.322
7.85 through 7.87	New
7.88	New, 75.322
7.89	New
7.90	New, 36.11
7.91 and 7.92	New
Part 7—Subpart F	New, Parts 7, 18, 36
7.95	New
7.96	New, 36.2, 7.2
7.97	New, 36.6, 7.3
7.98	New, Part 36—Subpart B
7.99	New
7.100 and 7.101	New, 36.46
7.102 and 7.103	New, 36.47
7.104	New, 36.46
7.105	New, 7.6, 36.11
7.106	New, 7.8(b)
7.107	New, 7.52
7.108 and 7.109	New
Part 36	Partly new, Part 31
36.1	Partly new
36.2(e)	Partly new
36.2(f)	Partly new, 36.2(h)
36.6 (b)(2) through (b)(4).	Partly new
36.9(a)	Partly new
36.20(b)	Partly new
36.20(c)	New
36.21	Partly new
36.43(a)	Partly new
36.48(b)	Partly new
70.1900(a)	New, 75.100, 75.362
70.1900 (a)(1) through (b)(3).	New
70.1900(c)	New, 75.322, 75.325(j)

New sections	Existing sections
70.1900(d)	New, 75.363
70.1900 (d)(1) through (e).	New
75.325 (f) through (h)	New, Part 32
75.325 (i) and (j)	New, Part 32, 75.322
75.325(k)	New, Part 32, 75.371
75.342 (b)(2) and (c)	Partly new
75.360(b)(7)	Partly new
75.371(r)	Partly new
75.371 (kk) through (oo).	New
75.371(pp)	New, 75.322
75.400	Partly new
75.1710 and 75.1710–1.	Partly new
Part 75—Subpart T	New, Part 32
75.1900	New, 75.301
75.1901(a)	New, 36.2(i)
75.1901(b)	New
75.1901(c)	New, 40 CFR 79
75.1902	New
75.1903(a)(1)	New, 75.301, 75.340
75.1903 (a)(2) and (a)(3).	New
75.1903(a)(4)	New, 75.333(e), 75.340
75.1903 (a)(5) through (a)(7).	New
75.1903(b)(1)	New, 75.1100–2(f)
75.1903 (b)(2) through (d)(6).	New
75.1904	New
75.1905	New
75.1906 (a) through (f).	New
75.1906(g)	New, 75.1107–3 through 75.1107–6, 75.1107–8 through 75.1107–16
75.1906 (h) and (i)	New
75.1906(j)	New, 75.1000–3
75.1906 (k) and (l)	New
75.1907	New
75.1908	New
75.1909 (a)(1) through (a)(3)(i).	New
75.1909 (a)(3)(ii)	New, 36.27(a)(1)
75.1909 (a)(3)(iii) through (a)(3)(ix).	New
75.1909 (a)(3)(x)	New, 36.27(c)
75.1909 (a)(3)(xi) through (b)(3).	New
75.1909(b)(4)	New, 36.28
75.1909(b)(5)	New, 36.33(b)
75.1909 (b)(6) through (b)(8).	New, 36.29
75.1909(c)	New, 75.523–3, 75.1404, 75.1404–1
75.1909(c)(1)	New, 75.523–3(b)(2)
75.1909(c)(2)	New, 75.523–3(b)(3)
75.1909(c)(3)	New, 75.523–3(b)(4)
75.1909(c)(4)	New, 75.523–3(b)(5)
75.1909(c)(5)	New, 75.523–3(c)
75.1909(c)(6)	New
75.1909(d)	New, 75.523–3(d)
75.1909(e)	New, 75.523–3(e)
75.1909(f)	New, 36.29
75.1909 (g) through (j).	New
75.1910(a)	New, 75.518, 75.518–1
75.1910 (b) through (e).	New
75.1910(f)	New, 75.513, 75.513–1
75.1910 (g) and (h)	New, 75.515
75.1910(i)	New, 75.514
75.1910(j)	New
75.1910(k)	New, 7.44(a)(1)
75.1910(l)	New, 7.44 (d), (e), and (m)
75.1910(m)	New, 7.44(f)
75.1910(n)	New, 7.44(h)
75.1910(o)	New, 7.44(g)
75.1911 (a) through (k).	New
75.1911(l)	New, 75.380(f), 75.1107–3 through 75.1107–16
75.1912(a)(1)	New, 75.1107–13
75.1912 (a)(2) through (b).	New
75.1912(c)	New, 75.1101–23
75.1912(d)	New, 75.1107–4
75.1912 (e) through (g).	New
75.1912(h)	New, 75.1107–16
75.1912(i)	New
75.1912(j)	New, 75.1101–23
75.1913	New
75.1914	New
75.1915	New
75.1916(a)	New, 75.380(d), 75.1403
75.1916 (b) through (e).	New

Distribution Table

The following table lists section numbers of existing standards which contain provisions that were used in the development of the listed final standards.

Existing sections	New sections
7.2	7.82, 7.96
7.3	7.83, 7.97
7.6	7.105
7.8(b)	7.106
7.44(a)(1)	75.1910(k)
7.44 (d) and (e)	75.1910(l)
7.44(f)	75.1910(m)
7.44(g)	75.1910(o)
7.44(h)	75.1910(n)
7.44(m)	75.1910(l)
7.44(a)(1)	75.1910(k)
7.52	7.107
Part 31	Part 36
Part 32	Part 7—Subpart E, 75.325 (f) through (k), and Part 75—Subpart T
32.4(f)	7.84
Part 36—Subpart B	7.98
36.2	7.82, 7.96
36.2(h)	36.2(f)
36.2(i)	75.1901(a)
36.6	7.83, 7.97
36.11	7.90, 7.105
36.26(b)	7.84
36.27(a)(1)	75.1909(a)(3)(ii)
36.27(c)	75.1909(a)(3)(x)
36.28	75.1909(b)(4)
36.29	75.1909 (b)(6) through (b)(8) and (f)
36.33(b)	75.1909(b)(5)
36.44	7.84
36.46	7.100, 7.101, 7.104
36.47	7.102, 7.103
75.100	70.1900(a)
75.301	75.1900, 75.1903(a)(1)
75.322	7.84, 7.88, 70.1900(c), 75.325 (i) and (j), 75.371(pp)
75.325 (g) and (i)	75.371(r)
75.325(j)	70.1900(c)
75.333(e)	75.1903(a)(4)
75.340	75.1903 (a)(1) and (a)(4)
75.362	70.1900(a)
75.363	70.1900(d)
75.371	75.325(k)
75.380(d)	75.1916(a)
75.380(f)	75.1911(l)
75.513 and 75.513–1	75.1910(f)
75.514	75.1910(i)
75.515	75.1910 (g) and (h)
75.518 and 75.518–1	75.1910(a)
75.523–3	75.1909(c)
75.523–3(b)(2)	75.1909(c)(1)
75.523–3(b)(3)	75.1909(c)(2)
75.523–3(b)(4)	75.1909(c)(3)
75.523–3(b)(5)	75.1909(c)(4)
75.523–3(c)	75.1909(c)(5)
75.523–3(d)	75.1909(d)
75.523–3(e)	75.1909(e)
75.1000–3	75.1906(j)
75.1100–2(f)	75.1903(b)(1)
75.1101–23	75.1912 (c) and (j)
75.1107–3 through 75.1107–16.	75.1911(l)
75.1107–3 through 75.1107–6 and 75.1107–8 through 75.1107–16.	75.1906(g)
75.1107–4	75.1912(d)
75.1107–13	75.1912(a)(1)
75.1107–16	75.1912(h)
75.1403	75.1916(a)
75.1404 and 75.1404–1.	75.1909(c)
40 CFR 79	75.1901(c)

III. Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), as implemented by OMB in regulations at 5 CFR 1320. No person may be required to respond to, or may be subjected to a penalty for failure to comply with, these information collection requirements until they have been approved by OMB and MSHA has displayed the assigned OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

The final rule addresses comments submitted to OMB and MSHA on the collection of information requirements in the proposed rule in the section-by-section discussions. In revising the requirements from those that appeared in the proposed rule, MSHA has evaluated the necessity and usefulness of the collection of information; reevaluated MSHA's estimate of the information collection burden, including the validity of the underlying methodology and assumptions; and minimized the information collection burden on respondents to the extent possible. This final rule also provides for the use of electronic storage and maintenance of records.

Tables 1 through 4 show the distribution of information collection burden hours imposed by the requirements of the final rule. Tables 1 and 2 pertain to manufacturers, Table 3 pertains to small mine operators, and Table 4 pertains to large mine operators.

TABLE 1.—ESTIMATED ANNUAL NEW BURDEN RELATED TO MANUFACTURERS

Detail	Number of respondents	Hours per response	Number of responses	Number of responses per respondent	Capital costs annualized (rounded)	Operating and maintenance costs (rounded)	Total hours
Part 7—Subpart E							
New Eng. (Perm.)[1]	1.5	43	1.5	1	$0	$0	65
New Eng. (Perm.)[2]	1.5	0.5	1.5	1	0	75	1
New Eng. (Nonperm.)[3]	2.5	34	2.5	1	0	0	85
New Eng. (Nonperm.)[4]	2.5	0.5	2.5	1	0	100	1
Existing Eng. (Nonperm.)[5]	16	5	16	1	425	0	80
New Eng. (Nonperm.)[6]	1	34.5	1	1	0	2,600	35
Existing Eng. (Nonperm.)[7]	1	34.5	1	1	200	0	35
7.90	148	0.1667	148	1	0	450	24
Part 7—Subpart F							
New Pow. Pack. (Perm.)[8]	1.5	43	1.5	1	0	0	65
Existing Pow. Pack. (Perm.)[9]	33	12	33	1	2,100	0	396
7.105	20	0.1667	20	1	0	75	3
Total Increases					2,725	3,300	790

[1] New diesel-powered engine models used in permissible equipment will require a maximum fuel:air ratio test and a gaseous ventilation rate test under part 7, subpart E, instead of under existing part 36. Burden hours are shifted from existing part 36 to part 7, subpart E. The annual estimated application costs of $4,850 are currently being incurred by manufacturers under part 36. Under the final rule, such costs will continue to be incurred under part 7, subpart E, instead of under part 36. There are no new compliance costs.

[2] New diesel-powered engine models used in permissible equipment that would have received part 36 approval will require a particulate index test.

[3] New diesel-powered engine models used in nonpermissible equipment that would have received part 32 approval will require a maximum fuel air ratio test and a gaseous ventilation rate test under part 7, subpart E, instead of under part 32. As a result of this rule, part 32 is deleted and burden hours related to the tests on such engine models are shifted from deleted part 32 to part 7, subpart E. The annual estimated application costs of $6,375 are currently being incurred by manufacturers under part 32. Under the final rule, such costs will continue to be incurred under part 7, subpart E, instead of under part 32. There are no new compliance costs.

[4] New diesel-powered engine models used in nonpermissible equipment that would have received part 32 approval will require a particulate index test.

[5] Existing diesel-powered engine models used in nonpermissible equipment that have part 32 approval will require a one time particulate index test.

[6] New diesel-powered engine models used in nonpermissible equipment that would not have received part 32 approval will require a maximum fuel air ratio test, a gaseous ventilation rate test, and a particulate index test.

[7] Existing diesel-powered engine models used in nonpermissible equipment that do not have part 32 approval will require a one time maximum fuel air ratio test, a gaseous ventilation rate test, and a particulate index test.

[8] New diesel-power package models used in permissible equipment will require approval under part 7, subpart F, instead of under part 36. Burden hours related to such approvals are shifted from part 36 to part 7, subpart F. The annual estimated application costs of $4,850 are currently being incurred by manufacturers under part 36. Under the final rule, such costs will continue to be incurred under part 7, subpart F, instead of under part 36. There are no new compliance costs.

[9] Diesel-power package models used in permissible equipment and previously approved under part 36 could be reapproved and used to comply with the requirement for a diesel power package pursuant to part 7, subpart F.

TABLE 2.—ESTIMATED ANNUAL DECREASE IN BURDEN RELATED TO MANUFACTURERS[1]

Detail	Number of respondents	Hours per response	Number of responses	Number of responses per respondent	Capital costs annualized	Operation and maintenance costs	Total hours
Part 36							
New Eng. (Perm.)[2]	1.5	43	1.5	1	$0	$0	65
New Pow. Pack. (Perm.)[3]	1.5	43	1.5	1	0	0	65
Part 32							
New Eng. (Nonperm.)[4]	2.95	34.5	2.95	1	0	0	102
Total Decreases							232

[1] Burden hours in this chart were developed and approved under the Paperwork Reduction Act of 1980 (PRA 80). PRA 80 did not require costs to be reported with burden hours. Thus no compliance costs are noted in this table.

[2] New diesel-powered engine models used in permissible equipment will be approved under part 7, subpart E, instead of part 36.

[3] Diesel-power package models used in permissible equipment will be approved under part 7, subpart F, instead of part 36.

[4] New diesel-powered engine models used in nonpermissible equipment will be approved under part 7, subpart E, instead of part 32.

TABLE 3.— ESTIMATED ANNUAL NEW BURDEN FOR SMALL UNDERGROUND COAL OPERATORS THAT USE DIESEL-POWERED EQUIPMENT [1]

Detail	Number of respondents [2]	Hours per response	Number of responses	Number of responses per respondent	Capital costs annualized (rounded)	Operation and maintenance costs (rounded)	Total hours
§ 75.363	10	0.10	100	10	$2,100	$3,800	10
§ 75.370	15	0.1667	15	1	0	100	3
§ 75.1901(a)	8	0.05	160	20	0	100	8
§ 75.1904(b)(4)(i)	15	0.0333	20	1	<25	0	1
§ 75.1911 (i)&(j) [3]	15	0.3333	212	14	0	1,835	71
§ 75.1911 (i)&(j) [4]	15	1.0833	11	<1	0	915	12
§ 75.1912 (h)&(i) [5]	15	0.5833	20	1	0	300	12
§ 75.1912 (h)&(i) [6]	15	1.0833	2	<1	0	100	2
§ 75.1914 (f)(1)&(h)	15	[7] 1.1857	500	33	0	15,400	593
§ 75.1914 (f)(2)&(h)	15	0.0833	500	33	0	1,100	42
§ 75.1914(g)&(h) [8]	15	2	30	2	150	0	60
§ 75.1914 (g)&(h) [9]	1	2	1	1	0	50	2
§ 75.1914 (g)(5)&(h)	15	0.25	1,480	98	3,150	16,650	370
§ 75.1915(a)	15	5	30	2	400	0	150
§ 75.1915 (b)(5)&(c) [8]	15	10	15	1	400	0	150
§ 75.1915 (b)(5)&(c) [9]	1	3	1	1	0	125	3
Total					6,225	40,475	1,489

[1] Small mines are those that employ 19 or fewer people.
[2] Respondents are the number of small mines.
[3] Section 75.1911(j) requires a record of § 75.1911(i) weekly exams which find defects.
[4] Section 75.1911(j) requires a record of § 75.1911(i) manufacturer recommended exams which find defects.
[5] Section 75.1912(i) requires a record of § 75.1912(h) weekly exams which find defects.
[6] Section 75.1912(i) requires a record of § 75.1912(h) manufacturer recommended exams which find defects.
[7] Represents a weighted average of hours based upon different exam hours for different types of equipment.
[8] Reflects burden hours that will occur in the first year of implementation of the provision.
[9] Reflects burden hours that will occur annually, after the first year of implementation of the provision.

TABLE 4.—ESTIMATED ANNUAL NEW BURDEN FOR LARGE UNDERGROUND COAL OPERATORS THAT USE DIESEL-POWERED EQUIPMENT [1]

Detail	Number of respondent [2]	Hours per responses	Number of responses	Number of responses per respondent	Capital costs annualized (rounded)	Operating and maintenance costs (rounded)	Total hours
§ 75.363	100	0.1834	1,000	10	$20,950	$40,825	184
§ 75.370	158	0.3333	158	1	0	1,975	52
§ 75.1901(a)	79	0.05	1,975	25	0	1,000	99
§ 75.1904(b)(4)(i)	158	0.0333	494	3	250	0	16
§ 75.1911 (i) & (j) [3]	158	0.3333	14,810	94	0	128,340	4,936
§ 75.1911 (i) & (j) [4]	158	1.0833	592	4	0	51,335	641
§ 75.1912 (h) & (i) [5]	158	0.5833	100	<1	0	1,525	58
§ 75.1912 (h) & (i) [6]	158	1.0833	4	<1	0	350	5
§ 75.1914 (f)(1) & (h)	158	[7] 0.6234	35,975	227	0	583,150	22,428
§ 75.1914 (f)(2) & (h)	158	0.0833	35,975	227	0	77,925	2,997
§ 75.1914 (g) & (h) [8]	158	2	711	4	3,725	0	1,422
§ 75.1914 (g) & (h) [9]	5	2	22.5	4	0	1,700	45
§ 75.1914 (g)(5) & (h)	158	0.25	52,350	331	33,100	460,225	13,088
§ 75.1915(a)	158	5	1,264	8	0	236,000	6,320
§ 75.1915 (b)(5) & (c) [8]	158	16	158	1	6,600	0	2,528
§ 75.1915 (b)(5) & (c) [9]	5	16	5	1	0	3,000	80
Total					64,625	1,587,350	54,899

[1] Large mines are those that employ 20 or more people.
[2] Respondents are the number of large mines.
[3] Section 75.1911(j) requires a record of § 75.1911(i) weekly exams which find defects.
[4] Section 75.1911(j) requires a record of § 75.1911(i) manufacturer recommended exams which find defects.
[5] Section 75.1912(i) requires a record of § 75. 1912(h) weekly exams which find defects.
[6] Section 75.1912(i) requires a record of § 75. 1912(h) manufacturer recommended exams which find defects.
[7] Represents a weighted average of hours based upon different exam hours for different types of equipment.
[8] Reflects burden hours that will occur in the first year of implementation of the provision.
[9] Reflects burden hours that will occur annually, after the first year of implementation of the provision.

IV. Executive Order 12866 and Regulatory Flexibility Analysis

Under E.O. 12866 [58 FR 51735, October 4, 1993] the Agency must determine whether the regulatory action is ''significant'' and subject to OMB review.

E.O. 12866 defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the right and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB determined that this rule for diesel-powered equipment in underground coal mines is a ''significant regulatory action'' because MSHA's diesel particulate rulemaking for all mines has been designated ''significant'' by the Agency. Although the diesel particulate rulemaking is separate and distinct from this final rule, OMB concluded that there is a sufficient enough relationship with this final rule to warrant its designation as significant. As such, MSHA has submitted this final rule to OMB for review.

As required by E.O. 12866, the Agency determined costs and benefits associated with this final rule and has prepared a Final Regulatory Impact Analysis (RIA) and a Final Regulatory Flexibility Analysis (RFA). The RFA assesses benefits and costs of, and potentially effective and reasonably feasible alternatives to, the planned regulatory action. The RIA and RFA are available electronically and on request from MSHA through the address listed in the contact section at the beginning of this document. It is summarized below.

Benefits

The final rule establishes comprehensive and integrated requirements governing diesel-powered equipment used in underground coal mines. Compliance with the rule will minimize fire, explosion, fuel handling, and fuel storage hazards. The health hazards of diesel engine exhaust are addressed by design, performance, and maintenance standards for diesel engines. Other safety hazards associated with the use of diesel-powered equipment in underground coal mines are also addressed.

The final rule includes tests and specifications for MSHA approval of diesel engines. Clean operating engines will reduce miners' exposure to harmful emissions in the confined underground mine environment. The final rule sets test procedures and limits on the concentrations of carbon monoxide and oxides of nitrogen, and establishes the quantity of ventilating air necessary to dilute these exhaust contaminants to safe levels. The rule also contains tests and specifications for approval of diesel engine components, to ensure that diesel engines are fire and explosion-proof.

The final rule also requires diesel-powered equipment to be equipped with certain safety features. These safety features will result in reduced fire hazards and lower the risk of accidents involving diesel-powered equipment. For example, the final rule requires diesel-powered equipment to have basic safety features, such as brakes and lights; fire protection features, including fuel, hydraulic, and electrical system protections; and properly designed, installed, and maintained fire suppression systems. In addition, the rule extends to diesel-powered equipment safety measures that already apply to electric-powered equipment that are proven to protect miners from cave-ins, such as cabs and canopies, and from explosions, such as methane monitors.

The final rule provides for a systematic approach to the clean and safe operation of diesel-powered equipment. To accomplish this, the final rule sets standards for ventilation of diesel-powered equipment, and for routine sampling of toxic exhaust gases in the workplace, and requires the use of low sulfur diesel fuel to minimize emissions. It also requires that maintenance be performed by trained personnel to keep diesel equipment in proper operating condition.

To ensure that the hazards associated with diesel fuel usage in the underground mine environment are properly controlled, the final rule includes requirements for the underground storage, transportation, and dispensing of diesel fuel. Design, tank capacity, and dispensing requirements are set for diesel fuel storage, as well as safety precautions and construction requirements for underground storage facilities and areas, including automatic fire suppression systems. These provisions will reduce the risk of fires involving diesel fuel.

The final rule also extends several longstanding safety requirements for electric equipment to diesel-powered equipment. The final rule requires certain diesel equipment to be installed with methane monitors, providing miners with critical protection against methane explosions. The final rule also requires cabs and canopies to be installed on certain diesel-powered equipment, protecting miners from the dangers of roof and rib falls in the underground mine environment.

Cost of Compliance

The compliance costs associated with the standards directly impact two industry groups: manufacturers of diesel-powered mining equipment and operators of underground coal mines. Part 7, subparts E and F relate to manufacturer costs and parts 70 and 75 relate to operator costs. The total compliance costs of the rule are estimated to be about $10.35 million per year, of which mine operators will incur about $10.3 million per year and manufacturers will incur about $50,000 per year.

The per-year cost of $10.3 million for mine operators consists of $4.9 million of annualized cost plus $5.4 million of annual costs. Of the $10.3 million, large mine operators will incur about $10.1 million, which consists of $4.8 million of annualized costs and $5.3 million of annual costs. Of the $10.3 million, small mine operators will incur about $210,800, which consists of $92,300 of annualized costs and $118,500 of annual costs. The per-year compliance costs for large and small mine operators is shown by section in Table 5.

Manufacturers will incur costs of approximately $50,450 per year. The $50,450 consists of $15,900 of annualized costs and $34,550 of annual costs. The per-year compliance costs for manufacturers is shown by section in Table 6.

TABLE 5.—UNDERGROUND COAL MINE COMPLIANCE COSTS FOR DIESEL EQUIPMENT

[Dollars × 1,000]

Standard	Large and small mines			Large mines			Small mines		
	(A) total [col. B+C]	(B) annualized	(C) annual	(D) total [col. E+F]	(E) annualized	(F) annual	(G) total [Col. H+I]	(H) annualized	(I) annual
70.1900	($59.7)	$80.9	($140.6)	($77.7)	$75.8	($153.5)	$18.0	$5.1	$12.9
75.325	589.0	0	589.0	589.0	0	589.0	0	0	0
75.1902	39.7	39.7	0	37.6	37.6	0	2.1	2.1	0
75.1903	68.5	51.5	17.0	58.2	44.7	13.5	10.3	6.8	3.5
75.1904	32.7	32.7	0	31.2	31.2	0	1.5	1.5	0
75.1905	2.4	2.4	0	2.3	2.3	0	0.1	0.1	0
75.1906	251.8	173.5	78.3	244.7	168.8	75.9	7.1	4.7	2.4
75.1907	1,610.3	1,596.6	13.7	1,589.6	1,576.4	13.2	20.7	20.2	0.5
75.1909	3,028.0	2,532.9	495.1	2,971.2	2,487.6	483.6	56.8	45.3	11.5
75.1910	117.4	117.4	0	116.1	116.1	0	1.3	1.3	0
75.1911	1,221.3	0	1,221.3	1,203.2	0	1,203.2	18.1	0	18.1
75.1912	20.0	0	20.0	16.5	0	16.5	3.5	0	3.5
75.1913	9.5	9.5	0	9.4	9.4	0	0.1	0.1	0
75.1914	2,769.3	40.1	2,729.2	2,700.0	36.8	2,663.2	69.3	3.3	66.0
75.1915	573.9	155.4	418.5	572.3	153.9	418.4	1.6	1.5	0.1
75.1916	8.7	8.7	0	8.4	8.4	0	0.3	0.3	0
Total	10,282.8	4,841.3	5,441.5	10,072.0	4,749.0	5,323.0	210.8	92.3	118.5

TABLE 6.—ESTIMATED MANUFACTURERS COMPLIANCE COSTS ASSOCIATED WITH THE REGULATIONS FOR DIESEL-POWERED EQUIPMENT IN UNDERGROUND COAL MINES

Standard	Manufacturers costs		
	(A) total [col. B+C]	(B) annualized	(c) annual
Part 7—Subpart E	$42,650	$12,200	$30,450
Part 7—Subpart F	7,800	3,700	4,100
Total Part 7	50,450	15,900	34,550

Regulatory Flexibility Certification

The Regulatory Flexibility Act requires that agencies developing regulatory standards evaluate and, where possible, include compliance alternatives that minimize any impact that would adversely affect small businesses. The use of diesel-powered equipment presents similar health and safety hazards in both large and small mining operations, and small mines will benefit from the requirements in the final rule. MSHA, therefore, has not exempted small mines from any provision of the final rule.

Regulatory relief is not warranted because the final rule will not impose a substantial cost increase for small mines. MSHA has determined that these provisions will not have a significantly adverse impact upon a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

MSHA has determined that this final rule is not a ''major rule'' requiring prior approval by the Congress and the President under the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. § 801 *et seq.*) (SBREFA), because it is not 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, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign enterprises in domestic and export markets.

The Agency will send copies of the final rule, preamble, and regulatory flexibility analysis to the President of the Senate, the Speaker of the House, and the General Counsel of the General Accounting Office.

V. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, Pub.L. 104–4, requires each federal agency to assess the effects of federal regulatory actions on state, local, and tribal governments and the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, this rule does not include any federal mandate that may result in increased expenditures by either State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million on the private sector.

VI. Electronic Availability of Rulemaking Documents

Electronic copies of the preamble and final rule, and the Regulatory Impact Analysis and Regulatory Flexibility Analysis are available on the Internet at the U.S. Department of Labor, Mine Safety and Health Administration's World Wide Web home page at http://www.msha.gov. Instructions for accessing regulatory documents and information are as follows:

From MSHA's home page select the menu item entitled ''Statutory and Regulatory Information.'' This will direct the search to the Statutory and Regulatory menu page. Then select the menu item entitled ''Federal Register Documents.'' This will direct the search

to the menu page for Federal Register Documents. The type of documents listed are proposed rules, final rules, meetings (Advisory Committees), Information Collection Requests, petitions for modifications, proposed policies, and miscellaneous notices. Select the menu item desired. To return to MSHA's home page, use the icon at the bottom of the page or the ''Back Button'' provided by your browser.

List of Subjects

30 CFR Part 7

Diesel-powered equipment, Mine safety and health, Reporting and recordkeeping requirements.

30 CFR Parts 31 and 32

Reporting and recordkeeping requirements, Research, Underground coal mines.

30 CFR Part 36

Mine safety and health.

30 CFR Parts 70 and 75

Diesel-powered equipment, Incorporations by reference, Mine safety and health, Underground coal mines, Reporting and recordkeeping requirements.

Dated: October 15, 1996.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, chapter I of title 30, Code of Federal Regulations is amended as follows:

PART 7—TESTING BY APPLICANT OR THIRD PARTY

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

Authority: 30 U.S.C. 957.

2. New subparts E and F are added to part 7 to read as follows:

Subpart E—Diesel Engines Intended for Use in Underground Coal Mines

Sec.

7.81 Purpose and effective date.
7.82 Definitions.
7.83 Application requirements.
7.84 Technical requirements.
7.85 Critical characteristics.
7.86 Test equipment and specifications.
7.87 Test to determine the maximum fuel-air ratio.
7.88 Test to determine the gaseous ventilation rate.
7.89 Test to determine the particulate index.
7.90 Approval marking.
7.91 Post-approval product audit.
7.92 New technology.

Subpart E—Diesel Engines Intended for Use in Underground Coal Mines

§ 7.81 Purpose and effective date.

Subpart A general provisions of this part apply to this subpart E. Subpart E establishes the specific engine performance and exhaust emission requirements for MSHA approval of diesel engines for use in areas of underground coal mines where permissible electric equipment is required and areas where non-permissible electric equipment is allowed. It is effective November 25, 1996.

§ 7.82 Definitions.

In addition to subpart A definitions of this part, the following definitions apply in this subpart.

Brake Power. The observed power measured at the crankshaft or its equivalent when the engine is equipped only with standard auxiliaries necessary for its operation on the test bed.

Category A engines. Diesel engines intended for use in areas of underground coal mines where permissible electric equipment is required.

Category B engines. Diesel engines intended for use in areas of underground coal mines where nonpermissible electric equipment is allowed.

Corrosion-resistant material. Material that has at least the corrosion-resistant properties of type 304 stainless steel.

Diesel engine. Any compression ignition internal combustion engine using the basic diesel cycle where combustion results from the spraying of fuel into air heated by compression.

Exhaust emission. Any substance emitted to the atmosphere from the exhaust port of the combustion chamber of a diesel engine.

Intermediate speed. Maximum torque speed if it occurs between 60 percent and 75 percent of rated speed. If the maximum torque speed is less than 60 percent of rated speed, then the intermediate speed shall be 60 percent of the rated speed. If the maximum torque speed is greater than 75 percent of the rated speed, then the intermediate speed shall be 75 percent of rated speed.

Low idle speed. The minimum no load speed as specified by the engine manufacturer.

Maximum torque speed. The speed at which an engine develops maximum torque.

Operational range. All speed and load (including percent loads) combinations from the rated speed to the minimum permitted engine speed at full load as specified by the engine manufacturer.

Particulates. Any material collected on a specified filter medium after diluting exhaust gases with clean, filtered air at a temperature of less than or equal to 125° F (52° C), as measured at a point immediately upstream of the primary filter. This is primarily carbon, condensed hydrocarbons, sulfates, and associated water.

Percent load. The fraction of the maximum available torque at an engine speed.

Rated horsepower. The nominal brake power output of a diesel engine as specified by the engine manufacturer with a specified production tolerance. For laboratory test purposes, the fuel pump calibration for the rated horsepower must be set between the nominal and the maximum fuel tolerance specification.

Rated speed. Speed at which the rated power is delivered, as specified by the engine manufacturer.

Steady-state condition. Diesel engine operating condition which is at a constant speed and load and at stabilized temperatures and pressures.

Total oxides of nitrogen. The sum total of the measured parts per millions (ppm) of nitric oxide (NO) plus the measured ppm of nitrogen dioxide (NO_2).

§ 7.83 Application requirements.

(a) An application for approval of a diesel engine shall contain sufficient information to document compliance with the technical requirements of this subpart and specify whether the application is for a category A engine or category B engine.

(b) The application shall include the following engine specifications—

(1) Model number;

(2) Number of cylinders, cylinder bore diameter, piston stroke, engine displacement;

(3) Maximum recommended air inlet restriction and exhaust backpressure;

(4) Rated speed(s), rated horsepower(s) at rated speed(s), maximum torque speed, maximum rated torque, high idle, minimum permitted engine speed at full load, low idle;

(5) Fuel consumption at rated horsepower(s) and at the maximum rated torque;

(6) Fuel injection timing; and

(7) Performance specifications of turbocharger, if applicable.

(c) The application shall include dimensional drawings (including tolerances) of the following components specifying all details affecting the technical requirements of this subpart. Composite drawings specifying the required construction details may be submitted instead of individual drawings of the following components—

(1) Cylinder head;
(2) Piston;
(3) Inlet valve;
(4) Exhaust valve;
(5) Cam shaft—profile;
(6) Fuel cam shaft, if applicable;
(7) Injector body;
(8) Injector nozzle;
(9) Injection fuel pump;
(10) Governor;
(11) Turbocharger, if applicable;
(12) Aftercooler, if applicable;
(13) Valve guide;
(14) Cylinder head gasket; and
(15) Precombustion chamber, if applicable.

(d) The application shall include a drawing showing the general arrangement of the engine.

(e) All drawings shall be titled, dated, numbered, and include the latest revision number.

(f) When all necessary testing has been completed, the following information shall be submitted:

(1) The gaseous ventilation rate for the rated speed and horsepower.

(2) The particulate index for the rated speed and horsepower.

(3) A fuel deration chart for altitudes for each rated speed and horsepower.

§ 7.84 Technical requirements.

(a) *Fuel injection adjustment.* The fuel injection system of the engine shall be constructed so that the quantity of fuel injected can be controlled at a desired maximum value. This adjustment shall be changeable only after breaking a seal or by altering the design.

(b) *Maximum fuel-air ratio.* At the maximum fuel-air ratio determined by § 7.87 of this part, the concentrations (by volume, dry basis) of carbon monoxide (CO) and oxides of nitrogen (NO_X) in the undiluted exhaust gas shall not exceed the following:

(1) There shall be no more than 0.30 percent CO and no more than 0.20 percent NO_X for category A engines.

(2) There shall be no more than 0.25 percent CO and no more than 0.20 percent NO_X for category B engines.

(c) Gaseous emissions ventilation rate. Ventilation rates necessary to dilute gaseous exhaust emissions to the following values shall be determined under § 7.88 of this part:

Carbon dioxide	−5000 ppm
Carbon monoxide	−50 ppm
Nitric oxide	−25 ppm
Nitrogen dioxide	−5 ppm

A gaseous ventilation rate shall be determined for each requested speed and horsepower rating as described in § 7.88(b) of this part.

(d) *Fuel deration.* The fuel rates specified in the fuel deration chart shall be based on the tests conducted under paragraphs (b) and (c) of this section and shall ensure that the maximum fuel:air (f/a) ratio determined under paragraph (b) of this section is not exceeded at the altitudes specified in the fuel deration chart.

(e) *Particulate index.* For each rated speed and horsepower requested, the particulate index necessary to dilute the exhaust particulate emissions to 1 mg/m^3 shall be determined under § 7.89 of this part.

§ 7.85 Critical characteristics.

The following critical characteristics shall be inspected or tested on each diesel engine to which an approval marking is affixed—

(a) Fuel rate is set properly; and

(b) Fuel injection pump adjustment is sealed, if applicable.

§ 7.86 Test equipment and specifications.

(a) Dynamometer test cell shall be used in determining the maximum f/a ratio, gaseous ventilation rates, and the particulate index.

(1) The following testing devices shall be provided:

(i) An apparatus for measuring torque that provides an accuracy of ±2.0 percent based on the engine's maximum value;

(ii) An apparatus for measuring revolutions per minute (rpm) that provides an accuracy of ±2.0 percent based on the engine's maximum value;

(iii) An apparatus for measuring temperature that provides an accuracy of ±4° F (2° C) of the absolute value except for the exhaust gas temperature device that provides an accuracy of ±27° F (15° C);

(iv) An apparatus for measuring intake and exhaust restriction pressures that provides an accuracy of ±5 percent of maximum;

(v) An apparatus for measuring atmospheric pressure that provides an accuracy of ±0.5 percent of reading;

(vi) An apparatus for measuring fuel flow that provides an accuracy of ±2 percent based on the engine's maximum value;

(vii) An apparatus for measuring the inlet air flow rate of the diesel engine that provides an accuracy of ±2 percent based on the engine's maximum value; and

(viii) For testing category A engines, an apparatus for metering in 1.0 ±0.1 percent, by volume, of methane (CH_4) into the intake air system shall be provided.

(2) The test fuel specified in Table E–1 shall be a low volatile hydrocarbon fuel commercially designated as ''Type 2–D'' grade diesel fuel. The fuel may contain nonmetallic additives as follows: Cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant, and biocide.

TABLE E–1.—DIESEL TEST FUEL SPECIFICATIONS

Item	ASTM	Type 2–D
Cetane number	D613	40–48.
Cetane index	D976	40–48.
Distillation range:		
IBP °F	D86	340–400.
(°C)		(171.1–204.4).
10 pct. point, °F	D86	400–460.
(°C)		(204.4–237.8).
50 pct. point, °F	D86	470.540.
(°C)		(243.3–282.2).
90 pct. point, °F	D86	560–630.
(°C)		(293.3–332.2).
EP, °F	D86	610–690.
(°C)		(321.1–365.6).
Gravity, °API	D287	32–37.
Total sulfur, pct.	D2622	0.03–0.05.
Hydrocarbon composition:		
Aromatics, pct.	D1319	27 minimum.
Paraffins, naphthenes, olefins	D1319	Remainder.

TABLE E–1.—DIESEL TEST FUEL SPECIFICATIONS—Continued

Item	ASTM	Type 2–D
Flashpoint, minimum, °F	93	130.
(°C)		(54.4).
Viscosity, centistokes	445	2.0–3.2.

(3) The test fuel temperature at the inlet to the diesel engine's fuel injection pump shall be controlled to the engine manufacturer's specification.

(4) The engine coolant temperature (if applicable) shall be maintained at normal operating temperatures as specified by the engine manufacturer.

(5) The charge air temperature and cooler pressure drop (if applicable) shall be set to within ±7° F(4° C) and ±0.59 inches Hg (2kPa) respectively, of the manufacturer's specification.

(b) Gaseous emission sampling system shall be used in determining the gaseous ventilation rates.

(1) The schematic of the gaseous sampling system shown in Figure E–1 shall be used for testing category A engines. Various configurations of Figure E–1 may produce equivalent results. The components in Figure E–1 are designated as follows—

(i) Filters—F1, F2, F3, and F4;

(ii) Flowmeters—FL1, FL2, FL3, FL4, FL5, FL6, and FL7;

(iii) Upstream Gauges—G1, G2, and G5;

(iv) Downstream Gauges—G3, G4, and G6;

(v) Pressure Gauges—P1, P2, P3, P4, P5, and P6;

(vi) Regulators—R1, R2, R3, R4, R5, R6, and R7;

(vii) Selector Valves—V1, V2, V3, V4, V6, V7, V8, V15, and V19;

(viii) Heated Selector Valves—V5, V13, V16, and V17;

(ix) Flow Control Valves—V9, V10, V11 and V12;

(x) Heated Flow Control Valves—V14 and V18;

(xi) Pump—Sample Transfer Pump;

(xii) Temperature Sensor—(T1);

(xiii) Dryer—D1 and D2; and

(xiv) Water traps—WT1 and WT2.

(A) Water removal from the sample shall be done by condensation.

(B) The sample gas temperature or dew point shall be monitored either within the water trap or downstream of the water trap and shall not exceed 45° F (7° C).

(C) Chemical dryers are not permitted.

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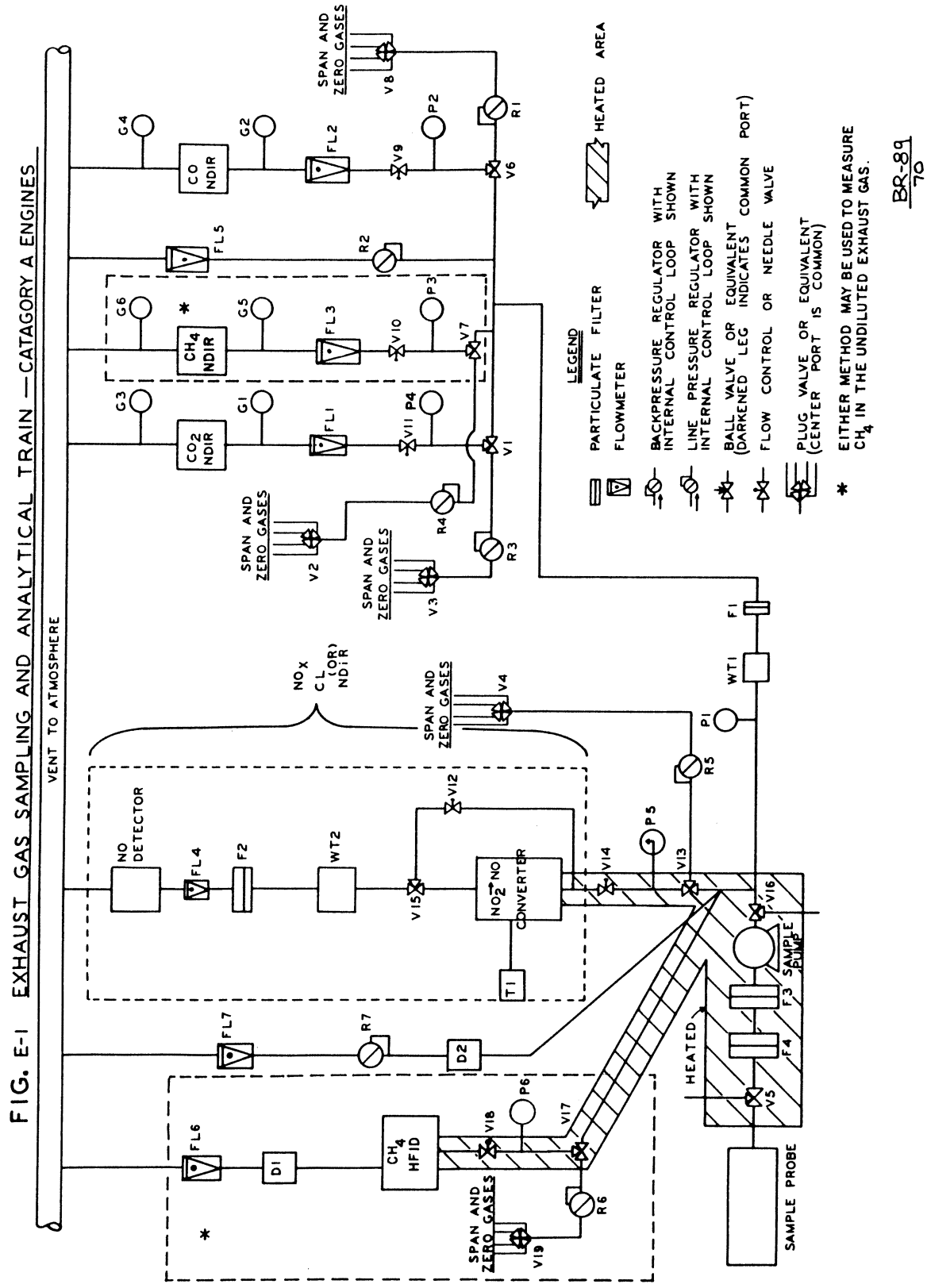

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(2) The schematic of the gaseous sampling system shown in Figure E–2 shall be used for testing category B engines. Various configurations of Figure E–2 may produce equivalent results. The components are designated as follows—

(i) Filters—F1, F2, F3, and F4;

(ii) Flowmeters—FL1, FL2, FL3, and FL4;

(iii) Upstream Gauges—G1, and G2;

(iv) Downstream Gauges—G3, and G4;

(v) Pressure Gauges—P1, P2, P3, and P4;

(vi) Regulators—R1, R2, R3, and R4;

(vii) Selector Valves—V1, V2, V3, V4, V6, and V7;

(viii) Heated Selector Valves—V5, V8, and V12;

(ix) Flow Control Valves—V9, V10, V11;

(x) Heated Flow Control Valves—V13;

(xi) Pump—Sample Transfer Pump;

(xii) Temperature Sensor—(T1); and

(xiii) Water traps—WT1 and WT2.

(A) Water removal from the sample shall be done by condensation.

(B) The sample gas temperature or dew point shall be monitored either within the water trap or downstream of the water trap and shall not exceed 45 °F (7 °C).

(C) Chemical dryers are not permitted.

(3) All components or parts of components that are in contact with the sample gas or corrosive calibration gases shall be corrosion-resistant material.

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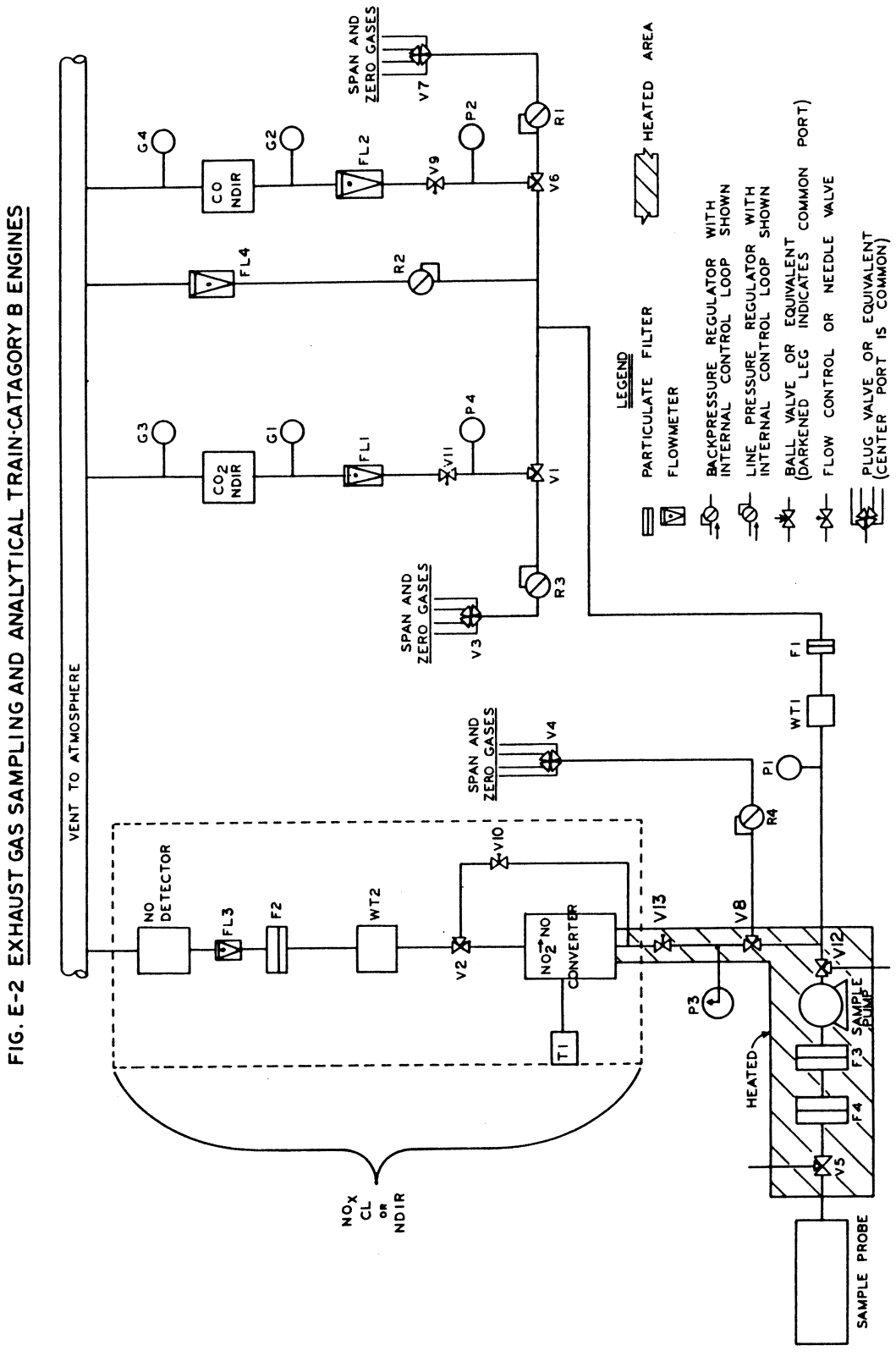
FIG. E-2 EXHAUST GAS SAMPLING AND ANALYTICAL TRAIN-CATAGORY B ENGINES



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(4) All analyzers shall obtain the sample to be analyzed from the same sample probe.

(5) CO and CO_2 measurements shall be made on a dry basis.

(6) Calibration or span gases for the NO_X measurement system shall pass through the NO_2 to NO converter.

(7) A stainless steel sample probe shall be straight, closed-end, multi-holed, and shall be placed inside the exhaust pipe.

(i) The probe length shall be at least 80 percent of the diameter of the exhaust pipe.

(ii) The inside diameter of the sample probe shall not be greater than the inside diameter of the sample line.

(iii) The heated sample line shall have a 0.197 inch (5 mm) minimum and a 0.53 inch (13.5 mm) maximum inside diameter.

(iv) The wall thickness of the probe shall not be greater than 0.040 inch (1 mm).

(v) There shall be a minimum of 3 holes in 3 different radial planes sized to sample approximately the same flow.

(8) The sample probe shall be located in the exhaust pipe at a minimum distance of 1.6 feet (0.5 meters) or 3 times the diameter of the exhaust pipe, whichever is the larger, from the exhaust manifold outlet flange or the outlet of the turbocharger. The exhaust gas temperature at the sample probe shall be a minimum of 158° F (70° C).

(9) The maximum allowable leakage rate on the vacuum side of the analyzer pump shall be 0.5 percent of the in-use flow rate for the portion of the system being checked.

(10) *General analyzer specifications.*

(i) The total measurement error, including the cross sensitivity to other gases, (paragraphs (b)(11)(ii), (b)(12)(iii), (b)(13)(iii), and (b)(13)(iv) of this section), shall not exceed ±5 percent of the reading or ±3.5 percent of full scale, whichever is smaller. For concentrations of less than 100 ppm the measurement error shall not exceed ±4 ppm.

(ii) The repeatability, defined as 2.5 times the standard deviation of 10 repetitive responses to a given calibration or span gas, must be no greater than ±1 percent of full scale concentration for each range used above 155 parts per million (ppm) or parts per million equivalent carbon (ppmC) or ±2 percent of each range used below 155 ppm (or ppmC).

(iii) The analyzer peak to peak response to zero and calibration or span gases over any 10 second period shall not exceed 2 percent of full scale on all ranges used.

(iv) The analyzer zero drift during a 1-hour period shall be less than 2 percent of full scale on the lowest range used. The zero-response is the mean response, including noise, to a zero gas during a 30-second time interval.

(v) The analyzer span drift during a 1-hour period shall be less than 2 percent of full scale on the lowest range used. The analyzer span is defined as the difference between the span response and the zero response. The span response is the mean response, including noise, to a span gas during a 30-second time interval.

(11) *CO and CO_2* analyzer specifications.

(i) Measurements shall be made with nondispersive infrared (NDIR) analyzers.

(ii) For the CO analyzer, the water and CO_2 interference shall be less than 1 percent of full scale for ranges equal to or greater than 300 ppm (3 ppm for ranges below 300 ppm) when a CO_2 span gas concentration of 80 percent to 100 percent of full scale of the maximum operating range used during testing is bubbled through water at room temperature.

(12) For NO_X analysis using a chemiluminescence (CL) analyzer the following parameters shall apply:

(i) From the sample point to the NO_2 to NO converter, the NO_X sample shall be maintained between 131° F (55° C) and 392° F (200° C).

(ii) The NO_2 to NO converter efficiency shall be at least 90 percent.

(iii) The quench interference from CO_2 and water vapor must be less than 3.0 percent.

(13) For NO_X analysis using an NDIR analyzer system the following parameters shall apply:

(i) The system shall include a NO_2 to NO converter, a water trap, and a NDIR analyzer.

(ii) From the sample point to the NO_2 to NO converter, the NO_X sample shall be maintained between 131° F (55° C) and 392° F (200° C).

(iii) The minimum water rejection ratio (maximum water interference) for the NO_X NDIR analyzer shall be 5,000:1.

(iv) The minimum CO_2 rejection ratio (maximum CO_2 interference) for the NO_X NDIR analyzer shall be 30,000:1.

(14) When CH_4 is measured using a heated flame ionization detector (HFID) the following shall apply:

(i) The analyzer shall be equipped with a constant temperature oven that houses the detector and sample-handling components.

(ii) The detector, oven, and sample-handling components shall be suitable for continuous operation at temperatures of 374° F (190° C) ± 18° F (10° C).

(iii) The analyzer fuel shall contain 40 ± 2 percent hydrogen. The balance shall be helium. The mixture shall contain ≤ 1 part per million equivalent carbon (ppmC), and ≤ 400 ppm CO.

(iv) The burner air shall contain < 2 ppmC hydrocarbon.

(v) The percent of oxygen interference shall be less than 5 percent.

(15) An NDIR analyzer for measuring CH_4 may be used in place of the HFID specified in paragraph (b)(14) of this section and shall conform to the requirements of paragraph (b)(10) of this section. Methane measurements shall be made on a dry basis.

(16) Calibration gas values shall be traceable to the National Institute for Standards and Testing (NIST), ''Standard Reference Materials'' (SRM's). The analytical accuracy of the calibration gas values shall be within 2.0 percent of NIST gas standards.

(17) Span gas values shall be traceable to NIST SRM's. The analytical accuracy of the span gas values shall be within 2.0 percent of NIST gas standards.

(18) Calibration or span gases for the CO and CO_2 analyzers shall have purified nitrogen as a diluent. Calibration or span gases for the CH_4 analyzer shall be CH_4 with purified synthetic air or purified nitrogen as diluent.

(19) Calibration or span gases for the NO_X analyzer shall be NO with a maximum NO_2 concentration of 5 percent of the NO content. Purified nitrogen shall be the diluent.

(20) Zero-grade gases for the CO, CO_2, CH_4 , and NO_X analyzers shall be either purified synthetic air or purified nitrogen.

(21) The allowable zero-grade gas (purified synthetic air or purified nitrogen) impurity concentrations shall not exceed ≤ 1ppm C, ≤ 1 ppm CO, ≤ 400 ppm CO_2, and ≤ 0.1 ppm NO.

(22) The calibration and span gases may also be obtained by means of a gas divider. The accuracy of the mixing device must be such that the concentration of the diluted calibration gases are within 2 percent.

(c) Particulate sampling system shall be used in determining the particulate index. A schematic of a full flow (single dilution) particulate sampling system for testing under this subpart is shown in Figures E–3 and E–4.

(1) The dilution system shall meet the following parameters:

(i) Either a positive displacement pump (PDP) or a critical flow venturi (CFV) shall be used as the pump/mass measurement device shown in Figure E–3.

(ii) The total volume of the mixture of exhaust and dilution air shall be measured.

(iii) All parts of the system from the exhaust pipe up to the filter holder, which are in contact with raw and diluted exhaust gas, shall be designed to minimize deposition or alteration of the particulate.

(iv) All parts shall be made of electrically conductive materials that do not react with exhaust gas components.

(v) All parts shall be electrically grounded to prevent electrostatic effects.

(vi) Systems other than full flow systems may also be used provided they yield equivalent results where:

(A) A seven sample pair (or larger) correlation study between the system under consideration and a full flow dilution system shall be run concurrently.

(B) Correlation testing is to be performed at the same laboratory, test cell, and on the same engine.

(C) The equivalency criterion is defined as a ± 5 percent agreement of the sample pair averages.

(2) The mass of particulate in the exhaust shall be collected by filtration. The exhaust temperature immediately before the primary particulate filter shall not exceed 125° F (52.0° C).

(3) Exhaust system backpressure shall not be artificially lowered by the PDP, CFV systems or dilution air inlet system. Static exhaust backpressure measured with the PDP or CFV system operating shall remain within ± 0.44 inches Hg (1.5 kPa) of the static pressure measured without being connected to the PDP or CFV at identical engine speed and load.

(4) The gas mixture temperature shall be measured at a point immediately ahead of the pump or mass measurement device.

(i) Using PDP, the gas mixture temperature shall be maintained within ± 10° F (6.0° C) of the average operating temperature observed during the test, when no flow compensation is used.

(ii) Flow compensation can be used provided that the temperature at the inlet to the PDP does not exceed 122° F (50° C).

(iii) Using CFV, the gas mixture temperature shall be maintained within ± 20° F (11° C) of the average operating temperature observed during the test, when no flow compensation is used.

(5) The heat exchanger shall be of sufficient capacity to maintain the temperature within the limits required above and is optional if electronic flow compensation is used.

(6) When the temperature at the inlet of either the PDP or CFV exceeds the limits stated in either paragraphs (c)(4)(i) or (c)(4)(iii) of this section, an electronic flow compensation system shall be required for continuous measurement of the flow rate and control of the proportional sampling in the particulate sampling system.

(7) The flow capacity of the system shall be large enough to eliminate water condensation.

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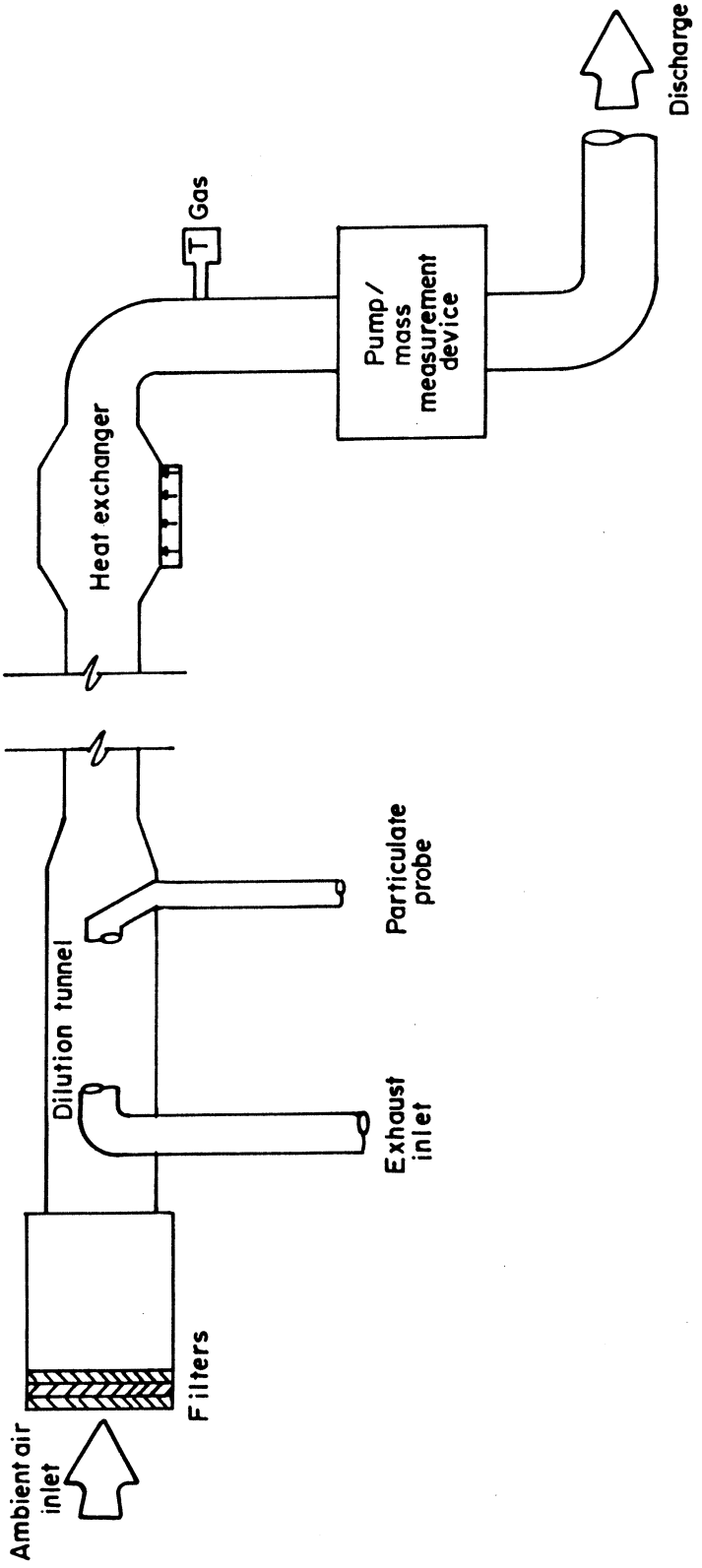

FIG. E-3 DILUTION TUNNEL/CONSTANT VOLUME SYSTEM

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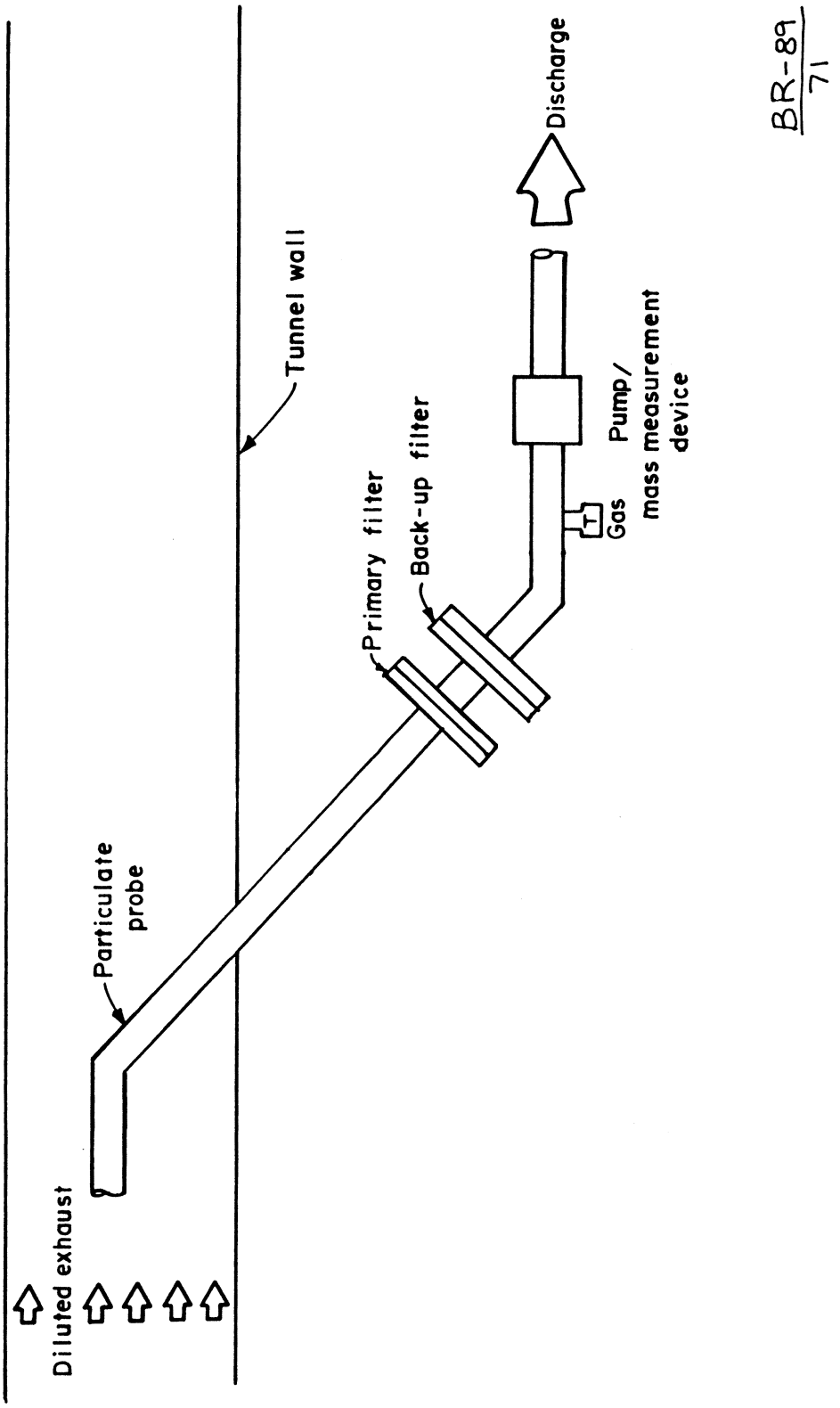
FIG. E-4 PARTICULATE SAMPLING SYSTEM



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(8) The flow capacity of the PDP or CFV system using single dilution shall maintain the diluted exhaust at 125 °F (52.0° C) or less immediately before the primary particulate filter.

(9) The flow capacity of the PDP or CFV system using a double dilution system shall be sufficient to maintain the diluted exhaust in the dilution tunnel at 375° F (191° C) or less at the sampling zone.

(10) The secondary dilution system shall provide sufficient secondary dilution air to maintain the double-diluted exhaust stream at 125° F (52.0° C) or less immediately before the primary particulate filter.

(11) The gas flow meters or the mass flow measurement instrumentation shall have a maximum error of the measured value within ±2 percent of reading.

(12) The dilution air shall have a temperature of 77° F±9° F (25° C±5° C), and be—

(i) Filtered at the air inlet; or

(ii) Sampled to determine background particulate levels, which can then be subtracted from the values measured in the exhaust stream.

(13) The dilution tunnel shall have the following specifications:

(i) Be small enough in diameter to cause turbulent flow (Reynolds number greater than 4,000) and of sufficient length to cause complete mixing of the exhaust and dilution air;

(ii) Be at least 3 inches (75 mm) in diameter; and

(iii) Be configured to direct the engine exhaust downstream at the point where it is introduced into the dilution tunnel for thorough mixing.

(14) The exhaust pipe length from the exit of the engine exhaust manifold or turbocharger outlet to the dilution tunnel shall not exceed a total length of 32 feet (10 m).

(i) When the exhaust pipe exceeds 12 feet (4 m), then all pipe in excess of 12 feet (4 m) shall be insulated with a radial thickness of at least 1.0 inch (25 mm) and the thermal conductivity of the insulating material shall be no greater than 0.1 W/mK measured at 752° F (400° C).

(ii) To reduce the thermal inertia of the exhaust pipe, the thickness to diameter ratio shall be 0.015 or less.

(iii) The use of flexible sections shall be limited to the length to diameter ratio of 12 or less.

(15) The particulate sample probe shall—

(i) Be installed in the dilution tunnel facing upstream, on the dilution tunnel centerline, and approximately 10 dilution tunnel diameters downstream of the point where the engine's exhaust enters the dilution tunnel; and

(ii) Have 0.5 inches (12 mm) minimum inside diameter.

(16) The inlet gas temperature to the particulate sample pump or mass measurement device shall remain a constant temperature of ±5° F (3.0° C) if flow compensation is not used.

(17) The secondary dilution portion of the double dilution system shall have:

(i) A particulate transfer tube shall have a 0.5 inch (12 mm) minimum inside diameter not to exceed 40 inches (1020 mm) in length measured from the probe tip to the secondary dilution tunnel has:

(A) An inlet with the transfer tube facing upstream in the primary dilution tunnel, centerline, and approximately 10 dilution tunnel diameters downstream of the point where the engine's exhaust enters the dilution tunnel.

(B) An outlet where the transfer tube exits on the centerline of the secondary tunnel and points downstream.

(ii) A secondary tunnel that has a minimum diameter of 3.0 inches (75 mm), and of sufficient length to provide a residence time of at least 0.25 seconds for the double-diluted sample.

(iii) Secondary dilution air supplied at a temperature of 77 °F ± 9° F(25° C±5° C).

(iv) A primary filter holder located within 12.0 inches (300 mm) of the exit of the secondary tunnel.

(18) The particulate sampling filters shall—

(i) Be fluorocarbon-coated glass fiber filters or fluorocarbon-based (membrane) filters and have a 0.3 μm di-octylphthalate (DOP) collection efficiency of at least 95 percent at a gas face velocity between 35 and 80 cm/s.;

(ii) Have a minimum diameter of 1.85 inches (47 mm), 1.46 inches (37 mm) stain diameter;

(iii) Have a minimum filter loading ratio of 0.5mg/1075 mm^2 stain area for the single filter method.

(iv) Have minimum filter loading such that the sum of all eight (8) multiple filters is equal to the minimum loading value (mg) for a single filter multiplied by the square root of eight (8).

(v) Be sampled at the same time by a pair of filters in series (one primary and one backup filter) so that:

(A) The backup filter holder shall be located no more than 4 inches (100 mm) downstream of the primary filter holder.

(B) The primary and backup filters shall not be in contact with each other.

(C) The filters may be weighed separately or as a pair with the filters placed stain side to stain side.

(D) The single filter method incorporates a bypass system for passing the sample through the filters at the desired time.

(vi) Have a pressure drop increase between the beginning and end of the test of no more than 7.4 in Hg (25kPa).

(vii) Filters of identical quality shall be used when performing correlation tests specified in paragraph (c)(1)(vi) of this section.

(19) *Weighing chamber specifications.*

(i) The temperature of the chamber (room) in which the particulate filters are conditioned and weighed shall be maintained to within 72 °F±5 °F (22 °C±3 °C) during all filter conditioning and weighing.

(ii) The humidity of the chamber (room) in which the particulate filters are conditioned and weighed shall be maintained to a dewpoint of 49 °F±5 °F (9.5 °C±3 °C) and a relative humidity of 45 percent ±8 percent during all filter conditioning and weighing.

(iii) The chamber (room) environment shall be free of any ambient contaminants (such as dust) that would settle on the particulate filters during their stabilization. This shall be determined as follows:

(A) At least two unused reference filters or reference filter pairs shall be weighed within four (4) hours of, but preferably at the same time as the sample filter (pair) weighings.

(B) The reference filters are to be the same size and material as the sample filters.

(C) If the average weight of reference filters (reference filter pairs) changes between sample filter weighings by more than ±5.0 percent (±7.5 percent for the filter pair respectively) of the recommended minimum filter loading in paragraphs (c)(18)(iii) or (c)(18)(iv) of this section, then all sample filters shall be discarded and the tests repeated.

(20) The analytical balance used to determine the weights of all filters shall have a precision (standard deviation) of 20 μg and resolution of 10 μg. For filters less than 70 mm diameter, the precision and resolution shall be 2 μg and 1 μg, respectively.

(21) All filters shall be neutralized to eliminate the effects of static electricity prior to weighing.

§ 7.87 Test to determine the maximum fuel-air ratio.

(a) *Test procedure.*

(1) Couple the diesel engine to the dynamometer and connect the sampling and measurement devices specified in § 7.86.

(2) Prior to testing, zero and span the CO and NO_X analyzers to the lowest analyzer range that will be used during this test.

(3) While running the engine, the following shall apply:

(i) The parameter for the laboratory atmospheric factor, f_a, shall be: $0.98 \leq f_a \leq 1.02$;

(A) The equation is $f_a=(99/P_s) * ((T_a+273)/298)^{0.7}$ for a naturally aspirated and mechanically supercharged engines; or

(B) The equation is $f_a=(99/P_s)^{0.7} * ((T_a+273)/298)^{1.5}$ for a turbocharged engine with or without cooling of the intake air.

Where:

P_s=dry atmospheric pressure (kPa)

T_a=intake air temperature (°C)

(ii) The air inlet restriction shall be set within ±10 percent of the recommended maximum air inlet restriction as specified by the engine manufacturer at the engine operating condition giving maximum air flow to determine the concentration of CO as specified in paragraph (a)(6) of this section.

(iii) The exhaust backpressure restriction shall be set within ±10 percent of the maximum exhaust backpressure as specified by the engine manufacturer at the engine operating condition giving maximum rated horsepower to determine the concentrations of CO and NO_X as specified in paragraph (a)(6)of this section.

(iv) The air inlet restriction shall be set within ±10 percent of a recommended clean air filter at the engine operating condition giving maximum air flow as specified by the engine manufacturer to determine the concentration of NO_X as specified in paragraph (a)(6) of this section.

(4) The engine shall be at a steady-state condition when the exhaust gas samples are collected and other test data is measured.

(5) In a category A engine, 1.0±0.1 percent CH_4 shall be injected into the engine's intake air.

(6) Operate the engine at several speed/torque conditions to determine the concentrations of CO and NO_X, dry basis, in the raw exhaust.

(b) *Acceptable performance.* The CO and NO_X concentrations in the raw exhaust shall not exceed the limits specified in § 7.84(b) throughout the specified operational range of the engine.

§ 7.88 Test to determine the gaseous ventilation rate.

The test shall be performed in the order listed in Table E–2. The test for determination of the particulate index described in § 7.89 may be done simultaneously with this test.

(a) *Test procedure.*

(1) Couple the diesel engine to the dynamometer and attach the sampling and measurement devices specified in § 7.86.

(2) A minimum time of 10 minutes is required for each test mode.

(3) CO, CO_2, NO_X, and CH_4 analyzers shall be zeroed and spanned at the analyzer range to be used prior to testing.

(4) Run the engine.

(i) The parameter for f_a shall be calculated in accordance with § 7.87(a)(3).

(ii) The air inlet and exhaust backpressure restrictions on the engine shall be set as specified in §§ 7.87(a)(3)(iii) and (iv).

(5) The engine shall be at a steady-state condition before starting the test modes.

(i) The output from the gas analyzers shall be measured and recorded with exhaust gas flowing through the analyzers a minimum of the last three (3) minutes of each mode.

(ii) To evaluate the gaseous emissions, the last 60 seconds of each mode shall be averaged.

(iii) A 1.0±0.1 percent CH_4, by volume, shall be injected into the engine's intake air for category A engines.

(iv) The engine speed and torque shall be measured and recorded at each test mode.

(v) The data required for use in the gaseous ventilation calculations specified in paragraph (a)(9) of this section shall be measured and recorded at each test mode.

(6) Operate the engine at each rated speed and horsepower rating requested by the applicant according to Table E–2 in order to measure the raw exhaust gas concentration, dry basis, of CO, CO_2, NO, and NO_2, and CH_4- exhaust (category A engines only).

(i) Test speeds shall be maintained within ±1 percent of rated speed or ±3 RPM, which ever is greater, except for low idle which shall be within the tolerances established by the manufacturer.

(ii) The specified torque shall be held so that the average over the period during which the measurements are taken is within ±2 percent of the maximum torque at the test speed.

(7) The concentration of CH_4 in the intake air shall be measured for category A engines.

TABLE E–2.—GASEOUS TEST MODES

Speed	Rated speed				Intermediate speed			Low-idle speed
% Torque	100	75	50	10	100	75	50	0

(8) After completion of the test modes, the following shall be done:

(i) Zero and span the analyzers at the ranges used during the test.

(ii) The gaseous emission test shall be acceptable if the difference in the zero and span results taken before the test and after the test are less than 2 percent.

(9) The gaseous ventilation rate for each exhaust gas contaminant shall be calculated as follows—

(i) The following abbreviations shall apply to both category A and category B engine calculations as appropriate:

cfm—Cubic feet per min (ft^3/min)

Exh—Exhaust

A—Air (lbs/hr)

H—Grains of water per lb. of dry intake air

J—Conversion factor

m—Mass flow rate (mass/hr)

TI—Intake air temperature (° F)

PCAir—Percent Air

$PCCH_4$—Percent CH_4 (intake air)

UCH_4—Unburned CH_4

$PCECH_4$—Percent Exhaust CH_4

(ii) Exhaust gas flow calculation for category B engines shall be (m Exh)=(A)+(m fuel).

(iii) Fuel/air ratio for category B engines shall be (f/a)=(m fuel) / (A).

(iv) Methane flow through category A engines shall be determined by the following:

$PCAir=100-PCCH_4$

$Y=(PCAir)(0.289)+(PCCH_4)(0.16)$

$Z=(0.16)(PCCH_4)\div Y$

$mCH_4=(A)(Z)\div(1-Z)$

(v) Exhaust gas flow calculation for category A engines shall be (m Exh)=(A)+(m fuel)+(m CH_4)

(vi) Unburned CH_4 (lbs/hr) calculation for category A engines shall be mUCH_4=(m Exh)(0.00552)(P$CECH_4$)

(vii) Fuel/air ratio for category A engines shall be (f/a)=((m fuel)+(m CH_4)−(m UCH_4))÷(A)

(viii) Conversion from dry to wet basis for both category A and category B engines shall be:

(NO wet basis)=(NO dry basis)(J)
(NO_2 wet basis)=(NO_2 dry basis)(J)
(CO_2 wet basis)=(CO_2 dry basis)(J)
(CO wet basis)=(CO dry basis)(10^{-4})(J)

Where:

J=(f/a)(−1.87)+(1−(0.00022)(H))

(ix) NO and NO_2 correction for humidity and temperature for category A and category B engines shall be:

(NO corr)=(NO wet basis)÷(E)
(NO_2 corr)=(NO_2 wet basis)÷(E)

Where:

E=1.0+(R)(H−75)+(G)(TI−77)
R=(f/a)(0.044)−(0.0038)
G=(f/a)(−0.116)+(0.0053)

(x) The calculations to determine the m of each exhaust gas contaminant in grams per hour at each test point shall be as follows for category A and category B engines:

(m NO)=(NO corr)(0.000470)(m Exh)
(m NO_2)=(NO_2 corr)(0.000720)(m Exh)
(m CO_2)=(CO_2 wet basis)(6.89)(m Exh)
(m CO)=(CO wet basis)(4.38)(m Exh)

(xi) The calculations to determine the ventilation rate for each exhaust gas contaminant at each test point shall be as follows for category A and category B engines:

(cfm NO)=(m NO)(K)
(cfm NO_2)=(m NO_2)(K)
(cfm CO_2)=(m CO_2)(K)
(cfm CO)=(m CO)(K)

Where:

K=13,913.4 (pollutant grams/mole)
(pollutant dilution value specified in § 7.84(c)).

(b) The gaseous ventilation rate for each requested rated speed and horsepower shall be the highest ventilation rate calculated in paragraph (a)(9)(xi) of this section.

(1) Ventilation rates less than 20,000 cfm shall be rounded up to the next 500 cfm.

Example: 10,432 cfm shall be listed 10,500 cfm.

(2) Ventilation rates greater than 20,000 cfm shall be rounded up to the next 1,000 cfm.

Example: 26,382 cfm shall be listed 27,000 cfm.

§ 7.89 Test to determine the particulate index.

The test shall be performed in the order listed in Table E–3.

(a) *Test procedure.*

(1) Couple the diesel engine to the dynamometer and connect the sampling and measurement devices specified in § 7.86.

(2) A minimum time of 10 minutes is required for each measuring point.

(3) Prior to testing, condition and weigh the particulate filters as follows:

(i) At least 1 hour before the test, each filter (pair) shall be placed in a closed, but unsealed, petri dish and placed in a weighing chamber (room) for stabilization.

(ii) At the end of the stabilization period, each filter (pair) shall be weighed. The reading is the tare weight.

(iii) The filter (pair) shall then be stored in a closed petri dish or a filter holder, both of which shall remain in the weighing chamber (room) until needed for testing.

(iv) The filter (pair) must be re-weighed if not used within 8 hours of its removal from the weighing chamber (room).

(4) Run the engine.

(i) The parameter for f_a shall be calculated in accordance with § 7.87(a)(3).

(ii) The air inlet and exhaust backpressure restrictions on the engine shall be set as specified in §§ 7.87(a)(3)(iii) and (iv).

(iii) The dilution air shall be set to obtain a maximum filter face temperature of 125° F (52° C) or less at each test mode.

(iv) The total dilution ratio shall not be less than 4.

(5) The engine shall be at a steady state condition before starting the test modes.

(i) The engine speed and torque shall be measured and recorded at each test mode.

(ii) The data required for use in the particulate index calculation specified in paragraph (a)(9) of this section shall be measured and recorded at each test mode.

(6) A 1.0±0.1 percent CH_4, by volume shall be injected into the engine's intake air for category A engines.

(7) Operate the engine at each rated speed and horsepower rating requested by the applicant according to Table E–3 to collect particulate on the primary filter.

(i) One pair of single filters shall be collected or eight multiple filter pairs shall be collected.

(ii) Particulate sampling shall be started after the engine has reached a steady-state condition.

(iii) The sampling time required per mode shall be either a minimum of 20 seconds for the single filter method or a minimum of 60 seconds for the multiple filter method.

(iv) The minimum particulate loading specified in §§ 7.86(c)(18)(iii) or (iv) shall be done.

TABLE E–3.—PARTICULATE TEST MODES

Speed	Rated speed				Intermediate speed			Low-idle speed
% Torque	100	75	50	10	100	75	50	0
Weighting factor	0.15	0.15	0.15	0.1	0.1	0.1	0.1	0.15

(v) Test speeds shall be maintained within ± percent of rated speed or ±3 RPM, which ever is greater, except for low idle which shall be within the tolerances set by the manufacturer.

(vi) The specified torque shall be held so that the average over the period during which the measurements are being taken is within ±2 percent of the maximum torque at the test speed.

(vii) The modal weighting factors (WF) given in Table E–3 shall be applied to the multiple filter method during the calculations as shown in paragraph (a)(9)(iii)(B) of this section.

(viii) For the single filter method, the modal WF shall be taken into account during sampling by taking a sample proportional to the exhaust mass flow for each mode of the cycle.

(8) After completion of the test, condition and weigh the particulate filters in the weighing chamber (room) as follows:

(i) Condition the filters for at least 1 hour, but not more than 80 hours.

(ii) At the end of the stabilization period, weigh each filter. The reading is the gross weight.

(iii) The particulate mass of each filter is its gross weight minus its tare weight.

(iv) The particulate mass (P_F for the single filter method; $P_{F,i}$ for the multiple filter method) is the sum of the particulate masses collected on the primary and back-up filters.

(v) The test is void and must be rerun if the sample on the filter contacts the petri dish or any other surface.

(9) The particulate index for the mass particulate shall be calculated from the equations listed below—

(i) The following abbreviations shall be:

cfm—Cubic feet per min (ft^3 min)
PT—Particulate (gr/hr)
m mix—Diluted exhaust gas mass flow rate on wet basis (kg/hr)
m sample—Mass of the diluted exhaust sample passed through the particulate sampling filters (kg)
P_F—Particulate sample mass collected on a filter (mg) at each test mode as determined in Table E–3.
K_p—Humidity correction factor for particulate
WF—Weighting factor
i-Subscript denoting an individual mode, i=1, . . . n
PI—Particulate Index (cfm)

(ii) When calculating ambient humidity correction for the particulate concentration (P_F part), the equation shall be:

$P_{fcorr}=(P_f)(K_p)$
$K_p=1/(1+0.0133 * (H-10.71))$
Where:
H_a=humidity of the intake air, g water per kg dry air
$H_a=(6.220 * R_a * p_a)/(p_B-p_a-R_a * 10^{-2})$
R_a=relative humidity of the intake air, %
p_a=saturation vapor pressure of the intake air, kPa
p_B=total barometric pressure, kPa

(iii) When the multiple filter method is used, the following equations shall be used.

(A) Mass of particulate emitted is calculated as follows:

$$PT\ gr/hr_i = \frac{(P_{fcorr}\ mg_i)(m\ mix\ kg/hr_i)}{(m\ sample\ kg_i)(1000\ mg/gr)}$$

(B) Determination of weighted particulate average is calculated as follows:

$$PT\ gr/hr = \sum_{i=1}^{i=n}(PT\ gr/hr_i)(WF_i)$$

(C) Determination of particulate index for the mass particulate from the average of the test modes shall be calculated as follows:

$$PI = \frac{(PT\ gr/hr)(1000\ mg/gr)(1\ hr/60\ min)(35.31\ ft^3/m^3)}{(1/1\ mg/m^3)}$$

(iv) When the single filter method is used, the following equations shall be used.

(A) Mass of particulate emitted:

$$PT\ gr/hr = \frac{(P_{Fcorr}\ mg)(m\ mix\ kg/hr)\ avg.}{(m\ sample\ kg)(1000\ mg/gr)}$$

Where:

$$(m\ mix\ kg/hr)\ avg. = \sum_{i=1}^{i=n}(m\ mix\ kg/hr_i)(WF_i)$$

$$(m\ sample\ kg) = \sum_{i=1}^{i=n}(m\ sample\ kg_i)$$

(B) Determination of particulate index for the mass particulate from the average of the test modes shall be as follows:

$$PI = \frac{(PT\ gr/hr)(1000\ mg/gr)(1\ hr/60\ min)(35.31\ ft^3/m^3)}{(1/1\ mg/m^3)}$$

(v) When the effective weighting factor, $WF_{E,i}$, for each mode is calculated for the single filter method, the following shall apply.

(A) $$WF_{E,i} = \frac{(m\ sample\ kg_i)(m\ mix\ kg/hr\ avg)}{(m\ sample\ kg)(m\ mix\ kg/hr_i)}$$

(B) The value of the effective weighting factors shall be within ±0.005 (absolute value) of the weighting factors listed in Table E–3.

(b) A particulate index for each requested rated speed and horsepower shall be the value determined in paragraph (a)(9)(iii)(C) of this section for the multiple filter method or paragraph (a)(9)(iv)(B) of this section for the single filter method.

(1) Particulate indices less than 20,000 cfm shall be rounded up to the next 500 cfm. Example: 10,432 cfm shall be listed 10,500 cfm.

(2) Particulate indices greater than 20,000 cfm shall be rounded up to the nearest thousand 1,000 cfm. Example: 26,382 cfm shall be listed 27,000 cfm.

§ 7.90 Approval marking.

Each approved diesel engine shall be identified by a legible and permanent approval marking inscribed with the assigned MSHA approval number and securely attached to the diesel engine. The marking shall also contain the following information:

(a) Ventilation rate.

(b) Rated power.

(c) Rated speed.

(d) High idle.

(e) Maximum altitude before deration.

(f) Engine model number.

§ 7.91 Post-approval product audit.

Upon request by MSHA, but no more than once a year except for cause, the approval holder shall make a diesel engine available for audit at no cost to MSHA.

§ 7.92 New technology.

MSHA may approve a diesel engine that incorporates technology for which the requirements of this subpart are not applicable if MSHA determines that the diesel engine is as safe as those which meet the requirements of this subpart.

Subpart F—Diesel Power Packages Intended for Use in Areas of Underground Coal Mines Where Permissible Electric Equipment Is Required

Sec.

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Subpart F–Diesel Power Packages Intended for Use in Areas of Underground Coal Mines Where Permissible Electric Equipment is Required

§ 7.95 Purpose and effective date.

Part 7, subpart A general provisions apply to subpart F. Subpart F establishes the specific requirements for MSHA approval of diesel power packages intended for use in approved equipment in areas of underground coal mines where electric equipment is required to be permissible. It is effective November 25, 1996.

§ 7.96 Definitions.

In addition to the definitions in subparts A and E of this part, the following definitions apply in this subpart.

Cylindrical joint. A joint comprised of two contiguous, concentric, cylindrical surfaces.

Diesel power package. A diesel engine with an intake system, exhaust system, and a safety shutdown system installed.

Dry exhaust conditioner. An exhaust conditioner that cools the exhaust gas without direct contact with water.

Exhaust conditioner. An enclosure, containing a cooling system, through which the exhaust gases pass.

Exhaust system. A system connected to the outlet of the diesel engine which includes, but is not limited to, the exhaust manifold, the exhaust pipe, the exhaust conditioner, the exhaust flame arrester, and any adapters between the exhaust manifold and exhaust flame arrester.

Fastening. A bolt, screw, or stud used to secure adjoining parts to prevent the escape of flame from the diesel power package.

Flame arrester. A device so constructed that flame or sparks from the diesel engine cannot propagate an explosion of a flammable mixture through it.

Flame arresting path (explosion-proof joint). Two or more adjoining or adjacent surfaces between which the escape of flame is prevented.

Flammable mixture. A mixture of methane or natural gas with normal air, that will propagate flame or explode when ignited.

Grade. The slope of an incline expressed as a percent.

High idle speed. The maximum no load speed specified by the engine manufacturer.

Intake system. A system connected to the inlet of the diesel engine which includes, but is not limited to, the intake manifold, the intake flame arrester, the emergency intake air shutoff device, the air cleaner, and all piping and adapters between the intake manifold and air cleaner.

Plane joint. A joint comprised of two adjoining surfaces in parallel planes.

Safety shutdown system. A system which, in response to signals from various safety sensors, recognizes the existence of a potential hazardous condition and automatically shuts off the fuel supply to the engine.

Step (rabbet) joint. A joint comprised of two adjoining surfaces with a change or changes in direction between its inner and outer edges. A step joint may be composed of a cylindrical portion and a plane portion or of two or more plane portions.

Threaded joint. A joint consisting of a male- and female-threaded member, both of which are the same type and gauge.

Wet exhaust conditioner. An exhaust conditioner that cools the exhaust gas through direct contact with water, commonly called a water scrubber.

§ 7.97 Application requirements.

(a) An application for approval of a diesel power package shall contain sufficient information to document compliance with the technical requirements of this subpart and include: drawings, specifications, and descriptions with dimensions (including tolerances) demonstrating compliance with the technical requirements of § 7.98. The specifications and descriptions shall include the materials of construction and quantity. These shall include the following—

(1) A general arrangement drawing showing the diesel power package and the location and identification of the intake system, exhaust system, safety shutdown system sensors, flame arresters, exhaust conditioner, emergency intake air shutoff device, automatic fuel shutoff device and the engine.

(2) Diesel engine specifications including the MSHA approval number, the engine manufacturer, the engine model number, and the rated speed, rated horsepower, and fuel rate.

(3) A drawing(s) which includes the fan blade material specifications, the location and identification of all water-cooled components, coolant lines, radiator, surge tank, temperature sensors, and orifices; arrows indicating proper flow direction; the height relationship of water-cooled components to the surge tank; and the proper procedure for filling the cooling system.

(4) A drawing(s) showing the relative location, identification of components,

and design of the safety shutdown system.

(5) Specific component identification, or specific information including detail drawings that identify the characteristics of the cooling system and safety shutdown system that ensures compliance with the technical requirements.

(6) Detail drawings of gaskets used to form flame-arresting paths.

(7) An assembly drawing showing the location and identification of all intake system components from the air cleaner to the engine head.

(8) An assembly drawing showing the location and identification of all exhaust system components from the engine head to the exhaust outlet.

(9) Detail drawings of those intake and exhaust system components identified in paragraphs (a)(7) and (a)(8) of this section that ensure compliance with the technical requirements. An exhaust conditioner assembly drawing shall be provided showing the location, dimensions, and identification of all internal parts, exhaust inlet and outlet, sensors, and the exhaust gas path through the exhaust conditioner. If a wet exhaust conditioner is used, the exhaust conditioner assembly drawing must also show the location, dimensions, and identification of the fill port, drain port, low water check port; high or normal operating water level; minimum allowable low water level; and the maximum allowable grade that maintains explosion-proof operations.

(10) A power package checklist which shall consist of a list of specific features that must be checked and tests that must be performed to determine if a previously approved diesel power package is in approved condition. Test procedures shall be specified in sufficient detail to allow the evaluation to be made without reference to other documents. Illustrations shall be used to fully identify the approved configuration of the diesel power package.

(11) Information showing that the electrical systems and components meet the requirements of § 7.98.

(12) A drawing list consisting of a complete list of those drawings and specifications which show the details of the construction and design of the diesel power package.

(b) Composite drawings specifying the required construction details may be submitted instead of the individual drawings in paragraph (a) of this section.

(c) All documents shall be titled, dated, numbered, and include the latest revision.

(d) When all testing has been completed, the following information shall be submitted and become part of the approval documentation:

(1) The settings of any adjustable devices used to meet the performance requirements of this subpart.

(2) The coolant temperature sensor setting and exhaust gas temperature sensor setting used to meet the performance requirements of this subpart.

(3) The minimum allowable low water level and the low water sensor setting used to meet the performance requirements of this subpart for systems using a wet exhaust conditioner as the exhaust flame arrester.

(4) The maximum grade on which the wet exhaust conditioner can be operated retaining the flame arresting characteristics.

(5) A finalized version of the power package checklist.

§ 7.98 Technical requirements.

(a) The diesel power package shall use a category A diesel engine approved under subpart E of this part with the following additional requirements:

(1) A hydraulic, pneumatic, or other mechanically actuated starting mechanism. Other means of starting shall be evaluated in accordance with the provisions of § 7.107.

(2) If an air compressor is provided, the intake air line shall be connected to the engine intake system between the air cleaner and the flame arrester. If the air compressor's inlet air line is not connected to the engine's intake system, it shall have an integral air filter.

(b) The temperature of any external surface of the diesel power package shall not exceed 302 °F (150 °C).

(1) Diesel power package designs using water jacketing to meet this requirement shall be tested in accordance with § 7.101.

(2) Diesel power packages using other techniques will be evaluated under the provisions of § 7.107.

(3) When using water-jacketed components, provisions shall be made for positive circulation of coolant, venting of the system to prevent the accumulation of air pockets, and effective activation of the safety shutdown system before the temperature of the coolant in the jackets exceeds the manufacturer's specifications or 212° F (100° C), whichever is lower.

(c) External rotating parts shall not be constructed of aluminum alloys containing more than 0.6 percent magnesium.

(d) If nonmetallic rotating parts are used, they shall be provided with a means to prevent an accumulation of static electricity. Static conducting materials shall have a total resistance of 1 megohm or less, measured with an applied potential of 500 volts or more. Static conducting materials having a total resistance greater than 1 megohm will be evaluated under the provisions of § 7.107.

(e) All V-belts shall be static conducting and have a resistance not exceeding 6 megohms, when measured with a direct current potential of 500 volts or more.

(f) The engine crankcase breather shall not be connected to the air intake system of the engine. The discharge from the breather shall be directed away from hot surfaces of the engine and exhaust system.

(g) Electrical components on diesel power packages shall be certified or approved by MSHA under parts 7, 18, 20, and 27 of this chapter.

(h) Electrical systems on diesel power packages consisting of electrical components, interconnecting wiring, and mechanical and electrical protection shall meet the requirements of parts 7, 18, and 27 of this chapter, as applicable.

(i) The diesel power package shall be equipped with a safety shutdown system which will automatically shut off the fuel supply and stop the engine in response to signals from sensors indicating—

(1) The coolant temperature limit specified in paragraph (b) of this section;

(2) The exhaust gas temperature limit specified in paragraph (s)(4) of this section;

(3) The minimum allowable low water level, for a wet exhaust conditioner, as established by tests in § 7.100. Restarting of the engine shall be prevented until the water level in the wet exhaust conditioner has been replenished above the minimum allowable low water level; and

(4) The presence of other safety hazards such as high methane concentration, actuation of the fire suppression system, etc., if such sensors are included in the safety shutdown system.

(j) The safety shutdown system shall have the following features:

(1) A means to automatically disable the starting circuit and prevent engagement of the starting mechanism while the engine is running, or a starting mechanism constructed of nonsparking materials.

(2) If the design of the safety shutdown system requires that the lack of engine oil pressure must be overridden to start the engine, the

override shall not be capable of overriding any of the safety shutdown sensors specified in paragraph (i) of this section.

(k) The diesel power package shall be explosion-proof as determined by the tests set out in § 7.100.

(l) Engine joints that directly or indirectly connect the combustion chamber to the surrounding atmosphere shall be explosion-proof in accordance with paragraphs (m) through (q) of this section and § 7.100. This paragraph does not apply to the following:

(1) Pistons to piston rings;

(2) Pistons to cylinder walls;

(3) Piston rings to cylinder walls;

(4) Cylinder head to cylinder block;

(5) Valve stem to valve guide; or

(6) Injector body to cylinder head.

(m) Each segment of the intake system and exhaust system required to provide explosion-proof features shall be constructed of metal and designed to withstand a minimum internal pressure equal to four times the maximum pressure observed in that segment in tests under § 7.100 or a pressure of 150 psig, whichever is less. Castings shall be free from blowholes.

(n) Welded joints forming the explosion-proof intake and exhaust systems shall be continuous and gas-tight. At a minimum, they shall be made in accordance with American Welding Society Standard D14.4–77 or meet the test requirements of § 7.104 with the internal pressure equal to four times the maximum pressure observed in tests under § 7.100 or a pressure of 150 psig, whichever is less.

(o) Flexible connections shall be permitted in segments of the intake and exhaust systems required to provide explosion-proof features, provided that failure of the connection activates the safety shutdown system before the explosion-proof characteristics are lost.

(p) Flame-arresting paths in the intake and exhaust systems shall be formed either by—

(1) Flanged metal to metal joints meeting the requirements of paragraph (q) of this section; or

(2) Metal flanges fitted with metal gaskets and meeting the following requirements:

(i) Flat surfaces between bolt holes that form any part of a flame-arresting path shall be planed to within a maximum deviation of one-half the maximum clearance specified in paragraph (q)(7) of this section. All metal surfaces forming a flame-arresting path shall be finished during the manufacturing process to not more than 250 microinches.

(ii) A means shall be provided to ensure that fastenings maintain the tightness of joints. The means provided shall not lose its effectiveness through repeated assembly and disassembly.

(iii) Fastenings shall be as uniform in size as practicable to preclude improper assembly.

(iv) Holes for fastenings shall not penetrate to the interior of an intake or exhaust system and shall be threaded to ensure that all specified bolts or screws will not bottom even if the washers are omitted.

(v) Fastenings used for joints of flame-arresting paths on intake or exhaust systems shall be used only for attaching parts that are essential in maintaining the explosion-proof integrity. They shall not be used for attaching brackets or other parts.

(vi) The minimum thickness of material for flanges shall be ½-inch, except that a final thickness of 7/16-inch is allowed after machining rolled plate.

(vii) The maximum fastening spacing shall be 6 inches.

(viii) The minimum diameter of fastenings shall be ⅜-inch, except smaller diameter fastenings may be used if the joint first meets the requirements of the static pressure test in § 7.104, and the explosion test in § 7.100.

(ix) The minimum thread engagement of fastenings shall be equal to or greater than the nominal diameter of the fastenings specified, or the intake or exhaust system must meet the test requirements of the explosion tests in § 7.100 and the static pressure test in § 7.104.

(x) The minimum contact surface of gaskets forming flame-arresting paths shall be ⅜-inch, and the thickness of the gaskets shall be no greater than 1/16-inch. The minimum distance from the interior edge of a gasket to the edge of a fastening hole shall be ⅜-inch. The gaskets shall be positively positioned, and a means shall be provided to preclude improper installation. When the joint is completely assembled, it shall be impossible to insert a 0.0015-inch thickness gauge to a depth exceeding ⅛-inch between the gasket and mating flanges. Other gasket designs shall be evaluated in accordance with § 7.107.

(q) The following construction requirements shall apply to flame-arresting paths formed without gaskets:

(1) Flat surfaces between fastening holes that form any part of a flame-arresting path shall be planed to within a maximum deviation of one-half the maximum clearance specified in paragraph (q)(7) of this section. All metal surfaces forming a flame-arresting path shall be finished during the manufacturing process to not more than 250 microinches. A thin film of nonhardening preparation to inhibit rusting may be applied to these finished metal surfaces, as long as the final surface can be readily wiped free of any foreign materials.

(2) A means shall be provided to ensure that fastenings maintain the tightness of joints. The means provided shall not lose its effectiveness through repeated assembly and disassembly.

(3) Fastenings shall be as uniform in size as practicable to preclude improper assembly.

(4) Holes for fastenings shall not penetrate to the interior of an intake or exhaust system and shall be threaded to ensure that all specified bolts or screws will not bottom even if the washers are omitted.

(5) Fastenings used for joints of flame-arresting paths on intake or exhaust systems shall be used only for attaching parts that are essential in maintaining the explosion-proof integrity. They shall not be used for attaching brackets or other parts.

(6) The flame-arresting path of threaded joints shall conform to the requirements of paragraph (q)(7) of this section.

(7) Intake and exhaust systems joints shall meet the specifications set out in Table F–1.

TABLE F–1.—DIMENSIONAL REQUIREMENTS FOR EXPLOSION-PROOF INTAKE AND EXHAUST SYSTEM JOINTS

Minimum thickness of material for flanges	½″ [1]
Minimum width of joint; all in one plane	1″
Maximum clearance; joint all in one plane	0.004″
Minimum width of joint, portions of which are different planes; cylinders or equivalent	¾″ [2]
Maximum clearances; joint in two or more planes, cylinders or equivalent:	
Portion perpendicular to plane	0.008″ [3]
Plane portion	0.006″
Maximum fastening [4] spacing; joints all in one plane [5]	6″
Maximum fastening spacing; joints, portions of which are in different planes	8″

TABLE F–1.—DIMENSIONAL REQUIREMENTS FOR EXPLOSION-PROOF INTAKE AND EXHAUST SYSTEM JOINTS—Continued

Minimum diameter of fastening (without regard to type of joint) [6]	3/8″
Minimum thread engagement of fastening [7]	1/16″
Maximum diametrical clearance between fastening body and unthreaded holes through which it passes [8 9 10].	
Minimum distance from interior of the intake or exhaust system to the edge of a fastening hole: [11]	
Joint-minimum width 1″	7/16″ [8 12]
Shafts centered by ball or roller bearings:	
Minimum length of flame-arresting path	1″
Maximum diametrical clearance	0.030″
Other cylindrical joints:	
Minimum length of flame-arresting path	1″
Maximum diametrical clearance	0.010″

[1] 1/16-inch less is allowable for machining rolled plate.

[2] If only two planes are involved, neither portion of a joint shall be less than 1/8-inch wide, unless the wider portion conforms to the same requirements as those for a joint that is all in one plane. If more than two planes are involved (as in labyrinths or tongue-in-groove joints), the combined lengths of those portions having prescribed clearances are considered.

[3] The allowable diametrical clearance is 0.008-inch when the portion perpendicular to the plane portion is 1/4-inch or greater in length. If the perpendicular portion is more than 1/8-inch but less than 1/4-inch wide, the diametrical clearance shall not exceed 0.006-inch.

[4] Studs, when provided, shall bottom in blind holes, be completely welded in place, or have the bottom of the hole closed with a plug secured by weld or braze. Fastenings shall be provided at all corners.

[5] The requirements as to diametrical clearance around the fastening and minimum distance from the fastening hole to the inside of the intake or exhaust system apply to steel dowel pins. In addition, when such pins are used, the spacing between centers of the fastenings on either side of the pin shall not exceed 5 inches.

[6] Fastening diameters smaller than specified may be used if the joint or assembly meets the test requirements of § 7.104.

[7] Minimum thread engagement shall be equal to or greater than the nominal diameter of the fastening specified, or the intake or exhaust system must meet the test requirements of § 7.104.

[8] The requirements as to diametrical clearance around the fastening and minimum distance from the fastening hole to the inside of the intake or exhaust system apply to steel dowel pins. In addition, when such pins are used, the spacing between centers of the fastenings on either side of the pin shall not exceed 5 inches.

[9] This maximum clearance only applies when the fastening is located within the flame-arresting path.

[10] Threaded holes for fastenings shall be machined to remove burrs or projections that affect planarity of a surface forming a flame-arresting path.

[11] Edge of the fastening hole shall include any edge of any machining done to the fastening hole, such as chamfering.

[12] f the diametrical clearance for fastenings does not exceed 1/32-inch, then the minimum distance shall be 1/4-inch.

(r) *Intake system.* (1) The intake system shall include a device between the air cleaner and intake flame arrester, operable from the equipment operator's compartment, to shut off the air supply to the engine for emergency purposes. Upon activation, the device must operate immediately and the engine shall stop within 15 seconds.

(2) The intake system shall include a flame arrester that will prevent an explosion within the system from propagating to a surrounding flammable mixture when tested in accordance with the explosion tests in § 7.100. The flame arrester shall be located between the air cleaner and the intake manifold and shall be attached so that it can be removed for inspection or cleaning. The flame arrester shall be constructed of corrosion-resistant metal and meet the following requirements:

(i) Two intake flame arrester designs, the spaced-plate type and the crimped ribbon type, will be tested in accordance with the requirements of § 7.100. Variations to these designs or other intake flame arrester designs will be evaluated under the provisions of § 7.107.

(ii) In flame arresters of the spaced-plate type, the thickness of the plates shall be at least 0.125-inch; spacing between the plates shall not exceed 0.018-inch; and the flame-arresting path formed by the plates shall be at least 1 inch wide. The unsupported length of the plates shall be short enough that permanent deformation resulting from explosion tests shall not exceed 0.002-inch. The plates and flame arrester housing shall be an integral unit which cannot be disassembled.

(iii) In flame arresters of the crimped ribbon type, the dimensions of the core openings shall be such that a plug gauge 0.018-inch in diameter shall not pass through, and the flame-arresting path core thickness shall be at least 1 inch. The core and flame arrester housing shall be an integral unit which cannot be disassembled.

(3) The intake system shall be designed so that improper installation of the flame arrester is impossible.

(4) The intake system shall include an air cleaner service indicator. The air cleaner shall be installed so that only filtered air will enter the flame arrester. The air cleaner shall be sized and the service indicator set in accordance with the engine manufacturer's recommendations. Unless the service indicator is explosion-proof, it shall be located between the air cleaner and flame arrester, and the service indicator setting shall be reduced to account for the additional restriction imposed by the flame arrester.

(5) The intake system shall include a connection between the intake flame arrester and the engine head for temporary attachment of a device to indicate the total vacuum in the system. This opening shall be closed by a plug or other suitable device that is sealed or locked in place except when in use.

(s) *Exhaust system.* (1) The exhaust system shall include a flame arrester that will prevent propagation of flame or discharge of glowing particles to a surrounding flammable mixture. The flame arrester shall be constructed of corrosion-resistant metal.

(i) If a mechanical flame arrester is used, it shall be positioned so that only cooled exhaust gas at a maximum temperature of 302° F (150° C) will be discharged through it.

(ii) If a mechanical flame arrester of the spaced-plate type is used, it must meet the requirements of paragraph (r)(2)(ii) of this section and the test requirements of § 7.100. Variations to the spaced-plate flame arrester design and other mechanical flame arrester designs shall be evaluated under the provisions of § 7.107. The flame arrester shall be designed and attached so that it can be removed for inspection and cleaning.

(2) The exhaust system shall allow a wet exhaust conditioner to be used as the exhaust flame arrester provided that

the explosion tests of § 7.100 demonstrate that the wet exhaust conditioner will arrest flame. When used as a flame arrester, the wet exhaust conditioner shall be equipped with a sensor to automatically activate the safety shutdown system at or above the minimum allowable low water level established by § 7.100. Restarting of the engine shall be prevented until the water supply in the wet exhaust conditioner has been replenished above the minimum allowable low water level. All parts of the wet exhaust conditioner and associated components that come in contact with contaminated exhaust conditioner water shall be constructed of corrosion-resistant material. The wet exhaust conditioner shall include a means for verifying that the safety shutdown system operates at the proper water level. A means shall be provided for draining and cleaning the wet exhaust conditioner. The final exhaust gas temperature at discharge from the wet exhaust conditioner shall not exceed 170° F (76° C) under test conditions specified in § 7.102. A sensor shall be provided that activates the safety shutdown system before the exhaust gas temperature at discharge from the wet exhaust conditioner exceeds 185° F (85° C) under test conditions specified in § 7.103(a)(4).

(3) The exhaust system shall be designed so that improper installation of the flame arrester is impossible.

(4) The exhaust system shall provide a means to cool the exhaust gas and prevent discharge of glowing particles.

(i) When a wet exhaust conditioner is used to cool the exhaust gas and prevent the discharge of glowing particles, the temperature of the exhaust gas at the discharge from the exhaust conditioner shall not exceed 170° F (76° C) when tested in accordance with the exhaust gas cooling efficiency test in § 7.102. A sensor shall be provided that activates the safety shutdown system before the exhaust gas temperature at discharge from the wet exhaust conditioner exceeds 185° F (85° C) when tested in accordance with the safety system controls test in § 7.103. All parts of the wet exhaust conditioner and associated components that come in contact with contaminated exhaust conditioner water shall be constructed of corrosion-resistant material.

(ii) When a dry exhaust conditioner is used to cool the exhaust gas, the temperature of the exhaust gas at discharge from the diesel power package shall not exceed 302° F (150° C) when tested in accordance with the exhaust gas cooling efficiency test of § 7.102. A sensor shall be provided that activates the safety shutdown system before the exhaust gas exceeds 302° F (150° C) when tested in accordance with the safety system control test in § 7.103. A means shall be provided to prevent the discharge of glowing particles, and it shall be evaluated under the provisions of § 7.107.

(5) Other means for cooling the exhaust gas and preventing the propagation of flame or discharge of glowing particles shall be evaluated under the provisions of § 7.107.

(6) There shall be a connection in the exhaust system for temporary attachment of a device to indicate the total backpressure in the system and collection of exhaust gas samples. This opening shall be closed by a plug or other suitable device that is sealed or locked in place except when in use.

§ 7.99 Critical characteristics.

The following critical characteristics shall be inspected or tested on each diesel power package to which an approval marking is affixed:

(a) Finish, width, planarity, and clearances of surfaces that form any part of a flame-arresting path.

(b) Thickness of walls and flanges that are essential in maintaining the explosion-proof integrity of the diesel power package.

(c) Size, spacing, and tightness of fastenings.

(d) The means provided to maintain tightness of fastenings.

(e) Length of thread engagement on fastenings and threaded parts that ensure the explosion-proof integrity of the diesel power package.

(f) Diesel engine approval marking.

(g) Fuel rate setting to ensure that it is appropriate for the intended application, or a warning tag shall be affixed to the fuel system notifying the purchaser of the need to make proper adjustments.

(h) Material and dimensions of gaskets that are essential in maintaining the explosion-proof integrity of the diesel power package.

(i) Dimensions and assembly of flame arresters.

(j) Materials of construction to ensure that the intake system, exhaust system, cooling fans, and belts have been fabricated from the required material.

(k) Proper interconnection of the coolant system components and use of specified components.

(l) Proper interconnection of the safety shutdown system components and use of specified components.

(m) All plugs and covers to ensure that they are tightly installed.

(n) The inspections and tests described in the diesel power package checklist shall be performed and all requirements shall be met.

§ 7.100 Explosion tests.

(a) *Test procedures.* (1) Prepare to test the diesel power package as follows:

(i) Perform a detailed check of parts against the drawings and specifications submitted under § 7.97 to determine that the parts and drawings agree.

(ii) Remove all parts that do not contribute to the operation or ensure the explosion-proof integrity of the diesel power package such as the air cleaner and exhaust gas dilution system.

(iii) Fill coolant system fluid and engine oil to the engine manufacturer's recommended levels.

(iv) Interrupt fuel supply to the injector pump.

(v) Establish a preliminary low water level for systems using the wet exhaust conditioner as a flame arrester.

(2) Perform static and dynamic tests of the intake system as follows:

(i) Install the diesel power package in an explosion test chamber which is large enough to contain the complete diesel power package. The chamber must be sufficiently darkened and provide viewing capabilities of the flame-arresting paths to allow observation during testing of any discharge of flame or ignition of the flammable mixture surrounding the diesel power package. Couple the diesel power package to an auxiliary drive mechanism. Attach a pressure measuring device, a temperature measuring device, and an ignition source to the intake system. The pressure measuring device shall be capable of indicating the peak pressure accurate to ±1 pound-per-square inch gauge (psig) at 100 psig static pressure and shall have a frequency response of 40 Hertz or greater. The ignition source shall be an electric spark with a minimum energy of 100 millijoules. The ignition source shall be located immediately adjacent to the intake manifold and the pressure and temperature devices shall be located immediately adjacent to the flame arrester.

(ii) For systems using the wet exhaust conditioner as an exhaust flame arrester, fill the exhaust conditioner to the specified high or normal operating water level.

(iii) Fill the test chamber with a mixture of natural gas and air or methane and air. If natural gas is used, the content of combustible hydrocarbons shall total at least 98.0 percent, by volume, with the remainder being inert. At least 80.0 percent, by volume, of the gas shall be methane. For all tests, the methane or natural gas concentration shall be 8.5 ± 1.8 percent, by volume, and the oxygen

concentration shall be no less than 18 percent, by volume.

(iv) Using the auxiliary drive mechanism, motor the engine to fill the intake and exhaust systems with the flammable mixture. The intake system, exhaust system, and test chamber gas concentration shall not differ by more than ±0.3 percent, by volume, at the time of ignition.

(v) For static tests, stop the engine, actuate the ignition source, and observe the peak pressure. The peak pressure shall not exceed 110 psig. If the peak pressure exceeds 110 psig, construction changes shall be made that result in a reduction of pressure to 110 psig or less, or the system shall be tested in accordance with the static pressure test of § 7.104 with the pressure parameter replaced with a static pressure of twice the highest value recorded.

(vi) If the peak pressure does not exceed 110 psig or if the system meets the static pressure test requirements of this section and there is no discharge of visible flames or glowing particles or ignition of the flammable mixture in the chamber, a total of 20 tests shall be conducted in accordance with the explosion test specified above.

(vii) For dynamic tests, follow the same procedures for static tests, except actuate the ignition source while motoring the engine. Forty dynamic tests shall be conducted at two speeds, twenty at 1800 ± 200 RPM and twenty at 1000 ± 200 RPM. Under some circumstances, during dynamic testing the flammable mixture may continue to burn within the diesel power package after ignition. This condition can be recognized by the presence of a rumbling noise and a rapid increase in temperature. This can cause the flame-arrester to reach temperatures which can ignite the surrounding flammable mixture. Ignition of the flammable mixture in the test chamber under these circumstances does not constitute failure of the flame arrester. However; if this condition is observed, the test operator should immediately stop the engine and allow components to cool to prevent damage to the components.

(3) Perform static and dynamic tests of the exhaust system as follows:

(i) Prepare the diesel power package for explosion tests according to § 7.100(a)(2)(i) as follows:

(A) Install the ignition source immediately adjacent to the exhaust manifold.

(B) Install pressure measuring devices in each segment as follows: immediately adjacent to the exhaust conditioner inlet; in the exhaust conditioner; and immediately adjacent to the flame arrester, if applicable.

(C) Install a temperature device immediately adjacent to the exhaust conditioner inlet.

(ii) If the exhaust system is provided with a spaced-plate flame arrester in addition to an exhaust conditioner, explosion tests of the exhaust system shall be performed as described for the intake system in accordance with this section. Water shall not be present in a wet exhaust conditioner for the tests.

(iii) If the wet exhaust conditioner is used as the exhaust flame arrester, explosion testing of this type of system shall be performed as described for the intake system in accordance with this section with the following modifications:

(A) Twenty static tests, twenty dynamic tests at 1800 ± 200 RPM, and twenty dynamic tests at 1000 ± 200 RPM shall be conducted at 2 inches below the minimum allowable low water level. All entrances in the wet exhaust conditioner which do not form explosion-proof joints shall be opened. These openings may include lines which connect the reserve water supply to the wet exhaust conditioner, insert flanges, float flanges, and cover plates. These entrances are opened during this test to verify that they are not flame paths.

(B) Twenty static tests, twenty dynamic tests at 1800± 200 RPM rated speed, and twenty dynamic tests at 1000 ± 200 RPM shall be conducted at 2 inches below the minimum allowable low water level. All entrances in the wet exhaust conditioner (except the exhaust conditioner outlet) which do not form explosion-proof joints shall be closed. These openings are closed to simulate normal operation.

(C) Twenty static tests, twenty dynamic tests at 1800 ± 200 RPM rated speed, and twenty dynamic tests at 1000 ± 200 RPM shall be conducted at the specified high or normal operating water level. All entrances in the wet exhaust conditioner which do not form explosion-proof joints shall be opened.

(D) Twenty static tests, twenty dynamic tests at 1800 ± 200 RPM, and twenty dynamic tests at 1000 ± 200 RPM shall be conducted at the specified high or normal operating water level. All entrances in the wet exhaust conditioner (except the exhaust conditioner outlet) which do not form explosion-proof joints shall be closed.

(iv) After successful completion of the explosion tests of the exhaust system, the minimum allowable low water level, for a wet exhaust conditioner used as the exhaust flame arrester, shall be determined by adding two inches to the lowest water level that passed the explosion tests.

(v) A determination shall be made of the maximum grade on which the wet exhaust conditioner can be operated retaining the flame-arresting characteristics.

(b) *Acceptable performance.* The explosion tests shall not result in any of the following—

(1) Discharge of flame or glowing particles.

(2) Visible discharge of gas through gasketed joints.

(3) Ignition of the flammable mixture in the test chamber.

(4) Rupture of any part that affects the explosion-proof integrity.

(5) Clearances, in excess of those specified in this subpart, along accessible flame-arresting paths, following any necessary retightening of fastenings.

(6) Pressure exceeding 110 psig, unless the intake system or exhaust system has withstood a static pressure of twice the highest value recorded in the explosion tests of this section following the static pressure test procedures of § 7.104.

(7) Permanent distortion of any planar surface of the diesel power package exceeding 0.04-inches/linear foot.

(8) Permanent deformation exceeding 0.002-inch between the plates of spaced-plate flame arrester designs.

§ 7.101 Surface temperature tests.

The test for determination of exhaust gas cooling efficiency described in § 7.102 may be done simultaneously with this test.

(a) *Test procedures.* (1) Prepare to test the diesel power package as follows:

(i) Perform a detailed check of parts against the drawings and specifications submitted to MSHA under compliance with § 7.97 to determine that the parts and drawings agree.

(ii) Fill the coolant system with a mixture of equal parts of antifreeze and water, following the procedures specified in the application, § 7.97(a)(3).

(iii) If a wet exhaust conditioner is used to cool the exhaust gas, fill the exhaust conditioner to the high or normal operating water level and have a reserve water supply available, if applicable.

(2) Tests shall be conducted as follows:

(i) The engine shall be set to the rated horsepower specified in § 7.97(a)(2).

(ii) Install sufficient temperature measuring devices to determine the location of the highest coolant temperature. The temperature measuring devices shall be accurate to ±4 °F (±2 °C).

(iii) Operate the engine at rated horsepower and with 0.5±0.1 percent,

by volume, of methane in the intake air mixture until all parts of the engine, exhaust coolant system, and other components reach their respective equilibrium temperatures. The liquid fuel temperature into the engine shall be maintained at 100 °F (38 °C) ±10 °F (6 °C) and the intake air temperature shall be maintained at 70 °F (21 °C) ±5 °F (3 °C).

(iv) Increase the coolant system temperatures until the highest coolant temperature is 205 °F to 212 °F (96 °C to 100 °C), or to the maximum temperature specified by the applicant, if lower.

(v) After all coolant system temperatures stabilize, operate the engine for 1 hour.

(vi) The ambient temperature shall be between 50 °F (10 °C) and 104 °F (40 °C) throughout the tests.

(b) *Acceptable performance.* The surface temperature of any external surface of the diesel power package shall not exceed 302 °F (150 °C) during the test.

§ 7.102 Exhaust gas cooling efficiency test.

(a) *Test procedures.* (1) Follow the procedures specified in § 7.101(a).

(2) Install a temperature measuring device to measure the exhaust gas temperature at discharge from the exhaust conditioner. The temperature measuring device shall be accurate to ±4 °F (±2 °C).

(3) Determine the exhaust gas temperature at discharge from the exhaust conditioner before the exhaust gas is diluted with air.

(b) *Acceptable performance.*

(1) The exhaust gas temperature at discharge from a wet exhaust conditioner before the exhaust gas is diluted with air shall not exceed 170 °F (76 °C).

(2) The exhaust gas temperature at discharge from a dry exhaust conditioner before the gas is diluted with air shall not exceed 302 °F (150 °C).

§ 7.103 Safety system control test.

(a) *Test procedures.* (1) Prior to testing, perform the tasks specified in § 7.101(a)(1) and install sufficient temperature measuring devices to measure the highest coolant temperature and exhaust gas temperature at discharge from the exhaust conditioner. The temperature measuring devices shall be accurate to ±4 °F (±2 °C).

(2) Determine the effectiveness of the coolant system temperature shutdown sensors which will automatically activate the safety shutdown system and stop the engine before the coolant temperature in the cooling jackets exceeds manufacturer's specifications or 212 °F (100 °C), whichever is lower, by operating the engine and causing the coolant in the cooling jackets to exceed the specified temperature.

(3) For systems using a dry exhaust gas conditioner, determine the effectiveness of the temperature sensor in the exhaust gas stream which will automatically activate the safety shutdown system and stop the engine before the cooled exhaust gas temperature exceeds 302 °F (150 °C), by operating the engine and causing the cooled exhaust gas to exceed the specified temperature.

(4) For systems using a wet exhaust conditioner, determine the effectiveness of the temperature sensor in the exhaust gas stream which will automatically activate the safety shutdown system and stop the engine before the cooled exhaust gas temperature exceeds 185 °F (85 °C), with the engine operating at a high idle speed condition. Temporarily disable the reserve water supply, if applicable, and any safety shutdown system control that might interfere with the evaluation of the operation of the exhaust gas temperature sensor. Prior to testing, set the water level in the wet exhaust conditioner to a level just above the minimum allowable low water level. Run the engine until the exhaust gas temperature sensor activates the safety shutdown system and stops the engine.

(5) For systems using a wet exhaust conditioner as an exhaust flame arrester, determine the effectiveness of the low water sensor which will automatically activate the safety shutdown system and stop the engine at or above the minimum allowable low water level established from results of the explosion tests in § 7.100 with the engine operating at a high idle speed condition. Temporarily disable the reserve water supply, if applicable, and any safety shutdown system control that might interfere with the evaluation of the operation of the low water sensor. Prior to testing, set the water level in the wet exhaust conditioner to a level just above the minimum allowable low water level. Run the engine until the low water sensor activates the safety shutdown system and stops the engine. Measure the low water level. Attempt to restart the engine.

(6) Determine the effectiveness of the device in the intake system which is designed to shut off the air supply and stop the engine for emergency purposes with the engine operating at both a high idle speed condition and a low idle speed condition. Run the engine and activate the emergency intake air shutoff device.

(7) Determine the total air inlet restriction of the complete intake system, including the air cleaner, as measured between the intake flame arrester and the engine head with the engine operating at maximum air flow.

(8) Determine the total exhaust backpressure with the engine operating at rated horsepower as specified in § 7.103(a)(7). If a wet exhaust conditioner is used, it must be filled to the high or normal operating water level during this test.

(9) The starting mechanism shall be tested to ensure that engagement is not possible while the engine is running. Operate the engine and attempt to engage the starting mechanism.

(10) Where the lack of engine oil pressure must be overridden in order to start the engine, test the override to ensure that it does not override any of the safety shutdown sensors specified in § 7.98(i). After each safety shutdown sensor test specified in paragraphs (a)(2) through (a)(5) of this section, immediately override the engine oil pressure and attempt to restart the engine.

(b) *Acceptable performance.* Tests of the safety system controls shall result in the following:

(1) The coolant system temperature shutdown sensor shall automatically activate the safety shutdown system and stop the engine before the water temperature in the cooling jackets exceeds manufacturer's specifications or 212 °F (100 °C), whichever is lower.

(2) The temperature sensor in the exhaust gas stream of a system using a dry exhaust conditioner shall automatically activate the safety shutdown system and stop the engine before the cooled exhaust gas exceeds 302 °F (150 °C).

(3) The temperature sensor in the exhaust gas stream of a system using a wet exhaust conditioner shall automatically activate the safety shutdown system and stop the engine before the cooled exhaust gas exceeds 185 °F (85 °C).

(4) The low water sensor for systems using a wet exhaust conditioner shall automatically activate the safety shutdown system and stop the engine at or above the minimum allowable low water level and prevent restarting of the engine.

(5) The emergency intake air shutoff device shall operate immediately when activated and stop the engine within 15 seconds.

(6) The total intake air inlet restriction and the total exhaust backpressure shall not exceed the engine manufacturer's specifications.

(7) It shall not be possible to engage the starting mechanism while the engine is running, unless the starting mechanism is constructed of nonsparking material.

(8) The engine oil pressure override shall not override any of the shutdown sensors.

§ 7.104 Internal static pressure test.

(a) *Test procedures.* (1) Isolate and seal each segment of the intake system or exhaust system to allow pressurization.

(2) Internally pressurize each segment of the intake system or exhaust system to four times the maximum pressure observed in each segment during the tests of § 7.100, or 150 psig ± 5 psig, whichever is less. Maintain the pressure for a minimum of 10 seconds.

(3) Following the pressure hold, the pressure shall be removed and the pressurizing agent removed from the intake system or exhaust system.

(b) *Acceptable performance.* (1) The intake system or exhaust system, during pressurization, shall not exhibit—

(i) Leakage through welds and gasketed joints; or

(ii) Leakage other than along joints meeting the explosion-proof requirements of § 7.98(q).

(2) Following removal of the pressurizing agent, the intake system or exhaust system shall not exhibit any—

(i) Changes in fastening torque;

(ii) Visible cracks in welds;

(iii) Permanent deformation affecting the length or gap of any flame-arresting paths;

(iv) Stretched or bent fastenings;

(v) Damaged threads of parts affecting the explosion-proof integrity of the intake system or exhaust system; or

(vi) Permanent distortion of any planar surface of the diesel power package exceeding 0.04-inches/linear foot.

§ 7.105 Approval marking.

Each approved diesel power package shall be identified by a legible and permanent approval plate inscribed with the assigned MSHA approval number and securely attached to the diesel power package in a manner that does not impair any explosion-proof characteristics. The grade limitation of a wet exhaust conditioner used as an exhaust flame arrester shall be included on the approval marking.

§ 7.106 Post-approval product audit.

Upon request by MSHA, but not more than once a year except for cause, the approval-holder shall make an approved diesel power package available for audit at no cost to MSHA.

§ 7.107 New technology.

MSHA may approve a diesel power package that incorporates technology for which the requirements of this subpart are not applicable if MSHA determines that the diesel power package is as safe as those which meet the requirements of this subpart.

§ 7.108 Power package checklist.

Each diesel power package bearing an MSHA approval plate shall be accompanied by a power package checklist. The power package checklist shall consist of a list of specific features that must be checked and tests that must be performed to determine if a previously approved diesel power package is in approved condition. Test procedures shall be specified in sufficient detail to allow evaluation to be made without reference to other documents. Illustrations shall be used to fully identify the approved configuration of the diesel power package.

PARTS 31—DIESEL MINE LOCOMOTIVES [REMOVED]

3. Part 31 is removed.

PART 32—MOBILE DIESEL-POWERED EQUIPMENT FOR NONCOAL MINES [REMOVED]

4. Part 32 is removed.

PART 36—[AMENDED]

5. The authority for part 36 continues as follows:

Authority: 30 U.S.C. 957, 961.

6. The heading of part 36 is revised to read as follows:

PART 36—APPROVAL REQUIREMENTS FOR PERMISSIBLE MOBILE DIESEL-POWERED TRANSPORTATION EQUIPMENT.

7. Section 36.1 is revised to read as follows:

§ 36.1 Purpose.

The regulations in this part set forth the requirements for mobile diesel-powered transportation equipment to procure their approval and certification as permissible; procedures for applying for such certification; and fees.

8. Section 36.2 is revised to read as follows:

§ 36.2 Definitions.

The following definitions apply in this part.

Applicant An individual, partnership, company, corporation, association, or other organization, that designs, manufactures, assembles, or controls the assembly and that seeks a certificate of approval or preliminary testing of mobile diesel-powered transportation equipment as permissible.

Certificate of approval. A formal document issued by MSHA stating that the complete assembly has met the requirements of this part for mobile diesel-powered transportation equipment and authorizing the use and attachment of an official approval plate so indicating.

Component. A piece, part, or fixture of mobile diesel-powered transportation equipment that is essential to its operation as a permissible assembly.

Diesel engine. A compression-ignition, internal-combustion engine that utilizes diesel fuel.

Explosion proof. A component or subassembly that is so constructed and protected by an enclosure and/or flame arrester (s) that if a flammable mixture of gas is ignited within the enclosure it will withstand the resultant pressure without damage to the enclosure and/or flame arrester(s). Also the enclosure and/or flame arrester(s) shall prevent the discharge of flame or ignition of any flammable mixture that surrounds the enclosure.

Flame arrester. A device so constructed that flame or sparks from the diesel engine cannot propagate an explosion of a flammable mixture through it.

Flammable mixture. A mixture of gas, such as methane, natural gas, or similar hydrocarbon gas with normal air, that will propagate flame or explode violently when initiated by an incendive source.

Fuel-air ratio. The composition of the mixture of fuel and air in the combustion chamber of the diesel engine expressed as weight-pound of fuel per pound of air.

MSHA. The United States Department of Labor, Mine Safety and Health Administration.

Mobile diesel-powered transportation equipment. Equipment that is:

(1) Used for transporting the product being mined or excavated, or for transporting materials and supplies used in mining or excavating operations;

(2) Mounted on wheels or crawler treads (tracks); and

(3) Powered by a diesel engine as the prime mover.

Normal operation. When each component and the entire assembly of the mobile diesel-powered transportation equipment performs the functions for which they were designed.

Permissible. As applied to mobile diesel-powered transportation equipment, this means that the

complete assembly conforms to the requirements of this part, and that a certificate of approval to that effect has been issued.

Subassembly. A group or combination of components.

9. Section 36.6, paragraphs (b)(2), (b)(3), and (b)(4) are amended by inserting the phrase ''Except for equipment utilizing part 7, subpart F power packages,'' at the beginning of the first sentence of each paragraph.

10. Section 36.9 is amended by revising the third sentence of paragraph (a) to read as follows:

§ 36.9 Conduct of investigations, tests, and demonstrations.

(a) * * * After the issuance of a certificate of approval, MSHA may conduct such public demonstrations and tests of the approved mobile diesel-powered transportation equipment as it deems appropriate. * * *

* * * * *

11. Section 36.20, paragraphs (b) is revised and paragraph (c) is added to read as follows:

§ 36.20 Quality of material, workmanship, and design.

* * * * *

(b) The quality of material, workmanship, and design shall conform to the requirements of § 7.98(q) of this chapter.

(c) Power packages approved under part 7, subpart F of this chapter are considered to be acceptable for use in equipment submitted for approval under this part. Sections 36.21 through 36.26 (except § 36.25(f)) and §§ 36.43 through 36.48 are not applicable to equipment utilizing part 7, subpart F power packages, since these requirements have already been satisfied.

12. Section 36.21 is amended by revising the first sentence to read as follows:

§ 36.21 Engine for equipment considered for certification.

Only equipment powered by a compression-ignition (diesel) engine and burning diesel fuel will be considered for approval and certification. ***

13. Section 36.43 is amended by removing the phrase ''in underground gassy noncoal mines and tunnels'' from the last sentence of paragraph (a).

14. The note of § 36.48 is revised to read as follows:

§ 36.48 Tests of surface temperature of engine and components of the cooling system.

* * * * *

Note to § 36.48: The engine may be operated under test conditions prescribed by MSHA while completely surrounded by a flammable mixture. MSHA reserves the right to apply combustible materials to any surface for test. Operation under such conditions shall not ignite the flammable mixture.

PART 70—[AMENDED]

15. The authority citation for part 70 continues to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957, and 961.

16. Subparts G–S are reserved and a new subpart T is added to part 70 to read as follows:

* * * * *

Subpart T—Diesel Exhaust Gas Monitoring

Sec.
70.1900 Exhaust Gas Monitoring

SUBPART T—DIESEL EXHAUST GAS MONITORING

§ 70.1900 Exhaust Gas Monitoring.

(a) During on-shift examinations required by § 75.362, a certified person as defined by § 75.100 of this chapter and designated by the operator as trained or experienced in the appropriate sampling procedures, shall determine the concentration of carbon monoxide (CO) and nitrogen dioxide (NO_2):

(1) In the return of each working section where diesel equipment is used, at a location which represents the contribution of all diesel equipment on such section;

(2) In the area of the section loading point if diesel haulage equipment is operated on the working section;

(3) At a point inby the last piece of diesel equipment on the longwall or shortwall face when mining equipment is being installed or removed; and

(4) In any other area designated by the district manager as specified in the mine operator's approved ventilation plan where diesel equipment is operated in a manner which can result in significant concentrations of diesel exhaust.

(b) Samples of CO and NO_2 shall be—

(1) Collected in a manner that makes the results available immediately to the person collecting the samples;

(2) Collected and analyzed by appropriate instrumentation which has been maintained and calibrated in accordance with the manufacturer's recommendations; and

(3) Collected during periods that are representative of conditions during normal operations.

(c) Except as provided in § 75.325(j) of this chapter, when sampling results indicate a concentration of CO and/or NO_2 exceeding an action level of 50 percent of the threshold limit values (TLV®) adopted by the American Conference of Governmental Industrial Hygienists, the mine operator shall immediately take appropriate corrective action to reduce the concentrations of CO and/or NO_2 to below the applicable action level. The publication, ''Threshold Limit Values for Substance in Workroom Air'' (1972) is incorporated by reference and may be inspected at MSHA's Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Arlington, VA 22203; at any Coal Mine Health and Safety District and Subdistrict Office; and at the Office of the Federal Register, 800 North Capitol Street, NW Suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. In addition, copies of the document may be purchased from the Secretary-Treasurer, American Conference of Governmental Industrial Hygienists, Post Office Box 1937, Cincinnati, OH 45202.

(d) A record shall be made when sampling results exceed the action level for the applicable TLV® for CO and/or NO_2. The record shall be made as part of and in the same manner as the records for hazards required by § 75.363 of this chapter and include the following:

(1) Location where each sample was collected;

(2) Substance sampled and the measured concentration; and

(3) Corrective action taken to reduce the concentration of CO and/or NO_2 to or below the applicable action level.

(e) As of November 25, 1997 exhaust gas monitoring shall be conducted in accordance with the requirements of this section.

PART 75—[AMENDED]

17. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

18. New paragraphs (f) through (k) are added to § 75.325 to read as follows:

§ 75.325 Air quantity.

* * * * *

(f) The minimum ventilating air quantity for an individual unit of diesel-powered equipment being operated shall be at least that specified on the approval plate for that equipment. Such air quantity shall be maintained—

(1) In any working place where the equipment is being operated;

(2) At the section loading point during any shift the equipment is being operated on the working section;

(3) In any entry where the equipment is being operated outby the section loading point in areas of the mine developed on or after April 25, 1997;

(4) In any air course with single or multiple entries where the equipment is being operated outby the section loading point in areas of the mine developed prior to April 25, 1997; and

(5) At any other location required by the district manager and specified in the approved ventilation plan.

(g) The minimum ventilating air quantity where multiple units of diesel-powered equipment are operated on working sections and in areas where mechanized mining equipment is being installed or removed must be at least the sum of that specified on the approval plates of all the diesel-powered equipment on the working section or in the area where mechanized mining equipment is being installed or removed. The minimum ventilating air quantity shall be specified in the approved ventilation plan. For working sections such air quantity must be maintained—

(1) In the last open crosscut of each set of entries or rooms in each working section;

(2) In the intake, reaching the working face of each longwall; and

(3) At the intake end of any pillar line.

(h) The following equipment may be excluded from the calculations of ventilating air quantity under paragraph (g) if such equipment exclusion is approved by the district manager and specified in the ventilation plan:

(1) Self-propelled equipment meeting the requirements of § 75.1908(b);

(2) Equipment that discharges its exhaust into intake air that is coursed directly to a return air course;

(3) Equipment that discharges its exhaust directly into a return air course; and

(4) Other equipment having duty cycles such that the emissions would not significantly affect the exposure of miners.

(i) A ventilating air quantity that is less than what is required by paragraph (g) of this section may be approved by the district manager in the ventilation plan based upon the results of sampling that demonstrate that the lesser air quantity will maintain continuous compliance with applicable TLV®'s.

(j) If during sampling required by § 70.1900(c) of this subchapter the ventilating air is found to contain concentrations of CO or NO_2 in excess of the action level specified by § 70.1900(c), higher action levels may be approved by the district manager based on the results of sampling that demonstrate that a higher action level will maintain continuous compliance with applicable TLV®'s. Action levels other than those specified in § 70.1900(c) shall be specified in the approved ventilation plan.

(k) As of November 25, 1977 the ventilating air quantity required where diesel-powered equipment is operated shall meet the requirements of paragraphs (f) through (j) of this section. Mine operators utilizing diesel-powered equipment in underground coal mines shall submit to the appropriate MSHA district manager a revised ventilation plan or appropriate amendments to the existing plan, in accordance with § 75.371, which implement the requirements of paragraphs (f) through (j) of this section.

19. Section 75.342 is amended by revising paragraph (b)(2) and the introductory text of paragraph (c) to read as follows:

§ 75.342 Methane monitors.

* * * * *

(b)(1) * * *

(2) The warning signal device of the methane monitor shall be visible to a person who can deenergize electric equipment or shut down diesel-powered equipment on which the monitor is mounted.

(c) The methane monitor shall automatically deenergize electric equipment or shut down diesel-powered equipment on which it is mounted when—

* * * * *

20. Section 75.344 is amended by removing paragraph (d) and redesignating paragraph (e) as new paragraph (d).

21. Section 75.360 is amended by revising paragraph (b)(7) as follows:

§ 75.360 Preshift Examination.

* * * * *

(b) * * *

(7) Areas where trolley wires or trolley feeder wires are to be or will remain energized during the oncoming shift.

* * * * *

22. Section 75.371 is amended by revising paragraph (r) and adding new paragraphs (kk), (ll), (mm), (nn), (oo), and (pp) to read as follows:

§ 75.371 Mine ventilation plan; contents.

* * * * *

(r) The minimum quantity of air that will be provided during the installation and removal of mechanized mining equipment, the location where this quantity will be provided, and the ventilation controls that will be used (see § 75.325(d), (g), and (i)).

* * * * *

(kk) Areas designated by the district manager where measurements of CO and NO_2 concentrations will be made (see § 70.1900(a)(4)).

(ll) Location where the air quantity will be maintained at the section loading point (see § 75.325(f)(2)).

(mm) Any additional location(s) required by the district manager where a minimum air quantity must be maintained for an individual unit of diesel-powered equipment. (see § 75.325(f)(5)).

(nn) The minimum air quantities that will be provided where multiple units of diesel-powered equipment are operated (see § 75.325(g) (1)–(3) and (i)).

(oo) The diesel-powered mining equipment excluded from the calculation under § 75.325(g). (see § 75.325(h)).

(pp) Action levels higher than the 50 percent level specified by § 70.1900(c). (see § 75.325(j)).

23. Section 75.380 is amended by removing paragraph (f)(3)(i) and by redesignating paragraphs (f)(3)(ii) through (f)(3)(v) as paragraphs (f)(3)(i) through (f)(3)(iv).

24. Section 75.400 is revised to read as follows:

§ 75.400 Accumulation of combustible materials.

Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall be cleaned up and not be permitted to accumulate in active workings, or on diesel-powered and electric equipment therein.

25. Section 75.1710 is revised to read as follows:

§ 75.1710 Canopies or cabs; diesel-powered and electric face equipment.

In any coal mine where the height of the coalbed permits, an authorized representative of the Secretary may require that diesel-powered and electric face equipment, including shuttle cars, be provided with substantially constructed canopies or cabs to protect the miners operating such equipment from roof falls and from rib and face rolls.

26. Section 75.1710–1 is amended by replacing the phrase ''electric face equipment'' with ''diesel-powered and electric face equipment'' in the title and in paragraphs (a) and (f).

27. A new subpart T is added to part 75 to read as follows:

Subpart T—Diesel-Powered Equipment

Sec.

75.1900 Definitions.
75.1901 Diesel fuel requirements.
75.1902 Underground diesel fuel storage—general requirements.

75.1903 Underground diesel fuel storage facilities and areas; construction and safety precautions.
75.1904 Underground diesel fuel tanks and safety cans.
75.1905 Dispensing of diesel fuel.
75.1905–1 Diesel fuel piping systems.
75.1906 Transport of diesel fuel.
75.1907 Diesel-powered equipment intended for use in underground coal mines.
75.1908 Nonpermissible diesel-powered equipment-categories.
75.1909 Nonpermissible diesel-powered equipment; design and performance requirements.
75.1910 Nonpermissible diesel-powered equipment; electrical system design and performance requirements.
75.1911 Fire suppression systems for diesel-powered equipment and diesel fuel transportation units.
75.1912 Fire suppression systems for permanent underground diesel fuel storage facilities.
75.1913 Starting aids.
75.1914 Maintenance of diesel-powered equipment.
75.1915 Training and qualification of persons working on diesel-powered equipment.
75.1916 Operation of diesel-powered equipment.

Subpart T—Diesel-Powered Equipment

§ 75.1900 Definitions.

The following definitions apply in this subpart.

Diesel fuel tank. A closed metal vessel specifically designed for the storage or transport of diesel fuel.

Diesel fuel transportation unit. A self-propelled or portable wheeled vehicle used to transport a diesel fuel tank.

Noncombustible material. A material that will continue to serve its intended function for 1 hour when subjected to a fire test incorporating an ASTM E119–88 time/temperature heat input, or equivalent. The publication ASTM E119–88 ''Standard Test Methods for Fire Tests of Building Construction and Materials'' is incorporated by reference and may be inspected at any Coal Mine Health and Safety District and Subdistrict Office; at MSHA's Office of Standards, Regulations, and Variances, 4105 Wilson Boulevard, Arlington, VA 22203; or at the Office of the Federal Register, 800 North Capitol Street, NW., Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. In addition, copies of the document may be purchased from the American Society for Testing Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

Permanent underground diesel fuel storage facility. A facility designed and constructed to remain at one location for the storage or dispensing of diesel fuel, which does not move as mining progresses.

Safety can. A metal container intended for storage, transport or dispensing of diesel fuel, with a nominal capacity of 5 gallons, listed or approved by a nationally recognized independent testing laboratory.

Temporary underground diesel fuel storage area. An area of the mine provided for the short-term storage of diesel fuel in a fuel transportation unit, which moves as mining progresses.

§ 75.1901 Diesel fuel requirements.

(a) Diesel-powered equipment shall be used underground only with a diesel fuel having a sulfur content no greater than 0.05 percent and a flash point of 100° F (38° C) or greater. Upon request, the mine operator shall provide to an authorized representative of the Secretary evidence that the diesel fuel purchased for use in diesel-powered equipment underground meets these requirements.

(b) Flammable liquids shall not be added to diesel fuel used in diesel-powered equipment underground.

(c) Only diesel fuel additives that have been registered by the Environmental Protection Agency may be used in diesel-powered equipment underground.

§ 75.1902 Underground diesel fuel storage—general requirements.

(a) All diesel fuel must be stored in:

(1) Diesel fuel tanks in permanent underground diesel fuel storage facilities;

(2) Diesel fuel tanks on diesel fuel transportation units in permanent underground diesel fuel storage facilities or in temporary underground fuel storage areas; or

(3) Safety cans.

(b) The total capacity of stationary diesel fuel tanks in permanent underground diesel fuel storage facilities must not exceed 1000 gallons.

(c)(1) Only one temporary underground diesel fuel storage area is permitted for each working section or in each area of the mine where equipment is being installed or removed.

(2) The temporary underground diesel fuel storage area must be located—

(i) Within 500 feet of the loading point;

(ii) Within 500 feet of the projected loading point where equipment is being installed; or

(iii) Within 500 feet of the last loading point where equipment is being removed.

(3) No more than one diesel fuel transportation unit at a time shall be parked in the temporary underground diesel fuel storage area.

(d) Permanent underground diesel fuel storage facilities and temporary underground diesel fuel storage areas must be—

(1) At least 100 feet from shafts, slopes, shops, or explosives magazines;

(2) At least 25 feet from trolley wires or power cables, or electric equipment not necessary for the operation of the storage facilities or areas; and

(3) In a location that is protected from damage by other mobile equipment.

(e) Permanent underground diesel fuel storage facilities must not be located within the primary escapeway.

§ 75.1903 Underground diesel fuel storage facilities and areas; construction and safety precautions.

(a) Permanent underground diesel fuel storage facilities must be—

(1) Constructed of noncombustible materials, including floors, roofs, roof supports, doors, and door frames. Exposed coal within fuel storage areas must be covered with noncombustible materials. If bulkheads are used they must be tightly sealed and must be built of or covered with noncombustible materials;

(2) Provided with either self-closing doors or a means for automatic enclosure;

(3) Provided with a means for personnel to enter and exit the facility after closure;

(4) Ventilated with intake air that is coursed into a return air course or to the surface and that is not used to ventilate working places, using ventilation controls meeting the requirements of § 75.333(e);

(5) Equipped with an automatic fire suppression system that meets the requirements of § 75.1912. Actuation of the automatic fire suppression system shall initiate the means for automatic enclosure;

(6) Provided with a means of containment capable of holding 150 percent of the maximum capacity of the fuel storage system; and

(7) Provided with a competent concrete floor or equivalent to prevent fuel spills from saturating the mine floor.

(b) Permanent underground diesel fuel storage facilities and temporary underground diesel fuel storage areas must be—

(1) Equipped with at least 240 pounds of rock dust and provided with two portable multipurpose dry chemical type (ABC) fire extinguishers that are listed or approved by a nationally recognized independent testing laboratory and have a 10A:60B:C or

higher rating. Both fire extinguishers must be easily accessible to personnel, and at least one fire extinguisher must be located outside of the storage facility or area upwind of the facility, in intake air; or

(2) Provided with three portable multipurpose dry chemical type (ABC) fire extinguishers that are listed or approved by a nationally recognized independent testing laboratory and have a 10A:60B:C or higher rating. All fire extinguishers must be easily accessible to personnel, and at least one fire extinguisher must be located outside of the storage facility or area upwind of the facility, in intake air.

(3) Identified with conspicuous markings designating diesel fuel storage; and

(4) Maintained to prevent the accumulation of water.

(c) Welding or cutting other than that performed in accordance with paragraph (d) of this section shall not be performed within 50 feet of a permanent underground diesel fuel storage facility or a temporary underground diesel fuel storage area.

(d) When it is necessary to weld, cut, or solder pipelines, tanks, or other containers that may have contained diesel fuel, these practices shall be followed:

(1) Cutting or welding shall not be performed on or within pipelines, tanks, or other containers that have contained diesel fuel until they have been thoroughly purged and cleaned or inerted and a vent or opening is provided to allow for sufficient release of any buildup pressure before heat is applied.

(2) Diesel fuel shall not be allowed to enter pipelines, tanks, or containers that have been welded, soldered, brazed, or cut until the metal has cooled to ambient temperature.

§ 75.1904 Underground diesel fuel tanks and safety cans.

(a) Diesel fuel tanks used underground shall—

(1) Have steel walls of a minimum 3⁄16-inch thickness, or walls made of other metal of a thickness that provides equivalent strength;

(2) Be protected from corrosion;

(3) Be of seamless construction or have liquid tight welded seams;

(4) Not leak; and

(5) For stationary tanks in permanent underground diesel fuel storage facilities, be placed on supports constructed of noncombustible material so that the tanks are at least 12 inches above the floor.

(b) Underground diesel fuel tanks must be provided with—

(1) Devices for emergency venting designed to open at a pressure not to exceed 2.5 psi according to the following—

(i) Tanks with a capacity greater than 500 gallons must have an emergency venting device whose area is equivalent to a pipe with a nominal inside diameter of 5 inches or greater; and

(ii) Tanks with a capacity of 500 gallons or less must have an emergency venting device whose area is equivalent to a pipe with a nominal inside diameter of 4 inches or greater.

(2) Tethered or self-closing caps for stationary tanks in permanent underground diesel fuel storage facilities and self-closing caps for diesel fuel tanks on diesel fuel transportation units;

(3) Vents to permit the free discharge of liquid, at least as large as the fill or withdrawal connection, whichever is larger, but not less than 1¼ inch nominal inside diameter;

(4) Liquid tight connections for all tank openings that are—

(i) Identified by conspicuous markings that specify the function; and

(ii) Closed when not in use.

(5) Vent pipes that drain toward the tank without sagging and are higher than the fill pipe opening;

(6) Shutoff valves located as close as practicable to the tank shell on each connection through which liquid can normally flow; and

(7) An automatic closing, heat-actuated valve on each withdrawal connection below the liquid level.

(c) When tanks are provided with openings for manual gauging, liquid tight, tethered or self-closing caps or covers must be provided and must be kept closed when not open for gauging.

(d) Surfaces of the tank and its associated components must be protected against damage by collision.

(e) Before being placed in service, tanks and their associated components must be tested for leakage at a pressure equal to the working pressure, except tanks and components connected directly to piping systems, which must be properly designed for the application.

(f) Safety cans must be:

(1) Limited to a nominal capacity of 5 gallons or less;

(2) Equipped with a flexible or rigid tubular nozzle attached to a valved spout;

(3) Provided with a vent valve designed to open and close simultaneously and automatically with the opening and closing of the pouring valve; and

(4) Designed so that they will safely relieve internal pressure when exposed to fire.

§ 75.1905 Dispensing of diesel fuel.

(a) Diesel-powered equipment in underground coal mines may be refueled only from safety cans, from tanks on diesel fuel transportation units, or from stationary tanks.

(b) Fuel that is dispensed from other than safety cans must be dispensed by means of—

(1) Gravity feed with a hose equipped with a nozzle with a self-closing valve and no latch-open device;

(2) A manual pump with a hose equipped with a nozzle containing a self-closing valve; or

(3) A powered pump with:

(i) An accessible emergency shutoff switch for each nozzle;

(ii) A hose equipped with a self-closing valve and no latch-open device; and

(iii) An anti-siphoning device.

(c) Diesel fuel must not be dispensed using compressed gas.

(d) Diesel fuel must not be dispensed to the fuel tank of diesel-powered equipment while the equipment engine is running.

(e) Powered pumps shall be shut off when fuel is not being dispensed.

§ 75.1905–1 Diesel fuel piping systems.

(a) Diesel fuel piping systems from the surface must be designed and operated as dry systems, unless an automatic shutdown is incorporated that prevents accidental loss or spillage of fuel and that activates an alarm system.

(b) All piping, valves and fittings must be—

(1) Capable of withstanding working pressures and stresses;

(2) Capable of withstanding four times the static pressures;

(3) Compatible with diesel fuel; and

(4) Maintained in a manner that prevents leakage.

(c) Pipelines must have manual shutoff valves installed at the surface filling point, and at the underground discharge point.

(d) If diesel fuel lines are not buried in the ground sufficiently to protect them from damage, shutoff valves must be located every 300 feet.

(e) Shutoff valves must be installed at each branch line where the branch line joins the main line.

(f) An automatic means must be provided to prevent unintentional transfer of diesel fuel from the surface into the permanent underground diesel fuel storage facility.

(g) Diesel fuel piping systems from the surface shall only be used to transport diesel fuel directly to stationary tanks or diesel fuel transportation units in a permanent underground diesel fuel storage facility.

(h) The diesel fuel piping system must not be located in a borehole with electric power cables.

(i) Diesel fuel piping systems located in entries must not be located on the same side of the entry as electric cables or power lines. Where it is necessary for piping systems to cross electric cables or power lines, guarding must be provided to prevent severed electrical cables or power lines near broken fuel lines.

(j) Diesel fuel piping systems must be protected and located to prevent physical damage.

§ 75.1906 Transport of diesel fuel.

(a) Diesel fuel shall be transported only by diesel fuel transportation units or in safety cans.

(b) No more than one safety can shall be transported on a vehicle at any time. The can must be protected from damage during transport. All other safety cans must be stored in permanent underground diesel fuel storage facilities.

(c) Safety cans that leak must be promptly removed from the mine.

(d) Diesel fuel transportation unit tanks and safety cans must be conspicuously marked as containing diesel fuel.

(e) Diesel fuel transportation units must transport no more than 500 gallons of diesel fuel at a time.

(f) Tanks on diesel fuel transportation units must be permanently fixed to the unit and have a total capacity of no greater than 500 gallons of diesel fuel.

(g) Non-self-propelled diesel fuel transportation units with electrical components for dispensing fuel that are connected to a source of electrical power must be protected by a fire suppression device that meets the requirements of §§ 75.1107–3 through 75.1107–6 and §§ 75.1107–8 and 75.1107–16.

(h) Diesel fuel transportation units and vehicles transporting safety cans containing diesel fuel must have at least two multipurpose, dry chemical type (ABC) fire extinguishers, listed or approved by a nationally recognized independent testing laboratory and having a 10A:60B:C or higher rating, with one fire extinguisher provided on each side of the vehicle.

(i) Diesel fuel transportation units shall be parked only in permanent underground diesel fuel storage facilities or temporary underground diesel fuel storage areas when not in use.

(j) When the distance between a diesel fuel transportation unit and an energized trolley wire at any location is less than 12 inches, the requirements of § 75.1003–2 must be followed.

(k) Diesel fuel shall not be transported on or with mantrips or on conveyor belts.

(l) Diesel fuel shall be stored and handled in accordance with the requirements of §§ 75.1902 through 75.1906 of this part as of November 25, 1997.

§ 75.1907 Diesel-powered equipment intended for use in underground coal mines.

(a) As of November 25, 1996 all diesel-powered equipment used where permissible electrical equipment is required must be approved under part 36 of this chapter.

(b) Diesel-powered equipment approved under part 36 of this chapter must be provided with additional safety features in accordance with the following time schedule:

(1) As of April 25, 1997 the equipment must have a safety component system that limits surface temperatures to those specified in subpart F of part 7 of this title;

(2) As of November 25, 1999 the equipment must have an automatic or manual fire suppression system that meets the requirements of § 75.1911 of this part, and at least one portable multipurpose dry chemical type (ABC) fire extinguisher, listed or approved by a nationally recognized independent testing laboratory and having a 10A:60B:C or higher rating. The fire extinguisher must be located within easy reach of the equipment operator and be protected from damage by collision.

(3) As of November 25, 1999 the equipment must have a brake system that meets the requirements of § 75.1909 (b)(6), (b)(7), (b)(8), (c), (d), and (e);

(4) As of November 25, 1997 a particulate index and dilution air quantity shall be determined for the equipment in accordance with subpart E of part 7 of this chapter; and

(5) Permissible diesel-powered equipment manufactured on or after November 25, 1999 and that is used in an underground coal mine shall incorporate a power package approved in accordance with part 7, subpart F of this chapter.

(c) As of November 25, 1999 nonpermissible diesel-powered equipment, except the special category of equipment under § 75.1908(d), shall meet the requirements of §§ 75.1909 and 75.1910 of this part.

§ 75.1908 Nonpermissible diesel-powered equipment—categories.

(a) Heavy-duty diesel-powered equipment includes—

(1) Equipment that cuts or moves rock or coal;

(2) Equipment that performs drilling or bolting functions;

(3) Equipment that moves longwall components;

(4) Self-propelled diesel fuel transportation units and self-propelled lube units; or

(5) Machines used to transport portable diesel fuel transportation units or portable lube units.

(b) Light-duty diesel-powered equipment is any diesel-powered equipment that does not meet the criteria of paragraph (a).

(c) For the purposes of this subpart, the following equipment is considered attended:

(1) Any machine or device operated by a miner; or

(2) Any machine or device that is mounted in the direct line of sight of a job site located within 500 feet of such machine or device, which job site is occupied by a miner.

(d) Diesel-powered ambulances and fire fighting equipment are a special category of equipment that may be used underground only in accordance with the mine fire fighting and evacuation plan under § 75.1101–23.

§ 75.1909 Nonpermissible diesel-powered equipment; design and performance requirements.

(a) Nonpermissible diesel-powered equipment, except for the special category of equipment under § 75.1908(d), must be equipped with the following features:

(1) An engine approved under subpart E of part 7 of this title equipped with an air filter sized in accordance with the engine manufacturer's recommendations, and an air filter service indicator set in accordance with the engine manufacturer's recommendations;

(2) At least one portable multipurpose dry chemical type (ABC) fire extinguisher listed or approved by a nationally recognized independent testing laboratory with a 10A:60B:C or higher rating. The fire extinguisher must be located within easy reach of the equipment operator and protected from damage;

(3) A fuel system specifically designed for diesel fuel meeting the following requirements:

(i) A fuel tank and fuel lines that do not leak;

(ii) A fuel tank that is substantially constructed and protected against damage by collision;

(iii) A vent opening that maintains atmospheric pressure in the fuel tank, and that is designed to prevent fuel from splashing out of the vent opening;

(iv) A self-closing filler cap on the fuel tank;

(v) The fuel tank, filler and vent must be located so that leaks or spillage during refueling will not contact hot surfaces;

(vi) Fuel line piping must be either steel-wire reinforced; synthetic elastomer-covered hose suitable for use with diesel fuel that has been tested and has been determined to be fire-resistant by the manufacturer; or metal;

(vii) Fuel line piping must be clamped;

(viii) Primary fuel lines must be located so that fuel line leaks do not contact hot surfaces;

(ix) The fuel lines must be separated from electrical wiring and protected from damage in ordinary use;

(x) A manual shutoff valve must be installed in the fuel system as close as practicable to the tank; and

(xi) A water separator and fuel filter(s) must be provided.

(4) A sensor to monitor the temperature and provide a visual warning of an overheated cylinder head on air-cooled engines;

(5) Guarding to protect fuel, hydraulic, and electric lines when such lines pass near rotating parts or in the event of shaft failure;

(6) Hydraulic tanks, fillers, vents, and lines located to prevent spillage or leaks from contacting hot surfaces;

(7) Reflectors or warning lights mounted on the equipment which can be readily seen in all directions;

(8) A means to direct exhaust gas away from the equipment operator, persons on board the machine, and combustible machine components;

(9) A means to prevent unintentional free and uncontrolled descent of personnel-elevating work platforms; and

(10) A means to prevent the spray from ruptured hydraulic or lubricating oil lines from being ignited by contact with engine exhaust system component surfaces.

(b) Self-propelled nonpermissible diesel-powered equipment must have the following features in addition to those in paragraph (a):

(1) A means to ensure that no stored hydraulic energy that will cause machine articulation is available after the engine is shut down;

(2) A neutral start feature which ensures that engine cranking torque will not be transmitted through the powertrain and cause machine movement on vehicles utilizing fluid power transmissions;

(3) For machines with steering wheels, brake pedals, and accelerator pedals, controls which are of automobile orientation;

(4) An audible warning device conveniently located near the equipment operator;

(5) Lights provided and maintained on both ends of the equipment. Equipment normally operated in both directions must be equipped with headlights for both directions;

(6) Service brakes that act on each wheel of the vehicle and that are designed such that failure of any single component, except the brake actuation pedal or other similar actuation device, must not result in a complete loss of service braking capability;

(7) Service brakes that safely bring the fully loaded vehicle to a complete stop on the maximum grade on which it is operated; and

(8) No device that traps a column of fluid to hold the brake in the applied position shall be installed in any brake system, unless the trapped column of fluid is released when the equipment operator is no longer in contact with the brake activation device.

(c) Self-propelled nonpermissible heavy-duty diesel-powered equipment under § 75.1908(a), except rail-mounted equipment, shall be provided with a supplemental braking system that:

(1) Engages automatically within 5 seconds of the shutdown of the engine;

(2) Safely brings the equipment when fully loaded to a complete stop on the maximum grade on which it is operated;

(3) Holds the equipment stationary, despite any contraction of brake parts, exhaustion of any nonmechanical source of energy, or leakage;

(4) Releases only by a manual control that does not operate any other equipment function;

(5) Has a means in the equipment operator's compartment to apply the brakes manually without the engine operating, and a means to release and reengage the brakes without the engine operating; and

(6) Has a means to ensure that the supplemental braking system is released before the equipment can be trammed, and is designed to ensure the brake is fully released at all times while the equipment is trammed.

(d) Self-propelled nonpermissible light-duty diesel-powered equipment under § 75.1908(b), except rail-mounted equipment, must be provided with a parking brake that holds the fully loaded equipment stationary on the maximum grade on which it is operated despite any contraction of the brake parts, exhaustion of any nonmechanical source of energy, or leakage.

(e) The supplemental and park brake systems required by paragraphs (c) and (d) must be applied when the equipment operator is not at the controls of the equipment, except during movement of disabled equipment.

(f) Self-propelled personnel-elevating work platforms must be provided with a means to ensure that the parking braking system is released before the equipment can be trammed, and must be designed to ensure the brake is fully released at all times while the equipment is trammed.

(g) Any nonpermissible equipment that discharges its exhaust directly into a return air course must be provided with a power package approved under subpart F of part 7 of this title.

(h) Self-propelled nonpermissible heavy-duty diesel-powered equipment meeting the requirements of § 75.1908(a) must be provided with an automatic fire suppression system meeting the requirements of § 75.1911.

(i) Self-propelled nonpermissible light-duty diesel-powered equipment meeting the requirements of § 75.1908(b) must be provided with an automatic or manual fire suppression system meeting the requirements of § 75.1911.

(j) Nonpermissible equipment that is not self-propelled must have the following features in addition to those listed in paragraph (a):

(1) A means to prevent inadvertent movement of the equipment when parked;

(2) Safety chains or other suitable secondary connections on equipment that is being towed; and

(3) An automatic fire suppression system meeting the requirements of § 75.1911.

§ 75.1910 Nonpermissible diesel-powered equipment; electrical system design and performance requirements.

Electrical circuits and components associated with or connected to electrical systems on nonpermissible diesel-powered equipment utilizing storage batteries and integral charging systems, except for the special category of equipment under § 75.1908(d), must conform to the following requirements:

(a) Overload and short circuit protection must be provided for electric circuits and components in accordance with §§ 75.518 and 75.518–1 of this part;

(b) Each electric conductor from the battery to the starting motor must be protected against short circuit by fuses or other circuit-interrupting devices placed as near as practicable to the battery terminals;

(c) Each branch circuit conductor connected to the main circuit between the battery and charging generator must be protected against short circuit by fuses or other automatic circuit-interrupting devices;

(d) The electrical system shall be equipped with a circuit-interrupting

device by means of which all power conductors can be deenergized. The device must be located as close as practicable to the battery terminals and be designed to operate within its electrical rating without damage. The device shall not automatically reset after being actuated. All magnetic circuit-interrupting devices must be mounted in a manner to preclude their closing by force of gravity;

(e) Each motor and charging generator must be protected by an automatic overcurrent device. One protective device will be acceptable when two motors of the same rating operate simultaneously and perform virtually the same duty;

(f) Each ungrounded conductor must have insulation compatible with the impressed voltage. Insulation materials must be resistant to deterioration from engine heat and oil. Electric conductors must meet the applicable requirements of §§ 75.513 and 75.513–1, except electric conductors for starting motors, which must only meet the requirements of § 75.513;

(g) All wiring must have adequate mechanical protection to prevent damage to the cable that might result in short circuits;

(h) Sharp edges and corners must be removed at all points where there is a possibility of damaging wires, cables, or conduits by cutting or abrasion. The insulation of the cables within a battery box must be protected against abrasion;

(i) When insulated wires other than cables pass through metal frames, the holes must be substantially bushed with insulated bushings. Cables must enter metal frames of motors, splice boxes, and electric components only through proper fittings. All electrical connections and splices must be mechanically and electrically efficient, and suitable connectors shall be used. All electrical connectors or splices in insulated wire must be reinsulated at least to the same degree of protection as the remainder of the wire;

(j) The battery must be secured to prevent movement, and must be protected from external damage by position. Batteries that are not protected from external damage by position must be enclosed in a battery box. Flame-resistant insulation treated to resist chemical reaction to electrolyte must be provided on battery connections to prevent battery terminals from contacting conducting surfaces;

(k) A battery box, including the cover, must be constructed of steel with a minimum thickness of ⅛ inch, or of a material other than steel that provides equivalent strength;

(l) Battery-box covers must be lined with a flame-resistant insulating material permanently attached to the underside of the cover, unless equivalent protection is provided. Battery-box covers must be provided with a means for securing them in closed position. At least ½ inch of air space must be provided between the underside of the cover and the top of the battery, including terminals;

(m) Battery boxes must be provided with ventilation openings to prevent the accumulation of flammable or toxic gases or vapors within the battery box. The size and locations of openings for ventilation must prevent direct access to battery terminals;

(n) The battery must be insulated from the battery-box walls and supported on insulating materials. Insulating materials that may be subject to chemical reaction with electrolyte must be treated to resist such action; and

(o) Drainage holes must be provided in the bottom of each battery box.

§ 75.1911 Fire suppression systems for diesel-powered equipment and fuel transportation units.

(a) The fire suppression system required by §§ 75.1907 and 75.1909 shall be a multipurpose dry chemical type (ABC) fire suppression system listed or approved by a nationally recognized independent testing laboratory and appropriate for installation on diesel-powered equipment and fuel transportation units.

(1) The system shall be installed in accordance with the manufacturer's specifications and the limitations of the listing or approval.

(2) The system shall be installed in a protected location or guarded to minimize physical damage from routine vehicle operations.

(3) Suppressant agent distribution tubing or piping shall be secured and protected against damage, including pinching, crimping, stretching, abrasion, and corrosion.

(4) Discharge nozzles shall be positioned and aimed for maximum fire suppression effectiveness. Nozzles shall also be protected against the entrance of foreign materials such as mud, coal dust, or rock dust.

(b) The fire suppression system shall provide fire suppression and, if automatic, fire detection for the engine including the starter, transmission, hydraulic pumps and tanks, fuel tanks, exposed brake units, air compressors and battery areas on diesel-powered equipment and electric panels or controls used on fuel transportation units and other areas as necessary.

(c) If automatic, the fire suppression system shall include audible and visual alarms to warn of fires or system faults.

(d) The fire suppression system shall provide for automatic engine shutdown. If the fire suppression system is automatic, engine shutdown and discharge of suppressant agent may be delayed for a maximum of 15 seconds after the fire is detected by the system.

(e) The fire suppression system shall be operable by at least two manual actuators. One actuator shall be located on each side of the equipment. If the equipment is provided with an operator's compartment, one of the manual actuators shall be located in the compartment within reach of the operator.

(f) The fire suppression system shall remain operative in the event of engine shutdown, equipment electrical system failure, or failure of any other equipment system.

(g) The electrical components of each fire suppression system installed on equipment used where permissible electric equipment is required shall be permissible or intrinsically safe and such components shall be maintained in permissible or intrinsically safe condition.

(h) Electrically operated detection and actuation circuits shall be monitored and provided with status indicators showing power and circuit continuity. If the system is not electrically operated, a means shall be provided to indicate the functional readiness status of the detection system.

(i) Each fire suppression system shall be tested and maintained in accordance with the manufacturer's recommended inspection and maintenance program and as required by the nationally recognized independent testing laboratory listing or approval, and be visually inspected at least once each week by a person trained to make such inspections.

(j) *Recordkeeping* Persons performing inspections and tests of fire suppression systems under paragraph (i) shall record when a fire suppression system does not meet the installation or maintenance requirements of this section.

(1) The record shall include the equipment on which the fire suppression system did not meet the installation or maintenance requirements of this section, the defect found, and the corrective action taken.

(2) Records are to be kept manually in a secure manner not susceptible to alteration or recorded electronically in a secured computer system that is not susceptible to alteration.

(3) Records shall be maintained at a surface location at the mine for one year

and made available for inspection by an authorized representative of the Secretary and miners' representatives.

(k) All miners normally assigned to the active workings of the mine shall be instructed about the hazards inherent to the operation of the fire suppression systems and, where appropriate, the safeguards available for each system.

(l) For purposes of § 75.380(f), a fire suppression system installed on diesel-powered equipment and meeting the requirements of this section is equivalent to a fire suppression system meeting the requirements of §§ 75.1107–3 through 75.1107–16.

§ 75.1912 Fire suppression systems for permanent underground diesel fuel storage facilities.

(a) The fire suppression system required by § 75.1903 shall be an automatic multipurpose dry chemical type (ABC) fire suppression system listed or approved as an engineered dry chemical extinguishing system by a nationally recognized independent testing laboratory and appropriate for installation at a permanent underground diesel fuel storage facility.

(1) Alternate types of fire suppression systems shall be approved in accordance with § 75.1107–13 of this part.

(2) The system shall be installed in accordance with the manufacturer's specifications and the limitations of the listing or approval.

(3) The system shall be installed in a protected location or guarded to prevent physical damage from routine operations.

(4) Suppressant agent distribution tubing or piping shall be secured and protected against damage, including pinching, crimping, stretching, abrasion, and corrosion.

(5) Discharge nozzles shall be positioned and aimed for maximum fire suppression effectiveness in the protected areas. Nozzles must also be protected against the entrance of foreign materials such as mud, coal dust, and rock dust.

(b) The fire suppression system shall provide automatic fire detection and automatic fire suppression for all areas within the facility.

(c) Audible and visual alarms to warn of fire or system faults shall be provided at the protected area and at a surface location which is continually monitored by a person when personnel are underground. In the event of a fire, personnel shall be warned in accordance with the provisions set forth in § 75.1101–23.

(d) The fire suppression system shall deenergize all power to the diesel fuel storage facility when actuated except that required for automatic enclosure and alarms.

(e) Fire suppression systems shall include two manual actuators located as follows:

(1) At least one within the fuel storage facility; and

(2) At least one a safe distance away from the storage facility and located in intake air, upwind of the storage facility.

(f) The fire suppression system shall remain operational in the event of electrical system failure.

(g) Electrically operated detection and actuation circuits shall be monitored and provided with status indicators showing power and circuit continuity. If the system is not electrically operated, a means shall be provided to indicate the functional readiness status of the detection system.

(h) Each fire suppression system shall be tested and maintained in accordance with the manufacturer's recommended inspection and maintenance program and as required by the nationally recognized independent testing laboratory listing or approval, and be visually inspected at least once each week by a person trained to make such inspections.

(i) *Recordkeeping.* Persons performing inspections and tests of fire suppression systems under paragraph (h) shall record when a fire suppression system does not meet the installation or maintenance requirements of this section.

(1) The record shall include the facility whose fire suppression system did not meet the installation or maintenance requirements of this section, the defect found, and the corrective action taken.

(2) Records are to be kept manually in a secure manner not susceptible to alteration or recorded electronically in a secured computer system that is not susceptible to alteration.

(3) Records shall be maintained at a surface location at the mine for one year and made available for inspection by an authorized representative of the Secretary and miners' representatives.

(j) All miners normally assigned to the active workings of the mine shall be instructed about the hazards inherent to the operation of the fire suppression systems and, where appropriate, the safeguards available for each system.

§ 75.1913 Starting aids.

(a) Volatile fuel starting aids shall be used in accordance with recommendations provided by the starting aid manufacturer, the engine manufacturer, and the machine manufacturer.

(b) Containers of volatile fuel starting aids shall be conspicuously marked to indicate the contents. When not in use, containers of volatile fuel starting aids shall be stored in metal enclosures that are used only for storage of starting aids. Such metal enclosures must be conspicuously marked, secured, and protected from damage.

(c) Volatile fuel starting aids shall not be:

(1) Taken into or used in areas where permissible equipment is required;

(2) Used in the presence of open flames or burning flame safety lamps, or when welding or cutting is taking place; or

(3) Used in any area where 1.0 percent or greater concentration of methane is present.

(d) Compressed oxygen or compressed flammable gases shall not be connected to diesel air-start systems.

§ 75.1914 Maintenance of diesel-powered equipment.

(a) Diesel-powered equipment shall be maintained in approved and safe condition or removed from service.

(b) Maintenance and repairs of approved features and those features required by §§ 75.1909 and 75.1910 on diesel-powered equipment shall be made only by a person qualified under § 75.1915.

(c) The water scrubber system on diesel-powered equipment shall be drained and flushed, by a person who is trained to perform this task, at least once on each shift in which the equipment is operated.

(d) The intake air filter on diesel-powered equipment shall be replaced or serviced, by a person who is trained to perform this task, when the intake air pressure drop device so indicates or when the engine manufacturer's maximum allowable air pressure drop level is exceeded.

(e) Mobile diesel-powered equipment that is to be used during a shift shall be visually examined by the equipment operator before being placed in operation. Equipment defects affecting safety shall be reported promptly to the mine operator.

(f) All diesel-powered equipment shall be examined and tested weekly by a person qualified under § 75.1915.

(1) Examinations and tests shall be conducted in accordance with approved checklists and manufacturers' maintenance manuals.

(2) Persons performing weekly examinations and tests of diesel-powered equipment under this paragraph shall make a record when the equipment is not in approved or safe condition. The record shall include the

equipment that is not in approved or safe condition, the defect found, and the corrective action taken.

(g) Undiluted exhaust emissions of diesel engines in diesel-powered equipment approved under part 36 and heavy-duty nonpermissible diesel-powered equipment as defined in § 75.1908(a) in use in underground coal mines shall be tested and evaluated weekly by a person who is trained to perform this task. The mine operator shall develop and implement written standard operating procedures for such testing and evaluation that specify the following:

(1) The method of achieving a repeatable loaded engine operating condition for each type of equipment;

(2) Sampling and analytical methods (including calibration of instrumentation) that are capable of accurately detecting carbon monoxide in the expected concentrations;

(3) The method of evaluation and interpretation of the results;

(4) The concentration or changes in concentration of carbon monoxide that will indicate a change in engine performance. Carbon monoxide concentration shall not exceed 2500 parts per million; and

(5) The maintenance of records necessary to track engine performance.

(h) *Recordkeeping.* Records required by paragraphs (f)(2) and (g)(5) shall be—

(1) Recorded in a secure book that is not susceptible to alteration, or recorded electronically in a computer system that is secure and not susceptible to alteration; and

(2) Retained at a surface location at the mine for at least 1 year and made available for inspection by an authorized representative of the Secretary and by miners' representatives.

(i) Diesel-powered equipment must be maintained in accordance with this part as of November 25, 1997.

§ 75.1915 Training and qualification of persons working on diesel-powered equipment.

(a) To be qualified to perform maintenance, repairs, examinations and tests on diesel-powered equipment, as required by § 75.1914, a person must successfully complete a training and qualification program that meets the requirements of this section. A person qualified to perform these tasks shall be retrained as necessary to maintain the ability to perform all assigned diesel-powered equipment maintenance, repairs, examinations and tests.

(b) A training and qualification program under this section must:

(1) Be presented by a competent instructor;

(2) Be sufficient to prepare or update a person's ability to perform all assigned tasks with respect to diesel-powered equipment maintenance, repairs, examinations and tests;

(3) Address, at a minimum, the following:

(i) The requirements of subpart T of this part;

(ii) Use of appropriate power package or machine checklists to conduct tests to ensure that diesel-powered equipment is in approved and safe condition, with acceptable emission levels;

(iii) Proper maintenance of approved features and the correct use of the appropriate maintenance manuals, including machine adjustments, service, and assembly;

(iv) Diesel-powered equipment fire suppression system tests and maintenance;

(v) Fire and ignition sources and their control or elimination, including cleaning of the equipment;

(vi) Safe fueling procedures and maintenance of the fuel system of the equipment; and

(vii) Intake air system maintenance and tests.

(4) Include an examination that requires demonstration of the ability to perform all assigned tasks with respect to diesel-powered equipment maintenance, repairs, examinations and tests; and

(5) Be in writing. The written program shall include a description of the course content, materials, and teaching methods for initial training and retraining.

(c) *Recordkeeping.* The operator shall maintain a copy of the training and qualification program required by this section and a record of the names of all persons qualified under the program.

(1) The record of the names of qualified persons shall be made in a manner that is not susceptible to alteration, or recorded electronically in a computer system that is secure and not susceptible to alteration.

(2) The training and qualification program and record of qualified persons are to be kept at surface location of the mine and made available for inspection by an authorized representative of the Secretary and by miners' representatives.

§ 75.1916 Operation of diesel-powered equipment.

(a) Diesel-powered equipment shall be operated at a speed that is consistent with the type of equipment being operated, roadway conditions, grades, clearances, visibility, and other traffic.

(b) Operators of mobile diesel-powered equipment shall maintain full control of the equipment while it is in motion.

(c) Standardized traffic rules, including speed limits, signals and warning signs, shall be established at each mine and followed.

(d) Except as required in normal mining operations, mobile diesel-powered equipment shall not be idled.

(e) Diesel-powered equipment shall not be operated unattended.

[FR Doc. 96–26838 Filed 10–24–96; 8:45 am]
BILLING CODE 4510–43–P

Federal Register

Friday
October 25, 1996

Part IV

Department of Housing and Urban Development

Office of the Secretary

Statutorily Mandated Designation of Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–4146–N–01]

Statutorily Mandated Designation of Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This document provides revised designations of ''Difficult Development Areas'' for purposes of the Low-Income Housing Tax Credit (''LIHTC'') under section 42 of the Internal Revenue Code of 1986, and provides the methodology used by the United States Department of Housing and Urban Development (''HUD''). The new Difficult Development Areas are based on FY 1996 Fair Market Rents (''FMRs''), FY 1996 income limits and 1990 census population counts as explained below. The corrected designations of ''Qualified Census Tracts'' under section 42 of the Internal Revenue Code published May 1, 1995 (60 FR 21246) remain in effect.

FOR FURTHER INFORMATION CONTACT: With questions on how areas are designated and on geographic definitions, Kurt G. Usowski, Economist, Division of Economic Development and Public Finance, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–0426, e-mail Kurt__G.__Usowski@hud.gov. With specific legal questions pertaining to section 42 and this notice, Harold J. Gross, Senior Tax Attorney, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–3260. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339. (Other than the ''800'' TDD number, telephone numbers are not toll free.) Additional copies of this notice are available through HUDUSER at (800) 245–2691 for a small fee to cover duplication and mailing costs.

COPIES AVAILABLE ELECTRONICALLY: This notice is available electronically on the Internet (World Wide Web) at: gopher://www.huduser.org:73/11/2/d in both downloadable and screen-readable formats.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Treasury Department and the Internal Revenue Service thereof are authorized to interpret and enforce the provisions of the Internal Revenue Code of 1986 (the ''Code''), including the Low-Income Housing Tax Credit (''LIHTC'') found at section 42 of the Code, as enacted by the Tax Reform Act of 1986 [Pub. L. 99–514], as amended by the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647], as amended by the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239], as amended by the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508], as amended by the Tax Extension Act of 1991 [Pub. L. 102–227], and as amended and made permanent by the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103–66]. The Secretary of HUD is required to designate Difficult Development Areas by section 42(d)(5)(C) of the Code.

In order to assist in understanding HUD's mandated designation of Difficult Development Areas for use in administering section 42 of the Code, a summary of section 42 is provided. The following summary does not purport to bind the Treasury or the IRS in any way, nor does it purport to bind HUD as HUD has no authority to interpret or administer the Code, except in those instances where it has a specific delegation.

Summary of Low Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (the ''credit ceiling'') is limited by population. Each state is allocated credit based on $1.25 per resident. Also, states may carry forward unused or returned credit for one year; if not used by then, credit goes into a national pool to be allocated to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit.

The credit allocated to a building is based on the cost of units placed in service as low-income units under certain minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: either 20 percent of units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income (''AMGI''), or 40 percent of units must be rent restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term ''rent-restricted'' means that gross rent, including an allowance for utilities, cannot exceed 30 percent of the tenant's imputed income limitation (i.e., 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar for dollar. It is taken annually for a term of ten years and is intended to yield a present value of either (1) 70 percent of the ''qualified basis'' for new construction or substantial rehabilitation expenditures that are not federally subsidized (i.e., financed with tax-exempt bonds or below-market federal loans), or (2) 30 percent of the qualified basis for the acquisition of existing projects or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in section 42. Individuals can use the credit up to a deduction equivalent of $25,000. This equals $9,900 at the 39.6 percent maximum marginal tax rate. Individuals cannot use the credit against the alternative minimum tax. Corporations, other than S or professional service corporations, can use the credit against ordinary income tax. They cannot use the credit against the alternative minimum tax. These corporations can also deduct the losses from the project.

The qualified basis represents the product of the ''applicable fraction'' of the building and the ''eligible basis'' of the building. The applicable fraction is based on the number of low income units in the building as a percentage of the total number of units, or based on the floor space of low income units as a percentage of the total floor space in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to capital account incurred prior to the end of the first taxable year in which the qualified low income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated Qualified Census Tracts or designated Difficult Development Areas,

eligible basis can be increased up to 130 percent of what it would otherwise be. This means that the available credit also can be increased by up to 30 percent. For example, if the 70 percent credit is available, it effectively could be increased up to 91 percent.

Under section 42(d)(5)(C) of the Code, a Qualified Census Tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income less than 60 percent of the AMGI. There is a limit on the amount of Qualified Census Tracts in any Metropolitan Statistical Area (''MSA'') or Primary Metropolitan Statistical Area (''PMSA'') that may be designated to receive an increase in eligible basis: all of the designated census tracts within a given MSA/PMSA may not together contain more than 20 percent of the total population of the MSA/PMSA. For purposes of HUD designations of Qualified Census Tracts, all non-metropolitan areas in a state are treated as if they constituted a single metropolitan area. This Notice does not redesignate Qualified Census Tracts. The corrected designation of Qualified Census Tracts published May 1, 1995, at 60 FR 21246 remains in effect. Qualified Census Tracts will not be redesignated until data from the 2000 census become available.

Section 42 defines a Difficult Development Area as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. Again, limits apply. All designated Difficult Development Areas in MSAs/PMSAs may not contain more than 20 percent of the aggregate population of all MSAs/PMSAs, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all non-metropolitan counties.

Explanation of HUD Designation Methodology

A. Difficult Development Areas

In developing the list of Difficult Development Areas, HUD compared incomes with housing costs. HUD used 1990 Census data and the MSA/PMSA definitions as published by the Office of Management and Budget (''OMB'') in OMB Bulletin No. 95–04 on June 30, 1995, *with the exceptions described in section D., below.* The basis for these comparisons was the fiscal year (''FY'') 1996 HUD income limits for Very Low Income households (''VLILs'') and Fair Market Rents (''FMRs'') used for the section 8 Housing Assistance Payments Program. The procedure used in making these calculations follows:

1. For each MSA/PMSA and each non-metropolitan county, a ratio was calculated. This calculation used the FY 1996 two-bedroom FMR and the FY 1996 four-person VLIL. The numerator of the ratio was the area's FY 1996 FMR. The denominator of the ratio was the monthly LIHTC income-based rent limit calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where 120 percent of the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent of AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for MSAs/PMSAs and for non-metropolitan counties.

3. The Difficult Development Areas are those with the highest ratios cumulative to 20 percent of the 1990 population of all metropolitan areas and of all non-metropolitan counties.

B. Changes in Designated Areas Due to New FMR Calculation Method

Beginning in FY 1996, HUD implemented a new minimum FMR policy in response to numerous public concerns that FMRs in rural areas were too low to operate the Section 8 Housing Assistance Payments Program effectively. As a result, FMRs are now established at the higher of the local FMR or the Statewide average of nonmetropolitan counties, subject to a ceiling rent cap. The State minimum also affects a small number of metropolitan areas whose rents would otherwise fall below the State minimum. The use of State minimum FMRs resulted in a substantial change in the designations of nonmetropolitan DDAs.

HUD believes that FMRs provide the most accurate basis for comparing housing costs in local areas across the country. That is why FMRs are used as a measure of construction, land, and utility costs in the designation of Difficult Development Areas. HUD further believes that the move to State minimum FMRs improves their usefulness for this purpose. Without the State minimum policy, extremely low FMRs which fail to reflect development (i.e., construction and land) costs are most likely to be obtained in areas with temporary imbalances in the housing market caused by, for example, declining population. In such markets, rents may be too low to cover the ''fixed costs'' of rental housing (i.e., the debt service and return on owners' equity which are, in effect, the amortized development costs). Thus the State minimum FMR better reflects actual development costs in the area.

While it is not sensible to encourage the development of additional housing stock in an area with declining population by assigning it a State minimum FMR and increasing the likelihood of its designation as a DDA, the LIHTC is also a program for subsidizing the rehabilitation of low-income housing. Rehabilitation may be especially needed in depressed housing markets where extremely low rents have encouraged the deferral of maintenance and deterioration of the housing stock.

C. Application of Population Caps to Difficult Development Area Determinations

In identifying Difficult Development Areas, HUD applied various caps, or limitations, as noted above. The cumulative population of metropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all metropolitan areas and the cumulative population of nonmetropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all nonmetropolitan counties.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains the procedure. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio as described above was identical (to three decimal places) to the last area selected, *and* its inclusion resulted in only a minor overrun of the cap. Thus for both the designated metropolitan and nonmetropolitan Difficult Development Areas there are minimal overruns of the caps. HUD believes the designation of these additional areas is consistent with the intent of the legislation. Some latitude is justifiable because it is impossible to determine whether the 20 percent cap has been exceeded, as long as the apparent excess is small, due to measurement error. Despite the care and effort involved in a decennial census, it is recognized by the Census Bureau, and all users of the data, that the population counts for a given area and for the entire country are not precise. The extent of the measurement error is unknown. Thus, there can be errors in both the numerator and denominator of the ratio of populations used in applying a 20

percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting *small* variances above the 20 percent limit.

D. Exceptions to OMB Definitions of MSAs/PMSAs and Other Geographic Matters

As stated in OMB Bulletin 95–04 defining metropolitan areas: OMB establishes and maintains the definitions of the [Metropolitan Areas] MAs solely for statistical purposes * * * OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions * * *. We recognize that some legislation specifies the use of metropolitan areas for programmatic purposes, including allocating Federal funds.

HUD makes exceptions to OMB definitions in calculating FMRs by deleting counties from metropolitan areas whose OMB definitions are determined by HUD to be larger than their housing market areas. In addition, HUD is required by statute to calculate a separate FMR and VLIL for Westchester County, New York, which OMB includes as part of the New York, NY PMSA. The following counties are assigned their own FMRs and VLILs and evaluated as if they were separate metropolitan areas for purposes of designating Difficult Development Areas.

Metropolitan Area and Counties Deleted

Atlanta, GA: Carrol, Pickens, and Walton Counties.
Chicago, IL: DeKalb, Grundy, and Kendall Counties.
Cincinnati-Hamilton, OH-KY-IN: Brown County, Ohio; Gallatin, Grant, and Pendleton Counties, Kentucky; and Ohio County, Indiana.
Dallas, TX: Henderson County.
Flagstaff, AZ-UT: Kane County, Utah.
Lafayette, LA: St. Landry and Acadia Parishes.
New York, NY: Westchester County.
New Orleans, LA: St. James Parish.
Washington, DC-MD-VA-WV: Clarke, Culpeper, King George, and Warren Counties, Virginia; and Berkely and Jefferson Counties, West Virginia.

Affected MSAs/PMSAs are assigned the indicator ''(part)'' in the list of Metropolitan Difficult Development Areas.

Finally, in the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) OMB defines MSAs/PMSAs according to county subdivisions or Minor Civil Divisions (''MCDs'') rather than county boundaries. Thus, when a New England county is designated as a Nonmetropolitan Difficult Development Area, only that part of the county (the group of MCDs) not included in any MSA/PMSA is the Nonmetropolitan Difficult Development Area. Geographic definitions of the nonmetropolitan parts of New England counties can be found in HUD's Rule establishing FY 1996 FMRs at 61 FR 6690 or 24 CFR Part 888. Affected counties are assigned the indicator ''(part)'' in the list of Nonmetropolitan Difficult Development Areas.

Future Designations

Difficult Development Areas are designated annually as updated income and FMR data become available. Qualified Census Tracts will not be redesignated until data from the 2000 census become available.

Effective Date

The list of Difficult Development Areas is effective for allocations of credit made after December 31, 1996. In the case of a building described in Internal Revenue Code section 42(h)(4)(B), the list is effective if the bonds are issued and the building is placed in service after December 31, 1996. The corrected designations of Qualified Census Tracts published May 1, 1995, at 60 FR 21246 remain in effect.

Findings and Certifications

Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.20 of the HUD regulations, the policies and actions in this document are determined not to have the potential of having a significant impact on the quality of the human environment and therefore further environmental review under the National Environmental Policy Act is not necessary.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities. The notice involves the designation of ''Difficult Development Areas'' for use by political subdivisions of the States in allocating the LIHTC, as required by section 42 of the Internal Revenue Code, as amended. This notice places no new requirements on the States, their political subdivisions, or the applicants for the credit. This notice also details the technical methodology used in making such designations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have any substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the order. The notice merely designates ''Difficult Development Areas'' for the use by political subdivisions of the States in allocating the LIHTC, as required under section 42 of the Internal Revenue Code, as amended. The notice also details the technical methodology used in making such designations.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The notice involves the designation of ''Difficult Development Areas'' for use by political subdivisions of the States in allocating the LIHTC, as required by section 42 of the Internal Revenue Code, as amended. The notice also details the technical methodology used in making such designations.

Dated: October 18, 1996.

Henry G. Cisneros,

Secretary.

1997 INTERNAL REVENUE CODE SECTION 42(d)(5)(C) METROPOLITAN DIFFICULT DEVELOPMENT AREAS

State	Metropolitan area	Metropolitan area	Metropolitan area	Metropolitan area
AZ	Tucson, AZ	Yuma, AZ.		
CA	Chico-Paradise, CA	Fresno, CA	Los Angeles-Long Beach, CA	Merced, CA.

1997 INTERNAL REVENUE CODE SECTION 42(d)(5)(C) METROPOLITAN DIFFICULT DEVELOPMENT AREAS—Continued

State	Metropolitan area	Metropolitan area	Metropolitan area	Metropolitan area
	Salinas, CA	San Francisco, CA	San Luis Obispo-Atascadero-Paso Robles, CA.	Santa Barbara-Santa Maria-Lompoc, CA.
	Santa Cruz-Watsonville, CA	Santa Rosa, CA	Ventura, CA.	
CT	New Haven-Meriden, CT	Stamford-Norwalk, CT.		
FL	Daytona Beach, FL	Fort Lauderdale, FL	Miami, FL	Orlando, FL.
	Punta Gorda, FL	Sarasota-Bradenton, FL.		
HI	Honolulu, HI.			
MA	Barnstable-Yarmouth, MA.			
ME	Portland, ME.			
NH	Portsmouth-Rochester, NH–ME.			
NJ	Atlantic-Cape May, NJ	Jersey City, NJ	Monmouth-Ocean, NJ	Vineland-Millville-Bridgeton, NJ.
NY	Nassau-Suffolk, NY	New York, NY (part)	Newburgh, NY-PA.	
OR	Eugene-Springfield, OR	Medford-Ashland, OR.		
PA	State College, PA.			
PR	Aguadilla, PR	Arecibo, PR	Caguas, PR	Mayaguez, PR.
	Ponce, PR	San Juan-Bayamon, PR.		
TX	Brownsville-Harlingen-San Benito, TX.	Corpus Christi, TX	El Paso, TX	Killeen-Temple, TX.
	Laredo, TX.			
WA	Bellingham, WA	Richland-Kennewick-Pasco, WA.	Yakima, WA.	

1997 INTERNAL REVENUE CODE SECTION 42(d)(5)(C) NON-METROPOLITAN DIFFICULT DEVELOPMENT AREAS

State	Non-metropolitan county or county equivalent	Non-metropolitan county or county equivalent	Non-metropolitan county or county equivalent	Non-metropolitan county or county equivalent
	PACIFIC ISLANDS.			
AK	BETHEL CENSUS AREA	DILLINGHAM CENSUS AREA	FAIRBANKS NORTH STAR BOROUGH.	HAINES BOROUGH.
	JUNEAU BOROUGH	KETCHIKAN GATEWAY BOROUGH.	KODIAK ISLAND BOROUGH	LAKE AND PENINSULA BOROUGH.
	NOME CENSUS AREA	NORTH SLOPE BOROUGH	NORTHWEST ARCTIC BOROUGH.	
AL	MACON COUNTY.			
AR	BAXTER COUNTY	DREW COUNTY	MISSISSIPPI COUNTY	
AZ	APACHE COUNTY	COCHISE COUNTY	GILA COUNTY	GRAHAM COUNTY.
CA	ALPINE COUNTY	AMADOR COUNTY	CALAVERAS COUNTY	COLUSA COUNTY.
	DEL NORTE COUNTY	GLENN COUNTY	HUMBOLDT COUNTY	IMPERIAL COUNTY.
	INYO COUNTY	KINGS COUNTY	LAKE COUNTY	MARIPOSA COUNTY.
	MENDOCINO COUNTY	MODOC COUNTY	MONO COUNTY	NEVADA COUNTY.
	PLUMAS COUNTY	SAN BENITO COUNTY	SIERRA COUNTY	SISKIYOU COUNTY.
	TEHAMA COUNTY	TRINITY COUNTY	TUOLUMNE COUNTY.	
CO	GARFIELD COUNTY	LA PLATA COUNTY	PITKIN COUNTY	SAN MIGUEL COUNTY.
CT	LITCHFIELD COUNTY (part)	MIDDLESEX COUNTY (part)	NEW LONDON COUNTY (part).	
FL	BAKER COUNTY	CALHOUN COUNTY	CITRUS COUNTY	COLUMBIA COUNTY.
	DESOTO COUNTY	DIXIE COUNTY	FRANKLIN COUNTY	GILCHRIST COUNTY.
	GLADES COUNTY	GULF COUNTY	HAMILTON COUNTY	HARDEE COUNTY.
	HENDRY COUNTY	HIGHLANDS COUNTY	HOLMES COUNTY	INDIAN RIVER COUNTY.
	JACKSON COUNTY	JEFFERSON COUNTY	LAFAYETTE COUNTY	LEVY COUNTY.
	LIBERTY COUNTY	MADISON COUNTY	MONROE COUNTY	OKEECHOBEE COUNTY.
	PUTNAM COUNTY	SUMTER COUNTY	SUWANNEE COUNTY	TAYLOR COUNTY.
	UNION COUNTY	WAKULLA COUNTY	WALTON COUNTY	WASHINGTON COUNTY.
GA	BUTTS COUNTY	DAWSON COUNTY.		
HI	HAWAII COUNTY	KAUAI COUNTY	MAUI COUNTY.	
KS	RILEY COUNTY.			
KY	HARLAN COUNTY	KNOX COUNTY	LAUREL COUNTY	PERRY COUNTY.
	PIKE COUNTY	PULASKI COUNTY.		
LA	ALLEN PARISH	AVOYELLES PARISH	CALDWELL PARISH	CATAHOULA PARISH.
	CLAIBORNE PARISH	CONCORDIA PARISH	DE SOTO PARISH	EAST CARROLL PARISH.
	EVANGELINE PARISH	FRANKLIN PARISH	GRANT PARISH	JEFFERSON DAVIS PARISH.
	MADISON PARISH	MOREHOUSE PARISH	NATCHITOCHES PARISH	RED RIVER PARISH.
	RICHLAND PARISH	SABINE PARISH	ST. HELENA PARISH	ST. MARY PARISH.
	TANGIPAHOA PARISH	TENSAS PARISH	VERNON PARISH	WASHINGTON PARISH.
	WEST CARROLL PARISH	WEST FELICIANA PARISH.		
MA	BARNSTABLE COUNTY (part)	DUKES COUNTY	FRANKLIN COUNTY (part)	HAMPDEN COUNTY (part).
	HAMPSHIRE COUNTY (part)	NANTUCKET COUNTY	WORCESTER COUNTY (part)	
ME	ANDROSCOGGIN COUNTY (part).	AROOSTOOK COUNTY	CUMBERLAND COUNTY (part).	FRANKLIN COUNTY.

1997 INTERNAL REVENUE CODE SECTION 42(d)(5)(C) NON-METROPOLITAN DIFFICULT DEVELOPMENT AREAS—Continued

State	Non-metropolitan county or county equivalent	Non-metropolitan county or county equivalent	Non-metropolitan county or county equivalent	Non-metropolitan county or county equivalent
	HANCOCK COUNTY	KNOX COUNTY	LINCOLN COUNTY	OXFORD COUNTY.
	PENOBSCOT COUNTY (part)	PISCATAQUIS COUNTY	SAGADAHOC COUNTY	SOMERSET COUNTY.
	WALDO COUNTY (part)	WASHINGTON COUNTY	YORK COUNTY (part).	
MS	ADAMS COUNTY	AMITE COUNTY	ATTALA COUNTY	BENTON COUNTY.
	BOLIVAR COUNTY	CARROLL COUNTY	CHOCTAW COUNTY	CLAIBORNE COUNTY.
	COAHOMA COUNTY	COPIAH COUNTY	COVINGTON COUNTY	FRANKLIN COUNTY.
	GEORGE COUNTY	GREENE COUNTY	HOLMES COUNTY	HUMPHREYS COUNTY.
	ISSAQUENA COUNTY	JASPER COUNTY	JEFFERSON COUNTY	JEFFERSON DAVIS COUNTY.
	KEMPER COUNTY	LAFAYETTE COUNTY	LAWRENCE COUNTY	LEAKE COUNTY.
	LEFLORE COUNTY	LINCOLN COUNTY	MARION COUNTY	MARSHALL COUNTY.
	MONTGOMERY COUNTY	NOXUBEE COUNTY	PANOLA COUNTY	PERRY COUNTY.
	PIKE COUNTY	QUITMAN COUNTY	SCOTT COUNTY	SHARKEY COUNTY.
	SUNFLOWER COUNTY	TALLAHATCHIE COUNTY	TUNICA COUNTY	WALTHALL COUNTY.
	WASHINGTON COUNTY	WAYNE COUNTY	WILKINSON COUNTY	YAZOO COUNTY.
NC	DARE COUNTY	WATAUGA COUNTY.		
NH	BELKNAP COUNTY	CARROLL COUNTY	CHESHIRE COUNTY	GRAFTON COUNTY.
	HILLSBOROUGH COUNTY (part).	MERRIMACK COUNTY (part)	ROCKINGHAM COUNTY (part).	STRAFFORD COUNTY (part).
NM	LINCOLN COUNTY	MCKINLEY COUNTY	QUAY COUNTY	SAN MIGUEL COUNTY.
	TAOS COUNTY.			
NY	CLINTON COUNTY	COLUMBIA COUNTY	ESSEX COUNTY	GREENE COUNTY.
	JEFFERSON COUNTY	SULLIVAN COUNTY	TOMPKINS COUNTY	ULSTER COUNTY.
OR	BAKER COUNTY	CLATSOP COUNTY	COOS COUNTY	CROOK COUNTY.
	CURRY COUNTY	DESCHUTES COUNTY	DOUGLAS COUNTY	GRANT COUNTY.
	HARNEY COUNTY	HOOD RIVER COUNTY	JEFFERSON COUNTY	JOSEPHINE COUNTY.
	KLAMATH COUNTY	LAKE COUNTY	LINCOLN COUNTY	MALHEUR COUNTY.
	MORROW COUNTY	SHERMAN COUNTY	TILLAMOOK COUNTY	UMATILLA COUNTY.
	UNION COUNTY	WALLOWA COUNTY	WASCO COUNTY	WHEELER COUNTY.
PA	MONROE COUNTY	NORTHUMBERLAND COUNTY.	UNION COUNTY	WAYNE COUNTY.
PR	All.			
RI	NEWPORT COUNTY (part)	WASHINGTON COUNTY (part).		
SD	BUTTE COUNTY	LAWRENCE COUNTY	MEADE COUNTY.	
TX	ARANSAS COUNTY	CAMP COUNTY	HUDSPETH COUNTY	KIMBLE COUNTY.
	LLANO COUNTY	ROBERTSON COUNTY	TYLER COUNTY	VAL VERDE COUNTY.
	WALKER COUNTY.			
UT	DAGGETT COUNTY	WASHINGTON COUNTY.		
VA	CAROLINE COUNTY	WESTMORELAND COUNTY.		
VI	St. Croix	St. Johns/St. Thomas.		
VT	ADDISON COUNTY	BENNINGTON COUNTY	LAMOILLE COUNTY	ORANGE COUNTY.
	RUTLAND COUNTY	WASHINGTON COUNTY	WINDHAM COUNTY	WINDSOR COUNTY.
WA	ADAMS COUNTY	ASOTIN COUNTY	CHELAN COUNTY	CLALLAM COUNTY.
	COLUMBIA COUNTY	FERRY COUNTY	GARFIELD COUNTY	GRANT COUNTY.
	GRAYS HARBOR COUNTY	JEFFERSON COUNTY	KITTITAS COUNTY	KLICKITAT COUNTY.
	LEWIS COUNTY	LINCOLN COUNTY	MASON COUNTY	OKANOGAN COUNTY.
	PACIFIC COUNTY	PEND OREILLE COUNTY	SAN JUAN COUNTY	SKAGIT COUNTY.
	SKAMANIA COUNTY	STEVENS COUNTY	WAHKIAKUM COUNTY.	

[FR Doc. 96–27501 Filed 10–24–96; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Friday
October 25, 1996

Part V

Department of Education

List of Approved ''Ability-to-Benefit'' Tests and Passing Scores; Notice

DEPARTMENT OF EDUCATION

List of Approved ''Ability-to-Benefit'' Tests and Passing Scores

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary provides the first list of ''ability-to-benefit'' tests and passing scores that the Secretary has approved under section 484(d) of the Higher Education Act of 1965, as amended (HEA), and the regulations that the Secretary promulgated to implement that section in 34 CFR Part 668, Subpart J. Except as provided herein and beginning with the 61st day after the publication of this notice in the Federal Register, an institution shall use one of the approved tests included in this notice to determine if a student who does not have a high school diploma or its recognized equivalent is eligible to receive funds under any title IV, HEA program. The title IV, HEA programs include the Federal Pell Grant, Federal Family Education Loan, William D. Ford Federal Direct Loan, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, and State Student Incentive Grant Programs.

FOR FURTHER INFORMATION CONTACT: Lorraine Kennedy, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3045, Washington, D.C. 20202–5451. Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Under section 484(d) of the HEA, a student who does not have a high school diploma or its recognized equivalent is eligible to receive funds under the title IV, HEA programs only if that student takes an independently administered examination and achieves a score on that test specified by the Secretary demonstrating that the student has the ability to benefit from the education or training being offered. Those students are colloquially referred to as ''ability-to-benefit'' or ''ATB'' students, and the tests are colloquially referred to as ''ability-to-benefit'' or ''ATB'' tests.

The Secretary published final regulations in the Federal Register on December 1, 1995, implementing section 484(d) (60 FR 61830–61844). These regulations in 34 CFR Part 668, Subpart J, §§ 668.151 to 668.156, became effective on July 1, 1996, and govern the approval of ATB tests, the passing scores for each approved test, and the administration of approved ATB tests.

Under 34 CFR 668.145(c)(1), if the Secretary approves an ATB test and the passing score on the test, the Secretary publishes the name of the test and the passing score in the Federal Register. The Secretary established the passing score on each approved test as the score that represents one standard deviation below the mean for students with high school diplomas who took the test. Establishing the passing score in this way means theoretically that 84 percent of the high school graduates who took the test passed the test. The Secretary established this score based upon a recognition that the secondary school level basic skills and general learned abilities of high school graduates in the United States vary widely.

The Secretary is publishing this notice to indicate that the Secretary has approved the following eight ATB tests and the following passing scores on those tests.

1. ASSET Program: Basic Skills Tests (Reading, Writing, and Numerical)—Forms B2 and C2

Passing Scores: The approved passing scores on this test are as follows: Reading (34), Writing (34), and Numerical (33).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, *Contact:* John D. Roth, *Telephone:* (319) 337–1030, *Fax:* (319) 337–1790.

2. Career Programs Assessment (CPAT) Basic Skills Subtests (Language Usage, Reading and Numerical)—Forms A, B, and C

Passing Scores: The approved passing scores on this test are as follows: Language Usage (43), Reading (44), and Numerical (42).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, *Contact:* John D. Roth, *Telephone:* (319) 337–1030, *Fax:* (319) 337–1790.

3. COMPASS Subtests: Prealgebra/Numerical Skills Placement, Reading Placement, and Writing Placement

Passing Scores: The approved passing scores on this test are as follows: Prealgebra/Numerical (21), Reading (60), and Writing (31).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, *Contact:* John D. Roth, *Telephone:* (319) 337–1030, *Fax:* (319) 337–1790.

4. Computerized Placement Tests (CPTs)/Accuplacer (Reading Comprehension, Sentence Skills, and Arithmetic)

Passing Scores: The approved passing scores on this test are as follows: Reading Comprehension (52), Sentence Skills (60), and Arithmetic (36).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: The College Board, 45 Columbus Avenue, New York, New York 10023–6992, *Contact:* Ms. Loretta M. Church, *Telephone:* (212) 713–8000, *Fax:* (212) 713–8063.

5. Descriptive Tests: Descriptive Tests of Language Skills (DTLS) (Reading Comprehension, Sentence Structure and Conventions of Written English)—Forms M–K–3KDT and M–K–3LDT; and Descriptive Tests of Mathematical Skills (DTMS) (Arithmetic)—Forms M–K–3KDT and M–K–3LDT

Passing Scores: The approved passing scores on this test are as follows: Reading Comprehension (108), Sentence Structure (9), Conventions of Written English (309), and Arithmetic (506).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: The College Board, 45 Columbus Avenue, New York, New York 10023–6992, *Contact:* Ms. Loretta M. Church, *Telephone:* (212) 713–8000, *Fax:* (212) 713–8063.

6. Test of Adult Basic Education (TABE): (Reading, Mathematics Computation, Applied Mathematics Language, and Spelling)—Forms 5 and 6, Level A

Passing Scores: The approved passing scores on this test are as follows: Reading (768), Mathematics Computation (804), Mathematics Concepts and Applications (759), Language (714), and Spelling (749).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: CTB/McGraw-Hill, 11301 Jollyville Road, Townhouse I–4, Austin, TX 78759, *Contact:* Ms. Lorna Harrison,

Telephone: (512) 349–7578, *Fax:* (512) 349–7580.

7. Test of Adult Basic Education (TABE): (Reading, Mathematics Computation, Applied Mathematics Language, and Spelling)—Forms 7 and 8, Level A

Passing Scores: The approved passing scores on this test are as follows: Reading (559), Mathematics Computation (558), Applied Mathematics (559), Language (545), and Spelling (540).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: CTB/McGraw-Hill, 11301 Jollyville Road, Townhouse I–4, Austin, TX 78759, Contact: Ms. Lorna Harrison, Telephone: (512) 349–7578, Fax: (512) 349–7580.

8. Wonderlic Basic Skills Test (WBST)—Verbal Forms VS–1 & VS–2, Quantitative Forms QS–1 & QS–2

Passing scores: The approved passing scores on this test are as follows: Verbal (200) and Quantitative (210).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: Wonderlic Personnel Test, Inc., 1509 N. Milwaukee Ave., Libertyville, IL 60048–1380, *Contact:* Mr. Victor S. Artese, *Telephone:* (800) 323–3742, *Fax:* (847) 680–9492.

Duration of Approval

The Secretary approves each of these tests for five years, unless the Secretary withdraws this approval or the publisher requests that approval of a test be withdrawn. In either case, the Secretary will publish a notice in the Federal Register indicating this change.

Use of approved tests

Until 60 days after the Secretary approves ATB tests and passing scores under the new regulations and publishes the names of those tests and passing scores in the Federal Register, institutions are allowed to continue to make ATB eligibility determinations in accordance with 34 CFR 668.155(a) under the tests and passing scores that were approved as of June 30, 1996. Those tests are listed in the 1996–97 Federal Student Financial Aid Handbook published by the Department.

Once the Secretary approves tests and passing scores under the new regulations and publishes the names of those tests and passing scores in the Federal Register, an institution may use one of those approved tests to make ATB eligibility determinations for the title IV, HEA programs. As already noted, the institution may also continue, for an additional 60 days, to use those tests approved as of June 30, 1996, for those determinations.

Except as provided under *Exception,* on the 61st day after publication in the Federal Register of the names of the tests and passing scores that are approved under the new regulations, all institutions shall use such an approved test and passing score to make ATB eligibility determinations for title IV, HEA program purposes. This means, except as provided under *Exception*, that as of December 26, 1996, an institution may only use one of the eight tests approved under the new regulations to determine whether an ATB student is eligible to receive title IV, HEA program funds. However, as indicated in § 668.155(b), if an institution properly determined that a student had the ability to benefit under a test approved as of June 30, 1996, it does not have to redetermine the student's eligibility under a newly approved test.

In addition, approved tests must be administered in accordance with the provisions of 34 CFR 668.151 or 668.152.

Exception: Section 668.153 contains special provisions for testing students whose native language is not English and who are not fluent in English and for students who have disabilities. None of the approved tests included in this notice has been approved for those purposes. Accordingly, institutions may continue to make ATB eligibility determinations under the guidelines prescribed in the ATB notice published in the Federal Register on December 30, 1992, (57 FR 62440) and by using the tests approved as of June 30, 1996, for those types of students. Moreover, the administration of those tests will not be governed by the provisions of 34 CFR Part 668, Subpart J.

Dated: October 21, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–27392 Filed 10–24–96; 8:45 am]

BILLING CODE 4000–01–P

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Federal Register

Vol. 61, No. 208

Friday, October 25, 1996

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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Gas produced from Federal and Indian leases; gas royalties and deductions for gas transportation calculations; comments due by 10-30-96; published 9-17-96

Royalty relief for deep water producing leases and existing leases; comments due by 10-30-96; published 9-17-96

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Aliens; legal assistance restrictions; comments due by 10-28-96; published 8-29-96

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Lobbying and certain other activities; restrictions; comments due by 10-28-96; published 8-29-96

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Prisoner representation; comments due by 10-28-96; published 8-29-96

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Securities Exchange Act of 1934; section 10A reporting requirements; comments due by 10-28-96; published 8-29-96

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Massachusetts; comments due by 10-31-96; published 4-30-96

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Regattas and marine parades:

Charleston Christmas Parade of Boats, SC; comments due by 10-28-96; published 9-26-96

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Airworthiness directives:

Bell; comments due by 10-29-96; published 8-30-96

Burkhart Grob, Luft- und Raumfahrt; comments due by 11-1-96; published 8-30-96

HOAC Austria; comments due by 10-28-96; published 8-22-96

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Commerce in firearms and ammunition:

Ammunition feeding devices with capacity of more than 10 rounds; importation; cross reference; comments due by 10-28-96; published 7-29-96

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Marketable book-entry Treasury bills, notes, and bonds; sale and issue; comments due by 10-28-96; published 9-27-96

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Privacy Act; implementation:

Internal Revenue Service; comments due by 10-28-96; published 9-26-96

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Privacy Act; implementation; comments due by 10-30-96; published 9-30-96

LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 632/P.L. 104–308

To enhance fairness in compensating owners of patents used by the United States. (Oct. 19, 1996; 110 Stat. 3814)

H.R. 1281/P.L. 104–309

To express the sense of the Congress that United States Government agencies in possession of records about individuals who are alleged to have committed Nazi war crimes should make these records public. (Oct. 19, 1996; 110 Stat. 3815)

H.R. 1874/P.L. 104–310

To modify the boundaries of the Talladega National Forest, Alabama. (Oct. 19, 1996; 110 Stat. 3817)

H.R. 3155/P.L. 104–311

To amend the Wild and Scenic Rivers Act by designating the Wekiva River, Seminole Creek, and Rock Springs Run in the State of Florida for study and potential

addition to the National Wild and Scenic Rivers System. (Oct. 19, 1996; 110 Stat. 3818)

H.R. 3249/P.L. 104–312

To authorize appropriations for a mining institute or institutes to develop domestic technological capabilities for the recovery of minerals from the Nation's seabed, and for other purposes. (Oct. 19, 1996; 110 Stat. 3819)

H.R. 3378/P.L. 104–313

Indian Health Care Improvement Technical Corrections Act of 1996 (Oct. 19, 1996; 110 Stat. 3820)

H.R. 3568/P.L. 104–314

To designate 51.7 miles of the Clarion River, located in Pennsylvania, as a component of the National Wild and Scenic Rivers System. (Oct. 19, 1996; 110 Stat. 3823)

H.R. 3632/P.L. 104–315

To amend title XIX of the Social Security Act to repeal the requirement for annual resident review for nursing facilities under the Medicaid program and to require resident reviews for mentally ill or mentally retarded residents when there is a significant change in physical or mental condition. (Oct. 19, 1996; 110 Stat. 3824)

H.R. 3864/P.L. 104–316

General Accounting Office Act of 1996 (Oct. 19, 1996; 110 Stat. 3826)

S. 1887/P.L. 104–317

Federal Courts Improvement Act of 1996 (Oct. 19, 1996; 110 Stat. 3847)

H.R. 3910/P.L. 104–318

Emergency Drought Relief Act of 1996 (Oct. 19, 1996; 110 Stat. 3862)

H.R. 4036/P.L. 104–319

Human Rights, Refugee, and Other Foreign Relations Provisions Act of 1996 (Oct. 19, 1996; 110 Stat. 3864)

H.R. 4194/P.L. 104–320

Administrative Dispute Resolution Act of 1996 (Oct. 19, 1996; 110 Stat. 3870)

H.J. Res. 193/P.L. 104–321

Granting the consent of Congress to the Emergency Management Assistance Compact. (Oct. 19, 1996; 110 Stat. 3877)

H.J. Res. 194/P.L. 104–322

Granting the consent of the Congress to amendments made by Maryland, Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact. (Oct. 19, 1996; 110 Stat. 3884)

S. 342/P.L. 104–323

Cache La Poudre River Corridor Act (Oct. 19, 1996; 110 Stat. 3889)

S. 1004/P.L. 104–324

Coast Guard Authorization Act of 1996 (Oct. 19, 1996; 110 Stat. 3901)

S. 1194/P.L. 104–325

Marine Mineral Resources Research Act of 1996 (Oct. 19, 1996; 110 Stat. 3994)

S. 1649/P.L. 104–326

Irrigation Project Contract Extension Act of 1996 (Oct. 19, 1996; 110 Stat. 4000)

S. 2183/P.L. 104–327

To make technical corrections to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. (Oct. 19, 1996; 110 Stat. 4002)

S. 2198/P.L. 104–328

To provide for the Advisory Commission on Intergovernmental Relations to continue in existence, and for other purposes. (Oct. 19, 1996; 110 Stat. 4004)

H.R. 1776/P.L. 104–329

United States Commemorative Coin Act of 1996 (Oct. 20, 1996; 110 Stat. 4005)

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