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federal register

Thursday
April 9, 1998

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Presidential Documents

Title 3—

The President

Proclamation 7078 of April 7, 1998

Education and Sharing Day, U.S.A., 1998

By the President of the United States of America

A Proclamation

As a new century of great promise and possibility approaches, as science and technology advance at astonishing rates, it is clear that now, more than ever, education is the key to our children's future.

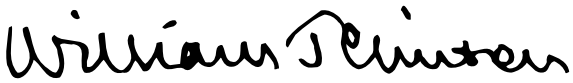
We should also recognize that education must serve not only as a path to knowledge, but also as a means to develop the character of our Nation's youth. When expanding educational opportunities, we must ensure that in addition to raising academic standards, we emphasize values, personal responsibility, and community spirit.

A firm believer in nurturing both mind and heart, the Lubavitcher Rebbe, Rabbi Menachem M. Schneerson, devoted his life to helping young people realize their potential and become visionary leaders and thinkers, as well as concerned, caring, and productive citizens. He established more than 2,000 educational and social institutions in more than 40 States and nearly 60 countries. He was deeply committed to fostering civic pride and moral integrity along with professional success.

On this day, as we remember Rabbi Schneerson's achievements, let us reaffirm our commitment to providing our Nation's children with an education that will enable them to flourish, both intellectually and spiritually.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 7, 1998, as Education and Sharing Day, U.S.A. I invite Government officials, educators, volunteers, and all of the people of the United States to observe this day with appropriate activities, programs, and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of April, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.



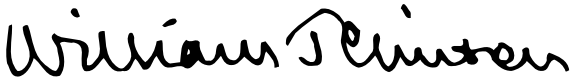
[FR Doc. 98–9580
Filed 4–8–98; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13079 of April 7, 1998

Waiver Under The Trade Act Of 1974 With Respect to Vietnam

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 402(c)(2) of the Trade Act of 1974, as amended (''Act'')(19 U.S.C. 2432(c)(2)), which continues to apply to Vietnam pursuant to section 402(d) of the Act, and having made the report to the Congress required by section 402(c)(2) of the Act, I hereby waive the application of sections 402(a) and 402(b) of the Act with respect to Vietnam.



THE WHITE HOUSE,
April 7, 1998.

[FR Doc. 98–9599
Filed 4–8–98; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 63, No. 68
Thursday, April 9, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1425

RIN 0560–AF33

Cooperative Marketing Associations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: This rule amends the Commodity Credit Corporation's (CCC's) Cooperative Marketing Association (CMA) program to reduce workload and reporting burdens and focus CCC's monitoring efforts on the CMA's participation in the commodity loan and loan deficiency payment programs. Other CMA business functions will no longer be subject to review or approval.

DATES: This rule is effective April 9, 1998. Comments concerning this rule should be received on or before May 11, 1998 to be assured consideration.

ADDRESSES: Address all comments concerning this interim rule to James Goff, Agricultural Program Specialist, Price Support Division, USDA, FSA, STOP 0512, 1400 Independence Avenue, S.W., Washington, DC 20250–0512, telephone (202) 720–5396: e-mail James__Goff@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among various levels of government.

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866 and has been determined to be not significant and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12988

The interim rule has been reviewed in accordance with Executive Order 12988. The provisions of this interim rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are:

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Environmental Evaluation

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

Paperwork Reduction Act of 1995

The Information Collections for the program are covered under OMB control number 0560–0040. A Notice with request for comments on the information collection was published in the **Federal Register** on April 7, 1998, at 63 FR 16958. An information collection package will be sent to OMB for review at the end of the 60-day comment period.

Background

CCC made loans and loan deficiency payments (LDP's) available to producers through agricultural marketing cooperatives for over 60 years. USDA first extended commodity loans to cotton cooperatives in 1934. Commodities now authorized for marketing assistance loans and LDP's through approved CMA's are: barley, canola, corn, cotton, flaxseed, mustard seed, oats, rapeseed, rice, safflower, sorghum, soybeans, sunflower seed, and wheat.

Explanation of Changes

Existing regulations have not been substantially changed or updated in the last 15 years. Many of the old regulations dealt with monitoring changes in the CMA's by-laws, equity requirements, and conflict-of-interest issues of board members and key employees. Cooperatives are voluntary organizations. Producers who join cooperatives have the right to review by-laws before joining the cooperative and approve by-law changes after becoming a member. CMA loans are non-recourse commodity loans for which CCC determines the loan value. CCC allows CMA's terminated for non-compliance to forfeit the collateral without additional financial penalty. CCC is not financially at risk for any program losses because, as stated in § 1425.17(m), CMA's are responsible to CCC for all losses. In addition, CCC does not require individual producers receiving similar loans to meet any equity requirements. Conflict of interest concerns have become important to cooperatives, their insurance companies, and members. Therefore, CCC's concern with respect to by-law, equity, or conflict of interest issues is diminished and CCC believes it is in the best interest of the government to focus on marketing

assistance loans and LDP-related activity by the CMA's. CCC will now rely on the CMA's Articles of Incorporation and its marketing agreements with its members to establish that the CMA is operating as a cooperative and is allocating marketing assistance loan and LDP proceeds back to the applicable eligible producers.

Summary of Changes

The entire part 1425 has been rewritten. In addition, specific changes are as follows:

(a) Seed cotton has been removed from the definition of an authorized commodity in § 1425.3. CMA's will no longer be authorized to obtain seed cotton loans.

(b) Section 1425.4 is amended by replacing required audit submissions with balance sheet submissions;

(c) All references to bylaw submissions and bylaw requirements are removed. This affected § 1425.4, § 1425.6, § 1425.8, § 1425.9, and § 1425.19. Section 1425.11 was removed as a result and is now reserved;

(d) Equity requirements in § 1425.10(c) have been removed;

(e) Conflict of interest statement submissions by cooperative Board members and key employees was removed from § 1425.12. Section 1425.12 is now reserved;

(f) Provisions to allow discrepancies between CCC and CMA records related to the eligibility status for a producer under certain situations were added to § 1425.17;

(g) In § 1425.14 the member volume requirement for a crop involved in loan or LDP activity has been reduced from 80 percent to 50 percent;

(h) The requirements in § 1425.10 (d) to adjust a CMA's net worth for pledged assets and restricted accounts have been removed;

(i) Section 1425.7(b) is amended so CCC may terminate a suspended CMA in less than 1 year;

(j) In § 1425.4(d) the requirements for CMA's to submit revised applications every 5 years is changed to require submissions when CCC questions whether the CMA is operating according to documents previously submitted; and

(k) Definitions have been added to § 1425.3 for cooperative, market gain, and loan pool.

Submit comments as an:

1. ASCII file avoiding the use of special characters and any form of encryption; or

2. WordPerfect 5.1—7.0 file on diskette.

Identify all comments and data in electronic form by RIN 0560–AF33.

List of Subjects in 7 CFR Part 1425

Agricultural commodities Cooperatives, Marketing agreements.

Accordingly, for the reasons stated in the preamble, 7 CFR part 1425 is revised as set forth below:

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

Sec.

1425.1 Applicability.
1425.2 Administration.
1425.3 Definitions.
1425.4 Approval.
1425.5 Confidentiality.
1425.6 Approved CMA's.
1425.7 Suspension and termination of approval.
1425.8 Ownership and control.
1425.9 Open membership.
1425.10 Financial ratio requirement.
1425.11–1425.12 [Reserved]
1425.13 Uniform marketing agreement.
1425.14 Member business.
1425.15 Vested authority.
1425.16 Payment limitation.
1425.17 Eligible commodity and pooling.
1425.18 Distribution of proceeds.
1425.19 Member cooperatives.
1425.20 [Reserved]
1425.21 Records required.
1425.22 Inspection and investigation.
1425.23 Reports.
1425.24 OMB control number assigned pursuant to Paperwork Reduction Act.
1425.25 Appeals.

Authority: 7 U.S.C. 1441 and 1421, 7 U.S.C. 7231–7237; and 15 U.S.C. 714b, 714c, and 714j.

§ 1425.1 Applicability.

This part sets forth the terms and conditions an approved Cooperative Marketing Association (CMA) must meet to obtain commodity marketing assistance loans (loans) and loan deficiency payments (LDP's) from CCC on behalf of its members. A CMA meeting these terms and conditions may obtain loans and LDP's for any eligible commodity for which a loan and LDP program is in effect.

§ 1425.2 Administration.

On behalf of CCC, the Farm Service Agency will administer the provisions of this part under the general direction and supervision of the Deputy Administrator for Farm Programs. In the field, the provisions of this part will be administered by the State and county FSA committees.

§ 1425.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in parts 718 of this title and parts 1421 and 1427 of this chapter shall also be applicable, except where those definitions conflict with the definitions in this section.

Active member is a member who has utilized the services offered by a CMA in one of the three preceding CMA fiscal years or such shorter period as may be provided in the CMA's articles of incorporation or bylaws.

Approved cooperative marketing association (CMA) is a cooperative approved by CCC to participate in loan and LDP programs for any authorized commodity.

Authorized commodity is a commodity for which a CMA is approved by CCC to obtain loans or LDP's. Commodities for which a CMA may be approved by CCC are barley, canola, corn, cotton, flaxseed, mustard seed, oats, rapeseed, rice, safflower, sorghum, soybeans, sunflower seed, and wheat.

Cooperative is a business owned and controlled by the producers who use its services and operated under generally accepted cooperative principles.

Eligible commodity is a commodity which meets the commodity's eligibility requirements set forth in chapter XIV of this title, and is produced and delivered to the CMA from a producer eligible for loan or LDP.

Loan pool is any CMA pool containing commodities used by the CMA to obtain either loans or LDP's.

Market gain is the sum of loan rate, minus the repayment rate on loans repaid with less than the loan rate, plus for LDP's, the same rate, times the quantity of commodity. Market gains cannot exceed the producer's applicable payment limitation as set out in part 1400 of this chapter.

Member is a producer who:

(a) Has fully paid for membership stock or earned equity credits in the CMA;

(b) Has executed a uniform marketing agreement with the CMA; and

(c) Is entitled to all CMA membership rights.

§ 1425.4 Approval.

(a) For a cooperative to gain CMA status to participate in a marketing assistance loan or LDP program for the 1997 through 2002 crop years, a cooperative must submit an application for approval to CCC. An application must include:

(1) A completed Form CCC–846 indicating commodities for which it seeks approval;

(2) A balance sheet, dated within the last year, prepared for the cooperative and accompanied by a letter from an independent Certified Public Accountant, certifying that the balance sheet was prepared in accordance with

generally accepted accounting principles;

(3) A copy of the articles of incorporation or articles of association and all marketing agreements for loan pools, together with a certification that this material is current;

(4) Resolutions made by the cooperative's board of directors stating the cooperative will abide by provisions of this part, the nondiscrimination provisions thereof, and all other related CCC policies;

(5) A detailed description of how proceeds from each loan pool will be distributed to members as provided for in § 1425.18;

(6) An executed form CCC–Cotton G, Cotton Cooperative Loan Agreement, by cooperatives applying for approval to participate in the cotton loan and LDP program; and

(7) Other information as requested by CCC concerning the organizational, operational, financial or any other aspect of the cooperative requested by CCC related to the cooperative's proposed methods of conducting CCC loan and LDP business.

(b) A CMA must submit, on an annual basis, the following information to CCC:

(1) A completed Form CCC–846–1, which shall disclose:

(i) The number of active and inactive CMA members;

(ii) The CMA's allocated equity;

(iii) The CMA's unallocated equity; and

(iv) Quantity of each loan pool commodity delivered to the CMA for marketing and the portion of such commodities received from active members during the prior year.

(2) The CMA's latest balance sheet. This balance sheet must be dated within the past year and be accompanied by a letter from an independent Certified Public Accountant certifying that the balance sheet was prepared in accordance with generally accepted accounting principles.

(c) A CMA shall furnish information to CCC within thirty calendar days relating to any:

(1) Change in its articles of incorporation and loan pool marketing agreements;

(2) Resolution affecting loan or LDP operations;

(3) Change to the CMA's name, address, phone number, or related data shown on the CCC–846–1;

(4) Change in loan pool operations with an explanation and justification; and

(5) Additional information CCC may request related to the CMA's continued approval by CCC.

(d) CCC may require a CMA to submit a new initial application instead of a recertification application when it questions whether the CMA is operating according to documents previously submitted.

§ 1425.5 Confidentiality.

Information submitted to CCC related to trade secrets, financial or commercial operations, or the financial condition of a CMA, whether for initial approval or continued approval, shall be kept confidential by the officers, agents, and employees of CCC and the Department of Agriculture except as required to be disclosed by law.

§ 1425.6 Approved CMA's.

(a) CCC shall, in accordance with the provisions of this part, approve a CMA to obtain marketing assistance loans and LDP's.

(b) CCC may approve a CMA to participate in a marketing assistance loan and LDP program for the 1997 through 2002 crop as:

(1) Unconditionally approved; or

(2) Conditionally approved.

(c) If CCC determines a CMA is in substantial but not total compliance with the requirements of this part, CCC may make the approval conditional on CMA coming into full compliance within a reasonable period of time as specified in the notification of conditional approval.

(d) A CMA is approved to participate in a marketing assistance loan and LDP program until the CMA's approval is suspended or terminated by CCC.

§ 1425.7 Suspension and termination of approval.

(a) CCC may suspend a CMA from obtaining loans and LDP's when CCC determines the CMA has not:

(1) Operated according to the CMA's application for approval or its last recertification submission;

(2) Complied with applicable regulations;

(3) Corrected deficiencies of the CMA's operation as noted by CCC; or

(4) Violated any of its agreements with CCC.

(b) A suspension may be lifted when CCC determines the CMA has complied with all requirements for approval. When suspensions are not lifted within 1 year, or a shorter time period if so indicated in CCC's suspension notification, the CMA's approval automatically terminates.

(c) CCC may terminate a CMA's approval by giving the CMA written notice of the termination.

(d) A CMA may, when it does not have any marketing assistance loans outstanding, through written notice to CCC, voluntarily terminate its participation in a loan and LDP program.

(e) CCC may, on demand, call all outstanding CCC loans made to a suspended or terminated CMA. When loans are called, CCC will provide at least 10 calendar days written notice to the CMA. Commodities pledged as collateral for loans must be repaid by the date specified by CCC. If redemption is not made by the date specified, title to the commodity shall vest in CCC and CCC shall have no obligation to pay the commodity's market value above the principal amount of such loans.

§ 1425.8 Ownership and control.

(a) CMA's must be owned and controlled by active members of the CMA.

(b) The CMA must provide evidence that:

(1) Active members own more than 50 percent of its allocated equity; and

(2) A majority of directors are active members of the CMA or authorized representatives of active members.

(c) An applicant cooperative or a CMA, not under the ownership or control, of its active members, may be approved by CCC if it is able to establish that, by retiring the equity of its inactive members or by obtaining new members, it can vest ownership and control in its active members, as required by this section, by a date specified by CCC.

§ 1425.9 Open membership.

(a) The CMA shall provide CCC documented proof that the CMA admits every membership applicant who is eligible under the statute regulating the CMA.

(b) Notwithstanding paragraph (a) of this section, a CMA may refuse membership to an applicant whose admission would prejudice, hinder, or otherwise obstruct the interests or purposes of the CMA.

§ 1425.10 Financial ratio requirement.

To be financially able to make advances to their members and to market their commodities, CMA's shall have a current ratio of at least 1 dollar of current assets for each 1 dollar of current liabilities (current ratio of 1:1 or better) on the balance sheet it submits to CCC with its initial application or annual recertification required in § 1425.4.

§ 1425.11–§ 1425.12 [Reserved]

§ 1425.13 Uniform marketing agreement.

(a) A CMA must enter into a uniform marketing agreement with each member who delivers a commodity to a loan pool.

(b) The identification number used by the member to report acreage on applicable farms to FSA must appear on the marketing agreement.

§ 1425.14 Member business.

(a) At least 50 percent of a crop of an authorized commodity acquired by, or delivered to, a CMA for marketing must be produced by its members for the CMA to obtain a loan or LDP for such crop. CCC may, for a period not to exceed 2 years, waive this requirement if:

(1) The CMA can establish to CCC that such authorization is necessary for the efficient operation of the CMA; and

(2) The CMA's plan, approved by CCC, will bring the CMA into compliance with the provisions of this section.

(b) Commodities purchased or acquired from CCC and processed products acquired from other processors or merchandisers shall not be considered in determining the volume of member or nonmember business.

§ 1425.15 Vested authority.

The marketing agreement between the CMA and its members shall give the CMA the authority to pledge the commodity as collateral for a loan, to place a lien on such commodity, and to market the commodity on behalf of its members even though the individual members retain the right, in effect, to determine the price at which the commodity can be marketed by the CMA.

§ 1425.16 Payment limitation.

CMA's shall monitor market gains they receive from CCC on behalf of their members and not obtain market gains for a member above the member's payment limitation determined in accordance with part 1400 of this chapter.

§ 1425.17 Eligible commodity and pooling.

(a) A CMA may establish separate loan pools as needed for quantities of a commodity.

(b) Loans and, if applicable, LDP's will be available to CMA's for any eligible commodity in a loan pool as provided in paragraph (e) of this section and the beneficial interest provisions of parts 1421 and 1427 of this chapter.

(c) A pool shall be eligible for loans and LDP's if:

(1) All of the commodity in the pool is eligible for loans or LDP's, except as provided in paragraphs (d) and (e) of this section;

(2) The commodity was delivered by members to the CMA for their benefit;

(3) The commodity was delivered and the members are eligible for loans and LDP's;

(4) Members retain the right to share in marketing proceeds from the commodity in accordance with § 1425.18; and

(5) Members agreed to accept a payment of initial advances from the CMA in accordance with § 1425.18(a).

(d) Ineligible commodities may be included in eligible pools when:

(1) The CMA inadvertently included ineligible quantities based on grade, quality, bale weight or repacking in the case of cotton, or other factors; or

(2) There are eligibility discrepancies within FSA records, the producer has certified to the CMA that the commodity is eligible for loan, and there is no market gain or LDP involved in the loan pool for the crop year.

(e) A CMA may, for a period of time as specified in Handbook 1–CMA, include a commodity that is ineligible based on FSA records when the producer has certified to the CMA the commodity is eligible. In these instances, CCC specifies a time period during which CMA's may obtain loan or LDP's on the applicable quantity while the eligibility status is resolved. If the final resolution is that the commodity was ineligible, the CMA must repay any loans outstanding with principal plus interest and any market gains obtained plus interest from the date of receiving the market gain through the repayment date.

(f) The CMA must have in inventory a quantity of commodity delivered by members of each class and grade at least equal to the quantity each class and grade pledged as loan collateral.

(g) Loans will be available to the CMA for the quantity of a farm-stored commodity that is, pursuant to such CMA marketing agreement with a member, part of the CMA's loan pool.

(h) A CMA shall have identity-preserved loan pool commodities stored in approved warehouses while the commodities are pledged as collateral for loan.

(i) Loan eligibility for commingled commodities stored on a farm or in a warehouse may be transferred to an approved warehouse.

(j) Commodities pledged as collateral for CCC loans shall be free and clear of all liens and encumbrances based on a CMA's financial agreements or the CMA shall obtain a completed form CCC–679, Lien Waiver. When liens are applicable based on CMA financial agreements, the CMA shall provide CCC the completed CCC–679. CMA's shall not take any action to cause a lien or encumbrance to be placed on a commodity after a loan is approved.

(k) If a loan or LDP is obtained for any quantity in a loan pool, allocations of costs and expenses among separate pools for the commodity in the pool shall be made according to generally accepted accounting principles.

(l) A CMA shall not apply marketing losses from a commodity not used to obtain a loan or LDP against the marketing proceeds of a commodity used to obtain a loan or LDP.

(m) CMA's shall not carry forward losses from one loan pool and apply them against a subsequent loan pool without CCC's authorization. CCC may grant authorization when it determines that carrying forward the loss complies with CCC's loan and LDP program intent.

(n) The CMA is responsible to CCC for any loss related to commodities the CMA pledged as collateral for loan or used to obtain LDP related to:

(1) The CMA failing to comply with these regulations;

(2) Changes in quantity or quality of either warehouse or farm stored commodities; or

(3) Liens based on either the CMA's or its members' financial agreements.

§ 1425.18 Distribution of proceeds.

(a)(1) If CCC makes loans or LDP's for any quantity in a loan pool, the related proceeds shall be distributed to members participating in the pool:

(i) Based on the quantity and quality of the commodity delivered by each member;

(ii) Less any authorized charges for services performed or paid by the CMA necessary to condition the commodity or otherwise make the commodity eligible for loans or LDP's; and

(iii) Within 15 work days from the date the CMA receives loan or LDP proceeds from CCC, except when loans are redeemed within 15 work days of the date of the loan.

(2) CMA's may credit advances to its members made before loans and LDP's are obtained against the distribution of loan and LDP proceeds requirement in paragraph (a)(1)(iii) of this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, loan pool proceeds shall not be combined with non-loan pool proceeds and the CMA shall distribute loan pool proceeds according to the information it provided CCC in accordance with § 1425.4(b)(7).

(2) Sales proceeds from a loan pool may be combined with sales proceeds from other pools if the proceeds from such pools are allocated among the pools according to the quantity and quality of the commodity included in the pools.

(3) Loan and LDP proceeds shall only be issued to members involved in pools used for loans or LDP's.

(4) When notified by CCC that loan and LDP distributions to a member must be reduced for a program year, farm, or crop, a CMA shall not make subsequent pool distributions and shall reimburse CCC for distributions previously issued, if applicable.

§ 1425.19 Member cooperatives.

A CMA may obtain loans or LDP's on behalf of a member cooperative when the member cooperative is itself a CMA operating in accordance with this part. Loans and LDP's are restricted based on the CMA obtaining the loan or LDP.

§ 1425.20 [Reserved]

§ 1425.21 Records required.

(a) A CMA shall maintain records for each loan or LDP commodity showing the quantity:

(1) Received from each member and nonmember;

(2) Eligible for loans and LDP's;

(3) By quality factors specified in the applicable commodity regulations including class, grade, and quality, where applicable; and

(4) Of unprocessed inventory broken down by items 1 through 3 above.

(b) Except as provided in paragraph (c) of this section, inventory shall be allocated in the following manner until all inventory in a loan pool is depleted:

(1) For processed commodities, the pool's inventory shall be adjusted when the commodity is withdrawn from inventory for processing; and

(2) For commodities that are not processed, the pool's inventory shall be allocated to the pool and the pool's inventories adjusted when the commodity is shipped.

(c) Records of loan and non-loan pool dispositions do not have to be maintained separately when sales proceeds from pools are allocated according to the quantity and quality of commodity in the pools.

§ 1425.22 Inspection and investigation.

(a) The books, documents, papers, and records of the CMA and subsidiaries shall be maintained for five years after the applicable crop year and shall be available to CCC for inspection and examination at all reasonable times.

(b) At any time after an application is received, CCC shall have the right to examine all books, documents, papers, and determine whether the CMA is operating or has operated in accordance with the regulations in this part, its articles of incorporation or articles association, and agreements with producers, the representations made by the CMA in its application for approval, and, where applicable, its agreements with CCC.

§ 1425.23 Reports.

(a) CMA's shall annually provide CCC a report of all commodity deliveries involved in loans and LDP's by FSA farm number for each member.

(b) When requested by CCC, CMA's shall report market gains received on behalf of each member.

§ 1425.24 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR 1425) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0560–0040.

§ 1425.25 Appeals.

A CMA may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at part 780 of this title.

Signed at Washington, D.C., on March 27, 1998.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98–9017 Filed 4–8–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 85

[Docket No. 96–013–2]

Official Pseudorabies Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the pseudorabies regulations by adding the glycoprotein I Particle Concentration Fluorescence Immunoassay test to the list of official pseudorabies tests and allowing its use as an approved differential test. We are taking this action based on a finding that the sensitivity and specificity of the glycoprotein I Particle Concentration Fluorescence Immunoassay test are equivalent to those of official tests for the diagnosis of pseudorabies. This rule allows the glycoprotein I Particle Concentration Fluorescence Immunoassay test to be used as an official pseudorabies test to qualify certain pseudorabies vaccinated swine for interstate movement to destinations other than slaughter or a quarantined herd or quarantined feedlot. Adding the glycoprotein I Particle Concentration Fluorescence Immunoassay test to the list of official pseudorabies tests also allows its use for the testing of nonvaccinated swine.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold C. Taft, Senior Staff Veterinarian, Swine Health Staff, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–4916; or e-mail: ataft@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Pseudorabies is a contagious, infectious, and communicable disease of livestock, primarily swine, and other animals. The disease, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus. The Animal and Plant Health Inspection Service's (APHIS) regulations in 9 CFR part 85 (referred to below as the regulations) govern the interstate movement of swine and other livestock (cattle, sheep, and goats) in order to help prevent the spread of pseudorabies.

On December 15, 1997, we published in the **Federal Register** (62 FR 65630–65631, Docket No. 96–013–1) a proposal to amend the pseudorabies regulations by adding the glycoprotein I (gpI) Particle Concentration Fluorescence Immunoassay (PCFIA) test to the list of official pseudorabies tests and allow its use as an approved differential test. We proposed this action based on a finding that the sensitivity and specificity of the gpI PCFIA test are equivalent to those of official tests for the diagnosis of pseudorabies.

We solicited comments concerning our proposal for 60 days ending February 13, 1998. We did not receive any comments. Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

This rule will provide an alternative official pseudorabies test to be used as an approved differential test. It will allow the gpI PCFIA test to be used as an official pseudorabies test to qualify certain pseudorabies vaccinated swine for interstate movement to destinations

other than slaughter or a quarantined herd or quarantined feedlot. Making this rule effective immediately will allow producers of swine to use the gpI PCFIA test for the testing of nonvaccinated swine. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule amends the pseudorabies regulations by adding the gpI PCFIA test to the list of official pseudorabies tests. This rule will allow the gpI PCFIA test to be used as an official pseudorabies test to qualify certain pseudorabies vaccinated swine for interstate movement to destinations other than slaughter or a quarantined herd or quarantined feedlot. Adding the gpI PCFIA test to the list of official pseudorabies tests will also allow its use for the testing on nonvaccinated swine.

The total U.S. inventory of hogs and pigs was approximately 56 million, valued at $5.283 billion, in 1996. The gross income of the inventory was approximately $11 billion. More than 99 percent of swine producers are considered to be small entities. According to the standard set by the Small Business Administration for agricultural producers, a producer with less than $0.5 million annually in sales qualifies as a small entity.

Nearly 95 percent of the swine inventory within the United States has not yet achieved pseudorabies-free status. The addition of this new test will provide an extra choice of official pseudorabies test for those who raise swine, when a test is required for interstate movement. Testing costs will be incurred only when an owner chooses to move a gpI vaccinates interstate to destinations other than slaughter or a quarantined herd or quarantined feedlot, since pseudorabies vaccinated swine do not require a test prior to interstate movement for slaughter or to a quarantined herd or quarantined feedlot. The cost of the gpI PCFIA test is within the range of the currently available tests. The test is highly automated and those laboratories that have the test kit are expected to accomplish the testing on large numbers of samples with greater speed. The test results have been found to produce fewer false negatives, reducing the need for tracebacks. The positive effect of having accurate results in a short time will be beneficial in all stages of pseudorabies eradication.

Allowing the use of the gpI PCFIA test to determine the pseudorabies status of nonvaccinated swine is not expected to have a significant economic impact on the owners of nonvaccinated swine, as it is only an additional pseudorabies testing tool to ensure the health of the U.S. swine population. It is likely, though, since the new gpI PCFIA test may be slightly higher in cost than other testing tools that are on the market, that most owners of nonvaccinated swine will continue using less expensive official pseudorabies tests until the cost of the gpI PCFIA test becomes comparable to that of other official tests.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 85

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 85 is amended as follows:

PART 85—PSEUDORABIES

1. The authority citation for part 85 continues to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 85.1 [Amended]

2. In § 85.1, in the definition of *official pseudorabies test*, in the second sentence, item 6 is amended by adding the words ‘‘, including the gpI PCFIA test’’ immediately after the word ‘‘Test’’.

§ 85.6 [Amended]

3. Section 85.6 is amended as follows:

a. In paragraph (c)(2)(iii), the words ‘‘or a gpI Particle Concentration Fluorescence Immunoassay (PCFIA)’’ are added immediately after the word ‘‘(ELISA)’’.

b. In paragraph (c)(2)(iv), the words ‘‘or the gpI PCFIA’’ are added immediately after the word ‘‘ELISA’’.

c. In paragraph (c)(2)(v), the words ‘‘or the gpI PCFIA’’ are added immediately after the word ‘‘ELISA’’.

Done in Washington, DC, on this 3rd day of April 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–9377 Filed 4–8–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–140–AD; Amendment 39–10453; AD 98–08–04]

RIN 2120–AA64

Airworthiness Directives; AERMACCI S.p.A. Models S.208 and S.208A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all AERMACCI S.p.A. Models S.208 and S.208A airplanes. This AD requires inspecting the landing gear rod springs to assure they are made with a wire diameter of 4.5 millimeters (mm), and replacing any that have a wire diameter of 4.0 mm. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to prevent failure of the landing gear caused by an insufficient wire diameter of the rod springs, which could result in loss of control of the airplane during landing operations.

DATES: Effective May 26, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of May 26, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from SIAI Marchetti S.p.A., Product Support Department, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy; telephone: +39–331–929117; facsimile: +39–331–922525. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–140–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David O. Keenan, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all AERMACCI S.p.A. Models S.208 and S.208A airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 2, 1998 (63 FR 5324). The NPRM proposed to require inspecting the landing gear rod springs to assure they are made with a wire diameter of 4.5 millimeters (mm), and replacing any that have a wire diameter of 4.0 mm. Accomplishment of the proposed action as specified in the NPRM would be in accordance with SIAI Marchetti S.p.A. Service Bulletin No. 205B59, dated July 29, 1995.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 6 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 9 workhours per airplane to accomplish the action required by this AD, and that the average labor rate is approximately $60 an hour. Parts cost approximately $15 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $3,330, or $555 per airplane. This figure is based on the presumption that all of the affected airplanes will have landing gear rod springs with an incorrect diameter, and will require replacement of these rod springs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–08–04 AERMACCI S.P.A.: Amendment 39–10453; Docket No. 97–CE–140–AD.

Applicability: Models S.208 and S.208A airplanes, all serial numbers, 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 in the body of this AD, unless already accomplished.

To prevent failure of the landing gear caused by an insufficient wire diameter of the rod springs, which could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the landing gear rod springs to assure they are made with a wire diameter of 4.5 millimeters (mm). Accomplish this inspection in accordance with SIAI Marchetti S.p.A. Service Bulletin No. 205B59, dated July 29, 1995.

(b) If any landing gear rod springs are found to have a wire diameter of 4.0 mm, prior to further flight after the inspection required by paragraph (a) of this AD, replace these rod springs with rod springs that have a wire diameter of 4.5 mm. Accomplish this replacement in accordance with the applicable maintenance manual.

(c) 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.

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

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

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

(e) Questions or technical information related to SIAI Marchetti S.p.A. Service Bulletin No. 205B59, dated July 29, 1995, should be directed to SIAI Marchetti S.p.A., Product Support Department, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy; telephone: +39–331–929117; facsimile: +39–331–922525. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(f) The inspection required by this AD shall be done in accordance with SIAI Marchetti S.p.A. Service Bulletin No. 205B59, dated July 29, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SIAI Marchetti S.p.A., Product Support Department, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on May 26, 1998.

Issued in Kansas City, Missouri, on March 31, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–9114 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–249–AD; Amendment 39–10450; AD 98–08–01]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070 and Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0070 and Mark 0100 series airplanes, that requires a one-time visual inspection to detect heat damage of the fuselage skin and stubwing structure. This proposal also would require either repetitive leak tests of the seals of the bleed air system, or repair of any heat-damaged structure, as necessary; and replacement of corrujoint seals with new improved seals. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the leakage of hot air from the corrujoint seals of the low- and high-pressure check valves located in the stubwings, which could result in heat damage to the fuselage skin and stubwing structure, and consequent reduced structural integrity of the airplane.

DATES: Effective May 14, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 14, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P. O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0070 and Mark 0100 series airplanes was published in the **Federal Register** on November 28, 1997 (62 FR 63292). That action proposed to require a one-time visual inspection to detect heat damage of the fuselage skin and stubwing structure. That action also proposed to require either repetitive leak tests of the seals of the bleed air system, or repair of any heat-damaged structure, as necessary; and replacement of corrujoint seals with new improved seals.

Comments

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

One commenter, the Air Transport Association (ATA) of America, on behalf of one of its members, requests that the AD include a statement excluding aircraft previously inspected and modified in accordance with the referenced Fokker service information. The ATA member indicates that it has already completed the inspection and modifications described in the service bulletins cited in the proposed AD. The FAA concurs that previously accomplished inspections and modifications need not be repeated; however, the commenters' concern in that regard was already addressed in the proposed AD by the statement, ''Compliance: Required as indicated, unless accomplished previously.'' That language reappears in this final rule. Therefore, no change to the final rule is necessary.

Similarly, the ATA requests that a provision be added to exclude airplanes on which the intent of the proposed AD has already been accomplished, including repairs that were generated to repair damaged structure, in accordance with Fokker Service Bulletin SBF100–53–081, which is not referenced in the proposed rule.

The FAA concurs that replacements and repairs accomplished prior to the effective date of this AD in accordance with the service bulletin referenced by the commenter are acceptable provided that no seal has been subsequently replaced with a seal having part number BE20061 (Rolls-Royce part number 3405891). This final rule, therefore, includes a note stating that inspections for heat damage, leak tests, seal replacements, and repairs accomplished prior to the effective date of this AD, in accordance with Fokker Service Bulletin SBF100–53–081, dated July 7, 1995, are considered acceptable for compliance with the requirements of this AD, provided that no seal has been subsequently replaced with a seal having part number BE20061 (Rolls-Royce part number 3405891).

The ATA, on behalf of another commenter, requests that a provision be added to allow the leak tests to be omitted if the inspection reveals no heat damage and if, prior to further flight, the corrujoint seals at the seventh stage low pressure check valve and twelfth stage high pressure check valves are replaced with the improved corrujoint seals. The commenter states that accomplishment of these actions is similar to the optional method of complying with Fokker Service Bulletin SBF100–53–084.

The FAA concurs with the commenter's request. The FAA agrees that, if the inspection required by paragraph (a) of this AD reveals no heat damage, and if, prior to further flight, all affected corrujoint seals are replaced with the improved corrujoint seals, then accomplishment of the leak tests is not necessary. The FAA has revised and

reformatted paragraph (b) of this final rule to include this provision.

The ATA also requests that the compliance time be extended from 12 to 18 months. The commenter states that 18 months is the accepted industry standard and further notes that, because of the areas to which access is needed, the work must be accomplished while an airplane is out of service for maintenance.

The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but a number of other factors as well. Those included the recommendations of the manufacturer and foreign airworthiness authority, the availability of required parts, and the practical aspect of accomplishing the required actions within an interval of time coinciding with normal scheduled maintenance for the majority of the affected operators. Considering all of those factors, the FAA determined that the proposed compliance time represents the maximum interval in which the affected airplanes could continue to operate without compromising safety. In that regard, the commenter did not provide any data to substantiate that an extension of the compliance time would not compromise safety. In view of those factors, and the amount of time that has already elapsed since issued of the original notice of proposed rulemaking, the FAA has determined that further delay of these actions is, in general, not appropriate. The FAA may, however, approve a request for an adjustment of the compliance time under the provisions of this final rule if data are submitted to substantiate that such an adjustment would provide an equivalent level of safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 131 Fokker Model F28 Mark 0070 and Mark 0100 series airplanes of U.S. registry will be affected by this AD.

The inspection will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $23,580, or $180 per airplane.

The replacement of the corrujoint seals will take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $80 per airplane. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $65,500, or $500 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the 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 adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–08–01 Fokker: Amendment 39–10450. Docket 97–NM–249–AD.

Applicability: Model F28 Mark 0070 and Mark 0100 airplanes; as listed in Fokker Service Bulletin SBF100–53–084, dated July 6, 1996; if equipped with any corrujoint seal having part number (P/N) BE20061 (Rolls-Royce P/N 3405891); 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 (e) 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 the leakage of hot air from the corrujoint seals of low- and high-pressure check valves located in the stubwings, which could result in heat damage to the fuselage skin and stubwing structure and consequent reduced structural integrity, accomplish the following:

Note 2: Inspections for heat damage, leak tests, seal replacements, and repairs accomplished prior to the effective date of this AD in accordance with Fokker Service Bulletin SBF100–53–081, dated July 7, 1995, are considered acceptable for compliance with the requirements of this AD, provided that no seal has been subsequently replaced with a seal having part number BE20061 (Rolls-Royce part number 3405891).

(a) Within 3,000 flight hours or 12 months after the effective date of this AD, whichever occurs first, perform a one-time visual inspection of the fuselage skin in the left- and right-hand stubwings to detect heat damage; in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996.

(b) If no heat damage is found during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Replace all corrujoint seals having P/N BE20061 (Rolls-Royce P/N 3405891) at the 7th stage low-pressure and 12th stage high-pressure check valves of the left- and right-hand bleed air systems with new improved

corrujoint seals having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(2) Perform a leak test of each corrujoint seal at the 7th stage low-pressure and 12th stage high-pressure check valves of the left- and right-hand bleed air systems, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996.

(i) If any leakage is found at a seal, prior to further flight, replace that seal with a new improved seal having part number EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(ii) If no leakage is found at a seal, perform an additional leak test of that seal within 250 flight hours after the initial test.

(A) If no leakage is found during the additional test of the seal, within 3,000 flight hours after the additional test, replace the seal with an improved seal having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(B) If any leakage is found during the additional test of the seal, prior to further flight, replace the seal with a new improved seal having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996; and inspect the fuselage skin in the applicable left- or right-hand stubwing to detect heat damage, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996.

(c) If any heat damage is found during the inspection required by paragraph (a) or paragraph (b)(2)(ii)(B) of this AD, prior to further flight, perform a detailed inspection of the fuselage skin and stubwing structure to detect the extent of heat damage, in accordance with Parts 4 and 5 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996; and accomplish paragraphs (c)(1) and (c)(2) of this AD.

(1) Repair the affected structure, in accordance with Part 6 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996. And

(2) Replace all corrujoint seals having P/N BE20061 (Rolls-Royce P/N 3405891) at the 7th stage low-pressure and 12th stage high-pressure check valves of the left- and right-hand bleed air systems with new improved corrujoint seals having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(d) As of the effective date of this AD, no person shall install a corrujoint seal having P/N BE20061 (Rolls-Royce P/N 3405891) on any airplane.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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 airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with Fokker Service Bulletin SBF100–53–084, dated July 6, 1996, and Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive BLA 1995–076/2 (A), dated August 30, 1996.

(h) This amendment becomes effective on May 14, 1998.

Issued in Renton, Washington, on March 31, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–9123 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–127–AD; Amendment 39–10452; AD 98–08–03]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Models S10 and S10–V Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Stemme GmbH & Co. KG (Stemme) Models S10 and S10–V sailplanes. This AD requires replacing the horizontal stabilizer rear fittings with parts of improved design. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent structural failure of the horizontal stabilizer caused by cracked rear fittings, which could result in loss of sailplane controllability.

DATES: Effective May 26, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 26, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–127–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Stemme Models S10 and S10–V sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 21, 1998 (63 FR 3054). The NPRM proposed to require replacing the horizontal stabilizer rear fittings with parts of improved design. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Stemme Service Bulletin No. A31–10–022, dated August 16, 1996.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

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

proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 9 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per sailplane to accomplish this replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $200 per sailplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $3,420, or $380 per sailplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–08–03 STEMME GmbH & CO. KG: Amendment 39–10452; Docket No. 97–CE–127–AD.

Applicability: The following sailplane models and serial numbers, certificated in any category:

Models	Serial Nos.
S10	10–03 through 10–63.
S10V	14–002 through 14–026 and transformed S10V sailplanes with serial numbers of 14–012M through 14–063M.

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

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent structural failure of the horizontal stabilizer caused by cracked rear fittings, which could result in loss of sailplane controllability, accomplish the following:

(a) Replace the horizontal stabilizer rear fittings with improved design fittings in accordance with the instructions in Stemme Service Bulletin No. A31–10–022, dated August 16, 1996.

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

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Stemme Service Bulletin No. A31–10–022 dated August 16, 1996, should be directed to Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(e) The replacement required by this AD shall be done in accordance with Stemme Service Bulletin No. A31–10–022, dated August 16, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from to Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on May 26, 1998.

Issued in Kansas City, Missouri, on March 31, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–9155 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–142–AD; Amendment 39–10454; AD 98–08–05]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Model Piaggio P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Industrie Aeronautiche e Meccaniche (I.A.M.) Model Piaggio P–180 airplanes. This AD requires inspecting the main landing gear (MLG) for interference between the MLG drag brace link and the MLG retraction actuator, and modifying this area if interference is found. This AD is the result of mandatory continuing

airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to prevent MLG failure caused by interference between the MLG retraction actuator and the MLG drag brace link, which could result in loss of control of the airplane during landing operations.

DATES: Effective May 26, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 26, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–142–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David O. Keenan, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain I.A.M. Model Piaggio P–180 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 2, 1998 (63 FR 5325). The NPRM proposed to require inspecting the main landing gear (MLG) for interference between the MLG drag brace link and the MLG retraction actuator, and modifying this area if interference is found. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Piaggio Service Bulletin No. SB–80–0064, dated December 5, 1994; and Dowty Aerospace Landing Gear Service Bulletin P180–32–11, dated September 26, 1994.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 5 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 10 workhours per airplane to accomplish this inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $3,000, or $600 per airplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–08–05 Industrie Aeronautiche E Meccaniche: Amendment 39–10454; Docket No. 97–CE–142–AD.

Applicability: Model Piaggio P–180 airplanes, serial numbers 1001, 1002, 1004 and 1006 through 1031, 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 in the body of this AD, unless already accomplished.

To prevent main landing gear (MLG) failure caused by interference between the MLG retraction actuator and the MLG drag brace link, which could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the MLG for interference between the MLG drag brace link and the MLG retraction actuator. Accomplish this inspection in accordance with both Piaggio Service Bulletin No. SB–80–0064, dated December 5, 1994; and Dowty Aerospace Landing Gear Service Bulletin P180–32–11, dated September 26, 1994.

(b) If any interference is found between the MLG drag brace and the MLG retraction actuator during the inspection required by paragraph (a) of this AD, prior to further flight, modify this area in accordance with both Piaggio Service Bulletin No. SB–80–0064, dated December 5, 1994; and Dowty Aerospace Landing Gear Service Bulletin P180–32–11, dated September 26, 1994.

(c) 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.

(d) An alternative method of compliance or adjustment of the compliance times that

provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to the service information referred to in this document should be directed to I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(f) The inspection and modification required by this AD shall be done in accordance with Piaggio Service Bulletin No. SB–80–0064, dated December 5, 1994; and Dowty Aerospace Landing Gear Service Bulletin P180–32–11, dated September 26, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from to I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on May 26, 1998.

Issued in Kansas City, Missouri, on March 31, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–9154 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–149–AD; Amendment 39–10456; AD 98–08–07]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–7 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Model PC–7 airplanes. This AD requires replacing the rudder and elevator pivot arms with parts of improved design. This AD results from reports of cracks in the elevator and rudder trim tab pivot arms on the above-referenced airplanes. The actions specified by this AD are intended to prevent failure of the elevator and rudder caused by fatigue cracking of the pivot arms, which could result in reduced airplane controllability and possible loss of control of the airplane.

DATES: Effective April 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6509; facsimile: +41 41 610 3351. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–149–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roman T. Gabrys, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Model PC–7 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 2, 1998 (63 FR 5765). The NPRM proposed to require replacing the rudder and elevator pivot arms with parts of improved design. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Pilatus Service Bulletin No. PC7–55–001, Revision No. 1, dated June 20, 1995.

The NPRM was the result of reports of cracks in the elevator and rudder trim tab pivot arms on the above-referenced airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 8 airplanes in the U.S. registry will be affected by the replacement required by this AD, that it will take approximately 6 workhours per airplane to accomplish this replacement, and that the average labor rate is approximately $60 an hour. Modification kits cost approximately $300 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $5,280, or $660 per airplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final 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, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–08–07 Pilatus Aircraft Ltd.: Amendment 39–10456; Docket No. 97–CE–149–AD.

Applicability: Model PC–7 airplanes, serial numbers MSN 001 through MSN 564, certificated in any category.

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

Compliance: Required upon accumulating 1,000 hours time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

To prevent fatigue failure of the elevator and rudder trim tab pivot arms because of cracks, which could result in the loss of airplane control, accomplish the following:

(a) Replace the rudder and elevator pivot arms with parts of improved design as specified in and in accordance with Pilatus Service Bulletin No. PC7–55–001, Revision No. 1, dated June 20, 1995.

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

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Pilatus Service Bulletin No. PC7–55–001, Revision No. 1, dated June 20, 1995, should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6509; facsimile: +41 41 610 3351. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(e) The replacement required by this AD shall be done in accordance with Pilatus Service Bulletin No. PC7–55–001, Revision No. 1, dated June 20, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on April 28, 1998.

Issued in Kansas City, Missouri, on March 31, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–9153 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–97–AD; Amendment 39–10459; AD 98–08–10]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Saab Model SAAB 2000 series airplanes, that requires revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: May 14, 1998.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1501 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on December 9, 1997 (62 FR 64782). That action proposed to require revising the Limitations Section of the Airplane Flight Manual (AFM) to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

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

Support for the Proposal

One commenter supports the proposal.

Request To Revise Wording of AFM Revision

One commenter, the manufacturer, requests that the wording of the proposed AFM revision be changed to add the word ''engine'' before the word ''overspeed.'' The manufacturer notes that addition of the word ''engine'' clarifies that the overspeed that can occur is of the engine, rather than an overspeed of the airplane. The FAA concurs and has revised the final rule wording of the required AFM revision accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change

previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 3 Saab Model SAAB 2000 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $180, or $60 per airplane.

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

Regulatory Impact

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

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–08–10 SAAB Aircraft AB: Amendment 39–10459. Docket 97–NM–97–AD.

Applicability: All Model SAAB 2000 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been 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 (b) 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 loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

''Positioning of power lever(s) below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an engine overspeed condition and subsequent loss of engine power.''

It is prohibited to activate BETA OVRD in flight.''

(b) 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 Manager, Standardization Branch, ANM–113.

(c) 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.

(d) This amendment becomes effective on May 14, 1998.

Issued in Renton, Washington, on April 3, 1998.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–9338 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–13–U

RAILROAD RETIREMENT BOARD

20 CFR Part 200

RIN: 3220–AB33

General Administration

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) revises its regulations to eliminate the list of Board forms and their descriptions found therein. The Board also removes the tables which cross-reference Board forms to OMB information collection control numbers and sections in the Code of Federal Regulations. The purpose of these revisions is to eliminate either out-of-date information or information already provided elsewhere in a more usable fashion.

EFFECTIVE DATE: May 11, 1998.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 754–4701.

SUPPLEMENTARY INFORMATION: Prior section 200.3 of the Board's regulations purported to list all Board forms. This listing is not required by any authority currently in effect and is out-of-date.

Section 200.3 also contained a table which lists Board forms, their OMB information control numbers, and where the information collection is found in the text of the Code of Federal Regulations. Such tables are not required since the Board lists the OMB control number on its forms and in the text of any regulation requiring information collection. See 5 CFR 1320.3(f).

The revised regulation provides that Board forms may be obtained from Board headquarters or from local Board offices.

This rule was published as a proposed rule on January 2, 1998, (63 FR 34). No comments were received.

The Board, with the agreement of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 200

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, Part 200, Title 20, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 200–GENERAL ADMINISTRATION

1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; § 200.7 also issued under 31 U.S.C. 3717.

2. Section 200.3, Designation of forms and display of assigned OMB control numbers is revised to read as follows:

§ 200.3 Obtaining forms from the Railroad Retirement Board.

Forms used by the Board, including applications for benefits and informational publications, may be obtained from the Board's headquarters at 844 Rush Street, Chicago, Illinois 60611, and from local Board offices.

Dated: March 31, 1998.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 98–9360 Filed 4–8–98; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 216

RIN: 3220–AB27

Eligibility for an Annuity

AGENCY: Railroad Retirement Board.

ACTION: Final Rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulation under the Railroad Retirement Act concerning when a child of a railroad employee is considered a full-time elementary or secondary student. The changes reflect the current trend in most States and jurisdictions to recognize home schooling and independent study programs as comparable to traditional education.

EFFECTIVE DATE: May 11, 1998.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 2(d)(4) of the Railroad Retirement Act (45 U.S.C. 231a(d)(4)) provides, in pertinent part, that an annuity is payable to a child of a deceased employee until such child attains age 18 or 19 if such child is in full-time attendance at an elementary or secondary school.

Section 2(d)(4) of the Act incorporates the provisions of section 202(d)(7) of the Social Security Act (42 U.S.C. 402(d)(7)), which defines the terms full-time elementary or secondary student. Section 202(d)(7) of the Social Security Act in turn provides that a full-time elementary or a secondary student is an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Commissioner of the Social Security Administration (by regulations prescribed by the Commissioner).

Before July 24, 1996, section 404.367 of the Social Security Administration regulations under the Social Security Act (20 CFR 404.367) defined a full-time student as an individual enrolled in an educational institution that included public, private, and religious schools. The Social Security Administration's previous policy, as reflected in its regulation, was aligned with the traditional definition of educational programs. However, recently most States and other jurisdictions have broadened the definition of education programs to include home schooling and independent study programs. Because of this trend, the Social Security Administration revised section 404.367 to include such types of schooling in the definition of elementary and secondary schools. See, 61 FR 38361 (1996). The Board, therefore, amends its regulations to include students enrolled in home schooling or independent study programs authorized by a State or other jurisdiction within the definition of a full-time elementary or secondary school student.

The rule was published as a proposed rule October 23, 1997 (62 FR 55196), requesting comments on or before December 22, 1997. No comments were received.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 216

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, chapter II of Title 20 of the Code of Federal Regulations is amended as follows:

PART 216—ELIGIBILITY FOR AN ANNUITY

1. The authority citation for part 216 continues to read as follows:

Authority: 45 U.S.C. 231f.

2. Section 216.74 is revised to read as follows:

§ 216.74 When a child is a full-time elementary or secondary school student.

(a) A child is a full-time elementary or secondary school student if he or she meets all of the following conditions:

(1) The child is in full-time attendance at an elementary or secondary school; or

(2) The child is instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which the child resides; or

(3) The child is in an independent study elementary or a secondary education program administered by the local school, district, or jurisdiction, which is in accordance with the law of the State or other jurisdiction in which he or she resides.

(b) The child is in full-time attendance in a day or evening non-correspondence course of at least 13 weeks duration and he or she is carrying a subject load that is considered full-time for day students under the institution's standards and practices. If he or she is in a home schooling program as described in paragraph (a)(2) of this section, he or she must be carrying a subject load that is considered full-time for day students under the standards and practices set by the State or other jurisdiction in which the student resides.

(c) To be considered in full-time attendance, scheduled attendance must be at the rate of at least 20 hours per week unless one of the exceptions in paragraphs (c)(1) and (2) of this section applies. If the student is in an independent study program as described in paragraph (a)(3) of this section, the number of hours spent in school attendance is determined by combining the number of hours of attendance at a school facility with the

agreed upon number of hours spent in independent study. The student may still be considered in full-time attendance if the scheduled rate of attendance is below 20 hours per week if the Board finds that:

(1) The school attended does not schedule at least 20 hours per week and going to that particular school is the student's only reasonable alternative; or

(2) The student's medical condition prevents him or her from having scheduled attendance of at least 20 hours per week. To prove that the student's medical condition prevents him or her from scheduling 20 hours per week, the Board may request that the student provide appropriate medical evidence or a statement from the school; or

(3) The student is not attending classes, but is graduating in that month and classes ended the month before.

(d) An individual is not a full-time student if, while attending an elementary or secondary school, he or she is paid compensation by an employer who has requested or required that the individual attend the school. An individual is not a full time student while he or she is confined in a penal institution or correctional facility because he or she committed a felony after October 19, 1980.

(e) A student who reaches age 19 but has not completed the requirements for a secondary school diploma or certificate and who is a full-time elementary or secondary student, as defined in paragraph (a) of this section, will continue to be eligible for benefits until the first day of the first month following the end of the quarter or semester in which he or she is then enrolled, or if the school is not operated on a quarter or semester system, the earlier of:

(1) The first day of the month following completion of the course(s) in which he or she was enrolled when age 19 was reached; or

(2) The first day of the third month following the month in which he or she reached age 19.

Dated: April 2, 1998.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 98–9359 Filed 4–8–98; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 96P–0338]

Food Labeling: Health Claims; Soluble Fiber From Certain Foods and Coronary Heart Disease; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of February 18, 1998 (63 FR 8103). The document authorizes the use, on food labels and in food labeling, of health claims on the association between soluble fiber from psyllium seed husk and reduced risk of coronary heart disease (CHD). The document was published with some errors. This document corrects those errors.

EFFECTIVE DATE: February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Virginia L. Wilkening, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5483.

In FR Doc. 98–4074, beginning on page 8103 in the **Federal Register** of Wednesday, February 18, 1998, the following corrections are made:

1. On page 8104, in the first column, in the first full paragraph, in the eighth line, the **Federal Register** citation ''(62 FR 3684'' should read ''(62 FR 3584''.

2. On page 8106, in the second column, in the second full paragraph, in the tenth line, ''(mg/dL)'' should read ''(mg/dL))''.

3. On page 8107, in the first column, in the second full paragraph, in the 32d line, ''24, and 26)'' should read ''24, 26, and 27)''.

4. On page 8109, in the first column, under the section ''E. Nature of the Food Eligible to Bear the Claim'', in the first paragraph, in the ninth and tenth lines, ''(7 g/d was'' should read ''(7 g/d) was''.

7. On page 8114, in the second column, in the first full paragraph, in the 18th line, ''201(m)'' should read ''201(n)''.

8. On page 8118, in the first column, in Reference number 15, in the third and forth lines, ''LDL–Synthesis'' should read ''LDL–Cholesterol''.

9. On pages 8120 and 8121, under Table 1.—Summary of Clinical Trials with Hypercholesterolemics: Psyllium and Coronary Heart Disease, the reference numbers used to identify the study references are incorrect. Table 1 is being republished in its entirety to read as follows:

TABLE 1.—SUMMARY OF CLINICAL TRIALS WITH HYPERCHOLESTEROLEMICS: PSYLLIUM AND CORONARY HEART DISEASE

Study	Duration Treatment	Number of Subjects	Supplements (Psyllium, Placebo) Soluble Fiber g/d	Diet Intake of groups: Sat fat % E; CHOL mg/d	Magnitude of PSY Effect[1]	Magnitude of Placebo Effect
Anderson et al. (Ref. 12)	Base: 8 wk Step 1; Tx: 26 wk Step 1+supplement	PSY: 131 C: 28	10.2 g/d bulk laxative, cellulose PSY: ~7 g SF	*Sat fat*: PSY- 8.3%; C- 7.7% *CHOL*: PSY- 164 mg; C- 146 mg	*CHOL*: -5 mg/dL (2.1%)[1] *LDL-C*: -5 mg/dL (2.9%)[1]	*CHOL*: +5 (2.6%) *LDL-C*: +6 (3.9%) *HDL-C*: no sig dif (grps)
Bell et al. (Ref. 13)	Base: 12-wk Step 1; Tx: 8-wk Step 1+supplement	PSY: 40 (20 men) Pla: 35 (18 men)	10.2 g/d bulk laxative, cellulose PSY: ~7 g SF	*Sat fat*: PSY- 8–10%; C- 7.7–8.6% *CHOL*: PSY- 168 mg; C- 206 mg	*CHOL*: -9 mg/dL (4.2%) *LDL-C*: -12 mg/dL (7.7%)	*CHOL*: 0 *LDL-C*: -0.2% *HDL-C*: no sig dif (grps)
Davidson et al. (Ref. 14)	Base: 8-wk Step 1; Tx: 24-wk Step 1 + PSY or control food (3 servings/d)	PSY 1 56 (31 men) PSY 2 40 (24 men) PSY 3 43 (28 men) C 59	3.4 g, 6.8 g, 10.2 g/d; incorporated into foods: C foods: no PSY PSY 1: ~2.3 g SF, PSY 2: ~4.6 g; PSY 3: ~7 g	*SAT fat*: PSY- 7–8.6%; C- 7–8.6% *CHOL*: PSY 1- 151 mg; PSY 2- 181; PSY 3- 169 C- 145 mg	*CHOL*: ~-3% (PSY 3) *LDL-C*: ~-5% (PSY 3)	*CHOL*: +1.7%; LDL-C: +3% *HDL-C*: No sig dif (grps)

TABLE 1.—SUMMARY OF CLINICAL TRIALS WITH HYPERCHOLESTEROLEMICS: PSYLLIUM AND CORONARY HEART DISEASE—Continued

Study	Duration Treatment	Number of Subjects	Supplements (Psyllium, Placebo) Soluble Fiber g/d	Diet Intake of groups: Sat fat % E; CHOL mg/d	Magnitude of PSY Effect[1]	Magnitude of Placebo Effect
Everson et al. (Ref. 15)	Regular diet; 5-d Base; 2 40-d periods; 11-d washout; crossover	20 men	15.3 g/d bulk laxative, cellulose PSY: ~10 g SF	*SAT fat*: PSY- 12%; C- 13.2 % *CHOL*: PSY- 296 mg; C- 274 mg	*CHOL*: -14 mg/dL (-5%) *LDL-C*: -15 mg/dL (8%)	*CHOL*: -1.9%; LDL-C: -2.7% *HDL-C*: No sig dif (grps)
Keane et al. (Ref. 17)	Base: 12 wk Step 1; Tx: 26 wk Step 1+supplement	PSY: 40 (18m, 24f) C: 39 (7m, 32f)	10.2 g/d bulk laxative, cellulose PSY: ~7 g SF	*SAT fat*: PSY- 5%; C- 5.3% *CHOL*: PSY- 145.2 mg; C- 151.1 mg	*CHOL*: -8.7 mg/dL (3%) *LDL-C*: -11.5 mg/dL (5.9%)[1]	*CHOL*: +2 (1%) *LDL-C*: 0 *HDL-C*: no sig dif (grps)
Levin et al. (Ref. 18)	Base: 8-wk Step 1; Tx: 16-wk Step 1+supplement	PSY: 30 (26 men) Pla: 28 (23 men)	10.2 g/d bulk laxative, cellulose PSY: ~7 g SF	*SAT fat*: PSY- 6.7%; C- 6.3% *CHOL*: PSY- 166 mg; C- 135 mg	*CHOL*: -13 mg/dL (5.6%) *LDL-C*: -13 mg/dL (8.6%)	*CHOL*: 0; LDL-C -2.2%; HDL-C: ~+6% (sig from PSY)
Stoy et al. (Ref. 22)	4-wk Step 1; Step 1 + (8x5x5 wks): Grp 1: PSY-Pla-PSY; Grp 2: Pla-PSY-Pla	23 men	Estimated 11.6 g/d PSY from cereal: ~8 g SF; Wheat cereal: ~3 g SF	*SAT fat*: PSY: 5.1% (Grp 1) and 5.1% (Grp 2) Wheat: 4.5% (Grp 1) and 5.0% (Grp 2) *CHOL*: PSY 141–165 mg Wheat: 164 mg (Grp 1), 117–170 (Grp 2)	*CHOL*: -10 mg/dL (4%) *LDL-C*: -11 mg/dL (6%)	*HDL-C*: No sig dif (grps)
Stoy et al. (Ref. 23)	4-wk Step 1; Step 1 + (8x5x5 wks): Grp 1: PSY-Pla-PSY; Grp 2: Pla-PSY-Pla	22 men	Estimated 11.6 g/d PSY from cereal: ~8 g SF; Wheat cereal: ~3 g SF	*SAT fat*: PSY: 4.8 (Grp 1) and 5.2% (Grp 2) Wheat: 4.7% (Grp 1) and 5.6% (Grp 2) *CHOL*: PSY 155–163 mg Wheat: 133 mg (Grp 1), 169–172 (Grp 2)	*CHOL*: -10 mg/dL (4%) *LDL-C*: -11 mg/dL (6%)	*HDL-C*: No sig dif (grps)
Weingand et al. (Ref. 25)	Base: 12 wk Step 1; Tx: 8 wk Step 1+supplement, crossover	23 (16m, 7f)	10.2 g/d bulk laxative, cellulose PSY: ~7 g SF	*SAT fat*: PSY- 8.7%; C- 9% *CHOL*: PSY- 162 mg; C- 203–261 mg	*CHOL*: -9 mg/dL (3.8%) *LDL-C*: -11 mg/dL (6.2%)[1]	*HDL-C*: sig higher in PSY group
Jenkins et al. (Ref. 28)	Base: 2 mo controlled Step 2 diets; Tx: 2- 1 mo Step 2 diets+ cereal, crossover	Study 1: 32 (15m, 17f)	Study 1: 11.4 g/d PSY in cereal (~7.8 g SF), wheat bran	Study 1: *SAT fat*: PSY- 4.6%; C -4.6% *CHOL*: PSY- 31 mg; C- 29 mg *MUFA*: PSY- 6%; C- 6%	Study 1: *CHOL*: -27 mg/dL[1] (9.8%) *LDL-C*: -24 mg/dL[1] (12.6%) *HDL-C*: -6.6 mg/dL (11.3%)[1]	Study 1: *CHOL*: -13.6 (5%)[2] *LDL-C*: -10 (5.5%) *HDL-C*: -2 (3.3%)
		Study 2: 27 (12m, 15f)	Study 2: 12.4 g/d PSY in cereal (~8.4 g SF), wheat bran	Study 2: *SAT fat*: PSY- 6%; C- 6% *CHOL*: PSY- 22 mg; C-22 mg *MUFA*: PSY- 12%; C- 12%	Study 2: *CHOL*: -34 mg/dL[1] (12.6%) *LDL-C*: -27.9 mg/dL[1] (14.9%) *HDL-C*: -4.3 mg/dL[1] (8%)	Study 2: *CHOL*: -29.5 (10.7%)[2] *LDL-C*: -17 (9%)[2] *HDL-C*: -1.4 (2.6%)

[1] Significant differences between treatment and placebo groups unless otherwise indicated.
[2] Significant change across the diet phase.

Dated: April 3, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–9427 Filed 4–8–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Neomycin Sulfate Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Med-Pharmex, Inc. The ANADA provides for use of neomycin sulfate soluble powder in water or milk as a drench or in drinking water for the treatment and control of colibacillosis in cattle (excluding veal calves), swine, sheep, and goats.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767–1861, filed ANADA 200–235 that provides for use of neomycin sulfate soluble powder in water or milk as a drench or in drinking water for the treatment and control of colibacillosis (bacterial enteritis) caused by *Escherichia coli* susceptible to neomycin sulfate in cattle (excluding veal calves), swine, sheep, and goats.

Med-Pharmex, Inc.'s ANADA 200–235 is approved as a copy of Upjohn's NADA 11–315. The ANADA is approved as of March 9, 1998, and the regulations are amended in § 520.1484 (21 CFR 520.1484) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Also, the regulation incorrectly indicates that Phoenix Scientific, Inc., has an approved neomycin sulfate soluble powder product. At this time, the regulation is amended by removing the sponsor for Phoenix Scientific, Inc., in § 520.1484(b) and by revising paragraph (c)(3).

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

Authority: 21 U.S.C. 360b.

2. Section 520.1484 is amended by revising paragraph (b) and the last sentence of paragraph (c)(3) to read as follows:

§ 520.1484 Neomycin sulfate soluble powder.

* * * * *

(b) *Sponsors.* See Nos. 000009, 000069, 046573, 050604, and 051259 in § 510.600(c) of this chapter.

(c) * * *

(3) * * * Discontinue treatment prior to slaughter as follows: Cattle (not for use in veal calves), 1 day; sheep, 2 days; swine and goats, 3 days.

Dated: March 27, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–9428 Filed 4–8–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

[Public Notice 2784]

22 CFR Part 121

Amendments to the International Traffic in Arms Regulations

AGENCY: Bureau of Political-Military Affairs, State.

ACTION: Final rule.

SUMMARY: This rule amends the International Traffic in Arms Regulations (ITAR) by removing from the U.S. Munitions List (USML), for transfer to the Department of Commerce's Commerce Control List (CCL), certain items when they are included in a commercial communications satellite licensed by the Department of Commerce. In all other cases, these items will continue to be controlled on the USML, subject to State Department licensing.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703) 812–2564 or FAX (703) 875–6647.

SUPPLEMENTARY INFORMATION: On October 26, 1996, the Department published an amendment to the ITAR to remove commercial communications satellites from the USML for transfer to licensing jurisdiction by the Department of Commerce. That amendment also covered certain USML items specified in Category XV(f) when they were included in a commercial comsat launch. In all other cases, however, these items remained on the USML. Recently, the Department, in consultation with the Departments of Commerce and Defense, has decided to elaborate the earlier amendment to include satellite fuel and certain additional USML items that may be included with a commercial communications satellite licensed by the Department of Commerce.

In carrying out this decision, the Note following Category XV(f)(9), describing those USML items that may be included in a Commerce licensed commercial communications satellite, is amended.

This amendment involves a foreign affairs function of the United States and, thus, is excluded from the procedures of Executive Order 12866 (58 FR 51735) and 9 U.S.C. 533 and 554, but has been reviewed internally by the Department to ensure consistency with the purposes thereof.

In accordance with 5 U.S.C. 808, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (the ''Act''), the Department of State has found for foreign policy reasons that notice and public procedure under section 251 of the Act is impracticable and contrary to the public interest. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory

Change, Room 200, SA–6, Washington, D.C. 20520–0602.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Part 121 is amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 comp. p. 79; 22 U.S.C. 2658.

2. In § 121.1 Category XV, the note following paragraph (f)(9) is revised to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category XV—Spacecraft Systems and Associated Equipment

* * * * *

(b) * * *

(9) * * *

Note: Commercial communications satellites are subject to commerce licensing jurisdiction even if they include the individual munitions list systems, components, or parts identified in Category XV(f) of the United States Munitions List (USML). In all other cases, these Category XV(f) systems, components, or parts remain on the USML except that satellite fuel, ground support equipment, test equipment, payload adapter/interface hardware, replacement parts for the preceding items and non-embedded, solid propellant orbit transfer engines (''kick motors'') are subject to Commerce licensing jurisdiction (and not controlled on the USML) when they are to be utilized for the specific commercial communications satellite launch, provided the solid propellant ''kick motor'' being utilized is not specifically designed or modified for military use or capable of being restarted after achievement of mission orbit (such orbit transfer engines are always controlled under Category IV of the USML). Technical data (as defined in § 120.10 of this subchapter, the International Traffic in Arms Regulations (ITAR) and defense services (as defined in § 120.9 of this subchapter related to the systems, components, or parts referred to in category XV(f) of the USML are always controlled under the USML, even when the satellite itself is licensed by the Department of Commerce.

* * * * *

Dated: March 13, 1998.

John D. Holum,

Acting Under Secretary of State for Arms Control and International Security Affairs and Director, U.S. Arms Control and Disarmament Agency, Department of State.

[FR Doc. 98–9278 Filed 4–8–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 203

Announcement of Public Workshop on Final Regulations Implementing Outer Continental Shelf (OCS) Deep Water Royalty Relief Act

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Workshop.

SUMMARY: MMS issued final regulations implementing Public Law 104–58, Outer Continental Shelf (OCS) Deepwater Royalty Relief Act and guidelines on January 16, 1998 on the procedure lease owners' use to apply for deep water royalty relief and for end-of-life royalty relief. This notice announces a workshop to illustrate the application requirements, explain the relief qualification systems, and answer evaluation and implementation questions.

DATES: MMS will hold the workshop Wednesday, June 10, 1998, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The workshop will be held at the Gulf of Mexico Regional Office, 1201 Elmwood Park Blvd., Elmwood Towers Bldg., Room 111, New Orleans, LA 70123.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Chief, Economics Division, MMS at (703) 787–1538, or Mike Melancon, Gulf of Mexico Regional Supervisor, Production and Development, MMS at (504) 736–2675.

SUPPLEMENTARY INFORMATION: Owners of leases that pre-date November 28, 1995 and are located in water 200 meters or deeper in the Central or Western Gulf of Mexico may request suspension of royalties by submitting a complete application. The final rule and guidelines specify the contents and format for such an application along with the criteria for, and conditions of, approval (63 FR 2605, January 16, 1998).

Part of the submission involves use of a computer model developed by MMS. Applicants use this model to organize their data and demonstrate that royalty relief can make their otherwise uneconomic field or expansion project economic. MMS has issued a revised version of this computer model (RSVP 2.0) that uses more widely available Windows-based spreadsheets. This workshop will show interested parties how to use the model, how to best support the values they input to the model, and how MMS has dealt with selected issues raised in early applications. In conjunction with the workshop, MMS will also issue documentation for the revised RSVP model and review technical corrections including new price assumptions for the deep water guidelines.

Owners of producing leases anywhere on the Outer Continental Shelf may qualify for reduced royalty rates. The final rule and guidelines on end-of-life royalty relief describe the conditions under which leases qualify for this relief. This system replaces and significantly simplifies the net revenue share relief system previously available to leases nearing the end of their economic life. This workshop will show how interested parties may determine whether their leases qualify for, and how royalty would be determined under, end-of-life relief.

MMS encourages all interested parties to attend the workshop and participate in the discussions. It should be especially valuable for those who will be responsible for preparing applications for their companies. Question and answer periods will be part of each session.

There is no registration fee for this workshop. However, to assess the probable number of participants, MMS requests participants to register with Mary Carter by calling (504) 736–2675 or FAX (504) 736–1738 before June 5, 1998. Seating is limited and will be on a first-come-first-seated basis.

Preliminary Agenda

- Welcome and Introduction.
- Review of the Deep Water Relief Evaluation Process.
- Use of the Resource Module of RSVP.
- Use of the Viability Module of RSVP.
- Evaluation Issues (e.g., price, sunk costs, joint costs, multi-lease fields) with Deep Water Applications.
- Process Issues (e.g., redetermination, tolling, field naming, dissemination of decisions) with Deep Water Applications.
- Structure and Qualification for End-of-Life Relief.

Dated: April 1, 1998.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 98–9285 Filed 4–8–98; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5992–4]

RIN 2060–AH27

Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of Methyl Acetate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action revises EPA's definition of volatile organic compounds (VOC) for purposes of preparing State implementation plans (SIP's) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (Act) and for any Federal implementation plan (FIP) for an ozone nonattainment area. This revision adds methyl acetate to the list of compounds excluded from the definition of VOC on the basis that this compound has negligible contribution to tropospheric ozone formation. This compound has potential for use as a solvent in paints, inks and adhesives.

DATES: This rule is effective May 11, 1998.

ADDRESSES: The EPA has established a public docket for this action, A–97–32, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (6102), 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: William Johnson, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (MD–15), Research Triangle Park, NC 27711, phone (919) 541–5245.

SUPPLEMENTARY INFORMATION:

Regulated entities

Entities potentially regulated by this action are those which use and emit VOC and States which have programs to control VOC emissions.

Category	Examples of regulated entities
Industry	Industries that manufacture and use paints, inks and adhesives.
States	States which have regulations to control volatile organic compounds.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Background

On July 30, 1996, Eastman Chemical Company submitted a petition to the EPA which requested that methyl acetate be added to the list of compounds which are considered to be negligibly reactive in the definition of VOC at 40 CFR 51.100(s). The petitioner based the request on a comparison of the reactivity of methyl acetate to that of ethane which has been listed since 1977 as having negligible reactivity. In a number of cases in the past, EPA has accepted compounds with lower reactivity than ethane as negligibly reactive (see, e.g., 61 FR 4588 (February 7, 1996), 61 FR 52848 (October 8, 1996), and 62 FR 44900 (August 25, 1997)).

As indicated in the proposal, a study was performed comparing the reactivity of methyl acetate to ethane on a ''per gram'' basis. The EPA also calculated the results of this study on a ''per mole'' basis.[1] Under both sets of tests, the reactivity of methyl acetate was comparable to or less than that for ethane. Based on these results, EPA concluded that existing scientific evidence does not support a methyl acetate reactivity higher than that of ethane. Therefore, EPA proposed on August 25, 1997 (62 FR 44926) to add methyl acetate to the list of negligibly reactive compounds in EPA's definition of VOC found in 40 CFR 51.100(s). The proposal provided for a 30-day public comment period.

II. Comments on the Proposal and EPA Response

In the proposal for today's action, EPA indicated that interested persons could request that EPA hold a public hearing on the proposed action (see section 307(d)(5)(ii) of the Act). There were no requests for a public hearing.

The EPA received written comments on the proposal from four organizations. The comments were from the petitioner, one industry trade association, and two manufacturing companies. Two commenters supported the action, one opposed the action, and one commenter raised the issue of banked credits for previous reductions in methyl acetate. Copies of these comments have been added to the docket (A–97–32) for this action. Substantial comments and EPA's responses are listed below.

Comment: One commenter found the proposed exclusion troubling as they understood that EPA is reconsidering the method for determining photochemical reactivity of VOC and the baseline used to determine negligible reactivity.

Response: The EPA is beginning a process of evaluating its reactivity policy in view of scientific information which has been gained since 1977 when the VOC policy was first published. This evaluation process, which will involve model development, modeling studies and collection of new information, is expected to take several years. However, the EPA has decided to proceed with approving the methyl acetate petition now even though the Agency is anticipating a review of its reactivity policy. Methyl acetate shows reactivity comparable to ethane on a per mole basis. There is currently no valid scientific support for not exempting this compound at this time, and the commenter has not provided the Agency with an adequate scientific basis for not exempting methyl acetate.

Comment: One commenter stated that fundamental organic photochemistry and oxidation chemistry imply that methyl acetate will contribute to the photochemical generation of ozone in the troposphere. Specifically, the photolysis of methyl acetate caused by the light absorption at wavelengths up to about 230 nanometers (nm) would result in the production of radicals and should be an efficient photochemical process. The commenter further states that methyl acetate may absorb energy and transfer this energy to other molecules to form radicals.

Response: The commenter's claim that methyl acetate participates in atmospheric photochemical reactions by virtue of light absorption at wavelengths up to about 230 nm and photolysis into free radicals is contrary to current understanding of photolytic processes occurring in the atmosphere. Specifically, the photolytic activity

[1] The EPA has evaluated most VOC exemption considerations in the past using k_{OH} values expressed in units of cm^3 $molecule^{-1}$ sec^{-1} which is consistent with a per mole basis. However, in one recent case, EPA examined a reactivity petition solely on a weight or ''per gram'' basis (60 FR 31633 (June 16, 1995) (exempting acetone from the definition of VOC)). The use of a reactivity per mole basis is a more strict basis for comparison to the reactivity of ethane for compounds whose molecular weight is greater than ethane. Given the relatively low molecular weight of ethane, use of the per gram basis tends to result in more compounds falling into the ''negligibly reactive'' class. Because methyl acetate is less reactive than ethane based on a per mole basis, EPA is not addressing today whether it should continue to exempt compounds based on a per gram basis.

attributed by the commenter to methyl acetate can occur outside but not inside the troposphere. It is a well known fact that, inside the troposphere, photolysis of chemical compounds is restricted to the wavelength region above 290 nm. Furthermore, the study of methyl acetate by Dr. William P.L. Carter of the University of California at Riverside, which was submitted with the petition, did not result in evidence of any effects due to photolysis. Finally, Dr. Carter's results and conclusion were supported by smog chamber data obtained by a competent experimentalist, and were agreed with by a reactivity expert peer reviewer. Such experimental and peer review support of a reactivity measurement are accepted by the reactivity scientific community as being reliable, and, therefore, justify EPA's decision to accept the measurement result.

Comment: A commenter stated that ethane is unreactive in radical reactions, that ethane is not usually used in chemical feedstocks, and that methyl acetate is easily destroyed using catalytic oxidation, while ethane is not.

Response: The evidence for methyl acetate's low reactivity reported in Dr. Carter's study indicates that the items in this comment are not significant when comparing the photochemical reactivity of methyl acetate to that of ethane.

Comment: One commenter expressed concern that the exclusion of methyl acetate as a VOC will have a deleterious effect on netting, offsetting and trading of existing emissions reduction ''credits'' at their facilities that have already made substantial reductions in methyl acetate emissions over the past few years. At the time they made the reductions, they did so with the understanding that they could be applied to future expansions at their facilities or could be used for trading and/or offsetting. They are concerned that EPA's proposal might be interpreted as obviating these emissions credits.

Response: This is an important concern, but it should not determine whether a compound, such as methyl acetate, is recognized as being negligibly reactive. This decision should rest only on the scientific evidence of the photochemical reactivity of the compound. How to treat banked credits of a compound that has subsequently been determined to be negligibly reactive and not to be counted toward VOC reductions in the future is an issue that transcends this methyl acetate action alone. The EPA's current policy is to allow States to decide how they will handle situations within their jurisdictions in a case-by-case manner.

III. Final Action

Today's action is based on EPA's review of the material in Docket No. A–97–32. The EPA hereby amends its definition of VOC at 40 CFR 51.100(s) to exclude methyl acetate as a VOC for ozone SIP and ozone control for purposes of attaining the ozone national ambient air quality standard. The revised definition also applies for purposes of any Federal implementation plan for ozone nonattainment areas (e.g., 40 CFR 52.741(a)(3)). States are not obligated to exclude from control as a VOC those compounds that EPA has found to be negligibly reactive. However, States should not include these compounds in their VOC emissions inventories for determining reasonable further progress under the Act (e.g., section 182(b)(1)) and should not take credit for controlling these compounds in their ozone control strategy. EPA, however, urges States to continue to inventory the emissions of methyl acetate for use in photochemical modeling to assure that such emissions are not having a significant effect on ambient ozone levels.

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file for all information submitted or otherwise considered by EPA in the development of this rulemaking. The principle purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process; and, (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A)).

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not ''significant'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

C. Unfunded Mandates Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgation of an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objective of the rule, unless EPA publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments including tribal governments, it must have developed under section 203 of the UMRA a small government plan which informs, educates and advises small governments on compliance with the regulatory requirements. Finally, section 204 provides that for any proposed or final rule that imposes a mandate on a State, local or tribal government of $100 million or more annually, the Agency must provide an opportunity for such governmental entities to provide input in development of the rule.

Since today's rulemaking is deregulatory in nature and does not impose any mandate on governmental entities or the private sector, EPA has determined that sections 202, 203, 204 and 205 of the UMRA do not apply to this action.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse economic impacts of Federal regulations upon small business entities. The Act specifically requires the completion of an RFA analysis in those instances where the regulation would impose a substantial economic impact on a significant number of small entities. The RFA analysis is for the purpose of determining the economic impact imposed by the terms of the regulation being adopted. Because this rule is deregulatory in nature, no economic impacts are imposed by its terms. Therefore, because this rulemaking imposes no adverse economic impacts within the meaning of the RFA, an analysis has not been conducted. Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant impact on a substantial number of small entities because no additional costs will be incurred.

E. Paperwork Reduction Act

This rule does not change any information collection requirements subject to OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

F. 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).

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 1, 1998.

Carol M. Browner,

Administrator.

For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7641q.

2. Section 51.100 is amended by republishing (s) introductory text and revising paragraph (s)(1) to read as follows:

§ 51.100 Definitions.

* * * * *

(s) *Volatile organic compounds (VOC)* means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

(1) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC–113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (HCFC–22); trifluoromethane (HFC–23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC–114); chloropentafluoroethane (CFC–115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC–123); 1,1,1,2-tetrafluoroethane (HFC–134a); 1,1-dichloro 1-fluoroethane (HCFC–141b); 1-chloro 1,1-difluoroethane (HCFC–142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC–124); pentafluoroethane (HFC–125); 1,1,2,2-tetrafluoroethane (HFC–134); 1,1,1-trifluoroethane (HFC–143a); 1,1-difluoroethane (HFC–152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC–225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC–225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43–10mee); difluoromethane (HFC–32); ethylfluoride (HFC–161); 1,1,1,3,3,3-hexafluoropropane (HFC–236fa); 1,1,2,2,3-pentafluoropropane (HFC–245ca); 1,1,2,3,3-pentafluoropropane (HFC–245ea); 1,1,1,2,3-pentafluoropropane (HFC–245eb); 1,1,1,3,3-pentafluoropropane (HFC–245fa); 1,1,1,2,3,3-hexafluoropropane (HFC–236ea); 1,1,1,3,3-pentafluorobutane (HFC–365mfc); chlorofluoromethane (HCFC–31); 1 chloro-1-fluoroethane (HCFC–151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC–123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$); methyl acetate and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear, completely fluorinated alkanes;

(ii) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

* * * * *

[FR Doc. 98–9247 Filed 4–8–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–56; FCC 98–47]

Cable Television Antitrafficking, Network Television, and MMDS/SMATV Cross Ownership

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission has denied a petition for reconsideration concerning its rules on television broadcast station network and cable television system cross ownership. On March 15, 1996, the Commission deleted the broadcast network/cable television ownership rule in order to conform the rules with statutory changes. In response to this decision, a petition for reconsideration was filed contending that the Commission was obligated to provide notice and an opportunity to participate in the rulemaking proceeding. In responding to this reconsideration petition, the Commission determined that because the rule changes merely conformed the rules to the statute, notice requirements did not apply.

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order on

Reconsideration, CS Docket No. 96–56, adopted March 25, 1998, and released March 27, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036.

Synopsis of the Order on Reconsideration

1. In the *Order on Reconsideration*, we address a petition filed by Network Affiliated Stations Alliance (''NASA'') with respect to the Commission's implementation of the television broadcast network and cable television cross ownership provisions of the Telecommunications Act of 1996 (''1996 Act'') in the Order Implementing sections 202(f), 202(i) and 301(i) of the Telecommunications Act of 1996 (''*Order*''). In the *Order on Reconsideration*, NASA's petition is denied.

2. Section 202(f)(1) of the 1996 Act directs the Commission to revise § 76.501 of its regulations (47 CFR 76.501) to permit a person or entity to own or control a network of broadcast stations and a cable system. Section 202(f)(2) further provides that the Commission shall revise such regulations if necessary to ensure carriage, channel positioning, and nondiscriminatory treatment of nonaffiliated broadcast stations by a cable system.

3. In the March 15, 1996 *Order*, 61 FR 15387, April 8, 1996, the Commission amended its cable television ownership rules under § 76.501 to conform them to changes mandated by the 1996 Act. Our rules have been modified to allow a person or entity to own or control a network of broadcast stations and a cable system. Although the *Order* did not implement additional rule changes regarding safeguards for nonaffiliated broadcast stations, it explained that the Commission would monitor the response to the rule changes to determine whether additional rules were necessary. Because the rule changes made pursuant to the 1996 Act merely conformed the rules to the statute, the Commission determined that it had good cause for concluding that the notice and comment provisions of the Administrative Procedure Act (''APA'') were not necessary.

4. NASA filed a petition for reconsideration of our *Order*. NASA contends that the Commission was obligated to provide notice and an opportunity to participate in the rulemaking proceeding.

5. We recognize that Congress, in section 202(f)(2) of the 1996 Act, directed the Commission to revise our rules, if necessary, to protect against possible anticompetitive behavior. Nothing in section 202(f)(2) mandates that the Commission withhold implementing the explicit directive of the statute. Section 202(f)(1) requires the Commission to revise its rules to allow network-cable cross ownership. It does not condition the implementation of this mandate on any particular finding or Commission rulemaking. The Commission had no discretion to forgo or to postpone this legislative directive. To the extent NASA seeks reconsideration of our decision to conform our rules to the statute, its petition is denied. 6. We also reject NASA's assertion that the Commission is obligated under the APA to conduct a formal rulemaking to determine whether safeguards are necessary at this time. We note that the explicit language of section 202(f)(2) of the 1996 Act calls for revision of our rules ''if necessary'' to ensure nondiscriminatory treatment of nonaffiliated broadcast stations by cable systems. The discretion to render the determination of necessity is placed squarely with the Commission and we have determined at this point that safeguards are not needed. Congress, in passing the 1996 Act, did not conclude that safeguards were immediately necessary and, as the Commission merely conforms its rules to the new statute, we reach a similar conclusion and elect to monitor the situation rather than to launch a full proceeding on this issue at this time. Combinations between major networks and cable operators have not yet been formed, nor does the record reflect specific examples of potential problems. Accordingly, we have concluded that safeguards are not necessary at this time. We do not believe this conclusion violates the APA. Although notice and comment is required when the Commission promulgates rules that establish or impose new obligations on private parties, our decision that safeguards are unnecessary at this time does not impose any additional obligations.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–9351 Filed 4–8–98; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 810, 811, 812, 836, 852 and 870

RIN 2900–AI05

VA Acquisition Regulations: Commercial Items

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs Acquisition Regulations (VAAR) concerning the acquisition of commercial items. It amends VAAR provisions to conform to the Federal Acquisition Regulation (FAR), to delete obsolete references and titles, to update references and titles, to reorganize material and to remove obsolete material. This document also sets forth VAAR provisions and clauses for use by contracting officers for commercial item solicitations and contracts. These provisions and clauses are warranted for use in commercial item solicitations and contracts. This document also incorporates Paperwork Reduction Act approval concerning collection of information regarding clauses and provisions for use in both commercial and non-commercial item, service, and construction solicitations and contracts.

DATES: Effective Date: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Don Kaliher, Acquisition Policy Team (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington DC 20420, (202) 273–8819.

SUPPLEMENTARY INFORMATION: On August 25, 1997, we published in the **Federal Register** (62 FR 44932) a proposal to amend the Department of Veterans Affairs Acquisition Regulations to make changes relating to the acquisition of commercial items. Comments were solicited concerning the proposal for 60 days, ending October 24, 1997. We did not receive any comments. The information presented in the proposed rule document still provides a basis for this final rule. In addition, the proposed rule requested Paperwork Reduction Act (PRA) comments concerning the collection of information regarding clauses and provisions for use in both commercial and non-commercial item, service, and construction solicitations and contracts. No comments were received by the Office of Management and Budget (OMB). The reporting and recordkeeping requirements of the proposed rule have been approved by OMB; clearance numbers have been

assigned to the provisions and clauses contained therein. Therefore, based on the rationale set forth in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule with no changes, except for nonsubstantive changes to reflect, at 48 CFR 801.301–70(c), the new PRA clearance numbers assigned by OMB, for correction to references made in 811.202(a), and for changes made in 811.202 to update the title for the Federal Hospital Subsistence Guide, which has been incorporated into the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, as Part IV.

The Secretary hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This rule would have a minuscule effect, if any, on small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

List of Subjects

48 CFR Parts 810, 811, and 812

Government procurement.

48 CFR Parts 801, 836 and 852

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 870

Asbestos, Frozen foods, Government procurement, Telecommunications.

Approved: March 26, 1998.

Togo D. West, Jr.,

Acting Secretary.

For the reasons set forth in the preamble, 48 CFR Chapter 8 is amended as follows:

1. The authority citation for parts 801, 836, and 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM

801.301–70(c) [Amended]

2. In part 801, the chart contained in § 801.301–70(c) is revised to read as follows:

801.301–70 Paperwork Reduction Act requirements.

(c) * * *

* * * * *

48 CFR part or section where identified and described	Current OMB control No.
809.504(d)	2900–0418
819.7003	2900–0445
836.606–71	2900–0422
852.219–70	2900–0584
852.211–70	2900–0587
852.211–74	2900–0588
852.211–75	2900–0586
852.211–77	2900–0585
852.214–70	2900–0593
852.236–72	2900–0422
852.236–79	2900–0422
852.236–81 through 852.236–85	2900–0422
852.236–88	2900–0422
852.237–71	2900–0590
852.270–03	2900–0589
871.201–2	2900–0416

PART 810 [REMOVED]

3. Under the authority of 38 U.S.C. 501 and 40 U.S.C. 486(c), Part 810 is removed.

4. Part 811 is added to read as follows:

PART 811—DESCRIBING AGENCY NEEDS

Sec.
811.001 Definitions.

Subpart 811.1—Selecting and Developing Requirements Documents

811.104 Items particular to one manufacturer.
811.104–70 Purchase descriptions.
811.104–71 Bid evaluation and award.
811.104–72 Procedure for negotiated procurements.

Subpart 811.2—Using and Maintaining Requirements Documents

811.202 Maintenance of standardization documents.
811.204 Solicitation provisions and contract clauses.

Subpart 811.4—Delivery or Performance Schedules

811.404 Contract clauses.

Subpart 811.5—Liquidated Damages

811.502 Policy.
811.504 Contract clauses.

Subpart 811.6—Priorities and Allocations

811.602 General.

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

811.001 Definitions.

(a) *Brand name product* means a commercial product described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer or distributor.

(b) *Salient characteristics* are those particular characteristics that specifically describe the essential physical and functional features of the material or service required. They are those essential physical or functional features which are identified in the specifications as a mandatory requirement which a proposed ''equal'' product or material must possess in order for the bid to be considered responsive. Bidders must furnish all descriptive literature and bid samples required by the solicitation to establish such ''equality''.

Subpart 811.1—Selecting and Developing Requirements Documents

811.104 Items particular to one manufacturer.

(a) Specifications shall be written in accordance with FAR 11.002 unless otherwise justified by the specification writer and approved by the contracting officer as described in paragraph (b) of this section. The contract file shall be documented accordingly.

(b) When it is determined that a particular physical or functional characteristic of only one product will meet the minimum requirements of the Department of Veterans Affairs (see FAR 11.104) or that a ''brand name or equal'' purchase description will be used, the specification writer, whether agency personnel, architect-engineer, or consultant with which the Department of Veterans Affairs has contracted, shall separately identify the item(s) to the contracting officer and provide a full written justification of the reason the particular characteristic is essential to the Government's requirements or why the ''brand name or equal'' purchase description is necessary. The contracting officer shall make the final determination whether restrictive specifications or ''brand name or equal'' purchase descriptions will be included in the solicitation.

(c) Purchase descriptions that contain references to one or more brand name products may be used only in accordance with 811.104–70, 811.104–71, and 811.104–72. In addition, purchase descriptions that contain references to one or more brand name products shall be followed by the words ''or equal,'' except when the acquisition is fully justified under FAR 6.3 and VAAR 806.3. Acceptable brand name products should be listed in the solicitation. Where a ''brand name or equal'' purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products are determined by the Government to fully meet the salient characteristics listed in

the invitation. The contract file will be documented in accordance with paragraph (b) of this section, justifying the need for use of a brand name or equal description.

(d) ''Brand name or equal'' purchase descriptions shall set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the minimum needs of the Government. For example, when interchangeability of parts is required, such requirement should be specified. Purchase descriptions shall contain the following information to the extent available and include such other information as is necessary to describe the item required:

(1) Complete common generic identification of the item required;

(2) Applicable model, make or catalog number for each brand name product referenced, and identity of the commercial catalog in which it appears; and

(3) Name of manufacturer, producer or distributor of each brand name product referenced (and address if not well known).

(e) When necessary to describe adequately the item required, an applicable commercial catalog description or pertinent extract may be used if such description is identified in the solicitation as being that of the particular named manufacturer, producer or distributor. The contracting officer will insure that a copy of any catalogs referenced (except parts catalogs) is available on request for review by bidders at the purchasing office.

(f) Except as noted in paragraph (d) of this section, purchase descriptions shall not include either minimum or maximum restrictive dimensions, weights, materials or other salient characteristics which are unique to a brand name product or which would tend to eliminate competition or other products which are only marginally outside the restrictions. However, purchase description may include restrictive dimensions, weights, materials or other salient characteristics if such restrictions are determined in writing by the user to be essential to the Government's requirements, the brand name of the product is included in the purchase description, and all other determinations required by 811.104 are made.

811.104–70 Purchase descriptions.

(a) When any purchase description, including a ''brand name or equal'' purchase description, is used in a solicitation for a supply contract to describe required items of mechanical equipment, the solicitation will include the clauses in 852.211–70 (Service Data Manual) and in 852.211–71 (Guarantee).

(b) Solicitations using ''brand name or equal'' purchase descriptions will contain the ''brand name or equal'' clause in 852.211–77, and the provision set forth at FAR 52.214–21, Descriptive Literature. Contracting officers are cautioned to review the requirements at FAR 14.202–5(d) when utilizing the descriptive literature provision.

(c) Except as provided in paragraph 811.104–70(d), when a ''brand name or equal'' purchase description is included in an invitation for bids, the following shall be inserted after each item so described in the solicitation, for completion by the bidder:

Bidding on:

Manufacturer name _____

Brand _____

No. _____

(d)(1) When component parts of an end item are described in the solicitation by a ''brand name or equal'' purchase description and the contracting officer determines that the clause in 811.104–70(b) is inapplicable to such component parts, the requirements of 811.104–70(c) shall not apply with respect to such component parts. In such cases, if the clause is included in the solicitation for other reasons, a statement substantially as follows also shall be included:

The clause entitled ''Brand Name or Equal'' does not apply to the following component parts (list the component parts to which the clause does not apply): and

(2) In the alternative, if the contracting officer determines that the clause in 811.104–70(b) shall apply to only certain such component parts, the requirements of 811.104–70(c) shall apply to such component parts and a statement substantially as follows also shall be included:

The clause entitled ''Brand Name or Equal'' applies to the following component parts (list the component parts to which the clause applies):

(e) When a solicitation contains ''brand name or equal'' purchase descriptions, bidders who offer brand name products, including component parts, referenced in such descriptions shall not be required to furnish bid samples of the referenced brand name products. However, solicitations may require the submission of bid samples in the case of bidders offering ''or equal'' products. If bid samples are required, the solicitation shall include the provision set forth at FAR 52.214–20, Bid Samples. The bidder must still furnish all descriptive literature in accordance with and for the purpose set forth in the ''Brand Name or Equal'' clause, 852.211–77(c)(1) and (2), even though bid samples may not be required.

811.104–71 Bid evaluation and award.

(a) Bids offering products that differ from brand name products referenced in a ''brand name or equal'' purchase description shall be considered for award when the contracting officer determines in accordance with the terms of the clause at 852.211–77 that the offered products are clearly identified in the bids and are equal in all material respects to the products specified.

(b) Award documents shall identify, or incorporate by reference, an identification of the specific products which the contractor is to furnish. Such identification shall include any brand name and make or model number, descriptive material, and any modifications of brand name products specified in the bid. Included in this requirement are those instances when the descriptions of the end items contain ''brand name or equal'' purchase descriptions of component parts or of accessories related to the end item, and the clause at 852.211–77 was applicable to such component parts or accessories (see 811.104–70(d)(2)).

811.104–72 Procedure for negotiated procurements.

(a) The policies and procedures prescribed in 811.104–70 and 811.104–71 should be used as a guide in developing adequate purchase descriptions for negotiated procurements.

(b) The clause at 852.211–77 may be adapted for use in negotiated procurements. If use of the clause is not practicable (as may be the case in unusual and compelling urgency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that such offered products are equal in all material respects to the products referenced.

Subpart 811.2—Using and Maintaining Requirements Documents

811.202 Maintenance of standardization documents.

(a) *Military and departmental specifications.* Contracting officers may, when they deem it to be advantageous to the Department of Veterans Affairs, utilize these specifications when procuring supplies and equipment costing less than the simplified

acquisition threshold. However, when purchasing items of perishable subsistence, contracting officers shall observe only those exemptions set forth in paragraphs (b)(2) and (b)(3) of this section.

(b) *Nutrition and Food Service specifications.* (1) The Department of Veterans Affairs has adopted for use in the procurement of packinghouse products, the purchase descriptions and specifications set forth in the Institutional Meat Purchase Specifications (IMPS), and the IMPS General Requirements, which have been developed by the U.S. Department of Agriculture. Purchase descriptions and specifications for dairy products, poultry, eggs, fresh and frozen fruits and vegetables, as well as certain packinghouse products selected from the IMPS especially for Department of Veterans Affairs use, are contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, Publication No. C8900–SL. A copy of Part IV of this catalog and the IMPS may be obtained from any Department of Veterans Affairs contracting officer.

(2) The military specifications for meat and meat products contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, shall be used by the Department of Veterans Affairs only when purchasing such items of subsistence from the Defense Logistics Agency (DLA). Military specifications for poultry, eggs, and egg products contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, may be used when purchasing either from DLA or from local dealers.

(3) Except as authorized in part 846 of this chapter, contracting officers shall not deviate from the specifications contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, and the IMPS without prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management.

(4) Items of meat, cured pork and poultry not listed in either Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, or the IMPS, will not be purchased without prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management.

(c) *Department of Veterans Affairs specifications.* (1) The Director, Publications Service, is responsible for developing, publishing, and distributing Department of Veterans Affairs specifications covering printing and binding.

(2) Department of Veterans Affairs specifications, as they are revised, are placed in stock in the VA Forms and Publications Depot. Facility requirements for these specifications will be requisitioned from that source.

(d) *Government paper specification standards.* (1) Invitations for bids, requests for proposals, purchase orders, or other procurement instruments covering the purchase of paper stocks to be used in duplicating or printing, or which specify the paper stocks to be used in buying printing, binding, or duplicating, will require that such paper stocks be in accordance with the Government Paper Specification Standards issued by the Joint Committee on Printing of Congress.

(2) All binding or rebinding of books, magazines, pamphlets, newspapers, slip cases and boxes will be procured in accordance with Government Printing Office (GPO) specifications and will be procured from the servicing GPO Regional Printing Procurement Office or, when appropriate, from commercial sources.

(3) There are three types of binding/rebinding: Class A (hard cover); Perfect (glued); and Lumbinding (sewn). The most suitable type of binding will be procured to satisfy the requirements, based upon the intended use of the bound material.

811.204 Solicitation provisions and contract clauses.

Specifications. When product specifications are cited in an invitation for bids or requests for proposals, the citation shall include desired options and shall conform to the following:

Shall be type _____, grade _____, in accordance with (type of specification) No. _____, dated_____ and amendment _____ dated _____, except paragraphs _____ and _____ which are amended as follows:

Subpart 811.4—Delivery or Performance Schedules

811.404 Contract clauses.

When delivery is required by or on a particular date, the time of delivery clause set forth in FAR 52.211–8 as it relates to f.o.b. destination contracts will state that the delivery date specified is the date by which the shipment is to be delivered, not the shipping date. In f.o.b. origin contracts, the clause will state that the date specified is the date shipment is to be accepted by the carrier.

Subpart 811.5—Liquidated Damages

811.502 Policy.

Liquidated damages provisions will not be routinely included in supply or construction contracts, regardless of dollar amount. The decision to include liquidated damages provisions will conform to the criteria in FAR 11.502. In making this decision, consideration will be given to whether the necessity for timely delivery or performance as required in the contract schedule is so critical that a probable increase in contract price is justified. Liquidated damages provisions will not be included as insurance against selection of a non-responsible bidder, as a substitute for efficient contract administration, or as a penalty for failure to perform on time.

811.504 Contract clauses.

When the liquidated damages clause prescribed in FAR 52.211–11 or 52.211–12 is to be used and where partial performance may be utilized to the advantage of the Government, the clause in 852.211–78 will be included in the contract.

Subpart 811.6—Priorities and Allocations

811.602 General.

(a) Priorities and allocations of critical materials are controlled by the Department of Commerce. Essentially, such priorities and allocations are restricted to projects having a direct connection with supporting current defense needs. The Department of Veterans Affairs is not authorized to assign a priority rating to its purchase orders or contracts involving the acquisition or use of critical materials.

(b) In those instances where it has been technically established that it is not feasible to use a substitute material, the Department of Commerce has agreed to assist us in obtaining critical materials for maintenance and repair projects. They will also, where possible, render assistance in connection with the purchase of new items, which may be in short supply because of their use in connection with the defense effort.

(c) Contracting officers having problems in acquiring critical materials will ascertain all the facts necessary to enable the Department of Commerce to render assistance to the Department of Veterans Affairs in acquiring these materials. The contracting officer will submit a request for assistance containing the following information to the Deputy Assistant Secretary for Acquisition and Materiel Management (90):

(1) A description of the maintenance and repair project or the new item, whichever is applicable;

(2) The critical material and the amount required;

(3) The contractor's sources of supply, including any addresses. If the source is other than the manufacturer or

producer, also list the name and address of the manufacturer or producer;

(4) The Department of Veterans Affairs contract or purchase order number;

(5) The contractor's purchase order number, if known, and the delivery time requirement as stated in the solicitation or offer;

(6) The additional time the contractor claims will be necessary to effect delivery if priority assistance is not provided;

(7) The nature and extent of the emergency that will be generated at the station, e.g.,

(i) damage to the physical plant,

(ii) impairment of the patient care program,

(iii) creation of safety hazards, and

(iv) any other pertinent condition that will result because of failure to secure assistance in obtaining the critical materials; and

(8) If applicable, a statement that the item required is for use in a construction contract which was authorized by the Chief Facilities Management Officer, Office of Facilities Management, to be awarded and administered by the facility contracting officer.

5. Part 812 is revised to read as follows:

PART 812—ACQUISITION OF COMMERCIAL ITEMS

Subpart 812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.
812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.
812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

PART 812—ACQUISITION OF COMMERCIAL ITEMS

812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) Notwithstanding prescriptions contained elsewhere in the VAAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part.

(b) The provision and clause in the following VAAR sections shall be used, in accordance with the prescriptions contained therein or elsewhere in the VAAR, in requests for quotations, solicitations, or contracts for the acquisition of commercial items:

(1) 852.219–70, Veteran-owned small business.

(2) 852.270–4, Commercial advertising.

(c) The provisions and clauses in the following VAAR sections shall be used, when appropriate, in accordance with the prescriptions contained therein or elsewhere in the VAAR, in requests for quotations, solicitations, or contracts for the acquisition of commercial items:

(1) 852.211–71, Guarantee clause.

(2) 852.211–72, Inspection.

(3) 852.211–73, Frozen processed foods.

(4) 852.211–74, Telecommunications equipment.

(5) 852.211–75, Technical industry standards.

(6) 852.214–70, Caution to bidders—bid envelopes.

(7) 852.216–70, Estimated quantities for requirements contracts.

(8) 852.229–70, Purchases from patient's funds.

(9) 852.229–71, Purchases for patients using Government funds and/or personal funds of patients.

(10) 852.233–70, Protest content.

(11) 852.237–70, Contractor responsibilities.

(12) 852.237–71, Indemnification and insurance (vehicle and aircraft service contracts).

(13) 852.270–1, Representatives of contracting officers.

(14) 852.270–2, Bread and bakery products.

(15) 852.270–3, Purchase of shell fish.

(d) The clauses in the following VAAR sections shall be used, when appropriate, in accordance with the prescriptions contained therein or elsewhere in the VAAR, in requests for quotations, solicitations, or contracts for the acquisition of commercial items, provided the contracting officer determines that use of the clauses is consistent with customary commercial practices.

(1) 852.211–70, Requirements for operating and maintenance manuals.

(2) 852.211–77, Brand name or equal.

(e) The contracting officer shall insert the clause in 852.271–70, Services provided eligible beneficiaries, by reference, in all requests for quotations, solicitations, and contracts meeting the prescription contained therein.

(f) Clauses are not required for micro-purchases using the procedures of this part or part 813. However, this does not prohibit the use of any clause prescribed in this part or elsewhere in this chapter in micro-purchases when determined by the contracting officer to be in the Government's best interest.

812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Agency procedures for approval of waivers: Waivers to tailor solicitations in a manner that is inconsistent with customary commercial practice shall be prepared by contracting officers in accordance with FAR 12.302(c). Waiver requests shall be submitted to the contracting officer's next higher level supervisor for approval. Approved requests shall be retained in the contract file.

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

836.202 [Amended]

6. In part 836, § 836.202(a) is amended by removing ''part 810'' and adding, in its place, ''part 811''.

836.206 [Amended]

7. In part 836, § 836.206 is amended by removing ''812.202'' and adding, in its place, ''811.502''; by removing ''852.212–70'' and adding, in its place, ''852.211–78''; and by removing ''52.212–5'' and adding, in its place, ''52.211–12''.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Part 852 is amended by redesignating the following sections as set forth below:

Old section	New section
852.210–70	852.211–70
852.210–71	852.211–71
852.210–72	852.211–72
852.210–73	852.211–73
852.210–74	852.211–74
852.210–75	852.211–75
852.210–76	852.211–76

852.210–77 [Redesignated as 852.211–77]

9. In part 852, § 852.210–77 is redesignated as § 852.211–77 and the introductory text is amended by removing ''810.004'' and adding, in its place, ''811.104''.

852.212–70 [Redesignated as 852.211–78]

10. In part 852, § 852.212–70 is redesignated as § 852.211–78, and the introductory text is amended by removing ''812.204'' and adding, in its place, ''811.504''.

852.219–70 [Amended]

11. In part 852, § 852.219–70 introductory text is amended by removing ''819.7003(a)'' and adding, in its place, ''819.7003(b)''.

852.229–70 [Amended]

12. In part 852, § 852.229–70 introductory text is amended by adding ''or, if the contract is for commercial items, in lieu of paragraph (k), Taxes, in FAR clause 52.212–4'' immediately after ''in FAR 52.229–1''.

852.229–71 [Amended]

13. In part 852, § 852.229–71 introductory text is amended by adding ''or, if the contract is for commercial items, as an addendum to FAR clause 52.212–4'' immediately after ''in FAR 52.229–1''.

852.271–70 [Amended]

14. In part 852, § 852.271–70 is amended by removing ''Chief Medical Director'' and adding, in its place, ''Under Secretary for Health''.

PART 870—SPECIAL PROCUREMENT CONTROLS

15. The authority citation for part 870 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

870.112 [Amended]

16. In part 870, § 870.112, paragraph (a) is amended by removing ''852.210–74'' and adding, in its place, ''852.211–74'', Footnote 1 is amended by removing ''Veterans Administration'' and adding, in its place, ''Department of Veterans Affairs'', paragraph (b) is amended by removing ''852.210–74'' and adding, in its place, ''852.211–74'', by removing ''the Office of Information Resources Operations'' and adding, in its place, ''Telecommunications Support Service''; by removing ''(93)'' each time it appears in paragraphs (b) and (c)(1) and adding, in its place, '', Acquisition Administration Team''.

[FR Doc. 98–9135 Filed 4–8–98; 8:45 am]

BILLING CODE 8320–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1843 and 1852

Suitable Adjustments Under Contracts for Construction, Dismantling, Demolishing, or Removing Improvements

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends NASA's Federal Acquisition Regulation Supplement (NFS) to set forth an agency-wide clause that may be used for equitable adjustments under contracts for construction, dismantling, demolishing, or removing improvements that are contemplated to be fixed-price and exceed the simplified acquisition threshold.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, Telephone: (202) 358–0444.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1997, a proposed rule to amend the NFS to establish an agency-wide clause to handle equitable adjustments under fixed-price contracts in excess of the simplified acquisition threshold for construction, dismantling, demolishing, or removing improvements was published in the **Federal Register** (62 FR 64545–64546) for comment. Comments were submitted by only one commenter who took exception to several aspects of the proposed rule. The comments were reviewed and considered; however, no changes were made to the proposed rule as a result of them.

Impact

NASA certifies that this proposed regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1843 and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR 1843 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1843 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2743(c)(1).

PART 1843—CONTRACT MODIFICATIONS

1843.205–70 [Amended]

2. In section 1843.205–70, the heading is revised, paragraphs (a), (b), and (c) are redesignated as (a)(1), (2), and (3), and a new paragraph (b) is added to read as follows:

1843.205–70 NASA contract clauses.

* * * * *

(b) The contracting officer may insert a clause substantially as stated at 1852.243–72, Equitable Adjustments, in solicitations and contracts for—

(1) Dismantling, demolishing, or removing improvements; or

(2) Construction, when the contract amount is expected to exceed the simplified acquisition threshold and a fixed-price contract is contemplated.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.243–70 [Amended]

3. In section 1852.243–70, introductory text, the prescription ''1843.205–70(a)'' is revised to read ''1843.205–70(a)(1)''.

4. In Alternate I to section 1852.243–70, the prescription ''1843.205–70(b)'' is revised to read ''1843.205–70(a)(2).

5. In Alternate II to section 1852.243–70, the prescription ''1843.205–70(c)'' is revised to read ''1843.205–70(a)(3)''.

6. Section 1852.243–72 is added to read as follows:

1852.243–72 Equitable Adjustments.

As prescribed in 1843.205–70(b), insert the following clause.

Equitable Adjustments April 1998

(a) The provisions of all other clauses contained in this contract which provide for an equitable adjustment, including those clauses incorporated by reference with the exception of the ''Suspension of Work'' clause (FAR 52.242–14), are supplemented as follows:

Upon written request, the Contractor shall submit a proposal for review by the Government. The proposal shall be submitted to the contracting officer within the time limit indicated in the request or any extension thereto subsequently granted. The proposal shall provide an itemized breakdown of all increases and decreases in the contract for the Contractor and each subcontractor in at least the following detail: material quantities and costs; direct labor hours and rates for each trade; the associated FICA, FUTA, SUTA, and Workmen's Compensation Insurance; and equipment hours and rates.

(b) The overhead percentage cited below shall be considered to include all indirect costs including, but not limited to, field and office supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. ''Commission'' is defined as profit on work performed by others. The percentages for overhead, profit, and commission are negotiable according to the nature, extent, and complexity of the work involved, but in no case shall they exceed the following ceilings:

	Overhead (percent)	Profit (percent)	Commission
To Contractor on work performed by other than its own forces	-----	-----	10
To first tier subcontractor on work performed by its subcontractors	-----	-----	10
To Contractor and/or subcontractors on work performed with their own forces	10	10	-----

(c) Not more than four percentages for overhead, profit, and commission shall be allowed regardless of the number of subcontractor tiers.

(d) The Contractor or subcontractor shall not be allowed overhead or commission on the overhead, profit, and/or commission received by its subcontractors.

(e) Equitable adjustments for deleted work shall include credits, limited to the same percentages for overhead, profit, and commission in paragraph (b) of this clause.

(f) On proposals covering both increases and decreases in the amount of the contract, the application of the overhead, profit, and commission shall be on the net change in direct costs for the Contractor or the subcontractor performing the work.

(g) After receipt of the Contractor's proposal, the contracting officer shall act within a reasonable period, provided that when the necessity to proceed with a change does not permit time to properly check the proposal, or in the event of a failure to reach an agreement on a proposal, the contracting officer may order the Contractor to proceed on the basis of the price being determined at the earliest practicable date. In such a case, the price shall not be more than the increase or less than the decrease proposed.

(End of clause)

[FR Doc. 98–9431 Filed 4–8–98; 8:45 am]

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Proposed Rules

Federal Register
Vol. 63, No. 68
Thursday, April 9, 1998

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–97–AD]

RIN 2120–AA64

Airworthiness Directives; CASA Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all CASA Model C–212 series airplanes. This proposal would require repetitive inspections for cracking in the false spar of the wing, and repair, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct cracking in the false spar, which could result in reduced structural integrity of the wing.

DATES: Comments must be received by May 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–97–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 Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–97–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–114, Attention: Rules Docket No. 98–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Dirección General de Aviación (DGAC), which is the airworthiness authority for Spain, notified the FAA that an unsafe condition may exist on all CASA Model C–212 series airplanes. The DGAC advises that, on several airplanes, cracking has been detected in the false spar of the wing, where the flaps of the airplane are housed during flight. The cause of this cracking has not been determined, but indications are that such cracking may result from stress corrosion caused by interference between the flaps and the wing trailing edge structure, which occurs when the flaps are stowed in flight. Such cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the wing.

Explanation of Relevant Service Information

The manufacturer has issued CASA Product Support Document COM 212–224, dated November 28, 1990, which describes procedures for performing repetitive detailed visual inspections for cracking in the false spar of the wing. The DGAC classified this service document as mandatory and issued Spanish airworthiness directive 02/96, dated May 13, 1996, in order to assure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

This airplane model is manufactured in Spain and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of actions specified in the service document described previously, except as discussed below.

Differences Between Proposed Rule and Service Document

Operators should note that, although the service document specifies that affected parts are to be removed if cracking is detected, this proposal would require the repair of any cracking to be accomplished in accordance with either a method approved by the FAA, or the DGAC (or its delegated agent). In

light of the type of repair that would be required to address the unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 41 airplanes of U.S. registry would be affected by this proposed AD, and that it would take approximately 30 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 $73,800, or $1,800 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Construcciones Aeronauticas, S.A. (CASA): Docket 98–NM–97–AD.

Applicability: All Model C–212 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the false spar of the wing, which could result in reduced structural integrity of the wing, accomplish the following:

(a) Within 1,200 flight hours after the effective date of this AD, perform a detailed visual inspection for cracking in the false spar of the wing, on the left and right side of the airplane, in accordance with CASA Product Support Document COM 212–224, dated November 28, 1990.

(1) If no cracking is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 1,200 flight hours.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Dirección General de Aviación (DGAC), which is the airworthiness authority for Spain (or its delegated agent). Repeat the detailed visual inspection thereafter at intervals not to exceed 1,200 flight hours.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 02/96, dated May 13, 1996.

Issued in Renton, Washington, on April 3, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–9342 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–53–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes. This proposal would require repetitive magnetic particle inspections to detect cracking of the splined operating shaft of the internal door handle on the forward passenger door, rear passenger door, and rear baggage door; and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct cracking of the splined operating shaft of the internal door handle, which could result in failure of the internal door handle, inability to operate the door during an emergency evacuation, and consequent injury to airplane occupants.

DATES: Comments must be received by May 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114,

Attention: Rules Docket No. 98–NM–53–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 AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–53–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–114, Attention: Rules Docket No. 98–NM–53–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace BAe Model ATP airplanes. The CAA advises that it has received reports of failure of the splined operating shaft of the internal door handle on Type I exits. These failures have occurred when the door was being opened or closed. Further investigation revealed that the splined operating shafts failed due to cracking caused by high operating loads. Such cracking, if not detected and corrected, could result in failure of the splined operating shaft of the internal door handle, inability to operate the door during an emergency evacuation, and consequent injury to airplane occupants.

Explanation of Relevant Service Information

The manufacturer has issued British Aerospace Regional Aircraft BAe ATP Alert Service Bulletin ATP–A52–30, dated March 19, 1997, which describes procedures for magnetic particle inspections to detect cracking of the splined operating shafts of the internal door handles on the forward passenger door, rear passenger door, and rear baggage door; and replacement of the existing splined operating shaft with a new shaft, if necessary. The CAA classified this alert service bulletin as mandatory and issued British airworthiness directive 004–03–97 (undated) in order to assure the airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, unlike the procedures described in the alert service bulletin, this proposed AD would not permit further flight if cracks are detected in the splined operating shaft of the internal door handle on the forward passenger door, rear passenger door, or rear baggage door. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any splined operating shaft found to be cracked must be replaced prior to further flight.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 18 work hours per airplane to accomplish the proposed magnetic particle inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the magnetic particle inspection proposed by this AD on U.S. operators is estimated to be $10,800, or $1,080 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 98–NM–53–AD.

Applicability: BAe Model ATP airplanes, constructor's numbers 2002 through 2067 inclusive; 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the splined operating shaft of the internal door handle on the forward passenger door, rear passenger door, and rear baggage door, which could result in failure of the internal door handle, inability to operate the door during an emergency evacuation, and consequent injury to airplane occupants; accomplish the following:

(a) Prior to the accumulation of 2,000 flight cycles on the splined operating shaft of the internal door handle on the forward passenger door, rear passenger door, and rear baggage door; or within 60 days after the effective date of this AD, whichever occurs later; accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Perform a magnetic particle inspection to detect cracking of the splined operating shaft of the internal door handle on the forward passenger door, rear passenger door, and rear baggage door, in accordance with British Aerospace Regional Aircraft BAe ATP Alert Service Bulletin ATP–A52–30, dated March 19, 1997.

(i) If any crack is found, prior to further flight, accomplish the actions required by paragraph (a)(2).

(ii) If no crack is found, repeat the actions required by paragraph (a) of this AD at intervals not to exceed 1,000 flight cycles.

(2) Replace the existing splined operating shaft with a new splined operating shaft, in accordance with the alert service bulletin. Repeat the actions required by paragraph (a) of this AD within 2,000 flight cycles after the replacement, and thereafter at intervals not to exceed 1,000 flight cycles.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 3: The subject of this AD is addressed in British airworthiness directive 004–03–97 (undated).

Issued in Renton, Washington, on April 3, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–9341 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–326–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require repetitive detailed visual inspections for corrosion, and repetitive high frequency eddy current (HFEC) inspections for cracks, of the upper link assembly on the number 2 and number 3 engine struts, and corrective actions, if necessary. This proposal is prompted by reports of corrosion and cracks located at the four fasteners that attach to the aft end to the upper link assembly on the number 2 and number 3 engine struts. The actions specified by the proposed AD are intended to prevent failure of the upper link due to cracking or corrosion, subsequent damage to other strut support structure, and in-flight separation of an engine from the airplane.

DATES: Comments must be received by May 26, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–326–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Dow, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–326–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–114, Attention: Rules Docket No. 97–NM–326–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that nine operators have found seven instances of corrosion and three instances of cracks on 10 airplanes that had accumulated between 7,400 and 19,800 flight cycles and between 37,100 and 81,600 flight hours. One operator reported a 1-inch crack from one fastener hole location at the aft end of the upper link of the strut to the part edge. The corrosion and cracks were located at the four fasteners which attach the aft end of the upper link assembly of the number 2 and number 3 engine struts. Such corrosion and cracking, in the struts upper link, at the aft end attachment for the number 2 and 3 engine struts, if not detected and corrected in a timely manner, could result in failure of the upper link, subsequent damage to other strut support structure, and in-flight separation of an engine from the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–54A2187, dated May 22, 1997, which describes procedures for repetitive detailed visual inspections for corrosion, and high frequency eddy current (HFEC) inspections for cracks, on the upper link assembly on the number 2 and number 3 engine struts, and corrective actions, if necessary. The corrective actions include repair or replacement of the upper link in accordance with Parts 2 and 3 of the Accomplishment Instructions of the alert service bulletin. Accomplishment of the actions specified in the alert service bulletin are intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as described below.

Differences Between Proposed Rule and Alert Service Bulletin

The alert service bulletin specifies that certain corrective actions required by this proposed AD may be accomplished in accordance with an operator's ''equivalent procedure.'' However, the alert service bulletin also specifies that operators may accomplish those actions in accordance with certain chapters of the Airplane Maintenance Manual. This proposed AD would require that any such actions be accomplished only in accordance with the procedures specified in the Airplane Maintenance Manual. An ''operator's equivalent procedure'' may be used only if approved as an alternative method of compliance in accordance with the provisions of this proposed AD.

Cost Impact

There are approximately 567 airplanes of the affected design in the worldwide fleet. The FAA estimates that 173 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $124,560, or $720 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 97–NM–326–AD.

Applicability: Model 747 series airplanes, line positions 1 through 886 inclusive; equipped with Pratt & Whitney JT9D–3 or –7, or General Electric CF6–45 or –50 engine struts; 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 (e) 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 failure of the upper link due to cracking or corrosion, subsequent damage to other strut support structure, and in-flight separation of an engine from the airplane, accomplish the following:

(a) Perform a detailed visual inspection for corrosion, and a high frequency eddy current (HFEC) inspection for cracks, of the upper link assembly on the number 2 and number 3 engine struts, in accordance with Boeing Alert Service Bulletin 747–54A2187, dated May 22, 1997, at the applicable time specified in either paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes with upper link assemblies that were overhauled in accordance with Overhaul Manual, 54–00–01, and on which the four aft end attach bolts were installed with sealant: Perform the inspections required by paragraph (a) of this AD, at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Within 6,000 flight cycles or 8 years after the date of overhaul of the upper link assembly, whichever occurs first.

(ii) Within 600 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

(2) For airplanes other than those identified in paragraph (a)(1) of this AD: Perform the inspections required by paragraph (a) of this AD, at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Within 6,000 total flight cycles, or 8 years after the date of manufacture of the airplane, whichever occurs first.

(ii) Within 600 flight cycles, or 6 months after the effective date of this AD, whichever occurs first.

(b) If no crack or corrosion is detected during any inspection required by paragraph (a) of this AD, repeat the inspections specified in paragraph (a) of this AD, thereafter, at intervals not to exceed 18 months.

(c) If any crack or corrosion is detected during any inspection required by this AD, prior to further flight, accomplish either paragraph (c)(1) or (c)(2) of this AD, in accordance with Boeing Alert Service Bulletin 747–54A2187, dated May 22, 1997. Thereafter, repeat the inspections required by paragraph (a) of this AD, at intervals not to exceed 6,000 flight cycles or 8 years, whichever occurs first.

(1) Repair the upper link within the limits specified in the alert service bulletin, in accordance with Part 2 of the Accomplishment Instructions of the alert service bulletin. (Complete corrosion and crack removal must be achieved within the limits specified in the alert service bulletin.) Or

(2) Replace the upper link with a new upper link assembly, in accordance with Part 3 of the Accomplishment Instructions of the alert service bulletin.

Note 2: If any cracking or corrosion is found, and Boeing Alert Service Bulletin 747–54A2187, dated May 22, 1997, specifies that corrective actions may be accomplished in accordance with an operator's ''equivalent procedure:'' The actions must be accomplished in accordance with the chapter of the Boeing 747 Airplane Maintenance Manual (AMM) specified in the alert service bulletin.

(d) Accomplishment of the modifications required in AD 95–13–07, amendment 39–9287 (for General Electric CF6–45 or –50 engine struts); or AD 95–10–16, amendment 39–9233 (for Pratt & Whitney JT9D–3 or –7 engine struts); constitutes terminating action for the requirements of this AD.

(e) 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, Seattle Aircraft Certification Office (ACO), 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, Seattle ACO.

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

(f) Special flight permits may be issued in accordance with §§ 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 April 3, 1998.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–9337 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–71–AD]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries Ltd. Model YS–11 and YS–11A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Mitsubishi Model YS–11 and YS–11A series airplanes. This proposal would require revising the airplane flight manual (AFM) to prohibit positioning the power levers below the flight idle stop. This proposal is a result of incidents and accidents involving airplanes equipped with turboprop engines in which the propeller beta was used improperly during flight. The actions specified by the proposed AD are intended to prevent loss of airplane controllability or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Comments must be received by May 26, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–71–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.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113; FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–71–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–71–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In recent years, the FAA has received reports of 14 incidents and/or accidents on airplanes equipped with turboprop engines in which intentional or inadvertent operation of the propellers in the beta range occurred during flight. (For the purposes of this proposal, beta is the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.)

Five of the 14 in-flight beta occurrences were classified as accidents. In each of these five cases, operation of the propellers in the beta range occurred during flight. Operation of the propellers in the beta range during flight, if not prevented, could result in loss of airplane controllability, or engine overspeed with consequent loss of engine power.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the FAA-approved airplane flight manual (AFM) for airplanes not certificated for in-flight operation with the power levers below the flight idle stop. (Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.)

U.S. Type Certification of the Airplane

This airplane model is manufactured in Japan and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

The FAA's Determination

The FAA has examined the circumstances and reviewed all available information related to the incidents and accidents described previously. The FAA finds that the Limitations Section of the AFM's for certain airplanes must be revised to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. The FAA has determined that the affected airplanes include those that are equipped with turboprop engines and that are not certificated for in-flight operation with the power levers below the flight idle stop. Since Mitsubishi Model YS–11 and YS–11A series airplanes meet these criteria, the FAA finds that the AFM's for these airplanes must be revised to include the limitation and statement of consequences described previously.

Explanation of the Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in Mitsubishi Model YS–11 and YS–11A series airplanes of the same type design, the proposed AD would require revising the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 10 Mitsubishi Model YS–11 and YS–11A series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $600, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Mitsubishi Heavy Industries, Ltd. [Formerly Nihon Aeroplane Manufacturing Company (NMAC)]: Docket 97–NM–71–AD.

Applicability: All Model YS–11 and YS–11A –200, –300, –500, and –600 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been 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 (b) 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 loss of airplane controllability or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

Warning: While the airplane is airborne, the LOW STOP lever (flight fine pitch stop) should not be placed in the GROUND position for any reason. Placing the LOW STOP lever in the GROUND position in flight may lead to loss of airplane control or may result in an engine overspeed condition and consequent loss of engine power.

(b) 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 Operations 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.

(c) 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 April 3, 1998.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–9339 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 235

Guides Against Deceptive Labeling and Advertising of Adhesive Compositions

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (''Commission'') requests public comments about the overall costs and benefits and the continuing need for its Guides Against Deceptive Labeling and Advertising of Adhesive Compositions (''Adhesive Compositions Guides'' or ''the Guides''), as part of the Commission's systematic review of all current Commission regulations and guides.

DATES: Written comments will be accepted until June 8, 1998.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Ave., N.W., Washington, D.C. 20580. Comments should be identified as ''Adhesive Compositions Guides, 16 CFR Part 235—Comment.'' E-mail comments will be accepted at [adhesives@ftc.gov]. Those who comment by e-mail should give a mailing address to which an acknowledgment can be sent.

FOR FURTHER INFORMATION CONTACT: Erika Wodinsky, Attorney, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103, telephone number (415) 356–5270, E-mail [ewodinsky@ftc.gov].

SUPPLEMENTARY INFORMATION:

I. Adhesive Composition Guides

The Commission promulgated the Adhesive Compositions Guides in 1967, 32 FR 15538 (Nov. 8, 1967), pursuant to section 5 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 45.[1]

These Guides, like other industry guides issued by the Commission, ''are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements.'' 16 CFR 1.5. Conduct inconsistent with the Guides may result in corrective action by the Commission under applicable statutory provisions.

The Guides contain eight parts. Guide 1 advises against representing that an adhesive product is composed of metal or a particular metal, or has the same intrinsic characteristics of that metal, if the product does not, after application, have the same physical and chemical properties as that metal. It also specifically advises against, with certain exceptions, the use of the terms ''metal,'' ''iron,'' ''steel,'' ''aluminum,'' or other names of metals to designate brand names of products that do not have the same chemical or physical properties as the specified metal.

Guide 2 advises against the use of the terms ''solder'' or ''weld'' to describe a product that does not form a metallic seal or bond, unless clear disclosure is made that the product is nonmetallic. Guide 3 addresses the use of the term ''porcelain,'' and advises against the use of the name in connection with products which do not possess all of the chemical and physical properties of porcelain.

Guide 4 applies to representations about epoxy adhesives. It counsels against the use of representations that a product is an epoxy adhesive unless the product is derived from specified chemical substances, and, when applied in use, reacts with a hardening agent to form an infusible and insoluble bond. Guide 5 addresses the use of the word ''rubber,'' and advises against the use of that term in connection with products that do not possess the essential characteristics of rubber. Guide 6 is a general, overall statement about what types of claims for adhesive products will be viewed as deceptive in advertising or labeling. In particular, it addresses the use of representations about the types of adhesive products specified in the Guides that are likely to mislead or deceive purchasers about the nature, composition, capabilities, durability, hardness, adhesive strength, lasting effect, thermal or electrical properties, or resistance to deterioration of the product. It specifically advises against making claims that a product will seal or mend ''anything'' when there are materials that it cannot seal or mend, or that a product will effect a ''permanent'' repair, when the repair will not last as long as the product.

Guide 7 addresses representations that a product is ''guaranteed,'' without a clear and conspicuous disclosure of the extent of the guarantee, any material conditions or limitations imposed by the guarantor, the manner in which the guarantor will perform thereunder, and the identity of the guarantor. Finally, Guide 8 advises against manufacturers and distributors providing others with promotional materials through which such persons may deceive consumers with respect to adhesive products.

II. Regulatory Review Program

The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission solicits comments on, among other things, the economic impact of and the continuing need for the Adhesive Compositions Guides; possible conflict between the Guides and state, local, or other federal laws; and the effect on the Guides of any technological, economic, or other industry changes.

[1] Section 5 of the FTC Act declares unfair methods of competition and unfair or deceptive acts or practices to be unlawful.

III. Request for Comment

The Commission solicits written public comments on the following questions:

(1) Is there a continuing need for the Adhesive Compositions Guides?

(a) what benefits have the Guides provided to purchasers of the products affected by the Guides?

(b) Have the Guides imposed costs on purchasers?

(2) What changes, if any, should be made to the Guides to increase the benefits of the Guides to purchasers?

(a) How would these changes affect the costs the Guides impose on firms adhering to their advice? How would these changes affect the benefits to purchasers?

(3) What significant burdens or costs, including costs of compliance, have the Guides imposed on firms adhering to their advice?

(a) Have the Guides provided benefits to such firms? If so, what benefits?

(4) What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on firms adhering to their advice?

(a) How would these changes affect the benefits provided by the Guides?

(5) Do the Guides overlap or conflict with other federal, state, or local laws or regulations?

(6) Since the Guides were issued, what effects, if any, have changes in the global marketplace, relevant technology (such as the Internet, e-mail, or CD ROM advertising), or economic conditions had on the Guides? If so, in what manner? Does use of these changed conditions, or this new technology affect consumers' rights or sellers' responsibilities under the Guides?

(7) Are any portions of the Guides outdated or otherwise no longer relevant in this industry? If yes, why?

(8) Are there industry standards covering any of the issued addressed by the Guides? If yes, what are they?

List of Subjects in 16 CFR Part 235

Advertising, Adhesives, Labeling, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–9356 Filed 4–8–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC24

Establishing Oil Value for Royalty Due on Indian Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on a proposed rule, which was published in the **Federal Register** on February 12, 1998, (63 FR 7089). The proposed rule amends the royalty valuation regulations for crude oil produced from Indian leases. In response to requests for additional time, MMS will extend the comment period from April 13, 1998, to May 13, 1998.

DATES: Comments must be submitted on or before May 13, 1998.

ADDRESSES: Mail comments, suggestions, or objections about this proposed rule to: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165. Courier address is Building 85, Denver Federal Center, Denver, Colorado 80225. E-mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, telephone number (303) 231–3432, fax number (303) 231–3385, e:mail RMP.comments@mms.gov.

SUPPLEMENTARY INFORMATION: MMS received requests from industry representatives to extend the comment period of this proposed rule. This time extension is in response to those requests in order to provide commentors with adequate time to provide detailed comments that MMS can use to proceed in the rulemaking.

Dated: April 2, 1998.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 98–9292 Filed 4–8–98; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5993–8]

Notice of Intent To Reopen Comment Period for Certain Issues Raised in the Proposed Rulemaking for the Nitrogen Oxides (NO_X) State Implementation Plan (SIP) Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Intent to reopen comment period for certain issues raised in the proposed rulemaking for a finding of significant contribution and rulemaking for certain states in the ozone transport assessment group region for purposes of reducing regional transport of ozone.

SUMMARY: Notice is hereby given that EPA intends to reopen during a specified period of time the comment period for certain issues raised in the Proposed Rulemaking for a Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone.

ADDRESSES: Documents relevant to this matter are available for inspection at the Air and Radiation Docket and Information Center (6101), Attention: Docket No. A–96–56, U.S. Environmental Protection Agency, 401 M Street SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions concerning today's action should be addressed to Kimber Smith Scavo, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–3354.

SUPPLEMENTARY INFORMATION: By notice dated November 7, 1997, EPA published, ''Proposed Rulemaking: Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone'' (62 FR 60318). This notice may be referred to as the Proposed NO_X SIP call because it consists, in part, of a requirement that certain States submit SIP revisions to require reductions of NO_X. This notice provided a 120-day comment period, which expired on March 9, 1998. The EPA has received numerous requests to

extend or reopen the comment period for this rulemaking for at least certain issues.

The EPA is today reopening the comment period—during the comment period for the supplemental notice of proposed rulemaking for the Proposed NO_X SIP call, as described below—for additional air quality modeling runs relevant to the issues raised in the proposed NO_X SIP call, as well as comments concerning the implications that any such additional runs may have for the State NO_X budgets under consideration in that rulemaking.

The EPA is not reopening or extending the comment period of the proposed NO_X SIP call for other issues not identified above. In particular, EPA reiterates its statements in its ''Notice of Proposed Rulemaking (NPR) for NO_X SIP Call—Clarification of Comment Process'' (63 FR 4206, January 28, 1998), in which EPA stated that in light of the need to assure that air quality modeling analyses would be completed in time for the final NO_X SIP call rulemaking, it would be necessary to assure that comments on one of the critical inputs into the air quality modeling analyses—the emissions inventories—were, in a timely manner. Accordingly, EPA stated in that notice, ''any comments concerning emission inventory data that are to be considered in the modeling analyses must be received by EPA within the official 120-day comment period (i.e., by March 9, 1998).'' *Id*.

The EPA intends to publish by mid-April 1998 a supplemental notice of proposed rulemaking for the proposed NO_X SIP call (supplemental proposed NO_X SIP call or supplemental proposal). The EPA intends to provide a 45-day comment period for all issues in the supplemental proposal, which would expire at approximately the end of May 1998. The reopened comment period for the issues identified above will coincide with the comment period for the supplemental proposal.

Dated: April 3, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–9391 Filed 4–8–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Request for Information on the Aleutian Canada Goose

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service), Alaska Region, is reviewing the status of the Aleutian Canada goose (*Branta canadensis leucopareia*) in Alaska and in the western coastal States of Washington, Oregon and California. The population of Aleutian Canada goose declined precipitously in the early to mid 1900s primarily as the result of the introduction of Arctic (*Alopex lagopus*) and red (*Vulpes vulpes*) foxes to its nesting islands. The Aleutian Canada goose was listed as endangered in 1967. A formal recovery program began in 1974, and by 1990 the Aleutian Canada goose had recovered sufficiently to be reclassified as threatened. Censuses on the breeding and wintering grounds indicate further, substantial increases in population, and suggest that the Aleutian Canada goose population may have recovered. The Service requests data and information on the status of this subspecies.

DATES: To ensure their consideration, comments from all interested parties should be received by May 11, 1998.

ADDRESSES: Comments and information concerning this notice should be sent to Anthony DeGange, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, AK 99503. Comments and information received will be available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Anthony DeGange at the above address or Teresa Woods at the above address.

SUPPLEMENTARY INFORMATION:

Background

The Aleutian Canada goose is a small island-nesting subspecies of Canada goose. Morphologically it resembles other small Canada goose subspecies, but nearly all Aleutians surviving past their first winter have a distinct white neck ring at the base of their black necks. The Aleutian Canada goose is the only subspecies of Canada goose whose range once included both the North American and Asian continents. It formerly nested in the northern Kuril and Commander Islands, in the Aleutian Archipelago and on islands south of the Alaska Peninsula east to near Kodiak Island. The species formerly wintered in Japan, and from British Columbia south to Mexico. The decline of the Aleutian Canada goose has been attributed to the introduction of Arctic foxes, and to a lesser extent red foxes, to its breeding islands for the purpose of developing a fur industry. Hunting and loss of habitat on its wintering range also contributed to the subspecies' decline. At the time of its listing as endangered, its known breeding range was limited to Buldir Island, a small, isolated island in the western Aleutian Islands where foxes were never introduced. Small breeding populations of small Canada geese were subsequently found on Chagulak Island in the central Aleutians and on Kiliktagik Island in the Semidi Islands south of the Alaska Peninsula. These island nesting geese are morphologically similar to Aleutian Canada geese and genetic studies indicate they are more closely related to Aleutian Canada geese than other Canada goose subspecies (Shields and Wilson 1987; B. Pierson, pers. comm.). The Service considers the Chagulak and Semidi Islands geese remnant populations of the previously more continuously distributed Aleutian Canada goose. The Aleutian Canada goose is believed to have numbered fewer than 800 birds in 1975.

Most Aleutian Canada geese winter in California. They arrive on the wintering grounds in early to mid-October. Some geese stop in the Crescent City area in northwest California but most continue on to the vicinities of Colusa in the Sacramento Valley and Modesto in the northern San Joaquin Valley. By mid-December the majority of the population is near Modesto. Small numbers of Aleutian Canada geese also frequently winter near El Sobrante in north San Francisco Bay and near Crescent City. Most of the population stages near Crescent City on the northward migration although several thousand birds are now using pasture land in south coastal Oregon for several weeks in the spring. The small population of geese that breeds in the Semidi Islands winters exclusively in coastal Oregon near Pacific City.

In response to reduced population levels, the Service classified the Aleutian Canada goose as endangered in 1967. The Service provided additional protection to the goose with passage of the Endangered Species Act of 1973. A recovery plan for the Aleutian Canada goose was approved in 1979 and revised in 1982 and 1991 (Byrd et al. 1991). Recovery activities were begun in 1974. Important features of the recovery

program in Alaska and the western U.S. included—banding of birds on the breeding grounds to identify important wintering and migration areas; closure of wintering and migration areas to hunting of Canada geese; acquisition, protection and management of important wintering and migration habitat; removal of foxes from potential nesting islands; propagation and release of captive Aleutian Canada geese on fox free-nesting islands in the Aleutians; and translocation of molting family groups from Buldir Island to other fox-free islands in the Aleutians. Survival of released captive-reared birds on fox-free islands was never high, thus once the population on Buldir Island was large enough to support the translocation of wild birds, release of captive birds was phased out. This approach and other recovery actions have been successful.

Recovery actions resulted in an increase in the population of Aleutian Canada geese. Rates of increase between 1975 and 1989 ranged from 6 to 35 percent annually, and by winter 1989/1990 the peak winter count reached 6,200 geese. The Service reclassified the Aleutian Canada goose from endangered to threatened in 1990 (55 FR 51106, December 12, 1990).

Summary of Status

Since the subspecies was downlisted to threatened in 1990, the overall population of Aleutian Canada geese has sustained a strong recovery. Estimates of the population of geese wintering near Modesto, California, based on ratios of marked to unmarked birds, were approximately 24,000 for the 1995/1996 and 1996/1997 winters (Drut and Trost 1997). The peak 1998 count of Semidi Island birds on their wintering grounds near Pacific City, Oregon was 115–120 (D. Pitkin, pers. comm.). Despite protection on both the breeding and wintering grounds, the Semidi Island population has sustained little or no growth since 1991. The reasons for this lack of growth are unclear.

As of summer 1995, the last year for which census data were available from the breeding grounds, approximately 4,000 pairs of Aleutian Canada geese were estimated to breed in the Aleutian Islands, including at least 350 pairs at Agattu Island, 124 pairs at Alaid/Nizki Islands, 3,500 pairs at Buldir Island, 5 pairs in the Rat Islands, and 20 pairs at Chagulak Island (Byrd 1995). Recent breeding has been documented at Amchitka, Amukta, and Little Kiska Islands. Although the current status of Aleutian Canada geese on these islands is unknown, reestablishment of breeding populations via translocations to Amchitka and Little Kiska Islands and natural recolonization of Amukta Island is believed to have a low probability of success. The presence of bald eagles (*Haliaeetus leucocephalus*), a predator of geese, on islands east of Buldir Island is believed to be a factor that has limited the success of translocations to Amchitka, Little Kiska and Kiska Islands.

The small breeding population on Chagulak Island is believed to be stable, but the terrain is steep and nesting habitat is limited. Foxes have been removed from most of the islands near Chagulak, and to bolster the population of geese in this portion of the Aleutians, translocations of geese from Buldir Island to Yunaska Island occurred in 1994 and 1995. Translocations also occurred in 1994 and 1995 to Skagul Island in the Rat Island group. At this time it is unclear if the translocations have resulted in establishment of breeding populations on these islands.

The status of Aleutian Canada geese in the Semidi Islands is tenuous. Investigators studying these geese found only 14 nests on Kiliktagik Island and 3 nests on Anowik Island in 1995, which is 11 nests fewer than were found on the same islands in 1992 (Beyersdorf and Pfaff 1995). Hatching and overall nesting success of geese in the Semidi Islands in 1995 was lower than their counterparts in the western Aleutian Islands. In addition, relatively few hatching year birds have been appearing on the wintering grounds each fall in coastal Oregon (D. Pitkin and R. Lowe pers. comm.). The reason for lower productivity of Aleutian Canada geese in the Semidi Islands is unknown.

The availability of nesting habitat in the Aleutian Islands is not likely to limit population growth in the foreseeable future. The Service believes there is considerable unoccupied nesting habitat available for geese on some of the existing nesting islands, and there are at least eight other islands with suitable nesting habitat that have been cleared of foxes that are available for natural recolonization. The Service is also continuing its fox eradication program in the Aleutian Islands to benefit geese and other ground nesting birds. All of the extant nesting islands of Aleutian Canada geese in Alaska, as well as most of the islands within its historic nesting range in Alaska, are protected as part of the Alaska Maritime National Wildlife Refuge. Despite the availability of nesting habitat, rapid natural expansion to unoccupied islands is not expected to occur because of the presence of bald eagles and the strong tendency for Canada geese to return to natal areas to breed.

On the wintering grounds in California and Oregon, Aleutian Canada geese depend on agricultural lands. They feed extensively in agricultural fields with waste beans and grain, and graze on sprouting grain and in pastures used by livestock (Dahl 1995). Most Aleutian geese use two ranches near Modesto as their primary winter range. The Service has purchased 2,800 acres of one ranch in fee title as part of the San Joaquin River National Wildlife Refuge, and is negotiating a long-term conservation easement on 2,000 acres of the other ranch to protect and manage the winter range of the Aleutian Canada goose. The Service is also attempting to acquire additional cropland, grassland and riparian acreage along the San Joaquin River, some of which could be used by geese in the future. The Service is actively managing its lands as goose foraging, loafing and roosting habitat, and assisting local landowners with enhancing their lands for geese by providing technical assistance. The intent is to provide high quality habitat for geese while holding them on managed lands to reduce crop depredation on neighboring private farms.

The lands used by Aleutian Canada geese near Colusa, California are primarily privately owned farms and Reclamation District land. The 733 acre Butte Sink National Wildlife Refuge is actively managed to attract geese and other waterfowl. The small wintering area at El Sobrante in north San Francisco Bay is owned by a public utility. In northwest California, Aleutian Canada geese roost on Castle Rock, an offshore island that is now part of the National Wildlife Refuge system, and to a lesser extent on Prince Island which is owned by Native Americans. As the Aleutian Canada goose population has increased, geese have shifted their feeding from State lands to managed pastures on private dairy farms used for livestock grazing, and are now in conflict with several of the local landowners. In an attempt to reduce the depredation problem, the State of California, in cooperation with local landowners, has begun to actively manage 400–500 acres of State land near Lake Earl by fertilizing, irrigating and grazing pasture land. Geese are being discouraged from using private land by hazing.

In Oregon, the Semidi Island geese forage primarily on the pastures of two dairy farms near Pacific City. Both dairies are privately owned but were included within the boundaries of the Nestucca Bay National Wildlife Refuge which would facilitate their acquisition should the Service and the landowners

reach a purchase agreement in the future. The refuge has acquired 120 acres of nearby pasture that is being used by Dusky Canada geese and could be used by Aleutian Canada geese in the future. The Semidi Island geese either roost on the ocean or on Haystack Rock which is part of the Oregon Islands National Wildlife Refuge. Several thousand Aleutian Canada geese from breeding sites in the Aleutian Islands are now using coastal southern Oregon as a stopover for several weeks in spring. These birds forage on privately-owned pasture and roost on offshore rocks in the Oregon Islands National Wildlife Refuge.

Establishment of closed areas for hunting Canada geese has contributed to the recovery of the Aleutian Canada goose. Six closed areas currently exist—islands in Alaska west of Unimak Island, beginning in 1973; northwestern California, the Modesto area and the Colusa area, beginning in 1975; and the Pacific City area and central and south coastal Oregon beginning in 1982. Occasionally a few Aleutian Canada geese using habitats outside of the closed hunting areas are killed by hunters.

Because many waterfowl species in the Pacific Flyway are now highly concentrated on the greatly reduced wetland acres of their wintering grounds, they are vulnerable to disease. Avian cholera has been identified as the cause of death for many of the Aleutian Canada geese found dead on the wintering grounds near Modesto. This disease is a chronic low-level problem on the wintering grounds but is being managed successfully. The Aleutian Canada Goose Recovery Team has prepared and revised a disease and contamination hazard contingency plan that provides information and direction to reduce the incidence and severity of both disease and contamination hazards (Byrd et al. 1996). In addition, the Service has an active program of collecting and disposing of dead and diseased waterfowl to reduce exposure of healthy geese.

In 1992, the Service sent 19 captive Aleutian Canada geese to Russia to start a captive flock in Kamchatka. This flock is being used as part of a joint Russian/Japanese project to reestablish Aleutian Canada geese on former nesting islands in the Commander and Kuril islands and on their former wintering grounds in northern Japan. In August 1997, 33 Aleutian Canada geese were released on Ekarma Island in the northern Kuril Islands. In winter 1997/1998 three of the marked birds released on Ekarma Island were observed on the wintering grounds in Japan (F. Lee, pers. comm.). In addition, up to 13 additional unmarked Aleutian Canada geese have been observed this winter in Japan (F. Lee, pers. comm.).

The Aleutian Canada Goose Recovery Plan (Byrd et al. 1991) identified the following recovery criteria for the Aleutian Canada goose—(1) an overall population greater than 7,500; (2) 50 pairs of geese nesting in each of 3 remnant breeding areas—western Aleutians (excluding Buldir Island), central Aleutians, and Semidi Islands; and, (3) conservation and management of 25,000–35,000 acres of migration and wintering habitat. The recovery plan states that failure to achieve a specific acreage target of migration and wintering habitat would not preclude delisting of the Aleutian Canada goose if otherwise warranted.

Although the breeding populations of Aleutian Canada geese in the central Aleutians and in the Semidi Islands have not met the second recovery criterion, the overall population of this subspecies is three times the minimum population target identified in the revised recovery plan as required for delisting. Sufficient migration and wintering habitat is now being conserved and managed to support additional population growth (V. Byrd, pers. comm.; D. Woolington, pers. comm.). On the strengths of the population recovery, recent translocations to the central and western Aleutians, an ongoing program to restore the Aleutian Canada goose to the Asian portion of its range, and substantial progress on conserving and managing migration and wintering habitat, the Aleutian Canada Goose Recovery Team concluded in 1995 that it was no longer justified to protect the Aleutian Canada goose under the Endangered Species Act (Byrd 1995).

Request for Data and Comments

The Service requests data on the status of Aleutian Canada geese from all interested parties and all affected local, State, and Federal governments. The Service needs the most recent data from the breeding grounds in Alaska and the wintering grounds and migration areas in California, Oregon and Washington. In particular the Service needs the most recent data on population status and trend and any other information that may bear on the recovery of this subspecies. The Service will use the best available scientific information to evaluate the status of this population, and if deemed appropriate, to prepare a proposal to remove this subspecies from the list of threatened and endangered wildlife. If this proposal is deemed warranted, it will be published in the **Federal Register**, including a review of materials used in its preparation.

References Cited

Beyersdorf, G.S., and L. Pfaff. 1995. Aleutian Canada geese in the Semidi Islands—an assessment of limiting factors. U.S. Fish and Wildlife Service, Alaska Maritime National Wildlife Refuge, Homer, AK. Unpubl. report. 24pp.

Byrd, G.V. 1995. Memorandum to Regional Director, David B. Allen with notes from the Aleutian Canada Goose Recovery Team meeting dated November 2–4, 1995.

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Author

The primary author of this notice is Anthony DeGange (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 30, 1998.

David B. Allen,

Regional Director, Region 7, Fish and Wildlife Service.

[FR Doc. 98–9282 Filed 4–8–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285 and 644

[I.D. 040198B]

Atlantic Tuna Fisheries; Atlantic Billfishes; Public Hearings

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

ACTION: Notice of public hearings; request for comments.

SUMMARY: NMFS will hold seven public hearings to receive comments from fishery participants and other members of the public regarding proposed Atlantic bluefin tuna (ABT) quota specifications and General category effort controls, tournament reporting for Atlantic billfishes, and an increase in minimum size limits for Atlantic blue marlin (BUM) and Atlantic white marlin (WHM). These management actions are necessary to achieve domestic management objectives for Atlantic highly migratory species (HMS).

DATES: The hearings will be held during April and May. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of the public hearings. Written comments on the proposed ABT specifications must be received by May 4, 1998, and comments on the regulatory amendments for Atlantic billfishes must be received by May 22, 1998.

ADDRESSES: The hearings will be held in Massachusetts, Delaware, Florida, Maine, and North Carolina. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of the public hearings. Written comments should be sent to Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Clearly mark the outside of the envelope ''HMS Comments.''

FOR FURTHER INFORMATION CONTACT: Mark Murray-Brown at 978–281–9260, Sarah McLaughlin at (301) 713–2347, or Buck Sutter at 813–570–5447.

SUPPLEMENTARY INFORMATION: The actions that are the subject of the hearings are necessary to improve management and monitoring of the U.S. Atlantic tuna and billfish fisheries, to implement 1996 and 1997 International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations, and to enhance collection of data to improve assessment of the environmental, economic, and social impacts of the fisheries.

Complete descriptions of the proposed ABT specifications and the interim billfish measures are contained in the proposed rule for ABT published April 2, 1998 (63 FR 16220) or in the interim rule for billfish published March 24, 1998 (63 FR 14030) and are not repeated here. Copies of these actions may be obtained by writing (see **ADDRESSES**) or calling one of the contact persons (see **FOR FURTHER INFORMATION CONTACT**). The public hearing schedule is as follows:

Thursday, April 16, 1998, Plymouth, MA, 7:30–9:30 p.m.

Sheraton Inn Plymouth, 180 Water Street, Plymouth, MA 02360.

Tuesday, April 21, 1998, Wilmington, DE, 7:00–9:00 p.m.

Wilmington Hilton, 630 Naamans Road, Wilmington, DE 19703.

Thursday, April 23, 1998, Panama City, FL, 7:30–9:30 p.m.

National Marine Fisheries Service, 3500 Delwood Beach Road, Panama City, FL 32408.

Monday, April 27, 1998, Brunswick, ME, 7:00–9:00 p.m.

Atrium Inn and Conference Center, Cooks Corner, Brunswick, ME 04011.

Monday, April 27, 1998, Fort Lauderdale, FL, 7:30–9:30 p.m.

Holiday Inn, 4900 Powerline Road/I–95 Exit 32, Fort Lauderdale, FL 33309.

Tuesday, April 28, 1998, St. Petersburg, FL, 7:30–9:30 p.m.

NMFS Southeast Regional Office, 9721 Executive Center Drive North, St. Petersburg, FL 33703.

Friday, May 1, 1998, Atlantic Beach, NC, 7:00–9:00 p.m.

Sheraton Atlantic Beach, 2717 West Fort Macon Road, Atlantic Beach, NC 28512.

The purpose of this announcement is to alert the interested public of hearings and provide for public participation.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rebecca Lent at least 5 days prior to the hearing date (see **ADDRESSES**).

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: April 3, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–9260 Filed 4–3–98; 4:40pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 68
Thursday, April 9, 1998

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

Animal and Plant Health Inspection Service

[Docket No. 97–114–2]

Monsanto Co.; Availability of Determination of Nonregulated Status for Tomato Genetically Engineered for Insect Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that the Monsanto Company's tomato line designated as 5345, which has been genetically engineered for resistance to certain lepidopteran insect pests, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Monsanto Company in its petition for a determination of nonregulated status, an analysis of other scientific data, and our review of comments received from the public in response to a previous notice announcing our receipt of the Monsanto Company's petition. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: March 26, 1998.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and all written comments received regarding the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnology and Biological Analysis, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–4882. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 14, 1997, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 97–287–01p) from Monsanto Company (Monsanto) of St. Louis, MO, seeking a determination that a tomato line designated as 5345, which has been genetically engineered for resistance to certain lepidopteran insect pests, does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

On November 28, 1997, APHIS published a notice in the **Federal Register** (62 FR 63312–63313, Docket No. 97–114–1) announcing that the Monsanto petition had been received and was available for public review. The notice also discussed the role of APHIS, the Environmental Protection Agency (EPA), and the Food and Drug Administration in regulating the subject tomato line and food products derived from it. In that notice, APHIS solicited written comments from the public as to whether this tomato line posed a plant pest risk. The comments were to have been received by APHIS on or before January 27, 1998. During the designated 60-day comment period, APHIS received two negative comments on the subject petition, both of which were from consumer policy organizations. The commenters argue that APHIS should deny the subject petition because the petitioner's insect pest resistance management strategies are inadequate based on recently published information in scientific journals. However, APHIS regulatory authority is based on an assessment of plant pest risk. EPA is the lead agency dealing with pest resistance management strategies for transgenic insect resistant plants, and EPA has established a pest resistance management working group to deal with pest resistance management issues. APHIS is working with EPA to examine the issues surrounding the development of pest resistance, and scientific consultations in public forums are being pursued in conjunction with the registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). While APHIS has carefully considered the comments submitted, our determination has not been affected by the points made by the commenters because they extend to authority exercised by EPA under FIFRA.

Analysis

Tomato line 5345 has been genetically engineered to express a CryIA(c) insect control protein derived from the common soil bacterium *Bacillus thuringiensis* subsp. *kurstaki* HD–73 (Btk). The subject tomato line also expresses the *nptII* gene, which codes for the enzyme neomycin phosphotransferase (NPTII) and has been used as a selectable marker in the development of the transgenic tomato plants. While tomato line 5345 contains the *aad* gene, tests indicate that the AAD protein is not expressed in the subject tomato plants. Expression of the added genes is controlled in part by noncoding DNA sequences derived from the plant pathogens *Agrobacterium tumefaciens* and cauliflower mosaic virus. The *Agrobacterium* transformation method was used to transfer the added genes into the UC82B parental tomato plants.

The subject tomato line has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogens. However, evaluation of field data reports from field tests of this tomato line conducted under APHIS notifications since 1995 indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the environmental release of tomato line 5345.

Determination

Based on its analysis of the data submitted by Monsanto and a review of other scientific data and field tests of the subject tomato line, as well as comments submitted by the public regarding the subject petition, APHIS has determined that tomato line 5345:

(1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than tomato lines developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that the subject tomato line and any progeny derived from hybrid crosses with other nontransformed tomato varieties will be as safe to grow as tomato in traditional breeding programs that are not subject to regulation under 7 CFR part 340.

The effect of this determination is that Monsanto's tomato line 5345 is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject tomato line or its progeny. However, importation of tomato line 5345 or seeds capable of propagation is still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that Monsanto's tomato line 5345 and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 3rd day of April 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–9376 Filed 4–8–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Food Stamp Program Form FCS–278–B, Food Stamp Redemption Certificate and Form FCS–278–4, Wholesaler Redemption Certificate

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection. The Food Stamp Act of 1977 requires that FNS will provide all authorized retail food stores and wholesale food concerns with redemption certificates. The redemption certificates are to be used by retailers and wholesale firms to present food coupons to insured financial institutions for credit or for cash. Requirements in the Food Stamp Regulations are the basis for the information collected on Form FCS–278B, Food Stamp Redemption Certificate and Form FCS–287–4, Wholesaler Redemption Certificate.

DATES: Written comments must be submitted on or before June 8, 1998.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Suzanne M. Fecteau, Chief, Redemption Management Branch, Food Stamp Program, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instructions should be directed to Suzanne M. Fecteau, (703) 305–2418.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Redemption Certificate.

OMB Number: 0584–0085.

Expiration Date: 09/30/98.

Type of Request: Extension of a currently approved collection for which approval expires on September 30, 1998.

Abstract: The Food and Nutrition Service (FNS), of the U.S. Department of Agriculture, formerly known as the Food and Consumer Service (FCS), is the Federal Agency responsible for the Food Stamp Program. Section 10 of the Food Stamp Act of 1977, as amended, (the Act) (7 U.S.C. 2019), requires that FNS provide for the redemption through financial institutions, of food coupons accepted by approved retail food stores and wholesale food concerns from program participants. Sections 278.3 and 278.4 of the Food Stamp Program regulations govern the participation of authorized wholesale food concerns and retail stores in the food coupon redemption process. Form FCS–278B, Food Stamp Redemption Certificate and Form FCS–278–4, Wholesaler Redemption Certificate (RCs) are required to be used by all authorized wholesalers or retailers, and are processed by financial institutions when they are represented for credit or for cash. Without the RCs, no vehicle would exist for financial institutions, Federal Reserve Banks, and the FNS to track deposits of food coupons.

The burden associated with this form is derived from the number of RCs processed annually, based on information available in our STARS (Store Tracking Redemption System) database. As of December 1997, the number of program respondents was 184,300 retailers and wholesalers and 5,850 banks participating in the Food Stamp Program. The number of completed RC responses by authorized retailers was 20,750,000 annually, with total annual burden hours calculated to be 415,000 hours. We estimate that it takes an average of 1.2 minutes (or .020 hours) for a retailer to complete the information on the RC and for the financial institution to handle and process the document. In fiscal year 1999, we estimate that the number of program respondents will be 176,928 respondents with 5,850 banks continuing to participate in the Food Stamp Program—a reduction of 7,372 (or 4 percent) respondents. We also

estimate that the number of completed RC responses by authorized retailers to be 19,297,500 annually—providing for a reduction of 1,452,500 (or seven percent) annual responses, and a total annual burden hours calculated to be 385,950 hours. The estimated reduction of respondents and annual burden hours is based on a projected decrease in the number of authorized retailers participating in the Food Stamp Program, and a decrease in the number of RCs processed as a result of fewer authorized retailers accepting paper food coupons due to the increased use of the Electronic Benefit Transfer (EBT) system.

As a result of the Agency name change, the forms will be changed to reflect the new Agency name when our inventory records indicate that stock on hand is low and needs replenishment.

Affected Public: Businesses, wholesale food concerns, or other-not-for-profit financial institutions.

Estimated Number of Respondents: 176,928.

Estimated Annual Number of Responses per Respondent: 109.06979.

Estimated Total Annual Responses: 19,297,500.

Estimate of Burden: Estimated to average .020 hours per response.

Estimated Total Annual Burden: 385,950 hours.

Dated: March 26, 1998.

Yvette S. Jackson,

Administrator, Food and Nutrition Service.

[FR Doc. 98–9416 Filed 4–8–98; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Implementation of a New Official Moisture Meter

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is announcing the selection of a new official moisture meter; i.e., a device approved by GIPSA for determining the moisture content of grain inspected under the United States Grain Standards Act. Specifically, the Grain Analysis Computer Model 2100 (GAC 2100), manufactured by Dickey-john Corporation, Auburn, Illinois, has been selected by GIPSA to replace the Motomco Model 919 Moisture Meter. The new moisture meter is expected to improve the ease, speed, and reliability of official moisture measurement and to allow automated measurements and electronic transmission of results.

FOR FURTHER INFORMATION CONTACT: Steven N. Tanner, Director, Technical Services Division, GIPSA, USDA, 10383 N. Executive Hills Boulevard, Kansas City, Missouri 64153; telephone (816) 891–0401; fax (816) 891–0478.

SUPPLEMENTARY INFORMATION:

The Grain Inspection, Packers and Stockyards Administration (GIPSA), acting through the USDA Animal and Plant Health Inspection Service, issued a solicitation on May 15, 1997, for the purpose of selecting and procuring new official moisture meters. GIPSA uses a single technology for all official moisture measurements because research has demonstrated that the use of multiple technologies would result in significant uncorrectable differences between official inspection points. This is true even if the different technologies have comparable accuracy with respect to the USDA air oven reference method. Therefore, the moisture meter selected from this solicitation will replace the current official moisture meter model, the Motomco Model 919.

GIPSA evaluated the received proposals according to the criteria specified in the solicitation. The criteria included potential range of grain types for which the instrument could be used; the range of moisture over which it exhibited acceptable accuracy; its potential to be used for measurement of other grading factors; its ability to operate in the temperature, vibrational, and electromagnetic environment typical of a grain inspection point; time and sample size required for measurements; ease of use; instrument self-checking capabilities; manufacturer's quality control plan and error analysis; degree of expected variation between measurements from different instruments of the same model; proposed procedures for checking the performance of field instruments against a master instrument (check-testing); and cost to the government. GIPSA surveyed current users of the instruments and conducted field tests of existing instruments at several different locations.

Implementation of the new instruments for official measurements of grains, oilseeds, and processed commodities will be phased in, product by product, over a period of at least 2 years. For any given product, all official moisture measurements will be performed using the Motomco Model 919 until the transition date for that product; the GAC 2100 will be used exclusively thereafter. The transition date for each product will be announced by GIPSA through a Notice in the **Federal Register** prior to the transition. Transition dates for each product will be selected to minimize the impact of the changes on the value of carry-over stocks and will be announced in advance. Tentative transition dates are as follows: August 1, 1998—corn, soybeans, and sunflower seeds; May 1, 1999—barley, oats, rough rices, sorghum, and all wheats. Transition dates for peas, beans, lentils, and other commodities may lie beyond 1999.

The GAC 2100 uses separate calibration equations for each grain type to achieve optimum accuracy. GIPSA routinely reviews the accuracy of official calibrations and revises calibration equations to optimize accuracy with respect to the USDA air oven method. All GAC 2100 calibration equations will be carefully reviewed for accuracy based on several years' crop data. Where accuracy can be improved, calibrations will be adjusted prior to issuing them as official calibrations.

Both the Motomco Model 919 and the GAC 2100 are calibrated to the USDA air oven method. Therefore, the overall average change in moisture results between the instruments should be quite small. The substantial differences in measurement methods between the two instrument types will, however, cause moisture measurements to differ for the two instruments on specific samples. It is impossible to predict exactly what the differences between Motomco Model 919 and GAC 2100 results will be for a given grain sample. Most results should agree within plus or minus 0.5 percent moisture, but some differences will exceed plus or minus 1.0 percent moisture.

GIPSA is currently reviewing Part 801 of the regulations, ''Official Performance Requirements For Grain Inspection Equipment''. Changes to the regulations will be published as appropriate and necessary.

GIPSA anticipates several important benefits from the new moisture meter. The new instrument's speed and ease of operation will help to hold down inspection costs. The instrument will increase confidence in official moisture results by eliminating most of the operator interactions in the moisture measurement process. Electronic transmission of results and adaptability to automated operation will contribute to improving the timeliness and value of official inspections. The instrument's newer technology and built-in system checks will improve reliability, reduce down-time, and automatically notify the operator of potential performance problems.

GIPSA's decision to approve and adopt the GAC 2100 as the new official moisture meter does not mean that the Agency endorses or recommends this instrument for unofficial purposes over other similar instruments that are not approved for the official system. The Agency's selection of this instrument was based on GIPSA's unique operational needs. Other instrument models may be as suitable or more suitable for a commercial entity's needs.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 2, 1998.

David R. Shipman,

Acting Administrator.

[FR Doc. 98–9417 Filed 4–8–98; 8:45 am]

BILLING CODE 3410–EN–P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME Friday, April 17, 1998, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of March 6, 1998 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointment for Texas
VI. State Advisory Committee Reports
- ''Race Relations in Rural Western Kansas Towns'' (Kansas)
- ''Focus on Affirmative Action'' (Minnesota)

VII. 1993 Los Angeles Racial and Ethnic Tensions Hearing Executive Summary
VIII. 1996 Los Angeles Racial and Ethnic Tensions Hearing Report
IX. Future Agenda Items
11:00 a.m. Briefing on Schools and Religion Project

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 98–9474 Filed 4–6–98; 4:51 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand

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

SUMMARY: In response to requests by four producers/exporters of subject merchandise and by the petitioners,[1] the Department of Commerce is conducting an administrative review of the antidumping duty order on canned pineapple fruit from Thailand. This review covers seven producers/exporters of the subject merchandise. The period of review is July 1, 1996, through June 30, 1997.

We preliminarily determine that sales have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price or constructed export price and the normal value.

Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Kris Campbell, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0650 or (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

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 Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations provided in 19 CFR Part 351, as published in the **Federal Register** on May 19, 1997 (62 FR 27296).

[1] Maui Pineapple Co. Ltd. and the International Longshoremen's and Warehousemen's Union.

Background

On July 18, 1995, we published in the **Federal Register** the antidumping duty order on canned pineapple fruit from Thailand (60 FR 36775). On July 21, 1997, we published in the **Federal Register** the notice of Opportunity to Request an Administrative Review of this order, covering the period July 1, 1996, through June 30, 1997 (62 FR 38973). On July 31, 1997, the petitioners requested a review of 26 producers/exporters of canned pineapple fruit (CPF), in accordance with 19 CFR 351.213(b)(1). On August 22, 1997, the petitioners withdrew their request for review for all companies except: (1) The Prachuab Fruit Canning Co. Ltd. (Prachuab); (2) Vita Food Factory (1989) Co. Ltd. (Vita); and (3) Siam Fruit Canning (1988) Co. Ltd. (SIFCO).

On July 31, 1997, the following producers/exporters of canned pineapple fruit requested a review in accordance with 19 CFR 351.213(b)(2): (1) Siam Food Products Public Co. Ltd. (SFP); (2) Thai Pineapple Canning Industry (TPC); (3) The Thai Pineapple Public Co. Ltd. (TIPCO); (4) Malee Sampran Factory Public Co. Ltd. (Malee); and (5) Dole Food Company Inc., Dole Packaged Foods Company and Dole Thailand Ltd. (collectively, Dole).

On August 28, 1997, we published the notice of initiation of this antidumping duty administrative review covering the period July 1, 1996, through June 30, 1997 (62 FR 45621).

Partial Rescission of Antidumping Duty Administrative Review

On October 6, 1997, Dole withdrew its request for a review. Because there was no other request for a review of Dole, and because Dole's letter withdrawing its request for a review was timely filed, we are rescinding the review with respect to Dole in accordance with 19 CFR 351.213(d)(1).

Scope of the Review

The product covered by this review is canned pineapple fruit. For purposes of the review, CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (i.e., juice-packed). Although these

HTSUS subheadings are provided for convenience and for customs purposes, our written description of the scope is dispositive.

Duty Absorption

On February 12, 1998, the petitioners requested that the Department investigate the extent to which duty absorption has occurred in this review. Section 351.213(j)(1) of our regulations provides that we will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation. Because the petitioners' request was untimely filed, we have not investigated the occurrence of duty absorption in this review.

Use of Facts Available

We have determined Vita's antidumping rate based on the facts available because this respondent failed to participate fully in, and has significantly impeded, this review. On January 8, 1998, counsel for Vita notified us that it had withdrawn its representation of, and entry of appearance on behalf of, this company. On January 9, 1998, we contacted Vita to determine whether the company planned to continue as a respondent in this review. Vita notified the Department on January 12, 1998, that it planned to continue in this review.

On January 20, 1998, we notified Vita that we had not received its response to our January 2, 1998, supplemental section A questionnaire. Vita notified the Department on January 22, 1998, that it had no knowledge of the supplemental section A questionnaire. Because we initially issued the supplemental section A questionnaire to counsel for Vita prior to its withdrawal as Vita's representative, we sent another copy of the questionnaire directly to Vita on January 27, 1998, and granted Vita additional time, until February 4, 1998, to respond. We also provided Vita with instructions on how to file submissions with the Department, instructions for serving such submissions to interested parties, and an interested parties list for this review. On the same date, we also sent a supplemental questionnaire for sections B and C directly to Vita by certified mail.

The record shows that on February 5, 1998, we again informed Vita that we had not received its response to the supplemental questionnaire for section A. At the same time, we reminded Vita of the February 6, 1998, deadline for its response to section D of the questionnaire (which we issued directly to the company on January 13, 1998), and its February 11, 1998, deadline for its response to the supplemental questionnaire for sections B and C. We have not received responses to any of these information requests.

Because Vita did not respond to our requests for information, without which we are unable to perform an analysis of its pricing practices, we preliminarily determine that the use of facts available is appropriate, in accordance with section 776(a) of the Act. Specifically, by failing to respond to section D of the questionnaire, Vita has precluded the Department from conducting an analysis to determine whether its comparison-market (Germany) sales prices were below the cost of production (COP) in substantial quantities. In addition, by not responding to the supplemental questionnaires, Vita has failed to provide information regarding its selling practices in the United States and Germany. Accordingly, we determine that, pursuant to section 776(b) of the Act, it is appropriate to make inferences adverse to the interests of Vita because it failed to cooperate to the best of its ability.

Where we must base the entire dumping margin for a respondent in an administrative review on facts available because that respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the use of inferences adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Due to Vita's failure to cooperate, we have preliminarily assigned to Vita as adverse facts available a rate of 55.77 percent, the highest rate calculated for any respondent during any segment of this proceeding. This rate was calculated for a respondent in the less-than-fair-value (LTFV) investigation.

Because information from prior segments of the proceeding constitutes secondary information, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that corroborate means simply that the Department will satisfy itself that the secondary information to be used has probative value. See H.R. Doc. 316, vol. 1, at 870 (1994).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this review, we are not aware of any circumstances that would render the use of the margin selected for Vita as inappropriate.

Fair Value Comparisons

We compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. We first attempted to compare contemporaneous sales[2] of products sold in the U.S. and comparison markets that were identical with respect to the following characteristics: weight, form, variety, and grade. Where we were unable to compare sales of identical merchandise, we compared U.S. products with the most similar merchandise sold in the comparison market based on the characteristics listed above, in that order of priority. Where there were no appropriate comparison market sales of comparable merchandise, we compared the

[2] For all companies except Prachuab and TPC, we matched U.S. and comparison market sales using invoice date as the date of sale for both markets. Our use of other dates as the date of sale for Prachuab and TPC is discussed in the company-specific sections of this notice.

merchandise sold in the United States to constructed value (CV).

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 133 F.3d 897 (Fed. Cir. 1998) (CEMEX). In that case, based on the pre-URAA version of the Act, the Court ruled that the Department may not resort immediately to CV as the basis for foreign market value (now normal value) when we find home market sales of the identical or most similar merchandise to be outside the ordinary course of trade. This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ordinary course of trade to include sales disregarded pursuant to the cost test. See Section 771(15) of the Act. Consequently, pursuant to this court decision, we have reconsidered our practice and have determined that, where we find comparison market sales of merchandise identical or most similar to that sold in the United States to be outside the ordinary course of trade, it would be inappropriate to resort directly to CV as the basis for NV. Instead, we will compare other sales of similar merchandise to the U.S. sales, if such other sales exist and are otherwise appropriate. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison.

Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all comparison market sales of the foreign like product that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no comparison market sales of identical merchandise made in the ordinary course of trade, we compared U.S. sales to comparison market sales of the most similar foreign like product made in the ordinary course of trade, based on characteristics listed above. Thus, we have implemented the Court's decision in CEMEX.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP as defined in sections 772(a) and 772(b) of the Act, respectively. We determined the EP or CEP for each company as follows.

TPC

During the POR, TPC made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by TPC to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts of record. We calculated a CEP for sales made by TPC's affiliated U.S. reseller, Mitsubishi International Corporation (MIC), after importation of the subject merchandise into the United States. EP and CEP were based on the packed FOB, CIF, or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions for discounts and rebates, including early payment discounts, promotional allowances, freight allowances, and billback discounts and rebates. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight from plant to port of exportation, foreign brokerage and handling, other miscellaneous foreign port charges, international freight, marine insurance, U.S. customs brokerage, U.S. customs duty, harbor maintenance fees, merchandise processing fee, and U.S. inland freight expenses (freight from port to warehouse and freight from warehouse to the customer).

In accordance with section 772(d)(1) of the Act, for CEP sales we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including commissions, direct selling expenses (credit costs, warranty expenses), and indirect selling expenses incurred by MIC in the United States. We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act.

Consistent with our findings in the first period of review,[3] we have based TPC's date of sale on the contract date for EP transactions and on the invoice date for CEP transactions. Although TPC suggested in its questionnaire response that invoice date was the appropriate date of sale for EP as well as CEP transactions, it did not provide evidence of any changes in the material terms of sale (price and quantity) between the contract date and invoice date for EP transactions.

TIPCO

We calculated an EP for all of TIPCO's sales because the merchandise was sold either directly by TIPCO or indirectly through its U.S. affiliate, TIPCO Marketing Co. (TMC), to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. Sales through TMC involved direct shipment from TIPCO to the unaffiliated customer, without any merchandise entering TMC's physical inventory. Further, TMC's involvement in the sales process for indirect sales was limited to that of a processor of sales documentation. We calculated EP based on the packed FOB or CIF price to unaffiliated purchasers for exportation to the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expenses (brokerage and handling, port charges, stuffing expenses, and inland freight), international freight, U.S. customs duties, and U.S. brokerage and handling.

SFP

We calculated an EP for all of SFP's sales because the merchandise was sold directly by SFP to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. SFP has one employee located in the United States who communicates with U.S. customers regarding SFP's U.S. sales. However, the information on record indicates that SFP's Bangkok office is responsible for confirming orders, issuing the invoice direct to the customer, and for arranging for shipment to the U.S. port. Accordingly, we have preliminarily determined that the activity performed by SFP's U.S. employee does not rise above the level of a processor of paperwork and communications link.

We calculated EP based on the packed FOB or C&F price to unaffiliated purchasers for exportation to the United States. We made deductions from the starting price for discounts. We also made deductions for foreign inland movement expenses and for international freight in accordance with section 772(c)(2)(A) of the Act.

Malee

We calculated an EP for all of Malee's sales because the merchandise was sold either directly by Malee or indirectly through its U.S. affiliate, Icon Foods LLC (Icon), to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. Sales through Icon involved direct shipment from Malee to the unaffiliated customer, without any merchandise entering Icon's physical inventory. Further, Icon's involvement in the sales process for indirect sales was limited to

[3] See Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple fruit From Thailand, 63 FR 7392, 7394 (February 13, 1998) (Final Results).

that of a processor of sales documentation. We calculated EP based on the packed FOB or CIF price to unaffiliated purchasers for exportation to the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign movement expenses (brokerage and handling and inland freight to the port of exportation), international freight, marine insurance and U.S. customs duties.

Prachuab

We calculated an EP for all of Prachuab's sales because the merchandise was sold directly by Prachuab to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated EP based on the packed, FOB or C&F price to unaffiliated purchasers for exportation to the United States. We made deductions from the starting price for foreign movement expenses (including inland freight and containerization charges) and international freight in accordance with section 772(c)(2)(A) of the Act. We based Prachuab's date of sale on shipment date because the information on the record indicates that: (1) Prachuab's date of shipment occurs within 3–5 days of its date of invoice and (2) Prachuab records its sales based on date of shipment.

SIFCO

We calculated an EP for all of SIFCO's sales because the merchandise was sold directly by SIFCO to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated EP based on the packed, FOB price to unaffiliated purchasers for exportation to the United States. We made deductions from the starting price for foreign inland movement expenses in accordance with section 772(c)(2)(A) of the Act.

Normal Value

A. Selection of Comparison Markets

Based on a comparison of the aggregate quantity of home market sales and U.S. sales, we determined that, with the exception of Malee, the quantity of foreign like product each respondent sold in the exporting country did not permit a proper comparison with the sales of the subject merchandise to the United States because the quantity of each company's sales in its home market was less than five percent of the quantity of its sales to the U.S. market. See section 773(a)(1) of the Act. For these respondents, in accordance with section 773(a)(1)(B)(ii) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in each respondent's largest third-country market, *i.e.*, Germany for TPC and SFP, Finland for TIPCO, and Japan for Prachuab and SIFCO.

For Malee, the quantity of foreign like product sold in Thailand did permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a)(1)(B) of the Act, because the quantity of Malee's sales in its home market was more than five percent of the quantity of its sales to the U.S. market. Accordingly, we have based NV on Malee's sales in Thailand.

B. Cost of Production Analysis

Based on timely allegations filed by the petitioners, we initiated COP investigations of Vita, Prachuab and SIFCO, to determine whether sales were made at prices below the COP. See Memoranda from Case Analysts to Richard W. Moreland, dated January 12, 1998 (Vita), January 27, 1998 (Prachuab) and February 27, 1998 (SIFCO). In addition, because we disregarded below-cost sales in the last completed review of TPC, TIPCO and SFP,[4] and in the last completed segment of the proceeding involving Malee (*i.e.*, the less-than-fair-value investigation), we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Tariff Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by TPC, TIPCO, SFP, Malee, Vita, Prachuab and SIFCO in the comparison market.

We conducted the COP analysis as described below.

1. Calculation of COP/Fruit Cost Allocation

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of the costs of materials, fabrication, general expenses, and packing costs. We relied on the submitted COPs except in the specific instances noted below, where the submitted costs were not appropriately quantified or valued.

The Department's long-standing practice, now codified at section 773(f)(1)(A) of the Act, is to rely on a company's normal books and records if such records are in accordance with home country generally accepted accounting principles (GAAP) and reasonably reflect the costs associated with production of the merchandise. In addition, as the statute indicates, the Department considers whether an accounting methodology, particularly an allocation methodology, has been historically used by the company. See section 773(f)(1)(A) of the Act. In previous segments of this proceeding, the Department has determined that joint production costs (*i.e.*, pineapple and pineapple processing costs) cannot be reasonably allocated to canned pineapple on the basis of weight. See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand, 60 FR 29553, 29561 (June 5, 1995)), and Final Results, 63 FR 7392, 7398.[5] For instance, cores and shells are used in juice production, while trimmed and cored pineapple cylinders are used in CPF production. Because these various parts of a pineapple are not interchangeable when it comes to CPF versus juice production, it would be unreasonable to value all parts of the pineapple equally by using a weight-based allocation methodology. Several respondents that revised their fruit cost allocation methodologies during the 1995–96 POR changed to weight-based methodologies and did not incorporate any measure of the qualitative factor of the different parts of the pineapple. As a result, such methodologies, although in conformity with Thai GAAP, do not reasonably reflect the costs associated with production of CPF. Therefore, for companies whose fruit cost allocation methodology is weight-based, we requested that they recalculate fruit costs allocated to CPF based on a net realizable value (NRV) methodology. Consistent with prior segments of this proceeding, the NRV methodology that we requested respondents to use was based on company-specific historical amounts for sales and separable costs during the five-year period of 1990 through 1994. We made this request of all companies in this review except for Malee. Because Malee already allocates

[4] See Final Results, 63 FR 7392 (February 13, 1998).

[5] The Court of International Trade (CIT) ruled in favor of the respondents who challenged the Department's position that joint production costs cannot be reasonably allocated to canned pineapple on the basis of weight. The Thai Pineapple Public Co. Ltd., et al. v. United States, Slip Op. 96–182 (CIT November 8, 1996). That decision is currently being reviewed by the Court of Appeals for the Federal Circuit.

fruit costs on a basis that reasonably takes into account qualitative differences between pineapple parts used in CPF versus juice products in its normal accounting records, we have not required Malee to recalculate its reported costs using the NRV methodology.

We made the following company-specific adjustments to the cost data submitted in this review.

Prachuab

While Prachuab provided its historical NRV data as requested, it calculated its variable fruit costs using POR-specific NRV data. Therefore, we have recalculated Prachuab's fruit costs using the historical five-year NRV data indicated above.

SIFCO

SIFCO used a weight-based methodology to calculate its variable fruit costs. Therefore, we have recalculated SIFCO's fruit costs using the historical five-year NRV data from SIFCO's February 20, 1998 submission.

In addition, we noted that SIFCO's databases contained missing values for packing expenses. Therefore, for sales to the United States and for sales to Japan, we used per-unit packing expenses provided in SIFCO's February 12, 1998 submission. SIFCO used a weight-based methodology.

SFP

SFP's reported fruit costs were based on NRV data for the 1992–95 period. Further, the NRV ratio was based on a ratio of standard cases of solid products to standard cases of juice products, which is distortive because the weighting factors used to derive standard cases of solid and juice products are not equivalent. Therefore, we have recalculated SFP's fruit costs using the 1990–94 NRV ratio that was verified in the previous review.

2. Test of Comparison Market Sales Prices

As required under section 773(b) of the Act, we compared the adjusted weighted-average COP for each respondent to the comparison market sales of the foreign like product, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the revised COP to the comparison market prices, less any applicable movement charges, taxes, rebates, commissions and other direct and indirect selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product were made at prices below the COP, we disregarded the below-cost sales because: (1) such sales were found to be made within an extended period of time in substantial quantities in accordance with sections 773(b)(2) (B) and (C) of the Act; and (2) based on comparisons of price to weighted-average COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain CPF products, TIPCO, SFP, TPC, Malee, Prachuab, and SIFCO made comparison market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

C. Calculation of Normal Value Based on Comparison Market Prices

We determined price-based NVs for each company as follows. For all respondents, we made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses consistent with section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset). Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to normal value for the lesser of (1) the amount of the commission paid in the U.S. market, or (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to normal value following the same methodology. Company-specific adjustments are described below.

TPC

We based third-country market prices on the packed, ex-factory, or delivered prices to unaffiliated purchasers in Germany. We adjusted for the following movement expenses: inland freight from plant to port of exportation, foreign brokerage and handling, other miscellaneous foreign port charges, and international freight. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, letter of credit charges, warranties and bank charges) and adding U.S. direct selling expenses (credit expenses, letter of credit charges, bank charges, and warranties). For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on third-country market sales and adding U.S. direct selling expenses other than those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act (*i.e.*, we added expenses for letters of credit and bank charges incurred by TPC in Thailand). We offset commission expenses in the manner described above. We denied TPC's claimed CEP offset for the reasons stated in the *Level of Trade* section below.

TPC claimed that because there were frequent changes in the material terms of sale between the contract date and the invoice date with respect to comparison market sales, the invoice date was the appropriate comparison market date of sale. We agree that TPC has demonstrated that invoice date is the appropriate date of sale in the comparison market, based on such changes to the material terms of sale. However, as noted in the *Export Price and Constructed Export Price* section above, contrary to our findings in the first review, TPC incorrectly claimed that invoice date was the appropriate date of sale for both EP and CEP transactions, and reported comparison market sales made 90 days before the earliest invoice date of U.S. sales. Because we have determined that contract date, not invoice date, is the

appropriate date of sale for EP transactions, we have matched such sales to comparison market sales based on U.S. contract date. Since the contract date precedes the invoice date, we do not have all comparison market sales made 90 days before the contract date of the first U.S. sale. Accordingly, we resorted to constructed value where we were unable to match EP sales to contemporaneous comparison market sales (*i.e.*, those sales made during the same month, 90 days before, or 60 days after, the contract date of the U.S. sale).

TIPCO

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in Finland. We adjusted for the following movement expenses: brokerage and handling, port charges, liner expenses, stuffing expenses and foreign inland freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses and bank charges) and adding U.S. direct selling expenses (credit expenses and bank charges). We offset commission expenses in the manner described above.

SFP

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in Germany. We adjusted for the following movement expenses: foreign inland freight and port charges. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses and bank charges) and adding U.S. direct selling expenses (credit expenses and bank charges).

Malee

We based home market prices on the packed, delivered prices to unaffiliated purchasers in Thailand. We adjusted for foreign inland freight. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expenses, warranty expenses, advertising expenses and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions). No other adjustments to NV were claimed or allowed.

Prachuab

We based third-country market prices on the packed, FOB or C&F prices to unaffiliated purchasers in Japan. We adjusted for the following movement expenses: foreign inland freight, containerization charges, and international freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions). As with Prachuab's U.S. sales, we based the date of sale of Prachuab's comparison market sales on shipment date.

SIFCO

We based third-country market prices on the packed, C&F prices to unaffiliated purchasers in Japan. We adjusted for the following movement expenses: foreign inland freight and international freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions).

D. Calculation of Normal Value Based on Constructed Value

For those CPF products for which we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product in the ordinary course of trade, we compared the EP or CEP to CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the cost of manufacturing (COM) of the product sold in the United States, plus amounts for general expenses, comparison market profit, and U.S. packing costs. We calculated each respondent's CV based on the methodology described in the Calculation of COP section of this notice, above. In accordance with section 773(e)(2)(A) of the Act, we used the actual amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country to calculate general expenses and comparison market profit.

For price-to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses other than those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act (*i.e.*, we added letter of credit expenses and bank charges for TPC). We also made adjustments, where applicable, for the commission offset in the manner described above.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP transaction. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information from each respondent about the marketing stage involved in the reported U.S. and comparison market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and third-country market sales, we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. We expect that, if claimed levels of trade are the same, the

functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

Our level-of-trade analysis for each respondent is described below.

TPC

During the POR, TPC made sales through multiple channels of distribution in both the U.S. and German markets. In the United States, TPC made both direct sales to unaffiliated customers and sales through its affiliated U.S. reseller MIC. In Germany, TPC made both direct sales and indirect sales through an affiliated reseller in the Netherlands, Princes Foods B.V. (Princes). We compared the selling activities performed by TPC for EP sales to the activities performed by TPC and MIC for CEP sales (after excluding those selling activities related to the expenses deducted under section 772(d) of the Act), and found them to be both limited in scope and essentially identical. The functions that TPC performed on both direct and indirect sales were limited to negotiation of prices, processing of purchase orders, and invoicing. Therefore, we find that there is a single level of trade in the United States for both EP and CEP sales.

Similarly, we compared the selling functions and activities performed by TPC for direct sales to Germany to the functions and activities performed by TPC and Princes for indirect sales to Germany. These activities were also limited to negotiating prices with German customers, invoicing those customers, and making limited sales calls. In essence, the only difference in selling activity between TPC's direct and indirect sales to Germany is that indirect sales involved the issuance of an additional invoice among affiliated parties, and this difference does not establish a significantly more advanced marketing stage. Therefore, we have considered TPC's direct and indirect sales to Germany as being at a single level of trade. Because the selling functions performed for TPC's sales in the two markets are essentially the same, irrespective of channel of distribution, we find that all of TPC's sales were made at a single level of trade. Therefore, no level of trade adjustment or CEP offset is warranted in the calculation of TPC's dumping margin.

Malee

Malee reported that all of its sales made to the United States were to importer/distributors and involved minimal selling functions on the part of Malee. Malee claimed two different levels of trade for its sales in the home market: (1) factory-direct sales involving minimal selling functions, and which are at a level of trade identical to the EP level of trade; and (2) sales through Malee Supply (1994) Co. Ltd. (Malee Supply), an affiliated reseller.

Malee made direct sales to hotels, restaurants and industrial users. Malee claimed that its only selling function on direct sales was delivery of the product to the customer. Malee reported numerous selling functions undertaken by Malee Supply for its resales to small wholesalers, retailers and end-users. In addition to maintaining inventory, Malee Supply also handled all advertising during the POR. The advertising was directed at the ultimate consumer. Malee also reported that Malee Supply replaces damaged or defective merchandise and, as necessary, breaks down packed cases into smaller lot sizes for many sales.

Our examination of the selling activities, selling expenses, and customer categories involved in these two channels of distribution indicates that they constitute separate levels of trade, and that the direct sales are made at the same level as Malee's U.S. sales. Accordingly, we matched Malee's U.S. sales to direct sales made in the home market. Because we were able to match all U.S. sales in this manner to sales made at the same level of trade, without resorting to home market sales made through the other level of trade, we did not reach the issue of whether a level-of-trade adjustment was appropriate under the facts of this case.

SFP, TIPCO, Prachuab and SIFCO

In this review, SFP, TIPCO, Prachuab and SIFCO claimed that all of their sales were made through a similar channel of distribution (direct sales to customers in export markets) and involved identical selling functions, irrespective of market. In examining these selling functions, we found that sales activities were limited to negotiation of prices, processing of purchase orders/contracts, invoicing, and collection of payment; there was little or no strategic and economic planning, advertising or sales promotion, technical services, technical assistance, or after-sale service performed in either market. Therefore, for these four respondents we have preliminarily found that there is a single (and identical) level of trade in each market, and no level-of-trade adjustment is required for comparison of U.S. sales to third-country sales.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a fluctuation. In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period July 1, 1996, through June 30, 1997:

Manufacturer/exporter	Margin (percent)
Siam Food Products Public Company Ltd.	0.59
The Thai Pineapple Public Company, Ltd.	5.24
Thai Pineapple Canning Industry Corp., Ltd.	4.78
Malee Sampran Factory Public Company Ltd.	1.01
The Prachuab Fruit Canning Co. Ltd.	10.96
Siam Fruit Canning (1988) Co. Ltd.	14.19
Vita Food Factory (1989) Co. Ltd.	55.77

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. See 19 CFR 351.224(b). Any interested party may request a hearing within thirty days of publication. See 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate

entries. Individual differences between EP/CEP and NV may vary from the percentages stated above. Upon completion of this review, the Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CPF from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for companies listed above will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis,* the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 24.64 percent, the All Others rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 2, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–9435 Filed 4–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–803]

Industrial Nitrocellulose from Germany; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review of industrial nitrocellulose from Germany.

SUMMARY: In response to a request from the petitioner, Hercules Incorporated, the Department of Commerce is conducting an administrative review of the antidumping duty order on industrial nitrocellulose from Germany. The period of review is July 1, 1996 through June 30, 1997. This review covers imports of industrial nitrocellulose from one producer, Wolff Walsrode AG.

We have preliminarily found that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price or constructed export price and normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Zev Primor, AD/CVD Enforcement Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4195, and 482–4114, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

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 Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351, (62 FR 27296, May 19, 1997).

Background

On July 10, 1990, the Department published in the **Federal Register** (55 FR 28271) the antidumping duty order on industrial nitrocellulose (INC) from Germany. On July 21, 1997, the Department published in the **Federal Register** (62 FR 38973) a notice of opportunity to request an administrative review of this antidumping duty order. On July 30, 1997, in accordance with 19 CFR 351.213(b), the petitioner and domestic producer of the subject merchandise, Hercules Incorporated, requested that the Department conduct an administrative review of Wolff Walsrode AG's (WWAG's) imports of subject merchandise to the United States. We published the notice of initiation of this review on August 28, 1997 (62 FR 45621).

Verification

As provided in section 782(i)(3) of the Act, we verified the data provided by the respondent using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Scope of the Review

Imports covered by this review are shipments of INC from Germany. INC is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which as a nitrogen content of greater than 12.2 percent. INC is currently classified under Harmonized Tariff Schedule (HTS) subheading 3912.20.00. While the HTS item number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage. The review period is July 1, 1996 through June 30, 1997.

Product Comparisons

We calculated monthly, weighted-average, normal values (NVs). Where possible, we compared U.S. sales to sales of identical merchandise in Germany. When identical merchandise

was not sold during the relevant contemporaneous period, we compared U.S. sales to sales of the next most similar foreign like product (*see* section 771(16) (B) and (C) of the Act).

Export Price and Constructed Export Price

For sales to the United States, we used export price (EP) or constructed export price (CEP) as defined in sections 772(a) and 772(b) of the Act, as appropriate. In accordance with sections 772(a) and (c) of the Act, we calculated an EP where the merchandise was sold by the producer outside the United States directly to the first unaffiliated purchaser in the United States prior to importation. In accordance with sections 772(b), (c) and (d) of the Act, we calculated a CEP for those sales made by affiliated U.S. resellers that took place after importation into the United States. For sales made prior to importation, we considered the following factors to determine whether to treat the sales as EP or CEP: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. affiliate was limited to that of a processor of sales-related documentation and a communications link with the unrelated buyer. The facts indicate that the activities of the U.S. affiliate were ancillary to these sales (*e.g.*, arranging transportation or customs clearance, invoicing), and therefore, we treated transactions as EP sales. The record in this case indicates that WWAG has correctly classified a portion of its U.S. sales as EP sales. For these sales the unaffiliated U.S. customer communicated directly with WWAG in Germany in placing its order. Wolff Walsrode U.S. (WWUS) acted only as processor of sales-related documentation.

In accordance with sections 782(b), (c) and (d) of the Act, we calculated a CEP for those sales made by affiliated U.S. resellers that took place after importation into the United States. EP and CEP sales were based on the packed C&F, delivered, CIF duty paid, or ex-dock duty paid price to unaffiliated purchasers, in, or for exportation to, the United States. As appropriate, we made deductions for discounts and rebates, including early payment discounts. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. customs brokerage, U.S. customs duties, harbor maintenance fees, merchandise processing fees, and U.S. inland freight expenses (freight from port to warehouse and freight from warehouse to the customer). We also added U.S. freight revenue to gross unit price.

For CEP sales, in accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including commissions paid on sales made by unrelated parties, direct selling expenses (credit costs and warranty expenses), inventory carrying costs, and indirect selling expenses, where applicable. We also deducted an amount for CEP profit in accordance with section 772(d)(3) of the Act.

Normal Value

We compared the aggregate quantity of home market and U.S. sales and determined that the quantity of the company's sales in its home market was more than five percent of the quantity of its sales to the U.S. market. Consequently, pursuant to section 773(a)(1)(B) of the Act, we based NV on home market sales.

Section 773(a)(1)(B) of the Act provides that normal value shall be based on the price at which the foreign like product is sold in the usual commercial quantities and in the ordinary course of trade.

We made adjustments for differences in packing in accordance with section 773(a)(6)(A) and 773(a)(6)B(i) of the Act. We also made adjustments for movement expenses, consistent with section 773(a)(6)(B) of the Act, for inland freight. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on home market sales and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on home market sales and adding any direct selling expenses associated with U.S. sales not deducted under the provisions of section 772(d)(1) of the Act. Because WWAG paid commissions on part of its U.S. sales, in calculating NV, we offset these commissions using the weighted-average amount of indirect selling expenses incurred on home market sales for the comparison product, up to the amount of the U.S. commissions. See 19 CFR 351.410(e).

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP sales. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the construction sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In the present case, there are two channels of distribution in the U.S. market. The first channel, direct (EP) sales, are sales of full container load shipments that travel directly from WWAG to the U.S. customer. The second channel involves (CEP) sales from inventory maintained by WWUS in a warehouse.

In the home market, WWAG also has two different distribution channels. The first type of sales are direct sales to primarily end-users where the product is delivered from the plant's storage warehouse to customer. The second home market distribution channel are those sales where delivery is made from independent, off-site warehouses, primarily for geographic and logistical reasons. There are no functional differences in marketing processes and

selling functions along the chain of distribution between those sales shipped directly from the plant and sales from the warehouse. Therefore, we determine that the two home market channels of distribution comprise a single level of trade.

Based on analysis of the different types of selling functions listed by respondent, relevant classes of customers, and selling expenses for both types of sales in the home and U.S. markets, the Department preliminarily determines that EP sales and home market sales are made at the same level of trade. For these sales, WWAG performs similar selling functions in both markets. However, the Department preliminarily determines that CEP sales are made at a different level of trade than EP sales and the home market sales.

In calculating CEP, certain adjustments are made pursuant to Section 772(c) and (d) of the Act. Specifically, Section 772(d) states that the price used to establish constructed export price are adjusted to remove expenses incurred by WWAG and WWUS in selling subject merchandise in the United States including inventory management, freight arrangements, and invoice processing to name a few. Therefore, when selling functions for CEP sales are compared with selling functions for home market sales, home market sales (NV) are more remote from factory than CEP sales (*i.e.*, that NV is at a more advance level of trade than CEP). Therefore a level of trade adjustment is warranted when comparing NV to CEP sales.

Section 773(a)(7)(B) states that a CEP offset is granted when NV is compared to CEP and NV is determined to be at a more advanced level of trade than the CEP, but the data available do not provide an appropriate basis to determine whether the difference in level of trade affects price comparability. *See* 19 CFR 351.412(f).

In the present case, as there is no level in the home market comparable to the CEP level and only one level of trade in the home market, the data does not exist to quantity a level of trade adjustment. As a result, the Department has preliminarily determined to grant WWAG an adjustment to NV in the form of a CEP offset.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the rates certified by the Federal Reserve Bank. *See* Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996).

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margin exists for the period July 1, 1996, through June 30, 1997:

Manufacturer/exporter	Margin (percent)
Wolff Walsrode AG (WWAG)	6.58

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Interested parties may also request a hearing within ten days of publication. If requested, a hearing will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such briefs, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with the methodology in *Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea* (62 FR 55574, October 27, 1997), we calculated exporter/importer-specific assessment values by dividing the total dumping duties due for each importer by the number of tons used to determine the duties due. We will direct Customs to assess the resulting per-ton dollar amount against each ton of the merchandise entered by these importers during the review period.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of industrial nitrocellulose from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The case deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required where weighted-average margin is *de minimis, i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the original investigation, the cash deposit rate will be 3.84 percent, the ''all others'' rate established in the LTFV investigation.

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 2, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary, Import Administration.

[FR Doc. 98–9432 Filed 4–8–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–506]

Porcelain-On-Steel Cooking Ware From The People's Republic of China; Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On January 26, 1998, the Department of Commerce published in the **Federal Register** (63 FR 3702) its notice of initiation of the administrative review of the antidumping duty order on porcelain-on-steel cooking ware from the People's Republic of China covering

the period December 1, 1996 through November 30, 1997. This review has now been rescinded at the request of the respondent.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Russell Morris or Lorenza Olivas, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

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 Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as set forth at 19 CFR § 353.1, *et seq.*, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

Pursuant to 19 CFR § 351.213(d) of the Department of Commerce's (the Department) regulations, on December 24, 1997, the respondent in this case, Clover Enamelware Enterprise Ltd., a manufacturer/exporter, and its third-country reseller, Lucky Enamelware Factory Limited (together, the respondent), requested that the Department conduct an administrative review of the antidumping duty order on porcelain-on-steel cooking ware from the People's Republic of China, published in the **Federal Register** on December 2, 1986 (51 FR 43414). On January 26, 1998, the Department published in the **Federal Register** (63 FR 3702) its notice of initiation of the antidumping review of the antidumping duty order on porcelain-on-steel cooking ware from the People's Republic of China, covering the period December 1, 1996 through November 30, 1997.

Rescission of Review

On February 27, 1998, the respondent withdrew its request for administrative review. Section 351.213(d)(1) of the Department's regulations provides that ''[t]he Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' See 19 CFR § 351.213(d)(1) (1997). Because the only party which requested a review has withdrawn its request within the regulatory time limit, we are now rescinding this review. The cash deposit rate will continue to be the rate established in the most recently completed segment of this proceeding.

This notice is published in accordance with sections 751 and 777(i) of the Tariff Act of 1930, as amended (19 U.S.C. § 1675 (1995); (19 U.S.C. § 1677f(i) (1995) and 19 CFR § 351.213(d)(4)).

Dated: April 3, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 98–9437 Filed 4–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review of sebacic acid from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on sebacic acid from the People's Republic of China (PRC) in response to requests from the petitioner, Union Camp Corporation, and four respondents: Tianjin Chemicals Import and Export Corporation (Tianjin), Guangdong Chemicals Import and Export Corporation (Guangdong), Sinochem International Chemicals Company, Ltd. (SICC) and Sinochem Jiangsu Import and Export Corporation (Jiangsu). This review covers four exporters of the subject merchandise. The period of review (POR) is July 1, 1996, through June 30, 1997.

We have preliminarily determined that sales have been made below normal value (NV) during this period. If these preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the United States price (USP) and NV. These assessment rates, if adopted for the final results of the review, will be calculated on an importer-specific *ad valorem* duty basis. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Stephen Jacques, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0182 or (202) 482–1391.

APPLICABLE STATUTE AND REGULATIONS: 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 (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are in reference to the regulations, codified at 19 CFR part 351, published on May 19, 1997.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** an antidumping duty order on sebacic acid from the PRC on July 14, 1995 (59 FR 35909). On July 21, 1997, the Department published in the **Federal Register** (62 FR 38973) a notice of opportunity to request an administrative review of the antidumping duty order on sebacic acid from the PRC covering the period July 1, 1996, through June 30, 1997.

On July 30, 1997, in accordance with 19 CFR 351.213(b), Union Camp requested that we conduct an administrative review of Tianjin, Guangdong, SICC, and Jiangsu. On July 29, 1997, Tianjin, Guangdong and SICC requested that we conduct an administrative review. Also on July 29, 1997, Tianjin has requested partial revocation of the antidumping duty order on sebacic acid from the PRC. However, because we have preliminarily determined a margin of 3.53 percent for Tianjin, which is above the Department's *de minimis* standard of 0.5 percent, we preliminarily determine that Tianjin has not met the requirements for revocation. We published a notice of initiation of this antidumping duty administrative review on August 28, 1997 (62 FR 45621). On August 30, 1997, we issued questionnaires to the four respondents. Jiangsu did not respond to the Department's questionnaire. The Department is conducting this

administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this order are all grades of sebacic acid, a dicarboxylic acid with the formula (CH2)8(COOH)2, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C10 dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

This review covers the period July 1, 1996, through June 30, 1997, and four exporters of Chinese sebacic acid.

Verification

We conducted verification of the sales and factor information provided by respondent Tianjin located in Tianjin, PRC and one of its producers, Hengshui Dongfeng Chemical Plant (Hengshui), located in Hengshui, PRC. We conducted the verifications using standard verification procedures, including onsite inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Separate Rates

1. Background and Summary of Findings

It is the Department's standard policy to assign all exporters of the merchandise subject to review in non-market-economy countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (''Sparklers''), as amplified in the Final Determination of *Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (''*Silicon Carbide*''). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. Evidence relevant to a *de facto* absence of government control with respect to exports is based on four factors, whether the respondent: (1) sets its own export prices independent from the government and other exporters; (2) can retain the proceeds from its export sales; (3) has the authority to negotiate and sign contracts; and (4) has autonomy from the government regarding the selection of management. See *Silicon Carbide* at 22587; *See* also *Sparklers* at 20589.

In our final determination of sales at less than fair value for the POR covering July 1, 1995 through June 30, 1996, the Department determined that there was *de jure* and *de facto* absence of government control of each company's export activities and determined that each company warranted a company-specific dumping margin. *See Final Results of Antidumping Administrative Review: Sebacic Acid From the People's Republic of China* (62 FR 65674, December 15, 1997) (''*Sebacic Acid*''). For this period of review, SICC , Tianjin and Guangdong have responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final determination in the previous administrative review and continues to demonstrate an absence of government control, both in law and in fact, with respect to their exports, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. During verification of Tianjin, we examined its business and financial statements. We found no evidence of government control of Tianjin's export activities.

2. Separate Rate Determination for Non-Responsive Company

For Jiangsu, which did not respond to the questionnaire, we preliminarily determine that this company does not merit a separate rate. Because the Department assigns a single rate to companies in a non-market economy unless an exporter can demonstrate absence of government control, we preliminarily determine that Jiangsu is subject to the country-wide rate for this case.

United States Price

For SICC, Tianjin and Guangdong, the Department based USP on export price (EP), in accordance with section 772(a) of the Act. We made deductions from EP, where appropriate, for foreign inland freight, ocean freight, brokerage and handling, and marine insurance. *See* ''Factor Valuation'' section of this notice. We selected India as the surrogate country for the reasons explained in the ''Normal Value'' section of this notice.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value (NV) using a factors-of-production methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices, or CV under section 773(a) of the Act. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Therefore, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production in a comparable market economy country which is a significant producer of comparable merchandise. Factors of production include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation.

Section 773(c)(4) of the Act and section 351.408 of the Department's regulations direct us to select a surrogate country that is economically comparable to the PRC. On the basis of per capita gross domestic product (GDP), the growth rate in per capita GDP, and the national distribution of labor, we find that India is a comparable economy to the PRC (*See* Memorandum from Director, Office of Policy, to Office Director, AD/CVD Group III, Office 9, dated February 5, 1998).

The statute (section 773(c)(4) of the Act and section 351.408 of the Department's regulations) also requires that, to the extent possible, the Department use a surrogate country that is a significant producer of merchandise comparable to sebacic acid. The countries that we confirmed to be producers of sebacic acid, such as Japan and the United States, do not have economies comparable to the PRC. We found that information contained in respondent's December 4, 1997 submission indicates that India was a producer of sebacic acid during the POR. Although we do not have information about the quantity of sebacic acid produced in India, we reviewed a fax from an Indian sebacic acid producer with a price quote to a U.S. importer. Moreover, in the last administrative review of this order, we determined that India is a significant producer of comparable merchandise (e.g., oxalic acid) during the POR. (*See* the Analysis Memorandum for the Preliminary Results of the 1996/1997 Review for sebacic acid, page 2) Therefore, we find that India fulfills both requirements of the statute.

For purposes of calculating NV, we valued PRC factors of production, in accordance with section 773(c)(1) of the Act. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) an average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. For those values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices published in the IMF's *International Financial Statistics.* When necessary, we adjusted the values reported in the *Chemical Weekly* to exclude sales and excise taxes. In accordance with our practice, we added to CIF import values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the factory, or from the domestic supplier to the factory. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China* (62 FR 61977, November 20, 1997) In accordance with this methodology, we valued the factors of production as follows:

For castor oil, the Department did not use the surrogate values for castor oil submitted by petitioners in their December 4, 1997 submission because there was no source documentation. We did not use respondent's data because we could not determine whether they were contemporaneous with the POR. Therefore, we have valued this material using price data reported in *The Economic Times* (Bombay), adjusted for inflation, for Hyderabad, Kanpur, Calcutta, and Delhi during the months of June 1995 through December 1995. The Department adjusted these values to account for freight costs between the supplier and the respondents' sebacic acid manufacturing facilities.

For castor seed, the Department did not use the surrogate values for castor oil submitted by petitioners in their December 4, 1997 submission because there was no source documentation. We did not use respondent's data as we could not determine whether they were the contemporaneous with the POR. Therefore, we have valued this material using price data reported in *The Economic Times* (Bombay), adjusted for inflation, for Hyderabad and Kanpur during the months of June 1995 through December 1995. The Department adjusted these values to account for freight costs between the supplier and the respondents' sebacic acid manufacturing facilities.

For caustic soda, the Department used a value reported in the publication *Chemical Weekly* (published in India), using a value published in July 1997 (with a June 1997 price value) submitted by respondents. Because price quotes for caustic soda reported by *Chemical Weekly* are for chemicals with a 100% concentration level of caustic soda, we made chemical purity adjustments according to the particular concentration level of caustic soda used by respondents. We adjusted this value to exclude taxes and to include freight expenses incurred from the suppliers to the respondents' sebacic acid manufacturing facilities.

For macropore resin, we are using the value for activated carbon because the valuations are interchangeable, according to an April 1997 Memorandum from Richard Moreland, Acting Deputy Assistant Secretary, Import Administration to all reviewers. For activated carbon, we are using a value from *Chemical Weekly* from December 1996 submitted by respondent. The Department adjusted this value to account for freight costs between the supplier and the respondents' sebacic acid manufacturing facilities.

For cresol, we are using respondents December 4, 1997 submission of data for price quotes for meta cresol, ortho cresol, and para cresol from *Chemical Weekly* from January 1997. We followed the same methodology to calculate a value for cresol that we used in the previous administrative review. Before calculating the cresol value, we adjusted the para cresol value to exclude sales and excise taxes but we did not have to adjust the meta cresol or ortho cresol values to exclude sales and excise taxes. We adjusted the value to include freight expenses incurred from the suppliers to the respondents' sebacic acid manufacturing facilities.

In Hengshui's questionnaire response to the Department, it submitted a usage factor for activated carbon. However, in pre-verification corrections, Hengshui stated it no longer uses activated carbon to produce sebacic acid, so we did not use activated carbon as an input.

For sodium chloride (also referred to as sodium chlorite or vacuum salt), we are using a published market price reported in *Chemical Weekly* from January 1997 submitted by respondents. We adjusted this value to exclude taxes and to include freight expenses incurred from the suppliers to the respondents' sebacic acid manufacturing facilities.

For phenol, we are using a published market price reported in *Chemical Weekly* from January 1997 submitted by respondents. We adjusted this value to exclude taxes and to include freight expenses incurred from the suppliers to the respondents' sebacic acid manufacturing facilities.

For zinc oxide, we are using a published market price reported in *Chemical Weekly* from January 1997 submitted by respondents. We adjusted this value to exclude taxes and to include freight expenses incurred from the suppliers to the respondents' sebacic acid manufacturing facilities.

For sulphuric acid, we are using a published market price reported in *Chemical Weekly* from January 1997 submitted by respondents. Because price quotes for sulphuric acid reported by *Chemical Weekly* are for chemicals with a 100% concentration level of sulphuric acid, we made chemical purity adjustments according to the particular concentration level of sulphuric acid used by respondents. We adjusted this value to exclude taxes and to include freight expenses incurred from the suppliers to the respondents' sebacic acid manufacturing facilities.

For labor, we used the PRC regression-based wage rate at Import Administration's homepage, Import Library, Expected Wages of Selected NME Countries, revised on June 2, 1997. Because of the variability of wage rates in countries with similar per capita GDPs, section 351.408(c)(3) of the Department's new AD regulations (62 FR 27296, May 19, 1997) requires the use of a regression-based wage rate. The source of this wage rate data on the Import Administration's homepage is found in the *1996 Year Book of Labour Statistics*, International Labour Office (''ILO''), (Geneva: 1996), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates range from 1990 to 1995.

At verification, we discovered that Hengshui underreported unskilled labor employees because Hengshui was not able to substantiate its verbal claim, with source documentation, that additional unskilled labor employees were not involved in producing sebacic acid. At verification, we reviewed the employee salary ledger and the labor worksheet for the sebacic acid production unit and determined that the additional unskilled labor employees on the employee salary list for the sebacic acid production unit were involved in producing sebacic acid. Therefore, we increased the number of unskilled direct labor hours used to make sebacic acid to the reported labor usage factors. As this subject involves proprietary information, please see the Analysis Memorandum for the Preliminary Results of the 1996/1997 Review for sebacic acid for a more complete discussion of this issue.

For factory overhead, we used information obtained from the April 1995 *Reserve Bank of India Bulletin*. From ''Statement 1—Combined Income, Value of Production, Expenditure and Appropriation Accounts, Industry Group-wise'' of that report for the Indian metals and chemicals industries, we summed those components which pertain to overhead expenses and divided them by the sum of those components pertaining to the cost of manufacturing to calculate a factory overhead rate of 15.41 percent. We multiplied this factory overhead rate of 15.41 percent by the cost of manufacture divided by one minus the factory overhead rate of 15.41 percent.

For steam coal, we used prices published in *Monthly Statistics of the Foreign Trade of India, Volume II—Imports* for the period of April 1995 through January 1996, adjusted for inflation. We did not use the respondents' submitted OECD/IEA data for steam coal from 1990 because we had more recent data. Hengshui reported one aggregate category of coal in its questionnaire response. However, at verification, Hengshui presented corrections at the beginning of verification which split the single coal category into two sub-categories: soft and hard coal. We verified that Hengshui's use of two types of coal were correctly presented to the Department at verification. Consequently, for Hengshui, we have used the value for soft coal from the *Gazette of India*, June 1994, adjusted for inflation. However, we were unable to obtain publicly available information for hard coal. Therefore, for Hengshui's hard coal, we are using the steam coal value from the *Monthly Statistics of Foreign Trade of India, Volume II—Imports* for the period of April 1995 through January 1996, adjusted for inflation. For all three types of coal used (hard, soft, and steam), we adjusted the values to include freight expenses incurred from the suppliers to the respondents' sebacic acid manufacturing facilities.

For electricity, the respondents submitted electricity data from 1990, which was not used because we had more recent data. We used information obtained from the *Current Energy Scene in India* for July 1995 and adjusted this value for inflation. At verification, we discovered that Hengshui did not report the electricity used to process crude glycerine, a by-product, into refined glycerine. We added the amount of electricity used to process crude glycerine into refined glycerine to the electricity usage factor reported to the Department in Hengshui's questionnaire response. At verification, we also could not substantiate, with source documentation, the amount deducted for an electric sub-meter. Therefore, we did not allow the deduction of the amount of electricity recorded at the sub-meter from the total amount of electricity used to produce sebacic acid. As this subject involves proprietary information, please see the Analysis Memorandum for the Preliminary Results of the 1996/1997 Review for sebacic acid for a more complete discussion of this issue.

For the value of export packing (plastic bags and woven bags), the Department used the value of imports into India during April 1995 through February 1996, as reported in the *Monthly Statistics of Foreign Trade of India*, Volume II, and adjusted these values for inflation. We did not use values from respondents because there was no supporting documentation. Also, we adjusted this value to account for freight expenses.

For foreign inland freight, the Department relied upon the trucking freight rates reported in *The Times of India*, April 20, 1994, which source was also applied to *Polyvinyl Alcohol* (60 FR 52647, October 10, 1995), and the value was adjusted for inflation. The rail freight rates used, which were adjusted for inflation, were reported to the Department in a December 1989 embassy cable for the final results of the antidumping administrative review for *Shop Towels of Cotton from the PRC* (56 FR 60969).

For ocean freight, we used the surrogate value used in the last administrative review. This value, provided by the Federal Maritime Commission on January 24, 1997, includes delivery destination charges and fuel adjustment charges and was not adjusted because the value was within the POR. For Tianjin, we used actual market economy shipping costs as reported by respondents where applicable.

To calculate the expense for marine insurance, we used information from a publicly summarized version of the questionnaire response for the investigation of sales of less than fair value of *Sulphur Vat Dyes from India* (62 FR 42758). The marine insurance rate reported in the public version of the October 8, 1992 response was adjusted for inflation to reflect marine insurance charges during the POR.

For foreign brokerage and handling charges, we used information from publicly available data for foreign brokerage and handling reported for the investigation for *Sulphur Vat Dyes*, (62 FR 42758) adjusted for inflation.

Consistent with the methodology employed in the previous administrative review for sebacic acid, we have determined that fatty acid, glycerine, and castor seed cake (when castor oil is self-produced) are by-products. Therefore, as by-products, we subtracted the sales revenue of fatty acid, glycerine, and, where applicable, castor seed cake, from the estimated production costs of sebacic acid. This treatment of by-products is also consistent with generally accepted accounting principles. (*See Cost Accounting: A Managerial Emphasis* (1991) at pages 539–544).

To value fatty acid, we used publicly available published information from the *Monthly Statistics of the Foreign Trade of India* (Monthly Statistics) for the period April 1995 through February 1996 and adjusted this data for inflation.

To value glycerine, we used the average price for glycerine (IW and CP) in the publication *Chemical Weekly* from January 1997 from the

respondents. We adjusted these values to include freight expenses incurred from the suppliers to the respondents' sebacic acid manufacturing facilities.

We also allocated a by-product credit for glycerine to the production cost for the co-product capryl alcohol. We deducted a by-product credit for glycerine from both sebacic acid and capryl alcohol based on the ratio of the value of sebacic acid to the total value of both sebacic acid and capryl alcohol.

Consistent with the methodology employed in the previous administrative review, we have determined that capryl alcohol is a co-product. Therefore, we have allocated the factor inputs, based on the relative quantity of output of this product and sebacic acid. Additionally, we have used the production times necessary to complete each production stage of sebacic acid as a basis for allocating the amount of labor, energy usage, and factory overhead among the co-product(s). This treatment of co-products is consistent with generally accepted accounting principles. (*See Cost Accounting: A Managerial Emphasis* (1991) at pages 528–533).

To value capryl alcohol, we used publicly available published information for octanol from *Chemical Weekly* from June 1997 and adjusted the price for sales and excise taxes. We used the *Chemical Weekly* octanol value from June 1997. Also, respondents submitted value data from the *Chemical Marketing Reporter* (U.S.). Octanol is used as the surrogate value for capryl alcohol because, in a letter submitted by respondents in attachment four of their December 4, 1997 submission concerning surrogate values, the editor of *Chemical Weekly* states that the reference to octanol in the journal refers to the more common 2-octanol (2-ethylhexanol). We adjusted these values to exclude taxes and to include freight expenses incurred from the suppliers to the respondents' sebacic acid manufacturing facilities.

To value castor seed cake, we used the value for castor seed from *The Economic Times* (Bombay) submitted by respondents, and adjusted this value for inflation.

For selling, general, and administrative (SG&A) expenses, we used information from the same source we used for factory overhead. We summed the values which comprised the components of SG&A and divided that figure by the same cost of manufacturing figure used to determine factory overhead, to arrive at an SG&A rate of 21.67 percent. We multiplied this SG&A rate of 21.67 percent by the total cost of manufacture, which includes factory overhead.

For the calculation of profit, we used information from the April 1995 *Reserve Bank of India Bulletin*. We divided the reported before-tax profit for the ''processing and manufacture: metals, chemicals, and products thereof'' category by the sum of those components pertaining to the cost of manufacturing plus SG&A to calculate a profit rate of 5.24 percent. We multiplied this profit rate of 5.24 percent by the sum of the total cost of manufacture and SG&A.

Preliminary Results of Review

For Jiangsu, which failed to respond to the Department's questionnaire, we have not granted a separate rate and the country-wide rate will apply to all sales.

We preliminarily determine that the following dumping margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Sinochem Jiangsu I/E Corp	7/01/96–6/30/97	243.40%
Tianjin Chemicals I/E Corp	7/01/96–6/30/97	3.53
Sinochem International Chemicals Corp	7/01/96–6/30/97	0.35
Guangdong Chemicals I/E Corp	7/01/96–6/30/97	16.35
Country-Wide Rate	7/01/96–6/30/97	243.40

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit written comments (case briefs) within 30 days of the date of publication of this notice. Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Upon issuance of the final results of review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all entries. We will calculate an importer-specific ad valorem duty assessment rate for each class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between statutory NV and statutory EP, by the total statutory EP value of the sales compared, and adjusting the result by the average difference between EP and customs value for all merchandise examined during the POR.)

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the reviewed companies named above which have separate rates (SICC, Tianjin, and Guangdong), the cash deposit rates will be the rates for those firms established in the final results of this administrative review; (2) for companies previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rates will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the cash deposit rates will be the PRC country-wide rate indicated above; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 2, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–9436 Filed 4–8–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Preliminary Results of the First Countervailing Duty Administrative Review

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

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on certain pasta from Italy for the period October 17, 1995 through December 31, 1996. For information on the net subsidy for each reviewed company, as well as for all non-reviewed companies, see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review*. Interested parties are invited to comment on these preliminary results. (*See, Public Comment* section of this notice.)

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Todd Hansen, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2815 or 482–1276, respectively.

Background

On July 24, 1996, the Department of Commerce (the Department) published in the **Federal Register** (61 FR 38544) the countervailing duty order on pasta from Italy.

In accordance with 19 CFR 351.213(b), this review of the order covers the producers or exporters of the subject merchandise for which a review was specifically requested. They are: Audisio Industrie Alimentari S.r.L (''Audisio''); the affiliated companies Delverde S.r.L., Tamma Industrie Alimentari, S.r.L., Sangralimenti S.r.L., and Pietro Rotunno, S.r.L. (''Delverde/Tamma''); La Molisana Industrie Alimentari S.p.A. (''La Molisana''); and Petrini S.p.A. (''Petrini''). Also, this review covers 24 programs.

Since the publication of the notice of initiation of this review in the **Federal Register** (62 FR 45621, August 28, 1997), the following events have occurred.

On September 29, 1997, we issued countervailing duty questionnaires to the Government of Italy (''GOI''), the Commission of the European Union (''EU''), and the above-named companies under review. On October 14, 1997, F.lli De Cecco di Filippo Fara S. Martino S.p.A., a company which had requested to be included in the review, withdrew its request. Similarly, on November 14, 1997, Industria Alimentari Colavita, S.p.A., another company which had requested to be included in the review, withdrew its request. We received responses to our questionnaires and issued additional questionnaires throughout the period of November 1997 through March 1998.

In January and February of 1998, we received comments from petitioners on the company and GOI responses. Among the comments was a request that the Department examine an energy savings grant received by Petrini pursuant to Law 308/82. In a supplementary questionnaire to Petrini, we requested further information on this grant. Subsequent to issuing this questionnaire, however, it became evident that the program in question had already been found not countervailable by the Department. *See, Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy*, 58 FR 37327 *(''Certain Steel from Italy'')*. Therefore, we have not included this grant in our review.

Scope of Review

The merchandise under review consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricultura Biologica (''AMAB''), by Bioagricoop Scrl, or by QC&I International Services. Furthermore, multicolored pasta imported in kitchen display bottles of decorative glass, which are sealed with cork or paraffin and bound with raffia, is excluded from the scope of this review.

The merchandise under review is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Applicable Statute

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''). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All other references are to the Department's regulations at 19 CFR Part 351 et. seq. *Antidumping Duties; Countervailing*

Duties; Final Rule, 62 FR 27296, May 19, 1997, unless otherwise indicated.

Period of Review

The period of review (''POR'') for which we are measuring subsidies is from October 17, 1995 through December 31, 1996. Because it is the Department's practice to calculate subsidy rates on an annual basis, we calculated a 1995 rate and a 1996 rate for each of the companies under review. We note, however, that the rates calculated for 1995 will be applicable only to entries, or withdrawals from warehouse, for consumption made on and after October 17, 1995, through the end of 1995.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: The companies under review did not take out any long-term, fixed-rate, lira-denominated loans or other debt obligations which could be used as benchmarks in any of the years in which grants were received or government loans under review were given. Therefore, we used the Bank of Italy reference rate, adjusted upward to reflect the mark-up an Italian commercial bank would charge a corporate customer, as the benchmark interest rate for long-term loans and as the discount rate for years prior to 1995. For 1995 and 1996, we used the average interest rate on medium- and long-term loans as reported by the Bank of Italy based on a survey of 114 Italian banks.

Allocation Period: In *British Steel plc.* v. *United States*, 879 F.Supp. 1254, 1289 (CIT 1995) *(''British Steel I'')*, the U.S. Court of International Trade (the Court) ruled against the allocation methodology for non-recurring subsidies that the Department had employed for the past decade, which was articulated in the *General Issues Appendix*, appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37225 (July 9, 1993) *(''GIA'')*. In accordance with the Court's remand order, the Department determined that the most reasonable method of deriving the allocation period for nonrecurring subsidies is a company-specific average useful life (''AUL'') of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See, British Steel plc.* v. *United States*, 929 F.Supp 426, 439 (CIT 1996) *(''British Steel II'')*. Accordingly, the Department has applied this method to those non-recurring subsidies that were not countervailed in the investigation.

For non-recurring subsidies received prior to the POR and which have already been countervailed based on an allocation period established in the investigation, it is neither reasonable nor practicable to reallocate those subsidies over a different period of time. Therefore, for purposes of these preliminary results, the Department is using the original allocation period assigned to each non-recurring subsidy received prior to the POR. This conforms with our approach in *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997).

For non-recurring subsidies received during the POR, each company under review submitted an AUL calculation based on depreciation and asset values of productive assets reported in its financial statements. Each company's AUL was derived by dividing the sum of average gross book value of depreciable fixed assets over the past ten years by the average depreciation charges over this period. We found this calculation to be reasonable and consistent with our company-specific AUL objective. We have used these calculated AULs for the allocation period for non-recurring subsidies received during the POR and those non-recurring subsidies received prior to the POR, which were not countervailed in the investigation.

Benefits to Mills: In cases where semolina (the input product to pasta) and the subject merchandise were produced within a single corporate entity, the Department has found that subsidies to the input product benefit total sales of the corporation, including sales of the subject merchandise, without conducting an upstream subsidy analysis. (*See, e.g., Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada* (57 FR 22570); *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel* (52 FR 25447); *Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Italy)* 61 FR 30288, 30292) (*''Pasta from Italy''*)). In accordance with our past practice, where the companies under review purchase their semolina from a separately incorporated company, whether or not they are affiliated, we have not included subsidies to the mill in our calculations. However, for those companies where the mill is not separately incorporated from the producer of the subject merchandise, we have included subsidies for the milling operations in our calculations. Where appropriate, we have also included sales of semolina in calculating the ad valorem subsidy rate.

Changes in Ownership

One of the companies under review, Delverde, purchased an existing pasta factory from an unrelated party. The previous owner of the purchased factory had received non-recurring countervailable subsidies prior to the transfer of ownership, which took place in 1991.

We have calculated the amount of the prior subsidies that passed through to Delverde with the acquisition of the factory, following the spin-off methodology described in the Restructuring section of the *GIA*, 58 FR at 37265.

Petrini, another of the companies under review, is controlled by two members of the Petrini family, who hold a majority-ownership interest in the company. During the period 1988 through 1994, Petrini acquired and absorbed a number of related companies, including one which produced pasta. All but one of these companies were wholly-owned by members of the Petrini family prior to their acquisition by Petrini; the remaining company was majority-owned by the Petrini family. Prior to the ownership restructurings, several of these companies, other than the pasta company, received non-recurring countervailable subsidies.

The Department does not consider internal corporate restructurings that transfer or shuffle assets among related parties to constitute a ''sale'' for purposes of evaluating the extent to which subsidies pass from one party to another. (*See*, the Restructuring section of the *GIA*, 58 FR at 37266.) Therefore, we did not apply the methodology from the Restructuring section of the *GIA* to these subsidies. Instead, we have attributed all of the non-recurring subsidies received prior to the restructurings to Petrini, the only remaining corporate entity.

To determine whether the benefit of any of these subsidies extended to the subject merchandise, we examined the extent to which these subsidies should be considered tied or untied.

The subsidies in question were loans and grants pursuant to Law 64/86, the Industrial Development Law, which benefits companies located in the South of Italy (the Mezzogiorno). In past cases, as well as the present review, we have found Law 64 grants and loans to be tied to the production of particular products. (*See, Pasta from Italy*, 61 FR at 30292.) In fact, the grants and loans are provided only after companies have committed funds for investment in

facilities to produce a particular product or products. Law 64 applications and awards indicate clearly the level of investment required of the recipient, the portion to be provided by the government, and a clear statement of the purpose of the investment. Follow-up audits by the GOI serve to ensure that funds have been used as claimed.

The Law 64 grants and loans received by certain Petrini family companies were for the production of products other than pasta or the inputs to pasta. In fact, Petrini's only pasta production and flour mill facilities are located in the North and did not qualify for Law 64 benefits.

Under these circumstances, we consider the subsidies in question to be tied to the production of products other than pasta. Accordingly, we preliminarily conclude that these subsidies did not confer a benefit on the subject merchandise.

Affiliated Parties

In the present review, we have examined several affiliated companies (within the meaning of section 771(33) of the Act) whose relationship may be sufficient to warrant treatment as a single company. In the countervailing duty questionnaire, consistent with our past practice, the Department defined companies as sufficiently related where one company owns 20 percent or more of the other company, or where companies prepare consolidated financial statements. The Department also stated that companies may be considered sufficiently related where there are common directors or one company performs services for the other company. According to the questionnaire, such companies that produce the subject merchandise or that have engaged in certain financial transactions with the company subject to review are required to respond.

In accordance with this practice, we have determined that Delverde and Tamma warrant treatment as a single company with a combined rate. Although Tamma holds less than a 20 percent direct ownership interest in the Delverde group, there is a substantial indirect ownership relationship between Tamma and Delverde. In addition, the same individual is the president of Tamma, Delverde, and Delverde's parent company. Therefore, we calculated a single countervailing duty rate for these companies by dividing their combined subsidy benefits by their combined sales.

Analysis of Programs

I. Programs Previously Determined to Confer Subsidies

A. Local Income Tax (''ILOR'') Exemptions

Companies located in the Mezzogiorno may receive a complete exemption for a period of 10 years from the ILOR on profits deriving from new plant and equipment or from plant expansion and improvement under Presidential Decree 218 of March 6, 1978. In addition, otherwise non-qualifying profits which are reinvested in plant or equipment may receive an exemption from the ILOR for the year of reinvestment. The provision for ILOR exemptions expired on December 31, 1993, but companies which were approved for the exemptions prior to this date may continue to benefit from the exemption until the expiration of the 10-year benefit period approved for each company.

Delverde/Tamma claimed an ILOR tax exemption on income tax returns filed during the POR.

In *Pasta from Italy*, the Department determined that the ILOR exemptions were subsidies within the meaning of section 771(5) of the Act, as the tax exemptions represented revenue foregone by the GOI and conferred tax savings on the companies. Also, they were regionally specific within the meaning of section 771(5A) because they were limited to companies located in the Mezzogiorno. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

To calculate the countervailable subsidy, we divided the tax savings in each year of the POR by the company's total sales in each year. On this basis, we determine the countervailable subsidy from this program for Delverde/Tamma to be 0.01 percent for Delverde/Tamma in 1995 and 0.01 percent *ad valorem* in 1996.

B. Industrial Development Grants Under Law 64/86

Law 64/86 provided assistance to promote industrial development in the Mezzogiorno. Grants were awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies were eligible for grants to expand existing plants but not to establish new plants, because the market for pasta was deemed to be close to saturated. Grants were made only after a private credit institution chosen by the applicant made a positive assessment of the project.

In 1992, the Italian Parliament decided to abrogate Law 64/86. This decision became effective in 1993. Projects approved prior to 1993, however, were authorized to receive grant amounts after 1993. La Molisana and Delverde/Tamma benefitted from industrial development grants during to the POR.

In *Pasta from Italy*, the Department determined that these grants provide a countervailable subsidy within the meaning of section 771(5) of the Act. They provided a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A). In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

In *Pasta from Italy*, the Department treated these grants as ''non-recurring'' based on the analysis set forth in the Allocation section of the *GIA*, 58 FR at 37226. In the current review, we have found no reason to depart from this treatment.

In accordance with our past practice, we have allocated those grants, which exceeded 0.5 percent of a company's sales in the year of receipt, over time. (*See, GIA* at 58 FR 37226.)

To calculate the countervailable subsidy, we used our standard grant methodology. We divided the benefit attributable to each company in each year of the POR by its sales in each year. Thus, we determine the countervailable subsidy for this program to be 1.37 percent *ad valorem* in 1995 and 1.11 percent *ad valorem* in 1996 for La Molisana and 2.25 percent *ad valorem* in 1995 and 2.25 percent *ad valorem* in 1996 for Delverde/Tamma.

As noted in the ''*Change of Ownership*'' section above, certain of the Petrini family-owned companies received Law 64 grants prior to their acquisition and absorption by Petrini, which we found to be tied to the production of products other than pasta. After the acquisition and absorption of these companies, Petrini itself received several Law 64 grants. Once again, we found these grants to be tied to products other than pasta.

C. Industrial Development Loans Under Law 64/86

Law 64/86 also provided reduced rate industrial development loans with interest contributions to companies constructing new plants or expanding or modernizing existing plants in the Mezzogiorno. The interest rate on these loans was set at the reference rate, with the GOI's interest contributions serving

to reduce this rate. For the reasons discussed above, pasta companies were eligible for interest contributions to expand existing plants but not to establish new plants.

Delverde/Tamma and La Molisana received industrial development loans with interest contributions from the GOI. These loans were outstanding during the POR.

In *Pasta from Italy*, the Department determined that these loans were countervailable subsidies within the meaning of section 771(5). They were a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies after accounting for the GOI's interest contributions. Also, they were found to be regionally specific within the meaning of section 771(5A). In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

It is the Department's practice to measure the benefit conferred by interest rebates using our loan methodology if the company knew in advance that the government was likely to pay or rebate interest on the loan at the time the loan was taken out. (*See, e.g., Certain Steel from Italy*). Because, in this case, the recipients of the interest contributions knew, prior to taking out the loans, that the GOI likely would provide the interest contributions, we have allocated the benefit over the life of the loan for which the contribution was received. We divided the benefit attributable to each year of the POR for each company by its sales in each year. On this basis, we determine the countervailable subsidy for this program to be 0.36 percent ad valorem in 1995 and 0.24 percent ad valorem in 1996 for La Molisana and 0.71 percent ad valorem in 1995 and 0.64 percent ad valorem in 1996 for Delverde/Tamma.

D. Export Marketing Grants under Law 304/90

To increase market share in non-EU markets, Law 304/90 provides grants to encourage enterprises operating in the food and agricultural sectors to carry out pilot projects aimed at developing links between Italian producers and foreign distributors and improving services in those markets. Emphasis is placed on assisting small- and medium-sized producers.

In *Pasta from Italy*, the Department determined that the export marketing grants under Law 304 provided countervailable subsidies within the meaning of section 771(5) of the Act. The grants were a direct transfer of funds from the GOI providing a benefit in the amount of the grant. The grants were also found to be specific because their receipt was contingent upon anticipated exportation. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

Delverde/Tamma received a grant under this program for a market development project in the United States prior to the POR.

Each project funded by a grant requires a separate application and approval, and the projects represent one-time events in that they involve an effort to establish warehouses, sales offices, and a selling network in new overseas markets. Therefore, in *Pasta from Italy*, the Department treated the grant received under this program as ''non-recurring'' based on the analysis set forth in the Allocation section of the *GIA*, 58 FR at 37226. Further, the Department found that the grant exceeded 0.5 percent of Delverde/Tamma's exports to the United States in the year it was received. Therefore, in accordance with our past practice, we allocated the benefits of this grant over time. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

To calculate the countervailable subsidy, we used our standard grant methodology. We divided the benefits attributable to each year of the POR by Delverde/Tamma's exports to the United States in each year. On this basis, we determine the countervailable subsidy to be 0.13 percent ad valorem in 1995 and 0.35 percent ad valorem in 1996 for Delverde/Tamma.

E. Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy

The Sabatini Law was enacted in 1965 to encourage the purchase of machine tools and production machinery. It provides for a deferral of up to five years of payments due on installment contracts for the purchase of such equipment and for a one-time, lump-sum interest contribution from Mediocredito Centrale toward the interest owed on these contracts. The amount of the interest contribution is equal to the present value of the difference between the payment stream over the life of the contract based on the reference rate and the payment stream over the life of the contract based on a concessionary rate. The concessionary rate for companies located in the Mezzogiorno is the reference rate less eight percentage points. The concessionary rate for companies located outside the Mezzogiorno is the reference rate less five percentage points.

Audisio and Petrini received interest contributions under the Sabatini Law for loans outstanding during the POR, which were related to the production of pasta and inputs to pasta in the North. Petrini also received other interest contributions in both northern and southern Italy, but these benefits were tied to non-subject merchandise. In addition, La Molisana received an interest contribution at the concessionary rate available in the Mezzogiorno for a loan still outstanding during the first year of the POR, which was related to pasta production.

With respect to the benefits provided in northern Italy, the Department, in *Pasta from Italy*, analyzed whether the program was specific ''in law or in fact,'' within the meaning of section 771(5A)(D)(i) and (iii). The Department concluded that these benefits were not specific and, therefore, not countervailable. In this review, the petitioner provided no new information which would warrant reconsideration of this determination.

Because the concessionary rate for companies in southern Italy was lower than the interest rate available to users of the program in northern Italy, however, the Department in *Pasta from Italy* determined that the Sabatini Law interest contributions to companies in southern Italy were countervailable subsidies within the meaning of section 771(5). They were a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies. In addition, they were regionally specific within the meaning of section 771(5A). In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

As stated earlier (*see, Industrial Development Loans* section, above), when a company knows in advance that the government is likely to pay or rebate interest on a loan, we will measure the benefit conferred by that rebate using our loan methodology. Because La Molisana knew, prior to taking out the loan at issue here, that it would receive the interest contribution, we have allocated the benefit over the life of the loan for which the contribution was received. We divided the benefit attributable to each year of the POR by La Molisana's sales in each year. Thus, we determine the countervailable subsidy for this program to be 0.05 percent ad valorem in 1995 and 0.00

percent ad valorem in 1996 for La Molisana.

F. Social Security Reductions and Exemptions

1. Sgravi Benefits. Pursuant to Law 1089 of October 25, 1968, companies located in the Mezzogiorno were granted a 10 percent reduction in social security contributions for all employees on the payroll as of September 1, 1968, as well as those hired thereafter. Subsequent laws authorized companies located in the Mezzogiorno to take additional reductions in social security contributions for employees hired during later periods, provided that the new hires represented a net increase in the employment level of the company. The additional reductions ranged from 10 to 20 percentage points. Further, for employees hired during the period July 1, 1976 to November 30, 1991, companies located in the Mezzogiorno were granted a full exemption from social security contributions for a period of 10 years, provided that employment levels showed an increase over a base period.

In *Pasta from Italy,* the Department determined that the social security reductions and exemptions were countervailable subsidies within the meaning of section 771(5). They represented revenue foregone by the GOI and they conferred a benefit in the amount of the savings received by the companies. Also, they were found to be specific within the meaning of section 771(5A) because they are limited to companies located in the Mezzogiorno. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

Delverde/Tamma and La Molisana received social security reductions and exemptions during the POR.

To calculate the countervailable subsidy, we divided the savings in social security contributions by each company during each year of the POR by that company's sales in each year. On this basis, we calculated the countervailable subsidy from this program to be 1.23 percent ad valorem in 1995 and 0.91 percent ad valorem in 1996 for Delverde/Tamma and 0.90 percent ad valorem in 1995 and 0.70 percent ad valorem in 1996 for La Molisana.

One respondent, Petrini, produces animal feed, chickens and eggs in southern Italy. All of Petrini's facilities related to pasta production and inputs thereto are located in the North. Petrini did not receive countervailable social security benefits with regard to any of its operations in the North. However, Petrini did receive social security benefits available to companies operating in the Mezzogiorno for its operations there.

We determine that the social security benefits received by Petrini's operations in southern Italy were tied to the production and sale of animal feed and other animal products. Therefore, for purposes of these preliminary results, we have not included these social security benefits in our calculation of the ad valorem subsidy rate applicable to Petrini.

2. *Fiscalizzazione Benefits.* In addition to the sgravi deductions described above, the GOI provides Social Security benefits of another type, called ''fiscalizzazione.'' Fiscalizzazione is a nationwide measure which provides a reduction of certain social security payments related to health care or insurance. The program provides an equivalent level of deductions throughout Italy for contributions related to tuberculosis, orphans, and pensions. However, the program provides a higher deduction from contributions to the National Health Insurance system for manufacturing enterprises located in southern Italy compared to those located in northern Italy. During the POR, the differential was 6.16 percent of base salary until July 31, 1995, when it was reduced to five percent. On January 1, 1996, it was further reduced to four percent.

In *Pasta from Italy,* the Department determined that the fiscalizzazione reductions were countervailable subsidies within the meaning of section 771(5) for companies with operations in southern Italy. They represented revenue foregone by the GOI and conferred a benefit in the amount of the greater savings accruing to the companies in southern Italy. In addition, they were found to be regionally specific within the meaning of section 771(5A). In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

Delverde/Tamma and La Molisana received the higher levels of fiscalizzazione deductions available to companies located in the Mezzogiorno during the POR.

To calculate the countervailable subsidy, we divided the excess fiscalizzazione deductions realized by each company in each year of the POR by its sales in each year. On this basis, we calculated the countervailable subsidy from this program to be 0.44 percent ad valorem in 1995 and 0.20 percent ad valorem in 1996 for Delverde/Tamma and 0.64 percent ad valorem in 1995 and 0.38 percent ad valorem in 1996 for La Molisana.

3. Law 407/90 Benefits. Law 407/90 grants a two-year exemption from social security taxes when a company hires a worker who has been previously unemployed for a period of two years or more. A 100 percent exemption was allowed for companies in southern Italy. However, companies located in northern Italy received only a 50 percent exemption.

In *Pasta from Italy,* the Department determined that the 100 percent exemptions provided to companies with operations in southern Italy under Law 407 were countervailable subsidies within the meaning of section 771(5). They represented revenue foregone by the GOI and conferred a benefit in the amount of the greater savings accruing to the companies in southern Italy. In addition, they were found to be regionally specific within the meaning of section 771(5A). In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

Delverde/Tamma received the higher level of Law 407 deductions available to companies located in the Mezzogiorno during the POR.

To calculate the countervailable subsidy rate, we divided the amount of the Law 407 exemption which exceeds the amount available in northern Italy realized by Delverde/Tamma in each year of the POR by that company's sales during the same period. On this basis, we calculated the countervailable subsidy from this program to be 0.00 percent ad valorem in 1995 and 0.00 percent ad valorem in 1996 for Delverde/Tamma.

4. Law 863 Benefits. Law 863 provides for a reduction of social security payments of 25 percent for companies in northern Italy for employees who are participating in a training program. Companies in southern Italy receive a 100 percent reduction in social security payments for such employees.

In *Pasta from Italy,* the Department determined that Law 863 reductions were countervailable subsidies within the meaning of section 771(5) for companies with operations in southern Italy. They represented revenue foregone by the GOI and confer a benefit in the amount of the greater savings accruing to the companies in southern Italy. In addition, they were found to be regionally specific within the meaning of section 771(5A). In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

Delverde/Tamma and La Molisana received the higher level of Law 863 deductions available to companies located in the Mezzogiorno during the POR.

To calculate the countervailable subsidy, we divided the amount of the Law 863 reductions which exceeds the amount available in northern Italy realized by each company in each year of the POR by it sales in that year. On this basis, we calculated the countervailable subsidy from this program to be 0.05 percent ad valorem in 1995 and 0.11 percent ad valorem in 1996 for Delverde/Tamma and 0.03 percent for La Molisana.

G. Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77

The Special Section for Export Credit Insurance (''SACE'') was created under Article 2 of Law 227/77 as the branch of the GOI responsible for the administration of government export credit insurance and guarantee programs. Pursuant to Article 3 of Law 227/77, SACE insures and reinsures political, catastrophic, economic, commercial and exchange-rate risks which Italian operators are exposed to in their foreign activities.

During the POR, only one private insurance company, Societa Italiana Crediti S.p.A. (''SIAC''), had a reinsurance agreement with SACE. Under the reinsurance agreement, SIAC passed along a fixed percentage (*i.e.*, 45 percent) of its export credit insurance premia to SACE. In return, SACE assumed that same percentage of risk on export credit insurance policies sold by SIAC (*i.e.*, SACE would pay 45 percent of any claim for which SIAC would become liable).

Article 33 of Law 227/77 provides for the remission of insurance taxes on policies directly insured or reinsured with SACE. For reinsurance policies, this remission of insurance taxes applied not only to the portion of the risk covered by SACE, but also the remaining portion covered by the private insurance company. As a result, export credit insurance policies sold by SIAC during the POR were totally exempt from the insurance tax by virtue of its reinsurance agreement with SACE. Export credit insurance policies sold by other private insurance companies, however, were not exempt from the insurance tax. The insurance tax rate was 12.5 percent of premia paid.

In *Pasta from Italy*, we determined that the exemption from the insurance tax for policies directly insured or reinsured with SACE was a countervailable subsidy within the meaning of section 771(5) of the Act. The exemption represents revenue foregone by the GOI and confers tax savings on the companies. Also, because export credit insurance was available only to exporters and was by its nature contingent upon export performance, we found the remission of taxes on export credit insurance to be specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

La Molisana obtained export credit insurance from SIAC for its exports to the United States and, therefore, was exempted from the insurance tax. To calculate the benefit, we multiplied the premia paid during each year of the POR for exports to the United States by the insurance tax rate and divided the amount by total exports to the United States in each year. We calculated a countervailable subsidy rate of 0.04 percent ad valorem in 1995 and 0.04 percent ad valorem in 1996 for La Molisana.

H. European Social Fund

The ESF is one of the Structural Funds operated by the EU. The ESF was created under Article 123 of the Treaty of Rome in order to improve employment opportunities for workers and to help raise their living standards. The ESF provides principally vocational training and employment aids. ESF aid is generally provided directly to public institutions or non-commercial enterprises. However, it can also be provided directly to a company, as long as it is located in an Objective 1, Objective 2, or Objective 5(b) region. Objective 1 regions are those regions whose development and structural adjustment has been identified by the EU as lagging behind. Objective 2 regions are frontier regions seriously affected by industrial decline. Objective 5(b) regions are rural regions in need of development. The ESF provides grants to companies located in such regions in order to train current employees for new jobs or to hire new employees.

Delverde/Tamma received ESF grants.

In *Pasta from Italy*, the Department determined that ESF grants were countervailable subsidies within the meaning of section 771(5) of the Act. The Department considers worker assistance programs to be countervailable when a company is relieved of an obligation it would otherwise have incurred. (*See, GIA* 58 FR at 37255.) In addition to providing funds for training programs which may or may not relieve companies of an obligation, ESF funds were available to aid companies in hiring new employees. Because a company is normally obligated to meet its hiring needs without assistance from the government, ESF funds clearly relieved companies of an obligation. Thus, the grants were a direct transfer of funds providing a benefit in the amount of the grant. Also, because ESF assistance to individual companies is limited to companies located in Objective 1, Objective 2, and Objective 5(b) regions, they were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

Because a separate application is required for each grant and because grants are awarded for specific projects, we have found the grants to be non-recurring. We determined that the grants received by Delverde/Tamma were less than 0.5 percent of the companies' sales in 1995, the year of receipt. Therefore, in accordance with past practice, we expensed these non-recurring grants to the year of receipt. On this basis, we calculated a countervailable subsidy rate of 0.04 percent ad valorem for Delverde/Tamma in 1995.

I. *Export Restitution Payments*

Since 1962, the EU has operated a subsidy program which provides restitution payments to EU pasta exporters based on the durum wheat content of their exported pasta products. Generally, under this program, a restitution payment is available to any EU exporter of pasta products, regardless of whether the pasta was made with imported wheat or wheat grown within the EU. The amount of the restitution payment is calculated by multiplying the prevailing restitution payment rate on the date of exportation by the weight of the unmilled durum wheat used to produce the exported pasta. The weight of the unmilled durum wheat is calculated by applying a conversion factor to the weight of the pasta. The EU calculates the restitution payment rate, on a monthly basis, by first computing the difference between the world market price of durum wheat and an internal EU price and then adding a monthly increment (in all months except June and July, which are harvest months). The EU will not normally allow the restitution payment rate to be higher than the levy that the EU imposes on imported durum wheat, as such a situation would lead to circular trade.

In 1987, the nature of this program changed with regard to exports to the

United States as a result of a settlement reached by the United States and the EU. This settlement arose out of a GATT panel proceeding, brought by the United States, in which the panel ruled (in 1983) that the restitution program violated the EU's GATT obligations and did not fall within the exception under Item (d) of the Illustrative List of Export Subsidies.

Under the settlement, the EU agreed to allow the importation of durum wheat from any non-EU country free of any levy under a system described in the settlement as ''Inward Processing Relief'' (''IPR''). Under this system, the EU pasta exporter would not receive a restitution payment when exporting to the United States pasta products containing durum wheat imported with IPR. Essentially, a restitution payment no longer was necessary because no levy had been paid upon importation of durum wheat in the first place.

As to pasta products containing EU durum wheat or durum wheat that had been imported without IPR, a restitution payment remained available for exports to the United States, except that the restitution rate was reduced, originally by 27.5 percent and later by approximately 35 percent, from the normal level available for exports to all other countries.

As a further condition of the settlement, the EU agreed to attempt to balance its exports to the United States equally between pasta products containing durum wheat imported with IPR, on the one hand, and pasta products containing EU durum wheat or durum wheat imported without IPR, on the other hand. The goal was for 50 percent of the EU's pasta exports to the United States to contain durum wheat imported with IPR (for which the exporter had paid world market price, free of any levy, and had received no restitution payments), while the remaining 50 percent of the EU's pasta exports to the United States would contain EU durum wheat or durum wheat imported without IPR (for which the exporter could receive reduced restitution payments). In all other respects, the program remained unchanged.

In *Pasta from Italy*, the Department determined that export restitution payments were countervailable subsidies within the meaning of section 771(5) of the Act. Each payment represented a direct transfer of funds from the EU providing a benefit in the amount of the payment. The restitution payments were found to be specific because their receipt is contingent upon export performance. In this review, neither the GOI, the EU nor the responding companies provided new information which would warrant reconsideration of this determination.

Delverde/Tamma, La Molisana, Audisio and Petrini received export restitution payments during the POR on shipments to the United States.

In accordance with our normal practice of recognizing subsidy benefits when there is a cash-flow effect, we have calculated the subsidy rate for export restitution benefits based on the amount actually received during the POR. Export restitution benefits are not ''automatic'' in that their receipt is not certain until an application has been filed. The amounts received, while generally quite close to the amounts requested, do not always equal the amount indicated by the company on its request form. Thus, we have calculated the subsidy rate for export restitution benefits based on the amount actually received during the POR.

To calculate the subsidy, we divided the export restitution payments received in each year of the POR on shipments to the United States by the company's sales of pasta for export to the United States in each year. We calculated a countervailable subsidy under this program of 0.23 percent ad valorem in 1995 and 0.19 percent ad valorem in 1996 for Delverde/Tamma, 0.08 percent ad valorem in 1995 and 0.07 percent ad valorem in 1996 for La Molisana, 2.27 percent ad valorem in 1995 and 0.00 percent ad valorem in 1996 for Petrini, and 7.78 percent ad valorem in 1995 and 0.00 percent ad valorem in 1996 for Audisio.

II. Program Preliminarily Determined to Confer a Subsidy: Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (PRISMA)

PRISMA, a program funded by the European Structural Fund, seeks to contribute to the creation of a single EU market by improving standardization and quality control procedures, and seeks to assist small- and medium-sized enterprises in Objective 1 regions to adapt to a single EU market and increased competition.

La Molisana received a PRISMA grant in 1996.

We preliminarily find that PRISMA grants constitute countervailable subsidies within the meaning of section 771(5) of the Act. The grants represent a transfer of funds from the administering government and provide a benefit in the amount of the grant. Further, we preliminarily find that they are specific within the meaning of section 771(5A) because they are limited to firms located in designated geographic regions.

Because the grant received by La Molisana was less than 0.5 percent of the company's sales in 1996, the year of receipt, we have allocated the entire grant to that year. To calculate the countervailable subsidy, we divided the benefit received by La Molisana's sales in 1996, the year of receipt. On this basis, we determine the countervailable subsidy for this program to be 0.00 percent ad valorem in 1995 and 0.10 percent ad valorem in 1996 for La Molisana.

III. Programs Preliminarily Determined to Be Not Used

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise did not apply for nor receive benefits under these programs during the POR:

A. VAT Reductions
B. Export Credits Under Law 227/77
C. Capital Grants Under Law 675/77
D. Retraining Grants Under Law 675/77
E. Interest Contributions on Bank Loans Under Law 675/77
F. Interest Grants Financed by IRI Bonds
G. Preferential Financing for Export Promotion Under Law 394/81
H. Corporate Income Tax (''IRPEG'') Exemptions
I. European Agricultural Guidance and Guarantee Fund
J. Urban Redevelopment Under Law 181

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the periods October 17, 1995, through December 31, 1995, January 1, 1996, through February 13, 1996, and July 24, 1996, through December 31, 1996, we preliminarily determine the net subsidy rates for producers/exporters under review to be those specified in the chart shown below. (In accordance with section 703(d) of the Act, countervailing duties will not be assessed on entries made during the period February 14, 1996, through July 23, 1996.) If the final results of this review remain the same as these preliminary results, the Department intends to instruct customs to assess countervailing duties at these net subsidy rates.

The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties at these rates on the f.o.b. value

of all shipments of the subject merchandise from the producers/exporters under review entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

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 reviews will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), 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 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g), the predecessor to 19 CFR 351.212(c)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of these reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies, except Barilla G. e R. F.lli S.p.A. (''Barilla'') and Gruppo Agricoltura Sana S.r.L. (''Gruppo'') (which were excluded from the order during the investigation), 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 *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Italy* (61 FR 38544, July 24, 1996), the most recently published countervailing duty rates for companies not reviewed in this administrative review. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the periods from October 17, 1995, through February 13, 1996, and from July 24, 1996, through December 31, 1996, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry, except for Barilla and Gruppo (which were excluded from the order during the original investigation).

Company	Ad valorem rate	
	10/17/95 to 12/31/95	01/01/96 to 02/13/96 and 07/24/96 to 12/31/96
Delverde, S.r.l	5.09	4.66
La Molisana Alimentari S.p.A	3.44	2.67
Tamma Industrie Alimentari di Capitanata	5.09	4.66
Petrini	2.27	0.00
Audisio	7.78	0.00

Public Comment

Parties to this proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 30 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted five days after the time limit for filing the case brief. Parties who submit an argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: April 2, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–9434 Filed 4–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–559–001]

Certain Refrigeration Compressors From the Republic of Singapore: Extension of Time Limit for Final Results of Countervailing Duty Administrative Review

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

ACTION: Notice of extension of time limit for final results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final results of the thirteenth administrative review of the agreement suspending the countervailing duty investigation of certain refrigeration compressors from the Republic of Singapore. This review covers the period April 1, 1995 through March 31, 1996.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3434 or 482–0165, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''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 Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations set forth at 19 CFR part 355 (April 1997).

Postponement of Final Results

Under the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On December 9, 1997, the Department of Commerce published in the **Federal Register** (62 FR 64806) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. Because of the complexity of certain issues in this case, it is not practicable to complete this review within the time limits mandated by section 751 (a)(3)(A) of the Act. Therefore, the Department is extending the time limit for completion of the aforementioned review to June 8, 1998.

This extension of time limits is in accordance with section 751 (a)(3)(A) of the Act.

Dated: April 3, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–9433 Filed 4–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of initiation of process to revoke export trade certificate of review no. 88–00011.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Abdullah Diversified Marketing, Inc. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to Abdullah Diversified Marketing, Inc.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (''the Act'') (15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III (''the Regulations'') are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on October 19, 1988 to Abdullah Diversified Marketing, Inc.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (Sections 325.14(a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation. (Sections 325.10(a) and 325.14(c) of the Regulations).

The Department of Commerce sent to Abdullah Diversified Marketing, Inc. on October 9, 1997, a letter containing annual report questions with a reminder that its annual report was due on December 3, 1997. Additional reminders were sent on December 16, 1997, and on January 8, 1998. The Department has received no written response to any of these letters.

On April 6, 1998, and in accordance with Section 325.10(c)(1) of the Regulations, a letter was sent by certified mail to notify Abdullah Diversified Marketing, Inc. that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with Section 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (Section 325.10(c)(2) of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (Section 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (Section 325.10(c)(4) of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (Sections 325.10(c)(4) and 325.11 of the Regulations).

Dated: April 6, 1998.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 98–9418 Filed 4–8–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The NWS is publishing proposed certifications for the consolidation, automation, and closure of the—

(1) Chattanooga, Tennessee Weather Service Office (WSO) which will be automated at FAA Weather Observation Service Level B and have its services consolidated into the future Knoxville/Tri-Cities and Nashville, Tennessee and Atlanta, Georgia Weather Forecast Offices (WFOs); and

(2) Syracuse, New York Weather Service Office (WSO) which will be automated at FAA Weather Observation Service Level A and have its services consolidated into the future Binghamton and Buffalo, New York and Burlington, Vermont Weather Forecast Offices (WFOs).

In accordance with Pub. L. 102–567, the public will have 60-days in which to comment on these proposed consolidation, automation, and closure certifications.

DATES: Comments are requested by June 8, 1998.

ADDRESSES: Requests for copies of the proposed consolidation, automation and closure package should be sent to Tom Beaver, Room 11426, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Beaver at 301–713–0300.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Pub. L. 102–567, the Secretary of Commerce must certify that these consolidations, automations, and closures will not result in any degradation of service to the affected areas of responsibility and must publish the proposed consolidation, automation, and closure certifications in the FR. The documentation supporting these proposed certifications includes the following:

(1) A draft memorandum by the meteorologists-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR–88D Radar Commissioning Reports, User Confirmation of Services Reports, and the Decommissioning Readiness Report (as applicable);

(7) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the ASOS Commissioning Report; series of three letters between NWS and FAA confirming that weather services will continue in full compliance with applicable flight aviation rules after ASOS commissioning; Surface Aviation Observation Transition Checklist documenting transfer of augmentation and backup responsibility from NWS to FAA; successful resolution of ASOS user confirmation of services complaints; and an inplace supplementary data program at the responsible WFOs;

(8) Warning and forecast verification statistics for pre-modernized and modernized services which were utilized in determining that services have not been degraded;

(9) An Air Safety Appraisal for offices which are located on an airport; and

(10) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. L. 102–567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certifications. Instead, the Committee would just review certifications after the public comment period had closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification package because it is too voluminous to publish. Copies of the certification package and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. At the June 25, 1997 MTC meeting the Committee stated that its endorsement of certifications is ''subject to the following qualifications:

(1) The number of trained staff in each modernized field office meets staffing requirements as established by the modernization criteria and documented in the National Implementation Plan and the Human Resources Plan (WBS 1100). Delays in training or failure to fill required positions will increase the risk of degradation of service.

(2) The availability of operational systems in each modernized field office meets requirements as established by the modernization criteria and documented in the System Commissioning and Support Function Demonstration Plans; and

(3) The operational and administrative infrastructures and technical development needed to support the modernized field offices be maintained as required by the modernization plan.'' These qualifications have been met for the above proposed certifications. If a decision to certify is made, the Secretary of Commerce must publish the final certifications in the FR and transmit the certifications to the appropriate Congressional committees prior to consolidating, automating, and closing this office.

Dated: April 3, 1998.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 98–9269 Filed 4–8–98; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and Opportunity for Public Comment.

SUMMARY: The NWS is publishing proposed certifications for the automation and closure of the following Weather Service offices at the indicated FAA Weather Observation Service Level:

(1) Honolulu, Hawaii Residual Weather Service Office (RWSO) which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Honolulu, Hawaii Weather Forecast Office (WFO); and

(2) Huntington, West Virginia Weather Service Office (WSO) which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Charleston, West Virginia and Cincinnati Ohio WFOs.

In accordance with Pub. L. 102–567, the public will have 60-days in which to comment on these proposed automation and closure certifications.

DATES: Comments are requested by June 8, 1998.

ADDRESSES: Requests for copies of the proposed automation and closure packages should be sent to Tom Beaver, Room 11426, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Beaver at 301–713–0300.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Pub. L. 102–567, the Secretary of Commerce must certify that these automations and closures will not result in any degradation of service to the affected areas of responsibility and must publish the proposed automation and closure certifications in the **Federal Register**. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist(s)-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area.

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the ASOS Commissioning Report; series of three letters between NWS and FAA confirming that weather services will continue in full compliance with applicable flight aviation rules after ASOS commissioning; surface Aviation Observation Transition Checklist documenting transfer of augmentation and backup responsibility from NWS to FAA; successful resolution of ASOS user confirmation of services complaints; and an in-place supplementary data program at the responsible WFO(s);

(7) Warning and forecast verification statistics for pre-modernized and modernized services which were utilized in determining that services have not been degraded;

(8) An Air Safety Appraisal for offices which are located on an airport; and

(9) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. L. 102–567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certifications. Instead, the Committee would just review certifications after the public comment period had closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification packages because they are too voluminous to publish. Copies of the certification packages and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. At the June 25, 1997 MTC meeting the Committee stated that its endorsement of certifications is ''subject to the following qualifications:

(1) The number of trained staff in each modernized field office meets staffing requirements as established by the modernization criteria and documented in the National Implementation Plan and the Human Resources Plan (WBS 1100). Delays in training or failure to fill required positions will increase the risk of degradation of service;

(2) The availability of operational systems in each modernized field office meets requirements as established by the modernization criteria and documented in the System Commissioning and Support Function Demonstration Plans; and

(3) The operational and administrative infrastructures and technical development needed to support the modernized field offices be maintained as required by the modernization plan.'' These qualifications have been met for the above proposed certifications. If a decision to certify is made, the Secretary of Commerce must publish the final certifications in the FR and transmit the certifications to the appropriate Congressional committees prior to automating and closing these offices.

Dated: April 3, 1998.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 98–9270 Filed 4–8–98; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Application for AFROTC Membership; AFROTC Form 20; OMB Number 0701–0105.

Type of Request: Reinstatement.

Number of Respondents: 12,000.

Responses per Respondent: 1.

Annual Responses: 12,000.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 4,000.

Needs and Uses: This information collection is required by HQ, Cadet Personnel Division, Air Force Reserve Officer Training Corps (AFROTC) and the AFROTC Detachment, to obtain information on which to base a decision of acceptance/nonacceptance to be a member of Air Force ROTC. Respondents are high school and college students who are requesting membership in the AFROTC program. Information gathered on the AFROTC Form 20 is used to determine eligibility to enter AFROTC and to establish the individual's personnel record.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 3, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 98–9286 Filed 4–8–98; 8:45 am]

BILLING CODE 5000-04–-M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–29]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164, dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–29, with attached transmittal, policy justification, and sensitivity of technology pages.

Dated: April 3, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

20 MAR 1998
In reply refer to:
I-63081/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-29, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Kuwait for defense articles and services estimated to cost $496 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-29

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Kuwait

(ii) Total Estimated Value:

Major Defense Equipment*	$ 241 million
Other	$ 255 million
TOTAL	$ 496 million

(iii) Description of Articles or Services Offered:
Two fully equipped Paladin artillery battalions to include 48 M109A6 self-propelled howitzers, 154 M2 machine guns, 18 M88A2 recovery vehicles, 24 M113A3 battalion/battery reconnaissance vehicles, 64 M992A2 field artillery ammunition support vehicles, 136 AN/VRC and 125 AN/PRC SINCGARS radio systems, two AN/TPQ-36(V)9 FIREFINDER radar sets, trucks and trailers, generation II+ night vision goggles, meteorological radar station, radios and radio systems, simulators, U.S. Government and contractor technical and logistic support, maintenance vehicles, spare and repair parts, support and test equipment, personnel training and training equipment, Quality Assurance Team, Technical Assistance Field Team, publications and technical data, support equipment and various other elements of logistics to ensure total program support.

(iv) Military Department: Army (JBE)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 20 MAR 1998

as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait - Fully Equipped Paladin Artillery Battalions

The Government of Kuwait has requested a possible sale of two fully equipped Paladin artillery battalions to include 48 M109A6 self-propelled howitzers, 154 M2 machine guns, 18 M88A2 recovery vehicles, 24 M113A3 battalion/battery reconnaissance vehicles, 64 M992A2 field artillery ammunition support vehicles, 136 AN/VRC and 125 AN/PRC SINCGARS radio systems, two AN/TPQ-36(V)9 FIREFINDER radar sets, trucks and trailers, generation II+ night vision goggles, meteorological radar station, radios and radio systems, simulators, U.S. Government and contractor technical and logistic support, maintenance vehicles, spare and repair parts, support and test equipment, personnel training and training equipment, Quality Assurance Team, Technical Assistance Field Team, publications and technical data, support equipment and various other elements of logistics to ensure total program support. The estimated cost is $496 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale of the battalions to fulfill their strategic commitments for self defense with coalition support in the region. These battalions could allow the U.S. Government to curtail some deployed U.S. Army anti-armor forces. Kuwait will have no difficulty absorbing these battalions into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be United Defense Limited Partnership, York, Pennsylvania. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require the assignment of a Quality Assurance Team for up to a month and a Technical Assistance Field Team for one to two years. Contractor representatives may be required to provide in-country support for two years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-29

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The M109A6 howitzer is unclassified. The dynamic reference unit (DRU) contains a ring laser gyroscope, the manufacturing process of which is proprietary to industry. The Government will furnish the DRU in a "black box" configuration and reverse engineering is considered feasible. The degree of sensitivity is low.

2. The following components of the AN/TPQ-36 radar contain critical technology: the signal processor unit and related software of the operations control group; the antenna array group, receiver, transmitter, and electronic counter-countermeasures of the antenna transceiver group. Certain operating characteristics of the radar are classified Confidential. The radar system is highly susceptible to the development of countermeasures (CMs) in a short period of time if both the hardware and software were acquired by a potential adversary.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 98–9290 Filed 4–8–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 20–22 April 1998.

Time of Meeting: 0800–1700, (all days).

Place: San Antonio Airport Hilton & Conference Center, San Antonio, TX.

Agenda: The Army Science Board's (ASB) 1998 Spring General Membership will receive briefings on ongoing studies, plan forthcoming studies and will receive presentations regarding major Army initiatives and issues. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call our office at (703) 604–7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98–9358 Filed 4–8–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Exclusive Licensing of U.S. Patent Applications for the Micro Rappel System

AGENCY: U.S. Army Soldier Systems Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1), announcement is made of a prospective exclusive license of a micro rappel system, described in Patent Application Serial No. 08/990,263, filed 12/15/97; Serial No. 08/819,577, filed 03/14/97; Serial No. 08/992,979, filed 12/18/97; and Natick Invention Disclosure NA–1150.

DATES: Written objections must be filed on or before 5 June 1998.

ADDRESSES: U.S. Army Soldier Systems Command, Office of Chief Counsel, Attn: Patent Counsel, Kansas Street, Natick, Massachusetts 01760–5035.

FOR FURTHER INFORMATION CONTACT: Mr. Vincent J. Ranucci, Patent Counsel at 508–233–4510 or Ms. Jessica M. Niro, Paralegal Specialist at 508–233–4513.

SUPPLEMENTARY INFORMATION: The Micro Rappel System was invented by Mr. James Sadeck and Mr. Archie Sanders III (U.S. Patent Application Serial Nos. 08/992,979; 08/990,263; 08/819,577; and Natick Invention Disclosure NA–1150). Rights to these inventions are vested in the U.S. Government as represented by the U.S. Army Soldier Systems Command (SSCOM). Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 92–502) and Section 207 of Title 35, U.S. Code, the Department of the Army as represented by SSCOM intends to grant an exclusive license on the micro rappel system to New England Ropes, Inc., 848 Airport Road, Fall River, MA 02720.

Pursuant to 37 CFR 404.7(a)(1), any interested party may file written objections to this prospective exclusive license arrangement. Written objections should be directed to the above address.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–9414 Filed 4–8–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 11, 1998, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 3, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0015–185 SFMR

SYSTEM NAME:

Correction of Military Records Cases *(February 22, 1993, 58 FR 10030).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Change the address to read 'Army Review Boards Agency, Army Board for the Correction of Military Records, 1941 Jefferson Davis Highway, Arlington, VA 22202–4508.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, Army Board for the Correction of Military Records, 1941 Jefferson Davis Highway, Arlington, VA 22202–4508.'

* * * * *

A0015–185 SFMR

SYSTEM NAME:

Correction of Military Records Cases.

SYSTEM LOCATION:

Army Review Boards Agency, Army Board for the Correction of Military Records, 1941 Jefferson Davis Highway, Arlington, VA 22202–4508. Copy of Board decision is incorporated in petitioner's Official Military Personnel File except where such action would nullify relief granted, in which case application and decision are retained in files of the Correction Board.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present or former members of the U.S. Army, U.S. Army Reserve or Army National Guard who apply for the correction of his/her military records.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for Correction of Military or Naval Record (DD Form 149), documentary evidence, affidavits, information from individual's military record pertinent to corrective action requested, testimony, hearing transcripts when appropriate, briefs/arguments, advisory opinions, findings, conclusions and decisional documents of the Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary

of the Army; 10 U.S.C. 1552; and E.O. 9397 (SSN).

PURPOSE(S):

Records are used by the Board to consider all applications properly before it to determine the existence of an error or an injustice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Justice when cases are litigated.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and microfiche.

RETRIEVABILITY:

By applicant's surname and Social Security Number.

SAFEGUARDS:

Information is privileged, and restricted to individuals who have a need for the record in the performance of their official duties. All records are retained in locked rooms within Crystal Mall 4 which has security guards.

RETENTION AND DISPOSAL:

Records are retained at the Army Board for Correction of Military Records for at least 6 months after case is closed and then retired to the National Personnel Records Center where they are retained for 20 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Army Board for the Correction of Military Records, 1941 Jefferson Davis Highway, Arlington, VA 22202–4508.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Army Board for the Correction of Military Records, 1941 Jefferson Davis Highway, Arlington, VA 22202–4508.

Individual must furnish full name, Social Security Number, service number if assigned, current address and telephone number, information that will assist in locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Army Board for the Correction of Military Records, 1941 Jefferson Davis Highway, Arlington, VA 22202–4508.

Individual must furnish full name, Social Security Number, service number if assigned, current address and telephone number, information that will assist in locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her Official Military Personnel File, other Army records/reports, relevant documents from any source.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98–9287 Filed 4–8–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend System of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 11, 1998, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 3, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0640–10b TAPC

SYSTEM NAME:

Official Military Personnel File *(February 22, 1993, 58 FR 10168).*

CHANGES:

* * * * *

SYSTEM NAME:

Replace 'File' with 'Record'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Rewrite entry to read 'Active duty members of the U.S. Army who are enlisted, appointed, or commissioned status; members of the U.S. Army who were enlisted, appointed, or commissioned and were separated by discharge, death, or other termination of military status.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete 'birth certificates;' from entry.

* * * * *

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete the eleventh and twenty-sixth paragraphs.

STORAGE:

Delete entry and replace with 'Optical digital imagery, microfiche stored randomly in electro-mechanical storage/retrieval devices. Files consists of selected data automated in support of military personnel management purposes on platters, disc fiche and other computer media.'

RETRIEVABILITY:

Delete entry and replace with 'Alphabetically by surname; automated data retrievable by name, Social Security Number or ADP parameter; records of active Army, Reserve, National Guard (Officer), retired,

separated and deceased persons are retrieved by Social Security Number terminal digit sequence.'

* * * * *

A0640–10b TAPC

SYSTEM NAME:

Official Military Personnel Record.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400 for active Army officers.

U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301 for active duty enlisted personnel.

U.S. Army Reserve Personnel Command, 9700 Page Avenue, St Louis, MO 63132–5200 for reserve personnel.

National Personnel Records Center, National Archives and Records Administration, 9700 Page Avenue, St Louis, MO 63132–5100, for discharged or deceased personnel.

An automated index exists at the U.S. Army Reserve Personnel Command showing physical location of the Official Military Personnel of retired, separated and files on all service members returned to active duty.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty members of the U.S. Army who are enlisted, appointed, or commissioned status; members of the U.S. Army who were enlisted, appointed, or commissioned and were separated by discharge, death, or other termination of military status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include enlistment contract; Department of Veterans Affairs benefit forms; physical evaluation board proceedings; military occupational specialty data; statement of service; qualification record; group life insurance election; emergency data; application for appointment; qualification/evaluation report; oath of office; medical examination; security questionnaire; application for retired pay; application for correction of military records; field for active duty; transfer or discharge report/Certificate of Release or Discharge from Active Duty; active duty report; voluntary reduction; line of duty and misconduct determinations; discharge or separation reviews; police record checks, consent/declaration of parent/guardian; Army Reserve Officers Training Corps supplemental agreement; award recommendations; academic reports; casualty report; U.S. field medical card; retirement points, deferment; preinduction processing and commissioning data; transcripts of military records; summary sheets review of conscientious objector; election of options; oath of enlistment; enlistment extensions; survivor benefit plans; efficiency reports; records of proceeding, 10 U.S.C. section 815 appellate actions; determinations of moral eligibility; waiver of disqualifications; temporary disability record; change of name; statements for enlistment; acknowledgments of service requirements; retired benefits; application for review by physical evaluation board and disability board; appointments; designations; evaluations; birth certificates; photographs; citizenship statements and status; educational constructive credit transcripts; flight status board reviews; assignment agreements, limitations/waivers/election and travel; efficiency appeals; promotion/reduction/recommendations, approvals/declinations announcements/notifications, reconsiderations/worksheets elections/letters or memoranda of notification to deferred officers and promotion passover notifications; absence without leave and desertion records; FBI reports; Social Security Administration correspondence; miscellaneous correspondence, documents, and military orders relating to military service including information pertaining to dependents, interservice action, in-service details, determinations, reliefs, component; awards, pay entitlement, released, transfers, and other military service data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; and E.O. 9397 (SSN).

PURPOSE(S):

These records are created and maintained to manage the member's Army service effectively; document historically a member's military service, and safeguard the rights of the member and the Army.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of State to issue passport/visa; to document persona-non-grata status, attache assignments, and related administration of personnel assigned and performing duty with the Department of State.

To the Department of Treasury to issue bonds; to collect and record income taxes.

To the Department of Justice to file fingerprints to perform investigative and judicial functions.

To the Department of Agriculture to coordinate matters related to its advanced education program.

To the Department of Labor to accomplish actions required under Federal Employees Compensation Act.

To the Department of Health and Human Services to provide services authorized by medical, health, and related functions authorized by 10 U.S.C. 1074 through 1079.

To the Nuclear Regulatory Commission to accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

To the American Red Cross to accomplish coordination and service functions including blood donor programs and emergency investigative support and notifications.

To the Civil Aeronautics Board to accomplish flight qualifications, certification and licensing actions.

To the Federal Aviation Agency to determine rating and certification (including medical) of in-service aviators.

To the U.S. Postal Service to accomplish postal service authorization involving postal officers and mail clerk authorizations.

To the Department of Veterans Affairs to provide information relating to service, benefits, pensions, in-service loans, insurance, and appropriate hospital support.

To the Bureau of Immigration and Naturalization to comply with status relating to alien registration, and annual residence/location.

To the Office of the President of the United States of America to exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

To the Federal Maritime Commission to obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.

To each of the several states, and U.S. possessions to support state bonus application; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions to accomplish student

registration, tuition support, tests, and related requirements incident to in-service education programs in compliance with 10 U.S.C. chapters 102 and 103.

To the Social Security Administration to obtain or verify Social Security Number; to transmit Federal Insurance Compensation Act deductions made from members' wages.

To the Department of Transportation to coordinate and exchange necessary information pertaining to inter-service relationships between U.S. Coast Guard (USCG) and U.S. Army when service members perform duty with the USCG.

To the Civil authorities for compliance with 10 U.S.C. 814.

To the U.S. Information Agency to investigate applicants for sensitive positions pursuant to E.O. 10450.

To the Federal Emergency Management Agency to facilitate participation of Army members in civil defense planning training, and emergency operations pursuant to the military support of civil defense as prescribed by DoD Directive 3025.10, Military Support of Civil Defense, and Army Regulation 500–70, Military Support of Civil Defense.

To the Director of Selective Service System to Report of Non-registration at Time of Separation Processing, of individuals who decline to register with Selective Service System. Such report will contain name of individual, date of birth, Social Security Number, and mailing address at time of separation.

Other elements of the Federal Government pursuant to their respective authority and responsibility.

NOTE: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices do not apply to these categories of records.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system, except for those specifically excluded categories of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Optical digital imagery, microfiche stored randomly in electro-mechanical storage/retrieval devices. Files consists of selected data automated in support of military personnel management purposes on platters, disc fiche and other computer media.

RETRIEVABILITY:

Alphabetically by surname; automated data retrievable by name, Social Security Number or ADP parameter; records of active Army, Reserve, National Guard, (officer), retired, separated and deceased persons are retrieved by Social Security Number terminal digit sequence.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel; automated records are further protected by authorized password system for access terminals, controlled access to operations locations, and controlled output distribution.

RETENTION AND DISPOSAL:

Microfiche and paper records are permanent; retained in active file until termination of service, following which they are retired to the U.S. Army Reserve Personnel Command, 9700 Page Avenue, St. Louis, MO 63132–5200.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-MSR, 200 Stovall Street, Alexandria, VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to the Commander, U.S. Army Reserve Personnel Command, 9700 Page Avenue, St. Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Command, National Archives and Records Administration, 9700 Page Avenue, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, service identification number, military status, and current address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-MSR, 200 Stovall Street, Alexandria, VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to the Commander, U.S. Army Reserve Personnel Command, 9700 Page Avenue, St. Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Center, National Archives and Records Administration, 9700 Page Avenue, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, service

identification number, military status, and current address.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Enlistment, appointment, or commission related forms pertaining to individual's military status; academic, training, or qualifications records acquired prior to or during military service; correspondence, forms, records, documents and other relevant papers in Department of the Army, other Federal agencies, or state and local governmental entities; civilian education and training institutions; and members of the public when information is relevant to the Service Member.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98–9291 Filed 4–8–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report/ Feasibility Study (EIS/EIR/FS) for Bolinas Lagoon Ecosystem Restoration Project, Marin County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the California Environmental Quality Act (CEQA), the Department of the Army and Marin County hereby give notice of intent to prepare a joint Environmental Impact Statement/ Environmental Impact Report/ Feasibility Study (EIS/EIR/FS) for the Bolinas Lagoon Ecosystem Restoration Project, Marin County, California. The U.S. Army Corps of Engineers proposes to restore the ecosystem by increasing the tidal prism (volume of water exchanged on tidal cycles) or by other feasible alternatives. In accomplishing this project, the Corps could dredge up to four million cubic yards (MCY) of sediment. Ocean disposal as well as other dredged material disposal options are under consideration.

FOR FURTHER INFORMATION CONTACT: Written comments and questions regarding the scoping process or preparation of the EIS/EIR/FS may be directed to Craig Vassel, U.S. Army Corps of Engineers, San Francisco District, 333 Market Street, 717P, Seventh Floor, San Francisco, CA 94105–2102, (415) 977–8546, Fax: 415–977–8695, Email: cvassel@smtp.spd.usace.army.mil.

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers and Marin County will be the lead agencies in preparing the combined EIS/EIR/FS. The Gulf of the Farallones National Marine Sanctuary, Point Reyes National Seashore, and Golden Gate National Recreation Area will be cooperating agencies. The EIS/EIR/FS will provide an analysis supporting both the requirements of NEPA and CEQA in addressing impacts to the environment which may result from dredging the lagoon and disposing of dredged sediments.

1. Proposed Action.

The Corps will study alternatives for restoring the ecosystem of Bolinas Lagoon with emphasis on increasing tidal exchange.

2. Project Alternatives.

The Corps Reconnaissance Report (2/98) identified four possible actions to restore lost tidal and subtidal habitat through increasing tidal prism and improving circulation within the lagoon:

a. Removing the deltaic formation (accumulated sediment) at the mouth of Pine Gulch Creek

b. Reestablishing the North Channel (between Kent Island and Bolinas) and its tributaries.

c. Opening the Seadrift Lagoon to unrestricted tidal exchange with Bolinas Lagoon.

d. Removing fill material on the east side of the Seadrift Spit.

3. Availability of EIS/EIR/FS.

The Draft EIS/EIR/FS should be available for public review in Fall 2000.

4. Purpose and Need for Project.

Bolinas Lagoon is the centerpiece of an estuary system that is considered to be an ecological treasure due to the diversity of species that either inhabit or use the area for migration purposes. Bolinas Lagoon provides productive and diverse coastal open water, mudflat, and marsh environment for fish, waterbirds, and marine mammals. Several types of habitat are found in the lagoon: subtidal, intertidal, marsh, riparian, sand bar, and beach.

5. Study Area Description.

Located on the Pacific coast of Marin County, the study area includes all of Bolinas Lagoon (1100 acres, 445 hectares, 1.7 square miles) and its watershed (17 square miles). Triangle-shaped Bolinas Lagoon is located on the Pacific coast of Marin County. Bolinas Ridge forms one side and the sand spit of Stinson Beach forms another. The watershed includes several creeks, including several that descend steeply from Bolinas Ridge. Half of the watershed is drained by the longest creek, Pine Gulch Creek, which follows the San Andreas Rift Valley and forms a delta in Bolinas Lagoon.

6. Larger Habitat Complex.

The Lagoon is part of a much larger protected natural habitat complex including Pt. Reyes National Seashore, Golden Gate National Recreation Area, Central California Coast Biosphere Reserve, Mount Tamalpais State Park, and Audubon Canyon Ranch and the Gulf of the Farallones National Marine Sanctuary (GFNMS). The Lagoon tidelands are owned by Marin County and managed as the Bolinas Lagoon Open Space Preserve by the Marin County Open Space District (MCOSD).

7. The problem: loss of Tidal Prism.

The tidal prism of an estuary or lagoon is the volume of water exchanged between lagoon and ocean during a tidal cycle. For Bolinas Lagoon, high tide (MHHW) is 2.4 feet above the NGVD datum. Low tide (MLLW) is 1.9 feet below the datum. Therefore, the tidal range is 4.3 feet. Tidal prism influences the dynamic equilibrium of the entrance channel and bathymetry (depth contours) of the lagoon. Larger tidal prisms more effectively scour and remove material, leading to deeper and wider channels. As tidal prisms decline within lagoons, sedimentation rates rise and entrance channels begin to experience temporary closure. The lagoon eventually transforms into a salt marsh and eventually a meadow.

8. Risk of Closure.

Estimates are that the natural tidal prism of Bolinas Lagoon is 200 million cubic feet (mcf). Today the tidal prism is about 90 mcf. The tidal prism of Bolinas Lagoon has been reduced by 22% in the 20-year period between 1968 and 1988, a volume of 28 mcf. The rate of decline is about 1.4 mcf per year (52,000 cy). Risk of closure may occur

when the tidal prism is reduced to 25 mcf.

9. Sedimentation History.

Over the last 150 years, much of the lagoon's richest subtidal and intertidal habitat has been lost through sedimentation. There is a growing concern about the long-term health of the lagoon. Past human impacts on the lagoon contributing to the subtidal and intertidal habitat reduction include poor watershed management practices such as logging, fires, agriculture, and grazing. This has resulted in higher than normal sediment loads conveyed into the lagoon. Other factors that may increase sedimentation include placement of fill in the lagoon and the diversion and manipulation of watercourses entering the lagoon and material entering the lagoon through the ocean entrance. It is estimated that from 1968 to 1988 Bolinas Lagoon lost 40% of its subtidal habitat as it was converted to emergent marsh and uplands.

10. 1906 Earthquake

The biggest historic change in tidal prism occurred during the 1906 earthquake, when Bolinas Lagoon subsided one foot over most of its area, increasing the tidal prism by about 50 mcf.

11. Ecosystem Restoration Goal

The goal of ecosystem restoration work performed at Bolinas Lagoon is to restore intertidal and subtidal habitat and stop further loss of these habitats through restoring tidal prism and improving circulation within the basin, while maintaining key mudflats, marsh vegetation, and other areas of biological importance.

12. Feasibility Study

The five-phase Feasibility Study will identify and evaluate measures to restore lost tidal prism and reduce the rate of sedimentation as follows:

a. Define existing conditions and Formulate Alternatives

Phase One will investigate existing physical and environmental conditions restoration needs and constraints of the area. The future without-project conditions in the study area will be projected. Input on the ecosystem will be sought from resource agencies and the public. Public scoping workshops will be held both at the Marin Civic Center and the Stinson Beach Community Center.

b. Alternative Development

During Phase Two, tidal hydraulic modeling of the preliminary alternatives will be completed and economics and environmental impacts studied.

c. Detailed Evaluation

In Phase Three, preliminary alternatives will be evaluated and environmental benefits of the ecosystem restoration alternatives will be qualified. A draft Fish and Wildlife Coordination Act Report including a Habitat Evaluation Procedure (HEP) will be prepared to help provide the basis for identifying the most cost-effective alternative acceptable to the agencies and community.

d. Draft Report Preparation

Phase Four involves preparing the draft Feasibility Report and Environmental Impact Statement/Report (EIS/R). The EIS/R will analyze all reasonable alternatives and evaluate compliance with federal and state environmental requirements. A formal public review and comment period will be started.

e. Final Report Preparation

The last phase of the study includes preparing the final Feasibility Report recommending a preferred alternative and completing the final EIS/R which will respond to all comments on the draft EIS/R. The feasibility study will conclude with the issue of the Division Engineer's Notice. Construction would follow.

13. Workshop/Scoping

Two Workshop/Scoping meetings will be held on Thursday April 16. The first is intended mainly for local, state, and federal agencies and organizations. The second is all interested parties.

Workshop/Scoping meeting locations:

9:00–12:00 Green Room, Marin Veterans' Memorial Auditorium, Marin Civic Center, San Rafael, CA

6:30–9:30 Stinson Beach Community Center, Stinson Beach, CA

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–9415 Filed 4–8–98; 8:45 am]

BILLING CODE 3710–19–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 8, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. 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: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the

Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 3, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Federal Perkins Loan Program (formerly National Direct/Defense Student Loan Program) Assignment Form.

Frequency: Annually.

Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 30,000.

Burden Hours: 15,000.

Abstract: This form is used to collect pertinent data regarding defaulted student loans from institutions participating in the Federal Perkins Loan programs. The ED Form 533 serves as the transmittal document in the assignment of such defaulted loans to the Federal government for collection.

Office of the Under Secretary

Type of Review: New.

Title: National Study of Local Education Agency Activities Under the Safe and Drug-Free Schools and Communities Act.

Frequency: One time reportings.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 561.

Burden Hours: 1,543.

Abstract: The purpose of this study is to increase understanding of how local education agencies plan, fund, implement, and evaluate drug use and violence prevention efforts, especially efforts funded by the Safe and Drug-Free Schools and Community Act program, as required by Section 4117 of Title IV of the Elementary and Secondary Education Act.

[FR Doc. 98–9273 Filed 4–8–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–178–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 3, 1998.

Take notice that on March 31, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to be effective May 1, 1998:

First Revised Sheet No. 9A
Original Sheet No. 45 F through 45 H
Third Revised Sheet No. 69—72
Third Revised Sheet No. 77

ANR states that this filing is being made accordance with the provisions of Sections 154.202 of the Commission's regulations, is to implement Rate Schedule IWS to create a new, flexible wheeling service for shippers on the ANR system. Accordingly, this filing includes revised tariff sheets for these changes, as well as certain conforming revisions to the General Terms and Conditions of ANR's tariff.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulations Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9307 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–177–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 3, 1998.

Take notice that on March 31, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets proposed to be effective May 1, 1998:

Second Revised Volume No. 1

Twenty-First Revised Sheet No. 17

Original Volume No. 2

Fifteenth Revised Sheet No. 14

ANR states that the referenced tariff sheets are being submitted to update the ''Eligible Throughput Actually Experienced'' as required by Sections 26.4, 26.5 and 27.3 of the General Terms and Conditions of ANR's FERC Gas Tariff, Second Revised Volume No. 1, to adjust the Order No. 528 Volumetric Buyout Buydown Surcharge and to implement the annual redetermination of ANR's Upstream Pipeline Surcharge, commencing May 1, 1998.

As a result of this filing, the Volumetric Buyout Buydown Surcharge will decline from $0.0240 to $0.0002 and be designed to recover annually $27.1 million less than the currently effective Buyout Buydown Volumetric Surcharge, due to the expiration of the Volumetric Buyout Buydown Surcharge for Docket Nos. RP91–33, et. al., RP91–192, RP92–4, RP92–199, RP93–29, RP93–149 and RP96–10. The Upstream Pipeline Surcharge will decline from $0.0005 to $0.0001 and be designed to recover $0.1 million less on an annual basis than the currently effective Upstream Pipeline Surcharge.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9308 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–176–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 3, 1998.

Take notice that on March 31, 1998, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, and Original Volume No. 2, the following tariff sheets proposed to become effective May 1, 1998:

Second Revised Volume No. 1

Ninth Revised Sheet No. 17A

Origianl Volume No. 2

Ninth Revised Sheet No. 15

ANR states that the above-referenced tariff sheets are being submitted to eliminate the ''Deferred Transportation Cost Adjustment'' and Great Lakes Gas Transmission surcharges collected pursuant to Commission orders in Docket Nos. RP97–307 and RP97–367, respectively.

ANR states that all of its Volume No. 1 and Volume No. 2 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9309 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–175–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 3, 1998.

Take notice that on March 31, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to be effective May 1, 1998.

Original Sheet No. 9 A
Original Sheet Nos. 45 A through 45 E
Second Revised Sheet Nos. 69 through 72
Second Revised Sheet No. 77
Second Revised Sheet No. 87
Original Sheet No. 87 A

ANR states that this filing is being made in accordance with the provisions of Section 154.202 of the Commission's regulations, is to implement Rate Schedule IPLS to create a new, flexible parking and lending service for shippers. Accordingly, this filing includes revised tariff sheets for the new Rate Schedule, as well as certain conforming revisions to the General Terms and Conditions of ANR's tariff.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protest must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9310 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1033–000]

Automated Power Exchange, Inc.; Notice of Issuance of Order

April 3, 1998.

Automated Power Exchange, Inc. (APX) filed an application requesting that the Commission disclaim jurisdiction over its operation of an automated, computerized information exchange through which sellers and buyers will trade in electric power and energy for physical delivery in stated hourly markets. In the alternative, APX requested that if the Commission found that it was a public utility, that the Commission grant APX market-based rate authority and accept for filing its rate schedule to become effective January 1, 1998, and grant APX certain filing requirements, waivers and authorizations. In particular, APX requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by APX. On March 25, 1998, the Commission issued an Order Asserting Jurisdiction, Conditionally Granting Market-Based Rate Authority, And Granting And Denying Waivers (Order), in the above-docketed proceeding. On March 27, 1998, The Commission issued an Errata Notice that corrected two of the ordering paragraphs.

The Commission's March 25, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (G), and (O):

(E) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by APX 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.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of APX's issuances of securities or assumptions of liabilities. . . .

(O) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, APX is hereby authorized to issue securities and assume obligations and liabilities as

guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of APX, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

Notice is hereby given that the deadline for filing motions to intervene or protest, as set forth above, is April 24, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–9303 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. GT98–4–001 and GT98–33–000]

Distrigas of Massachusetts Corporation; Notice of Proposed Changes In FERC Gas Tariff

April 3, 1998.

Take notice that on March 31, 1998, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Substitute Third Revised Sheet No. 94 effective December 1, 1997
Fourth Revised Sheet No. 94 effective June 1, 1998

DOMAC states that the purpose of filing Fourth Revised Sheet No. 94 is to record semiannual changes in DOMAC's Index of Customers. The Index of Customers presents DOMAC's customer contracts in effect as of April 1, 1998.

DOMAC states that it is filing Substitute Third Revised Sheet No. 94 to correct certain inadvertent omissions from the Index of Customers submitted on November 12, 1997, in Docket No. GT98–4–000, and which was approved by Commission letter order effective December 1, 1997.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9295 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–172–000]

EL Paso Natural Gas Company; Notice of Revenue Credit Report

April 3, 1998.

Take notice that on March 31, 1998, El Paso Natural Gas Company (El Paso) tendered for filing its revenue crediting report for the calendar year 1997.

El Paso states that the report details El Paso's crediting of risk sharing revenues for the calendar year 1997 in accordance with Section 25.3 of the General Terms and Conditions of its Volume No. 1–A Tariff.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 10, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9314 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–016]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 3, 1998.

Take notice that on April 1, 1998, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet to become effective April 1, 1998:

Fourteenth Revised Sheet No. 30
Seventh Revised Sheet No. 31

El Paso states that the above tariff sheets are being filed to implement seven negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipeline and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9315 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–308–000]

Florida Gas Transmission Corporation; Notice of Application

April 3, 1998.

Take notice that on March 27, 1998, Florida Gas Transmission Corporation (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP98–308–000 an application pursuant to

Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Acacia Natural Gas Corporation (Acacia) three minor gas supply laterals and related taps, valves, measurement facilities and appurtenant facilities located in the counties of Matagorda and Wharton, Texas, and for a determination that the subject facilities will be exempt from the Commission's jurisdiction following the disconnection from FGT's pipeline system and the sale to Acacia, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, FGT proposes to abandon by sale to Acacia the South Hutchins Lateral, the North Withers Lateral and the Jones Creek Lateral; and related taps, valves, measurement facilities and any other appurtenant facilities located in the counties of Matagorda and Wharton, Texas. FGT also seeks a determination that the subject facilities be exempt from the Commission's jurisdiction following the disconnection from FGT's pipeline system and sale to Acacia.

FGT states that the three gas supply laterals have no gas flowing from supply sources and only a small quantity of gas is flowing to supply one farm tap. FGT states that, consequently, the cost of operating these laterals exceed any current or anticipated future economic benefits. FGT states that it has, therefore, elected to sell these three laterals, along with related taps, valves, measurement facilities and any other attached appurtenant facilities. FGT states that it has reached agreement with the owner of the farm tap to terminate the interruptible transportation agreement used to move gas to the farm tap. FGT states that the farm tap owner will switch to an alternate fuel.

FGT states that the Jones Creek and North Withers Laterals feed directly into the South Hutchins Lateral, and that upon approval of this abandonment application and conveyance of title to Acacia, FGT will cut and cap the South Hutchins Lateral.

FGT states that Acacia will operate the facilities as non-jurisdictional facilities and not subject to the jurisdiction of the Commission under the Natural Gas Act.

FGT states that inasmuch as the facilities will be sold to Acacia, the capital and operating costs of the facilities will be removed from FGT's rate base and cost-of-service, and there will be no stranded facility costs associated with the proposed abandonment and sale.

FGT states that upon the abandonment of the subject facilities, as proposed herein, FGT will eliminate the appropriate points from its listing maintained on its Electronic Bulletin Board and in its Tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 24, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for FGT to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9300 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–305–000]

Florida Gas Transmission Company; Notice of Application to Abandon

April 3, 1998.

Take notice that on March 26, 1998, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed under Section 7(b) of the Natural Gas Act, for authority to abandon by sale to PG&E NGL Marketing, L.P., (PG&E) the Helen Gohlke Facilities consisting of 33.2 miles of 3-inch and 6-inch diameter pipeline in Victoria County, Texas. FGT also seeks a determination that the Helen Gohlke Facilities, will be not be subject to Commission jurisdiction under NGA Section 1(b) once they are conveyed to PG&E and disconnected from FGT's system. This application is on file with the Commission and open to public inspection.

More specifically the facilities proposed for sale by FGT consist of:

1. 32.1 miles of 6-inch diameter pipeline in Victoria County connecting to FGT's 20-inch mainline at MP 188.8, (Helen Gohlke Lateral);
2. .7 miles of 3-inch diameter pipeline in Victoria County connecting to the Helen Gohlke Lateral at MP 1.2, (Klotzmann Lateral); and
3. .4 miles of 3-inch pipeline in Victoria County connecting to the Helen Gohlke Lateral at MP 31.1, (Shell-Brown Lateral).

Any person desiring to be heard or make any protest with reference to said application should on or before April 24, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion

believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9301 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–174–001]

Gas Transport, Inc.; Notice of Corrected Tariff Filing

April 3, 1998.

Take notice that on April 1, 1998, Gas Transport, Inc. (GTI) tendered for filing in Docket No. RP98–174–001 revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, with a proposed effective date of May 1, 1998.

GTI states that on March 31, 1998, GTI submitted tariff sheets as part of its FERC Gas Tariff, Second Revised Volume No. 1, in Docket No. RP98–174–000. GTI's filing was submitted to reflect GTI's decision to discontinue its Bulletin Board System and to rely on its internet Web Site (required by Order No. 587–C) to satisfy its obligations under Commission regulations relating to electronic bulletin boards.

GTI states that the purpose of its corrected filing is to submit the following tariff sheets which were inadvertently omitted from the attachment to its Mrch 31, 1998 filing:

First Revised Sheet No. 100A
Second Revised Sheet No. 101.

GTI states that copies of this filing were served upon its firm customers and interested state commissions. Copies were also served on all interruptible customers as of the date of the filing.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9311 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–174–000]

Gas Transport, Inc.; Notice of Proposed Changes in FERC Gas Tariff

April 3, 1998.

Take notice that on March 31, 1998, Gas Transport, Inc. (GTI) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, revised tariff sheets listed on Appendix A to the filing, with a proposed effective date of May 1, 1998.

GTI states that the purpose of this filing is to submit tariff sheets reflecting GTI's replacement of its Bulletin Board System (BB System) with its Internet Web Site, as required by Order No. 587–C. The instant filing includes new GT&C Section 9, entitled ''Web Site,'' replacing current GT&C Section 9, entitled ''Electronic Communications.'' It is further indicated that the filing replaces references to GTI's BB System with references to its Web Site.

GTI states that copies of this filing were served upon its firm customers and interested state commissions. Copies were also served on all interruptible customers as of the date of the filing.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9312 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No RP97–8–009]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

April 3, 1998.

Take notice that on March 31, 1998, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective May 1, 1998:

Twelfth Revised Sheet No. 21
Thirteenth Revised Sheet No. 22
Tenth Revised Sheet No. 23

According to Granite State, the foregoing tariff sheets are tendered in compliance with the provisions of the settlement in Granite State's rate proceeding in Docket No. RP97–8–000, approved by the Commission in an order issued October 20, 1997. (18 FERC ¶ 61,065)

Granite State further states that the settlement provided for Phase I and Phase II Base Tariff Rates. Granite State asserts that the Phase I settlement rates included recovery of costs related to a lease of a pipeline facility, operated under a limited-term certificate and both the lease and the certificate were scheduled to expire April 30, 1998. The lower Phase II settlement rates, reflected in the tariff sheets listed above were designed to become effective May 1, 1998 after the pipeline lease expired.

Granite State further states that copies of its filing have been served on its firm transportation customers, Bay State Gas Company and Northern Utilities, Inc., and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to

be taken, but will not serve to make protestants parties to the proceedings.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9316 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–309–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Application

April 3, 1998.

Take notice that on March 27, 1998, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Great Lakes to construct and operate 258.5 miles of 36-inch pipeline loop in 11 segments (including a crossing of the Straits of Mackinac, a navigable waterbody located at the northern tip of Michigan's lower peninsula), seven compressor units totaling 180,000 horsepower (hp) and miscellaneous ancillary facilities, at an estimated cost of $620,250,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that the proposed facilities (the Great Lakes 300 Expansion), in conjunction with Great Lakes existing system, will enable Great Lakes to increase its system-wide deliverability at its downstream St. Clair, Michigan interconnect by 304,000 dekatherms per day (dtd). It is stated that this additional system capacity has been subscribed by firm transportation service between a point on the U.S.—Canada international boundary near St. Vincent, Minnesota and a point on the U.S.—Canada international boundary near St. Clair, Michigan under a precedent agreement executed by TransCanada PipeLines Limited. Great Lakes requests approval to charge a stand alone initial, levelized transportation rate, which is derived from the estimated additional costs to the system, over a fifteen-year (15) period, resulting from the construction and operation of the proposed facilities. Great Lakes avers that the additional transportation service is to commence and the proposed facilities are to be placed into service on November 1, 2000. Great Lakes states that meeting this date necessitates 1999–2000 winter construction of approximately 39.5 miles of pipeline looping in two segments. Accordingly, Great Lakes requests that an order making a preliminary determination that the proposed facilities are required by the public convenience and necessity be issued in September 1998, and that an order granting a certificate of public convenience and necessity authorizing construction and operation of the project be issued no later than September 1999.

Great Lakes further states that its proposed looping will be constructed in Marshall, Pennington, Red Lake, Itasca, Aitkin and St. Louis Counties, Minnesota; Douglas and Bayfield Counties, Wisconsin; and Gogebic, Delta, Schoolcraft, Clare, Isabella, Midland, Mackinac, Emmet, Genessee and Lapeer Counties, Michigan.

Great Lakes also proposes to install and operate a 31,000 hp compressor unit at its Thief River Falls Compressor Station in Marshall County, Minnesota and a similarly sized unit at each of its following compressor stations: Deer River in Itasca County, Minnesota; Wakefield in Gogebic County, Michigan; Rapid River in Delta County, Michigan; and Farwell in Clare County, Michigan. A 10,000 hp unit addition is proposed for installation at Great Lakes' St. Vincent Compressor Station in Kittson County, Minnesota and a 15,000 hp unit addition is proposed for installation at Great Lakes' Boyne Falls Compressor Station in Charlevoix County, Michigan.

Specifically, Great Lakes proposes to:

(i) Construct and operate ten (10) 36-inch outside diameter (O.D.) mainline loop segments totaling 253.7 miles;

(ii) Construct and operate a 36-inch O.D. looping of Great Lakes existing crossing of the Straits of Mackinac, totaling 4.8 miles;

(iii) Install and operate one (1) 10,000 hp, one (1) 15,000 hp, and five (5) 31,000 hp (ISO) class compressor units, to be located individually at seven (7) existing Great Lakes' compressor stations;

(iv) Change out seventeen (17) aerodynamic assemblies including modifying/replacing four (4) existing compressor cases, install gas aftercoolers at five (5) existing compressor stations, and modify yard and station piping at seven (7) compressor stations; and

(v) Construct and operate various above ground, ancillary facilities.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before April 24, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held

with further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Great Lakes to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9299 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–22–000]

Kansas Natural Gas, Inc.; Notice of Report of Refunds and Petition for Dispute Resolution and Procedural Adjustment

April 3, 1998.

Take notice that, on March 9, 1998, Kansas Natural Gas, Inc. (KNG) filed:

(1) A report of (a) the refunds alleged to be owed to Northern Natural Gas Company (Northern), under Docket No. RP98–39–000, K N Interstate Gas Transmission Company (KNI) under Docket No. RP98–53–000, and Colorado Interstate Gas Company (CIG), under Docket No. RP98–54–000, (b) the refunds conditionally paid by KNG, and (c) the amounts set aside by KNG; and

(2) A petition requesting (a) the Commission to resolve KNG's dispute with Northern and CIG over KNG's Kansas ad valorem tax refund liability, and (b) an adjustment of the Commission's refund procedures.

The Commission, by order issued September 10, 1997, in Docket No. *RP97–369–000* et al,[1] on remand from the D.C. Circuit Court of Appeals,[2] required first sellers to refund the Kansas ad valorem tax reimbursements to the pipelines, with interest, for the period from 1983 to 1988. KNG's petition is on file with the Commission and open to public inspection.

KNG states that, following receipt of the Statements of Refunds Due from the above-referenced pipelines, it contacted the subject pipelines and provided them with information regarding the refund amounts (principal and interest) attributable to each working interest owner. KNG adds that it also provided the pipelines with the last known mailing address of each working interest owner, that it requested (consistent with Commission precedent[3]) that Statements of Refunds Due be forwarded to the individual working interest owners, and that it requested a revised Statement of Refunds Due from each pipeline, limited to KNG's own individual working interest. KNG further states that KNI agreed and submitted a revised Statement of Refunds Due to KNG, on February 9, 1998, limited to KNG's working interest. KNG adds, however, that Northern and CIG held that KNG is responsible for the refunds attributable to the entire production.

In review of the above, KNG's pleading includes a petition for dispute resolution,[4] requesting the Commission to:

(1) Direct Northern and CIG to (a) provide a revised Statement of Refunds Due to the individual working interest owners, and (b) provide KNG with a revised Statement of Refunds Due, limited to KNG's own individual working interest;

(2) Find, based on the Commission's decision in *Williams Natural Gas Co.*, 70 FERC ¶ 61,380 at 62,119 (1995), that certain Kansas ad valorem tax reimbursements are not subject to refund, because the addition of those amounts to the price paid did not exceed the applicable maximum lawful price; and

(3) Expressly approve the conditional nature of payments that KNG has already made to each pipeline.

KNG's pleading also includes a petition for an adjustment of the Commission's refund procedures. Specifically, in lieu of placing disputed amounts escrow accounts, KNG requests permission to place such amounts into an interest-bearing fund over which it will maintain control. KNG states that it agrees, subject to the conditional nature of any payments made, to disburse funds in accordance with any subsequent order of the Commission in these proceedings. KNG argues that this approach:

(1) Will not harm or disadvantage any party;

(2) Will not affect the ultimate level of refunds provided; and

(3) Will relieve KNG of the burden and associated cost of establishing formal escrow accounts.

KNG also states that the Commission's orders in the Kansas ad valorem tax refund proceedings permit the affected parties (i.e., working interest owners) to establish the uncollectability of amounts attributable to royalty owners, on a case-by-case basis, and in accordance with the standards in *Wylee Petroleum Corporation*, 29 FERC ¶ 61,014 (1985). KNG informs the Commission that KNG intends to pursue this option, and that KNG has placed all amounts attributable to royalty owners in escrow.

Any person desiring to comment on or make any protest with respect to said petition should, on or before April 24, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9297 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–23–000]

La Jolla Properties, Inc.; Notice of Petition for Dispute Resolution

April 3, 1998.

Take notice that, on March 9, 1998, the certified public accounting firm of Gutschenritter & Johnson, L.L.C., filed a petition for dispute resolution on behalf of La Jolla Properties, Inc. (La Jolla), requesting the Commission to resolve La Jolla's dispute with Colorado Interstate Gas Company (CIG) over La Jolla's Kansas ad valorem tax refund liability to

[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

[3] See *Robert F. White*, 71 ¶ 61,185 (1995).

[4] In its January 28, 1998 Order Clarifying Procedures, the Commission stated that producers (i.e., first sellers) could file dispute resolution requests with the Commission, asking the Commission to resolve the dispute with the pipeline over the amount of Kansas ad valorem tax refunds owed, see 82 FERC ¶ 61,059 (1998).

CIG. The Commission, by order issued September 10, 1997, in Docket No. RP97–369–000 *et al*,[1] on remand from the D.C. Circuit Court of Appeals,[2] required first sellers to refund the Kansas ad valorem tax reimbursements to the pipelines, with interest, for the period from 1983 to 1988. In its January 28, 1998 Order Clarifying Procedures, the Commission stated that producers (i.e., first sellers) could file dispute resolution requests with the Commission, asking the Commission to resolve the dispute with the pipeline over the amount of Kansas ad valorem tax refunds owed.[3] La Jolla's petition is on file with the Commission and open to public inspection.

La Jolla's accountants state that the Kansas ad valorem tax refunds that CIG is seeking from La Jolla pertain to production in 1980, 1981, and 1982. La Jolla's accountants state that they sent two letters to CIG (dated December 8, 1997 and February 25, 1998), and have not received any response from CIG. In view of the above, La Jolla's accountant's on behalf of La Jolla, request the Commission's attention to this matter, i.e., that the Commission resolve this dispute.

Any person desiring to comment on or make any protest with respect to said petition should, on or before April 24, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9296 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28,1998, 82 FERC ¶61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC,* 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

[3] 82 FERC ¶ 61,059 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–21–000]

Midgard Energy Company; Notice of Petition for Dispute Resolution

April 3, 1998.

Take notice that, on March 6, 1998, Midgard Energy Company (Midgard), formerly; Maxus Exploration Company (Maxus), filed a petition requesting the Commission to resolve Midgard's dispute with K N Interstate Gas Transmission Company (KNI) over Midgard's Kansas ad valorem tax refund liability to KNI. The Commission, by order issued September 10, 1997, in Docket No. RP97–369–000 *et al.*,[1] on remand from the D.C. Circuit Court of Appeals,[2] required first sellers to refund the Kansas ad valorem tax reimbursements to the pipelines, with interest, for the period from 1983 to 1988.[3] Midgard's petition is on file with the Commission and open to public inspection.

In its petition, Midgard argues that it has no refund liability to KNI because, during the 1983 through 1988 period at issue Midgard did not own the properties and/or the production under Contract No. 130 on which KNI claims refunds. Midgard adds that it does not own those properties now.

Midgard states that KNI's Statement of Refunds Due lists Maxus Energy (as successor to Cotton Petroleum) as the first seller under Contract No. 130, for production from the Betts A–1 well. Midgard states that it did not collect any Kansas ad valorem tax reimbursements under Contract No. 130 during the 1983 to 1988 period, and that it believes that Cotton Petroleum owned the Betts A–1 well production under Contract No. 130 from 1983 through 1986, and that Apache Corporation or an Apache affiliate (Apache) acquired the subject well in 1986. Midgard states that it acquired the Betts A–1 well from Apache, effective May 1, 1991, as part of a producing property acquisition and that, effective August 1, 1992, Midgard and KNI entered into a termination agreement for Contract No. 130 that specifically provided (among other things) that ''each party does hereby forever release and discharge the other from any and all liability under the contract.'' Midgard adds that, effective July 1, 1996, it sold its interest in the Betts A–1 well to Mr. Kenneth R. Lang, Sr., of Garden City, Kansas, for $5,000.

Midgard contends that the 1983–1988 Kansas ad valorem tax refund liability should fall to Cotton Petroleum and Apache, not Midgard, since Midgard did not receive any Kansas ad valorem tax reimbursements during the 1983–1988 period at issue. Therefore, Midgard contends that it has no refund liability to KNI under Contract No. 130.

Any person desiring to comment on or make any protest with respect to said petition should, on or before April 24, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9298 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC,* 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

[3] In its January 28, 1998 Order Clarifying Procedures, the Commission stated that producers (i.e., first sellers) could file dispute resolution requests with the Commission, asking the Commission to resolve the dispute with the pipeline over the amount of Kansas ad valorem tax refunds owed, see 82 FERC ¶ 61,059 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–8–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

April 3, 1998.

Take notice that on March 31, 1998, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Ninth Revised Sheet No. 9, with a proposed effective date of April 1, 1998.

National states that pursuant to Article I, Section 4, of the approved settlement at Docket Nos. RP94–367–000, et al., National is required to redetermine quarterly the Amortization Surcharge to reflect revisions in the Plant to be Amortized, interest and

associated taxes, and a change in the determinants. The recalculation produced an Amortization Surcharge of 11.68 cents per dth.

Further, National states that under Article II, Section 2, of the approved settlement, National is required to recalculate the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under section 1 of Article II. The recalculation produced an IG Rate of 11 cents per dth.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9305 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–031]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 3, 1998.

Take notice that on March 31, 1998, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective April 1, 1998:

Seventh Revised Sheet No. 7C
Fourth Revised Sheet No. 7E.03
Fourth Revised Sheet No. 7G
Second Revised Sheet No. 7K
First Revised Sheet No. 7L

NGT states that the purpose of this filing is to reflect the expiration of certain negotiated rate contracts.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9317 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–4–28–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

April 3, 1998.

Take notice that on March 31, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective May 1, 1998.

Panhandle states that this filing is made in accordance with Section 25 (Flow Through of Cash-Out Revenues In Excess of Costs and Scheduling Charges Assessed Against Affiliates) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, First Revised Volume No. 1. Panhandle states that the revised tariff sheets filed herewith reflect the following changes to Panhandle's currently effective Maximum Reservation Rates under Rate Schedules FT, EFT, and LFT, currently effective one-part rate under the Rate Schedule SCT, and the currently effective Maximum Commodity Rates under Rate Schedules IT, and EIT:

(1) a $.02 per Dt. increase from the Base Reservation Rate for each of the Gathering Charge Rate, Field Zone Transmission Charge Rate and Market Zone Access Charge Rate under Rate Schedules FT, EFT and LFT;

(2) a 0.13¢ per Dt. increase from the Base Rate for each of the Gathering Charge Rate, Field Zone Transmission Charge Rate and Market Zone Access Charge Rate under Rate Schedule SCT; and

(3) a 0.07¢ per Dt. increase from the Base Rate for each of the Gathering Charge Rate, Field Zone Transmission Charge Rate and Market Zone Access Charge Rate under Rate Schedules IT and EIT.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9306 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG98–46–000, EG98–41–000, EG98–45–000, EG98–42–000, EG98–44–000, and EG98–43–000 (not consolidated)]

Sithe Mystic LLC et al; Notice of Supplemental Filing for Commission Determination of Exempt Wholesale Generator Status

April 3, 1998.

On March 25, 1998, Sithe Mystic LLC, Sithe Framingham LLC, Sithe Edgar LLC, Sithe West Medway LLC, Sithe New Boston LLC, and Sithe Wyman LLC (together the Sithe New England Projects), 450 Lexington Avenue, 37th Floor, New York, New York 10017, filed with the Commission a supplement to their applications for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. On March 27, 1998, the Sithe New England Projects filed a sworn statement in support of the supplemental filing. The Sithe New England Projects state that the supplemental filing provides additional information concerning the

wholesale electricity services that will be sold from the Projects.

Copies of these filings have been provided to the Massachusetts Department of Telecommunications and Energy and the Securities and Exchange Commission.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments 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 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before April 16, 1998 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9304 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–173–000]

Southern Natural Gas Company; Notice of GSR Revised Tariff Sheets

April 3, 1998.

Take notice that on March 31, 1998, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to become effective April 1, 1998:

Twenty-Third Revised Sheet No. 14A
Twenty-Ninth Revised Sheet No. 15A
Twenty-Third Revised Sheet No. 16A
Twenty-Ninth Revised Sheet No. 17A
Thirteenth Revised Sheet No. 18A

Southern submits the revised tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, in accordance with Article VII of the Stipulation and Agreement in Docket Nos. RP89–224–012, et al. (Settlement), approved by Commission order on September 29, 1995. Under Article VII, Southern is required to adjust the GSR volumetric surcharge that was placed into effect January 1, 1998, based on actual GSR costs incurred and the actual GSR revenues collected in 1997 from parties supporting the Settlement. As a result of the adjustment, the volumetric surcharge decreased from $.0020/Dth to $.0018/Dth, effective April 1, 1998.

Southern states that copies of the filing were served upon all parties listed on the official service list complied by the Secretary in these proceedings.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9313 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–34–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 3, 1998.

Take notice that on April 1, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective April 1, 1998:

Twelfth Revised Sheet No. 776
Fourteenth Revised Sheet No. 777
Thirteenth Revised Sheet No. 826
Seventeenth Revised Sheet No. 830
Twenty-third Revised Sheet No. 831

Williston Basin states that the revised tariff sheets are being filed simply to update and simplify its Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9294 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–39–000, et al.]

Tenaska Frontier Partners, Ltd., et al.; Electric Rate and Corporate Regulation Filings

April 1, 1998.

Take notice that the following filings have been made with the Commission:

1. Tenaska Frontier Partners, Ltd.

[Docket No. EG98–39–000]

Take notice that on March 17, 1998, Tenaska Frontier Partners, Ltd., filed a supplement to the application herein.

Comment date: April 15, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. New England Power Company, Narragansett Electric Company, AllEnergy Marketing Company, L.L.C. and USGen New England, Inc.

[Docket Nos. EC98–1–000 and ER98–6–000]

Take notice that on March 27, 1998, New England Power Company tendered a compliance filing in the captioned dockets.

Comment date: April 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Enron Power Marketing, Inc.

[Docket No. ER94–24–023]

Take notice that on March 27, 1998, in compliance with the Commission's orders approving its market-based rate schedule, 65 FERC ¶ 61,305 (1993) and 66 FERC ¶ 61,244 (1994), Enron Power Marketing, Inc., (EPMI) submitted for filing a Notification of Change in Status.

The EPMI filing describes the development of wind energy projects by affiliates of EPMI and concludes that these transactions do not alter the characteristics that the Commission relied upon in approving the market-based pricing for EPMI.

Comment date: April 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Enron Energy Services, Inc.

[Docket No. ER98–13–003]

Take notice that on March 27, 1998, in compliance with the Commission's order approving its market-based rate schedule, 81 FERC ¶ 61,257 (1997), Enron Energy Services, Inc. (EES), submitted for filing a Notification of Change in Status. The EES filing describes the development of wind energy projects by affiliates of EES and concludes that these transactions do not alter the characteristics that the Commission relied upon in approving the market-based pricing for EES.

Comment date: April 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket Nos. ER98–1144–000, ER98–1146–000, ER98–1155–000, ER98–1161–000, and ER98–1204–000]

Take notice that on March 27, 1998, Public Service Company of New Mexico (PNM), tendered for filing, Amendment One to the Coronado to Palo Verde Firm Point-to-Point Transmission Service Agreement (Docket No. ER98–1144–000); Amendment One to the Palo Verde to Westwing Firm Point-to-Point Transmission Service Agreement (Docket No. ER98–1146–000); Amendment One to the San Juan to Greenlee Firm Point-to-Point Transmission Service Agreement (Docket No. ER98–1155–000); Amendment One to the San Juan to Coronado Firm Point-to-Point Transmission Service Agreement (Docket No. ER98–1161–000); and Amendment One to the San Juan to Luna firm Point-to-Point Transmission Service Agreement (Docket No. ER98–1204–000); all dated March 26, 1998.

PNM requests waiver of the Commission's notice requirements in order that the proposed effective date of the Five Firm Point-to-Point Service Agreements remain unchanged (i.e. a requested effective date of December 1, 1997 for Docket Nos. ER98–1144, 1146, 1155, and 1161 and a requested effective date of January 1, 1998 for Docket No. ER98–1204).

Copies of this filing have been mailed to the Federal Energy Regulatory Commission, the New Mexico Public Utility Commission, PNM Transmission Development and Contracts, PNM Wholesale Power Marketing, and PNM International Business Development. PNM's filing is available for inspection at its offices in Albuquerque, New Mexico.

Comment date: April 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Indiana Gas and Electric Company

[Docket No. ER98–2325–000]

Take notice that on March 27, 1998, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing one (1) service agreement for firm transmission service under Part II of its Transmission Services Tariff with:

1. Merchant Energy Group of the Americas, Inc. and two (2) service agreements for non-firm transmission service under Part II of its Transmission Services Tariff with:

1. Merchant Energy Group of the Americas, Inc.

2. ConAgra Energy Services, Inc.

Copies of the filing were served upon each of the parties to the service agreement.

Comment date: April 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Central Vermont Public Service Corporation

[Docket No. ER98–2329–000]

Take notice that on March 27, 1998, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a (1) tariff providing for sales of electric capacity and/or energy at market rates and for the resale of transmission rights, (2) a Code of Conduct as to inter-affiliate transactions, and (3) a form of service agreement. Central Vermont asks that its tariff and related documents be allowed to become effective on May 27, 1998.

Comment date: April 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power Company

[Docket No. ER98–2330–000]

Take notice that on March 27, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing firm and non-firm transmission service agreements between itself, Amoco Energy Trading Corporation and the Merchant Energy Group of the Americas (MEGA). Additionally, a non-firm transmission service agreement between Wisconsin Electric and Louisville Gas and Electric Company (LG&E) was also submitted. The transmission service agreements allow these three customers to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Volume No. 7, which is pending Commission consideration in Docket No. OA97–578.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear. Copies of the filing have been served on LG&E, Amoco, and MEGA, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: April 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER98–2331–000]

Take notice that on March 27, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Plum Street Energy Marketing, Inc. This Transmission Service Agreement specifies that Plum Street Energy Marketing, Inc., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Plum Street Energy Marketing, Inc., to enter into separately scheduled transactions under which NMPC will provide transmission service for Plum Street Energy Marketing, Inc., as the parties may mutually agree.

NMPC requests an effective date of March 20, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Plum Street Energy Marketing, Inc.

Comment date: April 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. South Carolina Electric & Gas

[Docket No. ER98–2333–000]

Take notice that on March 27, 1998, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement establishing Southeastern Power Administration (SEPA), as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G

requests waiver of the Commission's notice requirements. Copies of this filing were served upon SEPA and the South Carolina Public Service Commission.

Comment date: April 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Carolina Power & Light Company

[Docket No. ER98–2334–000]

Take notice that on March 27, 1998, Carolina Power & Light Company (Carolina), tendered for filing an executed Service Agreement between Carolina and the following Eligible Entity: Amoco Energy Trading Corporation. Service to the Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Carolina Power & Light Company

[Docket No. ER98–2335–000]

Take notice that on March 27, 1998, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customer: Strategic Energy Ltd.; and a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Strategic Energy Ltd. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. PP&L, Inc.

[Docket No. ER98–2336–000]

Take notice that on March 27, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated March 25, 1998, with East Kentucky Power Cooperative, Inc. (EKPC), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds EKPC as an eligible customer under the Tariff.

PP&L requests an effective date of March 27, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to EKPC and to the Pennsylvania Public Utility Commission.

Comment date: April 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Commonwealth Electric Company

[Docket No. ER98–2337–000]

Take notice that on March 27, 1998, Commonwealth Electric Company (Commonwealth), tendered for filing a non-firm point-to-point transmission service agreement between Commonwealth and VTEC Energy, Inc., (VTEC). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to VTEC under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER97–1341–000, subject to refund and issuance of further orders.

Comment date: April 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. South Carolina Electric & Gas

[Docket No. ER98–2338–000]

Take notice that on March 27, 1998, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement establishing Southeastern Power Administration (SEPA), as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon SEPA and the South Carolina Public Service Commission.

Comment date: April 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Minnesota Power & Light Company

[Docket No. ER98–2340–000]

Take notice that on March 27, 1998, Minnesota Power & Light Company (Minnesota Power), filed amendments to its Wholesale Coordination Service Tariff No. 2 (WCS–2), FERC Electric Tariff Original Volume No. 5 (the WCS–2 Tariff). Minnesota Power proposes to amend the WCS–2 Tariff to permit Minnesota Power to sell, assign, or transfer transmission rights held by Minnesota Power to customers taking service under the WCS–2 Tariff. Minnesota Power requests that the revisions to the WCS–2 Tariff be accepted for filing effective as of a date 60 days after the date of filing or on the date on which the Commission issues an order accepting the revisions for filing, whichever is earlier.

Comment date: April 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Minnesota Power & Light Company

[Docket No. ER98–2341–000]

Take notice that on March 27, 1998, Minnesota Power & Light Company (Minnesota Power), filed amendments to its Wholesale Coordination Sales Tariff No. 1 (WCS–1), FERC Electric Tariff Original Volume No. 2 (the WCS–1 Tariff). Minnesota Power proposes to amend the WCS–1 Tariff to permit Minnesota Power to sell, assign, or transfer transmission rights held by Minnesota Power to customers taking service under the WCS–1 Tariff. Minnesota Power requests that the revisions to the WCS–1 Tariff be accepted for filing effective as of a date 60 days after the date of filing or on the date on which the Commission issues an order accepting the revisions for filing, whichever is earlier.

Comment date: April 16, 1998, 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–9302 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of Licenses

April 3, 1998.

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 licenses.

b. *Project Nos:* 2142–026, 2284–017, 2335–017.

c. *Date Filed:* March 23, 1998.

d. *Applicant:* Central Maine Power Company.

e. *Name of Projects:* Indian Pond (Harris), Brunswick, and Williams.

f. *Location:* Indian Pond: On Kennebec River, Somerset and Piscataquis Counties, Maine; Brunswick: On Androscaggin River, Cumberland and Sagadahoc Counties, Maine; Williams: On Kennebec River, Somerset County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* F. Allen Wiley, P.E., Managing Director of Generation, Central Maine Power Company, 46 Anthony Ave., Augusta, Maine 04330, Tel: (207) 621–4412.

i. *FERC Contact:* Mohamad Fayyad, (202) 219–2665.

j. *Comment Date:* April 23, 1998.

k. *Description of Amendments:* Licensee proposes to delete from projects' boundaries transmission lines that are no longer considered primary lines, as follows:

Harris Project: Licensee proposes to delete about 29.5-mile-long transmission line and related facilities from the project's boundary. This line is now part of the licensee's interconnected transmission system.

Brunswick: Licensee proposes to delete about 0.25-mile-long transmission line and related facilities from the project's boundary. This line is now part of the licensee's interconnected transmission system.

Williams: Licensee proposes to delete about 3,900-foot-long transmission line and related facilities from the project's boundary. This line is now part of the licensee's interconnected transmission system.

l. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9293 Filed 4–8–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–5993–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Electric Utility Steam Generating Unit Mercury Emissions Collection Effort

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Electric Utility Steam Generating Unit Mercury Emissions Information Collection Effort Information Collection Request; EPA ICR No. 1858.01. 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 of before June 8, 1998.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), Attention Docket No. A–92–55, Room M–1500, 401 M Street, S.W., Washington, D.C. 20460. The EPA requests that a separate copy also be sent to Mr. William Maxwell, Combustion Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Copies of ICR

The draft ICR and other relevant materials, including the draft supporting statement, are available from the docket at the above address in Room M–1500, Waterside Mall (ground floor), phone number (202) 260–7548. A reasonable fee may be charged for copying. The docket is open for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, except for Federal holidays. Copies of the draft ICR may also be obtained free of charge from the EPA's website listing **Federal Register** Notices at ''http://www.epa.gov/ttn/oarpg/t3pfpr.html'' or by contacting one of the people listed below.

Public Meeting

The EPA plans to hold a public meeting in Washington, D.C., at which time interested parties can provide comment on this ICR. A document will be published in the near future in the **Federal Register** announcing the date, time, and location of this meeting.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this ICR, contact Mr. William Maxwell [telephone number (919) 541–5430; facsimile number (919) 541–5450; e-mail ''maxwell.bill@epa.gov''], Combustion Group, Emission Standards Division (MD–13); or Mr. William Grimley [telephone number (919) 541–1065; facsimile number (919) 541–1039; e-mail ''grimley.william@epa.gov''], Emission Measurement Center,

Emission Monitoring and Analysis Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are owners and operators of coal-fired electric utility steam generating units as defined by section 112(a)(8) of the Clean Air Act, as amended (the Act).

Title: Electric Utility Steam Generating Unit Mercury Emissions Information Collection Effort Information Collection Request; EPA ICR No. 1858.01.

Abstract: Section 112(n)(1)(A) of the Act requires EPA to perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of hazardous air pollutants (HAPs) after imposition of the requirements of the Act and to prepare a Report to Congress containing the results of the study. The Agency is to proceed with rulemaking activities under section 112 to control HAP emissions from utilities if EPA finds such regulation is appropriate and necessary after considering the results of the study. The study has been completed and the Final Report to Congress was issued on February 24, 1998.

In the Final Report to Congress, the EPA stated that mercury is the HAP emission of greatest potential concern from coal-fired utilities and that additional research and monitoring are merited. The EPA also listed a number of research needs related to such mercury emissions. These include obtaining additional data on the mercury content of various types of coal as burned in electric utility steam generating units and additional data on mercury emissions to the atmosphere (e.g., how much is emitted from various types of units; how much is divalent vs. elemental mercury; and how do factors such as control device, fuel type, and plant configuration affect emissions and speciation).

As indicated above, section 112(n)(1)(A) of the Act requires the Administrator to regulate electric utility steam generating units under section 112 if the Administrator finds that such regulation is appropriate and necessary after ''considering the results of the study'' noted above. The Administrator interprets the quoted language as indicating that the results of the study are to play a principle, but not exclusive, role in informing the Administrator's decision as to whether it is appropriate and necessary to regulate electric utility steam generating units under section 112. The Administrator believes that in addition to considering the results of the study, she may consider any other available information in making her decision. The Administrator also believes that she is authorized to collect and evaluate any additional information which may be necessary to make an informed decision.

After carefully considering the Final Report to Congress, the Administrator has concluded that obtaining additional information under the authority of section 114 of the Act prior to making the required determination is appropriate. In the Final Report to Congress, the EPA stated that at this time, the available information, on balance, indicates that utility mercury emissions are of sufficient potential concern for public health to merit further research and monitoring. The EPA acknowledged that there are substantial uncertainties that make it difficult to quantify the magnitude of the risks due to utility mercury emissions, and that further research and/or evaluation would be needed to reduce those uncertainties. The EPA believes that among those uncertainties are: (i) the actual cumulative amount of mercury being emitted by all electric utility steam generating units on an annual basis; (ii) the speciation of the mercury which is being emitted; and, (iii) the effectiveness of various control technologies in reducing the volume of each form of mercury which is emitted.

To address the question of the cumulative amount of mercury potentially being emitted by all electric utility steam generating units on an annual basis, the EPA believes that it is necessary to require the owners/operators of all such units to provide information on the mercury content of the coal burned in each unit as well as the volume of coal burned in each unit. Thus, the ICR includes a requirement for the owners/operators of all coal-fired electric utility steam generating units with a capacity greater than 25 megawatts electric (MWe) to periodically measure the mercury content of the coal which they burn on a weekly basis and report the results together with the corresponding volume of coal burned in each unit.

In preparing the Final Report to Congress, the Agency had available mercury emission data from a number of utility boilers. These data included measurements of the mercury emitted during various stages of the process (e.g., exiting the boiler, exiting the various control devices). Research conducted during the period between acquisition of these data and release of the report has highlighted the importance of the specific valence state of the emitted mercury on the ability of a particular control device to remove mercury from the exhaust gas stream. In addition, advances have been made in emission testing methodologies that more accurately differentiate among the various species of mercury that may be emitted from an electric utility steam generating unit. Thus, the ICR also includes provisions for acquiring additional speciated mercury data on both controlled and uncontrolled air emissions so that the relationship between mercury content and other characteristics of the coal, the species of mercury formed in the boiler, and the mercury removal performance of various control devices may be further evaluated.

Although the actual variables that affect mercury speciation are still being determined in ongoing research efforts, two variables that appear to have an effect are coal characteristics and scrubber type. For purposes of grouping the coal-fired units (boilers) into categories, these two variables were used so that a more representative sample of coal-fired units can be selected for testing. Coal characteristics are related to the coal type, which is defined as either bituminous (including anthracite for this ICR), subbituminous, or lignite. Scrubber type is defined as either a dry-scrubber (of any type/model), wet-scrubber (of any type/model), or no scrubber at all.

ICR Description: To address the issues related to coal characteristics, this ICR requires that the owner/operator of each facility at which one or more individual coal-fired unit(s) (boiler(s)) is (are) located (there are approximately 421 nationwide) provide periodic analyses of all coals fired. This would be accomplished by obtaining weekly as-fired coal analyses from each distinct coal storage pile, including silos, etc., in use at the facility, rather than from each boiler located at the facility. In this way, information will be provided from which the amount of mercury entering each of the approximately 1,017 coal-fired boilers (nationwide) may be estimated at a minimum burden level for any given facility. It would also be necessary to measure and record the amount of coal burned in each week and identify the source of the coal (e.g., State, seam, etc.). Each coal sample would be analyzed using one of several standardized analytical methods for mercury, chlorine, and other specified items. These analyses would be obtained either by direct sampling and analysis by each owner/operator or by submission of suitable analyses

provided by the coal supplier. Analyses performed by the coal supplier would not be considered suitable if the coal would subsequently be cleaned at the facility where the electric utility steam generating unit(s) is (are) located. The Agency will ultimately apply appropriate correction factors to these data to derive a reasonable estimate of the total amount of mercury emitted by each coal-fired electric utility steam generating unit on an annual basis. To better evaluate whether mercury emissions from coal-fired electric utility steam generating units vary over time and to provide information to the public on mercury emissions over time, the Agency is considering requiring coal sampling and emissions reporting to be conducted for a number of years.

To address the issues related to scrubber type, this ICR also requires that quarterly, triplicate simultaneous before/after control device stack sampling be performed by a subset of boilers using a specified mercury speciation method. During the stack testing, a statistically appropriate number of coal samples would be required to be collected for analysis. When dealing with a large population (approximately 1,017 individual boilers) of this nature with consideration being made for the cost of the data collection effort (which involves sampling the fewest number of units possible without compromising the integrity of the data being collected), a statistically representative sample is considered to be 30. These samples can be selected in one of two ways: equally among the viable categories or proportional allocation of sample to stratified population (units within each category). The universe of boilers was divided into nine scrubber type/coal characteristic categories. One possible category had no members, leaving eight viable categories. A proportional allocation methodology was selected, with provisions being made for having at least two members selected from each category (assessing one sample would provide no basis for comparison).

A random selection process will be used to determine what units are required to participate in this testing program. If possible, once a unit from a particular site (facility) has been selected, no other unit(s) at that site will be chosen for that particular category (i.e., some facilities have units with different scrubber types or that burn coal from different sources). This will provide the Agency with more information from a larger number of facilities. Appropriate quality assurance/quality control (QA/QC) procedures would be required for each part of the ICR.

Burden Statement: 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.

The total annual reporting and recordkeeping burden for this ICR is estimated to be 40,516 hours and $14,659,264. This is the estimated burden for 421 facilities to provide coal analyses (assuming no more than two coal storage piles per facility) and 30 units to provide speciated mercury emission data. The average annual base reporting and recordkeeping burden and cost for this information collection for facilities having units subject only to the first component of the mercury emissions data gathering effort is 37 hours and $22,925. The average annual per electric utility steam generating unit base reporting and recordkeeping burden and cost for this information collection for units subject to the second component of the mercury emissions data gathering effort is 174 hours and $166,928. This ICR does not include any requirements that would cause the respondents to incur either capital and start-up costs or operation and maintenance costs. The EPA has assumed that all respondents will contract (i.e., purchase services) for the weekly coal analyses and for the quarterly stack testing. These costs are $8,804,800 for the coal analyses and $4,800,000 for the stack testing.

Request for Comments

The EPA solicits comments on the following aspects of the ICR itself.

1. Will the information that the Agency proposes to collect have practical utility in informing the Administrator's decision on whether it is appropriate and necessary to regulate HAP emissions from electric utility steam generating units under section 112 of the Act?

2. Is the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, accurate?

3. Are there ways to enhance the quality, utility, and clarity of the information to be collected?

4. How can the Agency best minimize the burden of the collection of information on those who are to respond? 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)?

The Agency also solicits comment on the following specific technical issues.

1. What is the exact amount, representativeness, and sufficiency of information on the mercury content of as-fired coal that already exists?

2. To what extent are analyses of mercury in as-fired coal currently being performed?

3. Do coal analyses performed on cleaned coal by coal suppliers accurately represent as-fired coal to the same degree as analyses of actual on-site samples?

4. What factors could increase or decrease the number of individual samples needed to identify with reasonable certainty an average annual mercury in coal value for a particular unit?

5. What is the minimum number of individual samples required for a particular unit to identify with reasonable certainty an average annual mercury in coal value?

6. Would a statistical sampling approach provide comprehensive data on the mercury content of the total volume of as-fired coal burned in electric utility steam generating units comparable in quality and reliability to that obtained by requiring the sampling of all such coals?

7. Could a particular facility be placed at a competitive disadvantage due to a disproportionate cost burden in either the coal or stack testing?

8. What is the specific amount, representativeness, and sufficiency of information on the speciation of mercury in stack gases that already exists or is currently being collected?

9. What difficulties in sampling at those sources selected for stack testing might occur due to unusual operating or physical characteristics?

10. Would requiring coal sampling and analyses for more than one year provide information that would be valuable to the public, as well as allow the Agency to better evaluate whether the characteristics of the as-fired coal burned in electric utility steam generating units vary over time and the impact of any such variation on mercury

emissions? The Agency seeks comment also on how best to design a mercury monitoring protocol beyond the first year.

Finally, the Agency requests comment on the following four general questions.

1. Are there other approaches to obtaining the desired information that the Agency could take which would provide data of comparable, or better, quality at a reduced burden?

2. Will the information which the Agency proposes to collect provide the Administrator with all of the information on the quantity and speciation of mercury emissions from electric utility steam generating units needed to determine whether it is appropriate and necessary to regulate HAP emissions from electric utility steam generating units under section 112 of the Act and to develop appropriate regulations if the Administrator determines that such regulation is appropriate and necessary?

3. Does the population of electric utility steam generating units from which the Agency proposes to obtain information (i.e., approximately 1,017 coal-fired boilers at approximately 421 facilities) adequately reflect the true population that meets the section 112(a)(8) definition (i.e., a population that may include publicly-owned utility companies, rural electric cooperatives, investor-owned utility generating companies, and non-utility generators)?

4. Is there any other information which the Agency should obtain to inform the Administrator's decision of whether it is appropriate and necessary to regulate HAP emissions from electric utility steam generating units under section 112 of the Act?

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that is sent to ten or more persons unless it displays a currently valid OMB control number. The OMB control numbers for EPA's approved information collection requests are listed in 40 CFR part 9 and 48 CFR Chapter 15. This notice is the first step in obtaining approval for the ICR described above.

Dated: April 3, 1998.

Richard D. Wilson,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 98–9390 Filed 4–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5993–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; The Class V Underground Injection Control Study

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: The Class V Underground Injection Control Study (ICR# 1834.01). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 8, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1834.01.

SUPPLEMENTARY INFORMATION:

Title: The Class V Underground Injection Control Study (ICR# 1834.01). This is a new collection of information.

Abstract: The Environmental Protection Agency (EPA) Office of Ground Water and Drinking Water (OGWDW) will collect information on Class V injection wells. This information collection will be conducted to meet the requirements of the Safe Drinking Water Act (SDWA) and EPA's modified consent decree with the Sierra Club.[1] The consent decree requires EPA, in part, to study Class V wells. The results of this study will be used by EPA to determine whether additional regulations are needed for certain Class V wells and to develop those regulations if necessary.

The objective of the Class V study is to gather information on Class V wells. This information will enable EPA to characterize the nationwide risk Class V wells pose to underground sources of drinking water (USDWs). To achieve this objective, EPA must have information on the number of wells by subclass and the risk posed by each subclass. EPA will collect information on each subclass of Class V well using two types of data collection: (1) collection of existing information from State agencies, EPA Regional offices, organizations and businesses by mail, telephone, and file searches; and (2) enumeration of the number and types of wells in study areas collected by site visits to those areas. Data collected during this study will be analyzed and stored in databases maintained by OGWDW.

Responses to this ICR are voluntary and no assurances of confidentiality will be provided to those who participate in the data collection effort.

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. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 18, 1997. No comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 28 minutes per response. 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.

Respondent/Affected Entities: Owners and operators of Class V wells.

Estimated Number of Respondents: 3448.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 1634 hours.

Estimated Total Annualized Cost Burden: $45,557.50.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection

[1] *Sierra Club* v. *Carol M. Browner,* Civil Action No. 93–2644 NHJ, 1997.

techniques to the following addresses. Please refer to EPA ICR# 1834.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 2, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–9388 Filed 4–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5993–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Four Private Party Surveys Regarding Prospective Purchaser Agreements and Comfort/Status Letters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Four Private Party Surveys Regarding Prospective Purchaser Agreements and Comfort/Status Letters (EPA ICR #1837.02). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR #1837.02.

SUPPLEMENTARY INFORMATION:

Title: Four Private Party Surveys Regarding Prospective Purchaser Agreements and Comfort/Status Letters (EPA ICR #1837.02). This is a new collection.

Abstract: In 1995, EPA issued guidance and policies concerning the use of Prospective Purchaser Agreements and Comfort/Status Letters. (See *Guidance on Settlements with Prospective Purchasers of Contaminated Property,* published in the **Federal Register** on July 3, 1995 (60 FR 34792), and *Policy on the Issuance of Comfort/Status Letters,* published in the **Federal Register** on January 30, 1997 (62 FR 4624). Since that date, EPA has entered into 76 Prospective Purchaser Agreements and issued approximately 200 Comfort/Status Letters. OSRE will use four surveys to collect information from private parties (non-government personnel) at Brownfield sites where Prospective Purchaser Agreements and Comfort/Status Letters have been issued, or where they have been sought but not obtained. OSRE will use the information collected to evaluate the effectiveness of the guidance on Prospective Purchaser Agreements and the Comfort/Status Letter policy, consider revisions to the guidance and policy, and consider expanding the use of Prospective Purchaser Agreements and Comfort/Status Letters to other EPA media programs. Responses to this information collection are strictly voluntary, and the information collection is a one-time effort.

OSRE will ensure the confidentiality of the responses to the information collection by employing contractor support to collect and analyze the information and by barring access to individual responses. Using contractors to collect the information through telephone surveys is expected to increase the candor of the responses. Contractors will transcribe responses onto survey forms and will compile the information. EPA and other personnel will not have access to individual responses. All EPA personnel, as well as other interested parties, will be limited to examining only compiled summaries of data. This process will safeguard the confidentiality of the information. All contractors involved in the information collection have signed non-disclosure statements and Conflict of Interest assessments. These documents ensure that the contractors have examined the information collection assignment for possible conflicts of interest and have found none. They also ensure that contractors will not reveal any information they collect while conducting the surveys.

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. A **Federal Register** document was published on 11/26/97 (62 FR 63158) soliciting comments on this collection of information, as required under 5 CFR 1320.8(d); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 45 minutes per response. 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.

Respondents/Affected Entities: Personnel at Brownfield sites.

Estimated Number of Respondents: 600.

Frequency of Response: one time only.

Estimated Total Annual Hour Burden: 488 hours.

Estimated Total Annualized Cost Burden: $18,700.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR #1837.02 in any correspondence.

Ms. Sandy Farmer, V.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 3, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–9389 Filed 4–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5993–2]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent To Certify Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of agency receipt of a notification of intent to certify equipment and initiation of 45-day public review and comment period.

SUMMARY: Engelhard Corporation (Engelhard) has submitted to EPA a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR part 85, subpart O. EPA is making the notification (application) available for public review and comment for a 45-day period.

Engelhard intends that this equipment be certified to the 0.10 grams per brake-horsepower-hour (g/bhp-hr) particulate matter standard for 1988–1993 model year Detroit Diesel Corporation (DDC) 6V92TA engines equipped with Detroit Diesel Electronic Control (DDEC). Also, Engelhard submits life cycle cost information and guarantees that this equipment will be made available to all affected bus operators for less than the applicable life cycle cost ceiling. If the candidate equipment is the first to be certified as to meet this standard for less than the applicable life cycle cost, then it would ''trigger'' the 0.10 g/bhp-hr standard for the applicable engines.

The application describes equipment that is based upon a 6V92TA DDEC II engine that is rebuilt to a standard 1991 to 1993 DDC specification of 277 horsepower (hp). However, when the engine is rebuilt it will utilize ETX specific coated cylinder heads, coated valves, cylinder kits incorporating coated piston domes, an improved turbocharger, and a CMX–5 catalytic muffler.

As described in the application, Engelhard would provide the coated cylinder heads, coated cylinder kits, improved turbocharger, catalytic muffler, and ECM upgrade (only for 1988 through 1990 model year engines). To complete the kit, an operator would have to acquire on its own, the other required engine rebuild parts: fuel injectors, blower, and camshafts.

Pursuant to section 85.1407(a)(7), today's **Federal Register** document summarizes the application, announces that it is available for public review and comment, and initiates a 45-day period during which comments can be submitted. EPA will review this notification of intent to certify, as well any comments it receives, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The notification of intent to certify, as well as other materials specifically relevant to it, are contained in Category XXII of Public Docket A–93–42, entitled ''Certification of Urban Bus Retrofit/Rebuild Equipment''. This docket is located at the address listed below.

Today's notice initiates a 45-day period during which EPA will accept written comments relevant to whether or not the equipment included in this notification of intent to certify should be certified. Comments should be provided in writing to the addresses below.

DATES: Comments must be submitted on or before May 26, 1998.

ADDRESSES: Submit separate copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category XXII–A), Room M–1500, 401 M Street S.W., Washington, DC 20460
2. William Rutledge, Engine Compliance Programs Group, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 ''M'' Street S.W., Washington, DC 20460

The Engelhard notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 564–9297.

SUPPLEMENTARY INFORMATION:

I. Program Background

On April 21, 1993, EPA published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Option 1 sets particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Option 2 is a fleet averaging program that sets out a specific annual target level for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is the certification of retrofit/rebuild equipment. To meet either of the two compliance options, operators of the affected buses must use equipment which has been certified by EPA. Emissions requirements under either of the two options depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Option 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Option 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program.

Under Option 1, additional information regarding cost must be submitted in the application for certification, in order for certification of that equipment to initiate (or trigger) program requirements for a particular engine model. In order for the equipment to serve as a trigger, the certifier must guarantee that the equipment will be offered to affected operators for $7,940 or less at the 0.10 g/bhp-hr PM level, or for $2,000 or less for the 25 percent or greater reduction in PM. Both of the above amounts are based on 1992 dollars and include life cycle costs incremental to the cost of a standard rebuild.

II. Application For Certification

Engelhard Corporation has applied for certification of equipment, referred to as the ETX rebuild kit, that is applicable to 1988 through 1993 model year Detroit Diesel Corporation 6V92TA diesel engines equipped with Detroit Diesel Electronic Control (DDEC). The application states that the candidate equipment achieves a particulate matter (PM) level of 0.10 g/bhp-hr. Life cycle costs, incremental to the cost of a standard rebuild, are stated to be less than $7,940 (in 1992 dollars) for all affected operators. The use of the equipment by transit operators to meet program requirements is discussed further below.

The GPX® and CMX™ technology in the candidate kit are identical to the technology of the kit that EPA certified

earlier (62 FR 12166; March 14, 1997) to the 0.10 g/bhp-hr standard for Detroit Diesel Corporation (DDC) 6V92TA model engines that use mechanical unit injectors.

The application states that the candidate ETX rebuild kit is designed to update all electronically controlled DDC 6V92TA DDEC II engines to one standard 277 Hp ETX configuration. The kit incorporates engine components (cylinder head fire deck, valve faces and piston crowns) that are coated with Engelhard's proprietary GPX technology, a CMX catalytic muffler, and an improved turbocharger.

The basis for the kit is a 6V92TA DDEC II engine that is rebuilt to a standard 1991 to 1993 DDC specification of 277 horsepower (hp). However, when the engine is rebuilt it will utilize ETX-specific coated cylinder heads, coated valves, cylinder kits incorporating coated piston domes, an improved turbocharger, and a CMX–5 catalytic muffler. The 1988 to 1990 model year engines receive an upgraded control program for the electronic control module.

Engelhard indicates that the coated engine components utilize unique properties to improve the combustion efficiency of the engine to reduce the engine-out emissions of particulate matter (PM). The improved turbocharger operates like a typical turbocharger but with improved efficiency and airflow. The improved airflow improves combustion efficiency which reduces engine-out PM. The CMX–5 catalytic muffler incorporates Engelhard's oxidation catalyst technology to reduce PM emissions in the exhaust.

The specific catalytic converter part to be used depends on the type of coach as well as the type of engine. Engelhard's notification provides a table listing the various catalytic converter kits available for different engine/coach combinations. The catalytic converter used in this equipment package is not the same as the Engelhard catalytic converter previously certified by EPA to reduce PM by 25 percent (60 FR 28402, May 31, 1995). Therefore, transit operators cannot use the previously certified converter in place of the new converter in the candidate kit.

Engelhard presents emissions data from testing two baseline engines, one rebuilt to a 1988 configuration, and the other rebuilt to a 1991 to 1993 model year DDC DDEC II standard configuration (using a DDC DDEC II upgrade kit). A certification test was performed on the engine after being rebuilt with the ETX Rebuild Kit. Lists of parts used in the rebuilds are provided in a letter dated February 9, 1998, from Engelhard. This letter can be found in the public docket at the address listed above. Transient testing was performed in accordance with the federal test procedure of 40 CFR part 86, subparts N and I.

The certification testing document a PM emissions level of 0.09 g/bhp-hr, and also show that emissions of hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen (NOx), and smoke are within the applicable standards.

The emissions data of the application are summarized below in Table 1. Based on this testing demonstration, EPA believes that all ETX-equipped engines would meet the 0.10 g/bhp-hr PM standard because installation of the kit results in the replacement of all emissions related parts with a specific set of parts, the combination of which results in a documented PM level of 0.09 g/bhp-hr. The PM emissions level of an original engine, prior to installation of the Engelhard kit, may be irrelevant since all emissions-related parts are required to be replaced upon installation of the kit. EPA requests comments on whether or not all engines for which certification is intended will meet the 0.10 g/bhp-hr PM standard.

The baseline test engines also produced fuel consumption values which are important to evaluate any fuel consumption impact of the candidate equipment. This is discussed further below, as it relates to the life cycle cost analysis.

TABLE 1.— SUMMARY OF ENGELHARD TESTING

	g/bhp-hr					
	HDDE standards			1988 6V92TA DDEC II Baseline[1]	1991–1993 6V92TA DDEC II Baseline[2]	6V92TA DDEC II with ETX kit
	1988	1990	1991			
Gaseous and Particulate Test:						
HC	1.3	1.3	1.3	0.8	0.5	0.2
CQ	15.5	15.5	15.5	1.4	1.9	0.6
NO_X	10.7	6.0	5.0	5.5	4.7	5.0
PM	0.60	0.60	0.25	0.43	0.28	0.094
BSFC[3]	.....	.....	.....	0.481	0.498	0.503
HP (R/O)[4]	.....	.....	.....	277/273	277/281	277/266
Smoke Test:	Standards (percent)					
ACCEL	20			.....	.....	3.6
LUG	15			.....	.....	0.6
PEAK	50			.....	.....	8.1

[1] All 6V92TA testing was performed on engine identification number 6VF–118287.
[2] The DDC upgrade kit (25% reduction) configures an engine to the 1991 model year.
[3] Brake Specific Fuel Consumption (BSFC) is measured in units of lb/bhp-hr.
[4] Horsepower (Rated/Observed during testing).

Engelhard's application includes life cycle cost information which is required pursuant to 40 CFR 85.1407 in order to trigger the program standard of 0.10 g/bhp-hr for applicable engines. The following table summarizes the life cycle cost information presented by Engelhard, with some EPA clarifications and notations.

TABLE 2.—Life Cycle Costs in 1992 Dollars

[For 1988 to 1990 model year DDEC engines [1]

Item	Maximum cost to bus operator		
	Standard rebuild [1]	ETX Kit	Difference
Standard Rebuild Non-ETX Parts [1]	$3,045	$3,045	
Standard Rebuild, ETX Parts [1]	3,921	.....	
CMX Installation (6 hours @ $35.00/hour)	.....	210	
ETX Purchase Price	.....	10,280	
Fuel Penalty	.....	1,315	
Total	6,966 [1]	14,850	7,884
For 1991 to 1993 Model Year DDEC Engines			
Standard Rebuild Non ETX Parts [1]	3,045	3,045	
Standard Rebuild, ETX Parts [1]	3,921	.....	
CMX Installation (6 hours @ $35.00/hour)	.....	210	
ETX Kit Purchase Price	.....	11,595	
Fuel Penalty [2]	.....	0	
Total	6,966 [1]	14,850	7,884

[1] DDC itemized the prices of individual parts of a ''standard'' rebuild in its notification of intent to certify (with an issue date of December 22, 1995) its 25-percent reduction upgrade kit.

[2] The $1,315 penalty (1992 dollars) is due to the 4.7 percent fuel penalty related to the DDC upgrade kit. This penalty (4.7 percent) is from DDC's notification of intent to certify with issue date of December 22, 1995.

The Engelhard application indicates that total life cycle cost of the candidate kit is $14,850 (in 1992 dollars) for all applicable model year engines. For 1988 through 1990 model year engines, this includes $10,280 to purchase the candidate kit, $210 for installation of the catalytic converter muffler, a fuel economy penalty of $1,315, and $3,045 to purchase the required emission-related engine rebuild parts that are not provided with the kit. For 1991 through 1993 model year engines, this includes $11,595 to purchase the candidate kit, $210 for installation of the catalytic converter muffler, no fuel economy penalty, and $3,045 to purchase the required emission-related engine rebuild parts that are not provided with the kit. Engelhard states that the labor to rebuild an engine will be the same for a ''standard'' rebuild and the candidate kit, with the exception of the additional labor required for installation of the catalytic converter muffler. Engelhard uses $6,966 as the cost a ''standard'' rebuild because this is the sum of the purchase prices of the individual parts of a ''standard'' rebuild that DDC provided in its notification of intent to certify (with an issue date of December 22, 1995) its 25-percent reduction upgrade kit. The fuel consumption data for the candidate kit indicates roughly 4.6 percent fuel economy penalty when the candidate equipment is used with 1988/1989 model year engines. This percent penalty appears consistent with the 4.78 percent penalty determined by DDC in its notification of intent to certify its 25-percent reduction upgrade kit. This fuel economy impact increases life cycle costs about $1,315 (in 1992 dollars) only for 1988 and 1989 model year engines. Engelhard indicates that the total life cycle cost ($14,850) is less than $7,940 incremental to the cost of a ''standard'' rebuild (listed as $6,966) and therefore meets the life cycle cost requirements to trigger the 0.10 g/bhp-hr standard for the applicable engines.

In accordance with program requirements, Engelhard's application includes emissions defect and emissions performance warranties.

The candidate kit requires particular engine rebuild parts that are specified by Engelhard in order to upgrade applicable engines to a 277 hp 1991 to 1993 model year configuration. As proposed in the application, Engelhard would provide certain engine components (the coated cylinder heads, coated valves, and cylinder kits incorporating coated piston domes), the catalytic converter muffler, and the turbocharger. The remaining required parts (fuel injectors, camshafts, and blower) would be purchased elsewhere or supplied separately by the transit operator, as long as such parts were the Engelhard-specified OEM components. Engelhard contends that the ''engine specified parts'' that an operator would acquire elsewhere are all ''standard'' engine parts that are not modified or influenced by the ETX components. Engelhard proposes that the candidate kit include a specified parts list, but not provide these ''standard'' parts. Additionally, EPA understands that Engelhard does not intend that the warranties provided by them would cover these parts, because these parts are normally replaced during a standard rebuild.

EPA expects to evaluate this supply method and its impact on life cycle costs and whether it is appropriate pursuant to program requirements [such as 40 CFR 85.1403(a)(1)]. Also, EPA will evaluate whether this supply method would compromise the ability of the Engelhard kit to achieve 0.10 g/bhp-hr PM standard in the field. EPA requests comment on this supply method.

At this point, EPA has not determined the accuracy of the life cycle cost information, including whether a fuel economy penalty exists, or the cost of a standard rebuild. EPA requests comment on the life cycle cost analysis. EPA will use information gathered through public comment and from the certifier to address any issues.

If Engelhard cannot show that its equipment will be offered to all operators for less than $7,940 (in 1992 dollars) incremental to the cost of a standard rebuild, then certification may proceed but it would not trigger the 0.10 g/bhp-hr PM standard.

If EPA certifies the candidate application, then urban bus operators who choose to comply with compliance Option 1 of this program will be required to use this equipment or other equipment certified to the 0.10 g/bhp-hr standard beginning six months after certification approval, when applicable engines are rebuilt or replaced.

If EPA approves Engelhard's certification request, then bus operators

who chose to comply under compliance Option 2 of this program may also use the Engelhard equipment.

In a final rule dated March 26, 1998 (63 FR 14626), the urban bus program regulations were amended to provide for EPA review of equipment certified by July 1, 1998, and revision of the post-rebuild levels used with Option 2 target level calculations, as necessary. This amendment was done to assure that the two compliance options of the urban bus program remain equivalent, and also because EPA expects equipment to be certified in early 1998 at a level of 0.10 g/bhp-hr for the 6V92TA DDEC engine models. If certification of the candidate kit is approved prior to July 1, 1998, then EPA expects to use the emission level of the Engelhard rebuild kit to revise the Option 2 post-rebuild levels for the applicable engines. While we believe that only a small number of operators use Option 2, we estimate that the engines affected by the candidate equipment are 40 percent of the urban bus fleet covered by the regulation.

The date of today's notice initiates a 45-day period during which EPA will accept written comments relevant to whether or not the equipment described in the Engelhard application should be certified. Interested parties are encouraged to review this application, and provide comments related to whether or not the equipment described in it should be certified pursuant to the urban bus retrofit/rebuild program. Comments should be provided in writing to the address listed under the Addresses section of this document.

EPA will review this notification of intent to certify, along with comments received from the interested parties, and attempt to resolve or clarify issues as necessary. During the review process, EPA may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment.

Dated: April 3, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Office of Air and Radiation.

[FR Doc. 98–9387 Filed 4–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5992–9]

Extension of the Policy on Enforcement of RCRA Section 3004(j) Storage Prohibition at Facilities Generating Mixed Radioactive/ Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; policy statement.

SUMMARY: EPA is announcing an interim extension of its policy (61 FR 18588, April 26, 1996) on the civil enforcement of the storage prohibition in section 3004(j) of the Resource Conservation and Recovery Act (RCRA) at facilities that generate ''mixed waste.'' RCRA defines ''mixed waste'' as waste that contains both hazardous waste and source, special nuclear, or by-product material subject to the Atomic Energy Act (AEA). RCRA section 1004(41), 42 U.S.C. 6903. Thus, ''mixed waste'' is regulated under both the RCRA subtitle C hazardous waste program and the AEA. This action extends the April 1996 policy until October 31, 1998. The policy affects only mixed wastes that are prohibited from land disposal under the RCRA land disposal restrictions and for which there are no available options for treatment or disposal. EPA has been recently gathering information to determine whether long-term extension of the policy remains appropriate. Specifically, EPA sent information request letters pursuant to RCRA section 3007 to a selected sample of mixed waste generators and has conducted a series of site visits to facilities storing mixed waste. Following a thorough review of this information, EPA expects to determine whether a longer term extension of the policy is appropriate by October 31, 1998.

EFFECTIVE DATE: April 21, 1998.

FOR FURTHER INFORMATION CONTACT: Leslie Bell, Federal, State and Tribal Programs Branch, Office of Solid Waste; telephone (703) 308–8888; or EPA's Mixed Waste HomePage at ''http://www.epa.gov/radiation/mixed-waste.''

Dated: April 3, 1998.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 98–9385 Filed 4–8–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00534; FRL–5784–6]

FIFRA Scientific Advisory Panel and Science Advisory Board; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a joint two-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) and the Agency Science Advisory Board (SAB) to review a set of scientific issues being considered by the Agency concerning the development of the Agency's endocrine disruptor screening and testing program as required by the 1996 Food Quality Protection Act and the Safe Drinking Water Act. This meeting will focus on scientific issues identified by the Endocrine Disruptors Screening and Testing Advisory Committee (EDSTAC) in their draft report. Agenda items include the conceptual framework for the operation of the EDSTAC, the endocrine disruptors priority setting process, the proposed endocrine disruptors screening battery and testing scheme, and a discussion of the near-term endocrine disruptors program implementation activities. Information from the draft EDSTAC report and from this meeting as well as public comments will be used by the Agency to develop the endocrine disruptors program. A second meeting of this peer review panel will be convened later this year to review scientific issues concerning the Agency's proposed approach to implementing the Safe Drinking Water Act and Food Quality Protection Act endocrine disruptor program.

DATES: The meeting will be held on Tuesday and Wednesday May 5 and 6, 1998 from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at: Holiday Inn (Arlington at Ballston), I-66 and Glebe Road, 4610 North Fairfax Drive, Arlington VA 22203. The telephone number for the hotel is: (703) 243–9800.

By mail: Submit written comments (one original and 25 copies) to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by delivery service, bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. The

telephone number for the docket is (703) 305–5805.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION'' in this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Larry C. Dorsey, Designated Federal Official, FIFRA Scientific Advisory Panel (7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location: Rm. 819B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202; telephone: (703) 305–5369; e-mail: dorsey.larry@epamail.epa.gov.

A meeting agenda and copies of the draft Endocrine Disruptors Screening and Testing Advisory Committee report are available and may be obtained by contacting: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202; telephone: (703) 305–5805. These documents are also available at the internet site: www.epa.gov/pesticides/SAP/.

SUPPLEMENTARY INFORMATION: Any member of the public wishing to make an oral presentation at the meeting should contact Larry C. Dorsey at the address or the phone number given in ''FOR FURTHER INFORMATION CONTACT'' to confirm that the meeting is still scheduled and that the agenda has not been modified or changed. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advanced written request to the Designated Federal Official, interested persons may be permitted by the Chair to present oral statements at the meeting. There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately five minutes. As oral statements only will be permitted as time permits, the Agency urges the public to submit written comments in lieu of oral presentations.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. An edited copy of the comment that does not contain the CBI material must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket. All comments and materials received will be made part of the public record and will be considered by the Panel.

A public record has been established for this notice under docket control number ''OPP–00534'' (including comments and data submitted electronically). A public version of this record, including printed versions of electronic comments, which does not include information claimed as CBI, is available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPP–00534''. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The official record for this notice, as well as the public version, will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Copies of the minutes from this meeting will be available approximately 30 working days after the meeting and may be obtained by contacting the Public Information and Records Integrity Branch, at the address or telephone number given in ''FOR FURTHER INFORMATION CONTACT''.

List of Subjects

Environmental protection.

Dated: April 3, 1998.

Lynn R. Goldman,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–9534 Filed 4–8–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–5993–1]

Industrial Combustion Coordinated Rulemaking Federal Advisory Committee Notice of Upcoming Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; industrial combustion coordinated rulemaking (ICCR) federal advisory committee notice of upcoming meeting.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, section 9(c), EPA gave notice of the establishment of the ICCR Federal Advisory Committee (hereafter referred to as the ICCR Coordinating Committee) in the **Federal Register** on August 2, 1996 (61 FR 40413).

The public can follow the progress of the ICCR through attendance at meetings (which will be announced in advance) and by accessing the Technology Transfer Network (TTN), which serves as the primary means of disseminating information about the ICCR.

DATES: The next meeting of the ICCR Coordinating Committee is scheduled for April 28–29, 1998. Also, most of the ICCR Work Groups—which report to the Coordinating Committee—have meetings scheduled in April, 1998. The dates of these Work Group meetings are summarized below. Further information on the dates of the Coordinating Committee meeting and the Work Group meetings may be obtained by accessing the TTN or by calling EPA (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: The Coordinating Committee meeting on April 28–29, 1998 will be held at the Holiday Inn University Park, 425 West Prospect Road, Fort Collins, Colorado. The telephone number for the Holiday Inn University Park is (970) 482–2626. The locations of the Work Group meetings are summarized below. Further information on the locations of the Coordinating Committee meeting and the Work Group meetings may be obtained by accessing the TTN or by calling EPA (see **FOR FURTHER INFORMATION CONTACT**).

Inspection of Documents

Docket. Minutes of the meetings, as well as other relevant materials, will be available for public inspection at the U.S. EPA Air and Radiation Docket and Information Center, Docket No. A–96–17. The docket is open for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW, Washington, DC 20460; telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Fred Porter or Sims Roy, U.S. Environmental Protection Agency, Emission Standards Division, Combustion Group, (MD–13), Research Triangle Park, North Carolina 27711, telephone numbers (919) 541–5251 and 541–5263, respectively.

SUPPLEMENTARY INFORMATION:

Technology Transfer Network (TTN)

The TTN is one of the EPA's electronic bulletin boards. The TTN can be accessed through the Internet at:

WWW: http://www.epa.gov/ttn/iccr

FTP: mountain.epa.gov

When accessing the WWW site, select Technical Sites which brings up the Directory of TTN Sites, then select ICCR—Industrial Combustion Coordinated Rulemaking from the Directory of TNN Sites.

Access to the TTN through FTP is a streamlined approach for downloading files, but is only useful, if the desired filenames are known.

If more information on the TTN is needed, call the help desk at (919) 541–5384.

Meetings of the ICCR Coordinating Committee and Work Groups are open to the public. All Coordinating Committee meetings will be announced in the **Federal Register** and on the TTN. Work Group meetings will be announced on the TTN and in the **Federal Register**, when possible.

The next meeting of the Coordinating Committee will be held April 28–29, 1998 at the Holiday Inn University Park, 425 West Prospect Road, Fort Collins, Colorado from about 8:00 a.m. to about 6:00 p.m. The agenda for this meeting will include reports from the Work Groups on their progress, testing needs and prioritization issues, discussion of data gathering efforts to support the ICCR, and a discussion of direction and guidance from the Coordinating Committee to the Work Groups. An opportunity will be provided for the public to offer comments and address the Coordinating Committee.

The Work Groups have currently scheduled the following meetings:

Work group	Date	Location
Incinerators	May 27–28, 1998	RTP, NC.
	July 7, 1998	To be determined.
IC Engines	April 30, 1998	Fort Collins, CO.
	July 30, 1998	Long Beach, CA.
Boilers	April 30, 1998	Fort Collins, CO.
	June 10–11, 1998	Boston, MA.
	July 30, 1998	Long Beach, CA.
Stationary Combustion Turbines	April 30, 1998	Fort Collins, CO.
	July 30, 1998	Long Beach, CA.
Process Heaters	April 30, 1998	Fort Collins, CO.
	July 30, 1998	Long Beach, CA.
Economics Analysis	April 27, 1998	Fort Collins, CO.
Testing and Monitoring Protocol	May 1, 1998	Fort Collins, CO.

The agendas for these meetings include review and revision of the ICCR databases, data and information gathering efforts, possible emission testing, and potential subcategorization. An opportunity will be provided at each meeting for the public to offer comments and address the Work Group.

Individuals interested in Coordinated Committee meetings, Work Group meetings, or any aspect of the ICCR for that matter, should access the TTN on a regular basis for information.

Two copies of the ICCR Coordinating Committee charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request to the Docket (ask for item #I–B–1). The purpose of the ICCR Coordinating Committee is to assist EPA in the development of regulations to control emissions of air pollutants from industrial, commercial, and institutional combustion of fuels and non-hazardous solid wastes. The Coordinating Committee will attempt to develop recommendations for national emission standards for hazardous air pollutants (NESHAP) implementing section 112 and solid waste combustion regulations implementing section 129 of the Act, and may review and make recommendations for revising and developing new source performance standards (NSPS) under section 111 of the Act. The recommendations will cover boilers, process heaters, industrial/commercial and other incinerators, stationary internal combustion engines, and stationary combustion turbines.

Lists of Coordinating Committee and Work Group members are available from the TTN for the purpose of giving the public the opportunity to contact members to discuss concerns or information they would like to bring forward during the ICCR process.

It is anticipated that the next meeting of the Coordinating Committee, following the meeting in April, will be July 28–29, 1998 in Long Beach, California.

Dated: April 3, 1998.

Richard D. Wilson,

Acting Assistant Administrator.

[FR Doc. 98–9386 Filed 4–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00532; FRL–5780–9]

Pesticide Environmental Stewardship Program Regional Workshops; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

SUMMARY: The Pesticide Environmental Stewardship Program (PESP) is a voluntary partnership between the pesticide user community and EPA. EPA, in conjunction with the National Foundation for Integrated Pest Management Education, will hold a 2–day meeting in May to allow PESP members to discuss pesticide risk

reduction issues of common interest and to exchange ideas on risk reduction techniques. Further, the meetings will serve as an introduction to PESP for organizations considering membership and for other parties interested in pesticide risk reduction.

DATES: The meeting will be held on May 6 and 7, 1998, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting on May 6 will be held at U.S. Department of Agriculture's Agricultural Research Service, Center for Medical, Agricultural and Veterinary Entomology, 1600 SW 23rd Drive, Gainesville, FL. The meeting on May 7 will be held at the Radisson Hotel, 2900 SW 13th St., Gainesville, FL.

FOR FURTHER INFORMATION CONTACT: By mail: Frank W. Ellis, Jr., Office of Pesticide Programs (7511W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 5th floor, 2800 Crystal Drive, Arlington, VA, 703-308-8107; e-mail: ellis.frank@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Pesticide Environmental Stewardship Program (PESP) is a voluntary partnership between the pesticide user community and EPA. Begun in 1994 with 23 charter partners, PESP has grown to include 85 partners encompassing interests as diverse as almond growers in California, villages in the Northeast and utility rights-of-way managers throughout the country and 16 supporters encompassing interests as diverse as major food processors and stormwater management agencies. Partner organizations represent pesticide users; supporter organizations influence pesticide use or have an interest in pesticide issues.

In 1996, a National PESP Workshop was held in the Washington, DC area. At that workshop, many participants suggested that regional workshops be held to provide for more one-on-one contact between members in smaller groups. These workshops are in response to that request. The Agency anticipates holding additional regional workshops in the future.

The May 6 meeting will concentrate on residential and commercial pest control operators and their specific pesticide risk reduction needs. This session will include demonstrations of new pest control technologies being developed at the Agricultural Research Service facility. The May 7 meeting will include both agricultural and non-agricultural participants in PESP. Topics to be discussed on the second day include the development and implementation of risk reduction strategies and the PESP grant process. There will be time for open discussion among the participants.

List of Subjects

Environmental protection.

Dated: March 26, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–9394 Filed 4–8–98; 8:45 a.m.]

BILLING CODE 6560–50–F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, April 21, 1998 at 2:00 p.m. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, N.W., Washington, D.C. 20507.

STATUS: Part of the meeting will be open to the public and part of the meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and

2. Priority Charge Handling Task Force, Litigation Task Force Report.

Closed Session

Litigation Authorization: General Counsel Recommendations.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings. Contact Person for More Information: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: April 7, 1998.

This Notice issued April 7, 1998.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 98–9590 Filed 4–7–98; 3:35 pm]

BILLING CODE 6750–06–M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Designation of High Intensity Drug Trafficking Areas

AGENCY: Executive Office of the President, Office of National Drug Control Policy.

ACTION: Notice.

SUMMARY: This notice lists three (3) new High Intensity Drug Trafficking Areas designated by the Director of National Drug Control Policy.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding this notice should be directed to Mr. Richard Y. Yamamoto, Director, HIDTA, Office of National Drug Control Policy, Executive Office of the President, Washington, D.C. 20503; 202–395–6755.

SUPPLEMENTARY INFORMATION: In 1990, the Director of ONDCP designated the first five HIDTAs. These original HIDTAs, areas through which most illegal drugs enter the United States, are the Southwest Border, Houston, Los Angeles, New York/New Jersey, and South Florida. In 1994, the Director designated the Washington/Baltimore HIDTA to address the extensive drug distribution networks serving hardcore drug users. Also in 1994, the Director designated Puerto Rico/U.S. Virgin Islands as a HIDTA based on the significant amount of drugs entering the United States through this region. In 1995, the Director designated three more HIDTAs in Atlanta, Chicago, and Philadelphia/Camden to target drug abuse and drug trafficking in those areas.

HIDTAs are domestic regions identified as having the most critical drug trafficking problems that adversely affect the United States. These new counties are designated pursuant to 21 U.S.C. 1504(c), as amended, to promote more effective coordination of drug control efforts. This action will support local, state and federal law enforcement officers in assessing regional drug threats, designing strategies to combat the threats, developing initiatives to implement the strategies, and evaluation of the effectiveness of these coordinated efforts.

HIDTAs support over 250 co-located officer/agent task forces in twenty regions of the country, including the entire Southwest Border. The HIDTA program strengthens mutually supporting local, state, and federal drug trafficking and money laundering task forces, bolsters information analysis and sharing networks and, improves

integration of law enforcement, drug treatment and drug abuse prevention programs.

Seven new HIDTAs were designated in 1997. They are: the Detroit, Michigan HIDTA, the Gulf Coast HIDTA (includes parts of Alabama, Louisiana, and Mississippi); the Lake County, Indiana HIDTA, the Midwest HIDTA (includes parts of Iowa, Kansas, Missouri, Nebraska, and South Dakota, with focus on methamphetamine); the Northwest HIDTA (includes seven counties of Washington State); the Rocky Mountain HIDTA (includes parts of Colorado, Utah, and Wyoming) and the San Francisco Bay Area HIDTA.

The states and counties included in the three new HIDTAs are:

(1) Milwaukee, Wisconsin—The Milwaukee HIDTA currently consists of the county of Milwaukee, Wisconsin.

(2) The Appalachia HIDTA—The Appalachia HIDTA currently consists of the following twenty-six (26) Kentucky counties: Adair, Bell, Breathitt, Clay, Clinton, Cumberland, Floyd, Harlan, Jackson, Knott, Knox, Laurel, Lee, Leslie, McCreary, Magoffin, Marion, Monroe, Owsley, Perry, Pike, Pulaski, Rockcastle, Taylor, Wayne, Whitley; the following eleven (11) West Virginia counties: Boone, Braxton, Cabell, Gilmer, Lewis, Lincoln, Logan, Mason, McDowell, Mingo and Wayne; and the following twenty-eight (28) Tennessee counties: Bledsoe, Campbell, Claiborne, Clay, Cocke, Cumberland, Fentress, Franklin, Grainger, Greene, Grundy, Hamblen, Hancock, Hawkins, Jackson, Jefferson, Macon, Marion, Overton, Pickett, Putnam, Rhea, Scott, Sequatchie, Sevier, Unicoi, Van Buren and White.

(3) Central Florida HIDTA—The Central Florida HIDTA consists of seven (7) Florida counties: Hillsborough, Orange, Osceola, Pinellas, Polk, Seminole, Volusia.

Signed at Washington, D.C. this 27th day of February, 1998.

Barry R. McCaffrey,

Director.

[FR Doc. 98–9375 Filed 4–8–98; 8:45 am]

BILLING CODE 3180–02–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission

DATE & TIME: Tuesday, April 14, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, April 16, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Future Meeting Dates.

Advisory Opinion 1997–21: (Reconsideration). Firebaugh for Congress Committee by counsel, Judith Corley.

Advisory Opinion 1997–24: The Corporation for the Advancement of Psychiatry and CAP Political Action Committee, by the CAPPAC treasurer, Gerald H. Flamm, M.D. (continued from meeting of March 12, 1998).

Advisory Opinion 1998–04: White Oak Technologies, Inc. by Alan J. Broder, President.

Audit: San Diego Host Committee/Sail to Victory '96 (continued from meeting of March 5, 1998).

Audit: Committee on Arrangements for the 1996 Republican National Convention (continued from meeting of March 5, 1998).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–9576 Filed 4–7–98; 2:49 Pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573. Puget Sound International, Inc., 3205 Port of Tacoma Road, Tacoma, WA 98421, Officers: Gina Lyons, President, William L. Lageman, Vice President.

Dated: April 3, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–9271 Filed 4–8–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice

BACKGROUND: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83-I and supporting statement and the approved collection of information instrument will be placed into OMB's public docket files. The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection,

including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before June 8, 1998.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the implementation of the following report:

1. Report title: Survey of Small Business Finances
Agency form number: FR 3044
OMB control number: 7100-0262
Frequency: one-time
Reporters: small businesses
Annual reporting hours: 6,100
Estimated average hours per response: 1
Number of respondents: 6,100

Small businesses are affected.

General description of report: This information collection would be voluntary (12 U.S.C. 252, 1817(j), 1828(c), and 1841 et seq.). Individual respondent data would be provided in a public-use file. However, any information that could identify respondent firms, or the financial institutions that they use, would be excluded from the public data set pursuant to the Freedom of Information Act [5 U.S.C. § 552(b)(4)].

Abstract: The FR 3044 would be similar to the 1987 and 1993 National Surveys of Small Business Finances (OMB Nos. 7100-0234 and 7100-0262, respectively). In part, this survey is being conducted to collect information needed to satisfy the requirements of Section 2227 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. This law requires the Board to conduct a study and submit a report to the Congress every five years ''...detailing the extent of small business lending by all creditors....''

The FR 3044 would gather data from small businesses on their financial relationships, credit experiences, lending terms and conditions, income and balance sheet information, the location and types of financial institutions used, and other firm characteristics. The survey would be conducted by a private survey firm to be chosen in a competitive bidding process. In conjunction with Board staff, the survey firm would conduct small focus groups to investigate emerging issues in small business finance and update the 1993 questionnaire. The survey firm would then conduct two pretests with a minimum of fifty small business firms in each pretest. Following revisions to the questionnaire, the survey would be conducted by means of computer-assisted telephone interviews with approximately 6,000 randomly selected small business firms. Interviewing would likely commence in early 1999.

Board of Governors of the Federal Reserve System, April 3, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–9355 Filed 4–8–98; 8:45AM]

Billing Code 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CRADA EPO–98–001]

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), Epidemiology Program Office (EPO), Division of Applied Public Health Training (DAPHT), announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) for development of an interactive computer game based on principles of epidemiology and public health practice.

The science of epidemiology is a critical element to achieving CDC's mission, ''To promote health and quality of life by preventing and controlling disease, injury, and disability.'' Through interaction with this computer game, players will have an opportunity to apply epidemiology in simulated public health situations. Through this activity, players will acquire knowledge and develop skills enabling them to promote CDC's public health prevention mission.

It is anticipated that all inventions which may arise from the CRADA will be jointly owned. The collaborator with whom the CRADA is made will have an option to negotiate an exclusive royalty-bearing license.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. There is a single restriction in this exchange: CDC MAY NOT PROVIDE FUNDS to the other participants in a CRADA. This opportunity is available until May 26, 1998. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

DATES: Comments must be received by May 26, 1998.

FOR FURTHER INFORMATION CONTACT:

Technical: Peter Jenkins, Office of Scientific and Health Communications, Epidemiology Program Office, CDC, Mailstop C08, 1600 Clifton Rd., NE., Atlanta, GA 30333, telephone 404–639–3909, FAX 404–639–3950; Kimberly Geissman, Division of Applied Public Health Training, Epidemiology Program Office, CDC, Mailstop D18, 1600 Clifton Rd., NE., Atlanta, GA 30333, telephone 404–639–4772, FAX 404–639–2222.

Business: Janet Mosser, Office of the Director, Epidemiology Program Office, CDC, Mailstop C08, 1600 Clifton Rd., NE., Atlanta, GA 30333, telephone 404–639–3191, FAX 404–639–2132.

SUPPLEMENTARY INFORMATION:

EPO/DAPHT Development Team will work with applicant to develop and promote an interactive, strategic computer game (similar to SimCity[TM] & SimHealth[TM] [1]) that simulates the work environment of a practicing epidemiologist/public health specialist in which the player investigates disease outbreaks. Collaborating with DAPHT staff, applicant will design and produce a CD–ROM-based game that simulates disease outbreaks, e.g., infectious diseases and environmental injuries that affect the health of a fictitious human/animal population. The game is to contain epidemiologic data from 5–15 actual CDC-conducted disease outbreak investigations. (Variables in epidemiologic data may be introduced to increase possible combinations.) The player uses epidemiologic principles to determine the source of the outbreak and develop a response to control disease-related morbidity and mortality. The game is to be designed for multiple levels of player experience, beginning with high-school students through professionally trained public health specialists. Training and background-information modules will be included to guide beginner and intermediate players while expert level players may bypass those activities. Consideration is to be given for adding new epidemiologic data to extend the longevity of game marketability. The game is to be marketed to public health professionals, educators, and the general public.

The goal of this CRADA is to establish a commercial partnership for the development and production of an interactive computer-based game in epidemiology. CDC holds a wealth of data from actual epidemiologic investigations that would be useful in educating students and health professionals about public health principles if presented in a popular, entertaining computer medium that is highly developed in the commercial marketplace.

Respondents to this application are to provide evidence of expertise in the development and marketing of computer-based simulation games. Respondents should provide supporting information (e.g., resumes) of qualifications for the project director and staff such as instructional designer, computer programmer, and graphic artist who would be involved in the CRADA. In addition, evidence should be provided that a technical representative familiar with epidemiological data systems will be able to work on-site at CDC. The respondent should also provide samples of similar projects developed and indicate the length of time of production and examples of successful marketing to academic and professional audiences. The respondent will develop the final research plan in collaboration with CDC but should provide an outline of a research plan for review by CDC in judging applications.

Applicant submissions will be judged according to the following criteria:

1. Expertise, qualifications, and experience of staff.

2. Willingness to assign technical representative on-site at CDC.

3. Demonstration of development of a similar technical product in a timely manner.

4. Ability to produce a product suitable for an academic/educational audience (high school through post-graduate/professional).

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act: Public Law 99–502, as amended.

The responses must be made to: Peter Jenkins, Office of Scientific and Health Communications, Epidemiology Program Office, CDC, Mailstop C08, 1600 Clifton Rd., NE., Atlanta, GA 30333, telephone 404–639–3909; FAX 404–639–3950.

Dated: April 3, 1988.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–9333 Filed 4–8–98; 8:45 am]

BILLING CODE 4163–18–P

[1] Use of trade names and commercial sources is for identification only and does not imply endorsement by the U.S. Department of Health and Human Services or CDC.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 98047]

Health Promotion and Disease Prevention Research Centers Cooperative Agreements; Notice of Availability of Funds for Fiscal Year 1998

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for cooperative agreement programs for Health Promotion and Disease Prevention Research Centers.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a DHHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to health priorities in Health Promotion, Health Protection, and Preventive Services. (To order a copy of ''Healthy People 2000,'' see the section ''Where to Obtain Additional Information.'')

Authority

This program is authorized under sections 1706 (42 U.S.C. 300u–5) and 317(k)(3) (42 U.S.C. 247b(k)(3)), of the Public Health Service Act, as amended.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are academic health centers; defined as schools of public health, medicine, or osteopathy; that have:

A. Multidisciplinary faculty with expertise in public health and which has working relationships with relevant groups in such fields as public health, medicine, psychology, nursing, oral health, social work, education, and business.

B. Core faculty in epidemiology, biostatistics, social sciences, behavioral and environmental health sciences, and health administration.

C. Demonstrated curriculum in health promotion and disease prevention.

D. Capability for residency training in public health or preventive medicine.

Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the essential requirements of this program and to strengthen the overall application.

Availability of Funds

Approximately $7 million is available in FY 1998 to fund approximately fourteen new awards. It is expected that the average award will be $500,000, (including both direct and indirect costs), ranging from $ to $600,000. It is expected that the awards will begin on or about September 30, 1998, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

If requested, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

Optional Funding

In addition, approximately $205,000 (including both direct and indirect costs) is available to fund one special interest project related to promotion of physical activity and healthy eating.

Available funds will support a Prevention Research Center addressing one or more of the following objectives:

(NOTE: A careful evaluation strategy must be described and implemented, regardless of the objective selected.)

(a) Develop and test tools to assess need, monitor processes and determine outcomes of environmental and policy changes designed to increase physical activity and healthy eating at the State or community level in various settings or among specific target populations.

(b) Develop and test policy/environmental interventions to promote physical activity. Intervention and assessment methodologies will be developed incorporating elements such as community psychology, transportation systems, and policy evaluation.

(c) Develop and test policy/environmental interventions to promote healthy eating. Intervention and assessment methodologies will be developed incorporating elements such as community psychology, food marketing and retail systems, religious organizations, schools, worksites, and policy evaluation.

It is expected that this award will begin on or about September 30, 1998, and is made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. For more information on applying for Optional Funding, please contact persons listed under the section ''Where to Obtain Additional Information.''

Lobbying Restrictions

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Pub. L. 105–78) states in section 503 (a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relations, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Special Interest Projects (SIP)

Applicants currently funded to conduct special interest projects (SIP) can apply for extensions and continuations for FY 1998 under current award. Requests for SIP extensions and continuations should not be submitted with applications for funding under this announcement. Requests should be addressed separately to CDC's Procurement and Grants Office. Applicants receiving funds under this announcement will be eligible to compete for new SIP's whenever such projects are announced by CDC.

Background

Recent history has indicated a gap between public health research findings and the implementation of those findings through public health practices. The Health Promotion Disease Prevention Research Centers Program was established in 1986 to bridge the gap between public health science and applied public health practices. This program serves to establish and maintain interdisciplinary academic centers that focus on public health issues or themes of national importance. The congressionally mandated purpose of this program remains as originally intended—to improve public health practice within communities.

CDC Program Objectives

An integrated, interdisciplinary community-based approach to health promotion disease prevention is the hallmark of the Health Promotion Disease Prevention Research Center Program. The program's overarching objectives are:

A. To develop community-based partnerships that lead to improved public health practice and increased capacity in health promotion and disease prevention.

B. To assess the current status of health promotion and disease prevention programs and services offered within State, local, and territorial health agencies; State and local education agencies; tribal jurisdictions; public and private health-care providers; voluntary agencies; and other community or lay organizations.

C. To identify, develop, and disseminate effective health promotion disease prevention interventions.

D. To advance the scientific basis of health promotion and disease prevention programs and services through research, evaluation, and dissemination.

E. To establish demonstration projects for delivery of health promotion and disease prevention programs and services to defined population groups in collaboration with the providers of these programs and services, especially State and local health and education departments.

F. To develop improved evaluation methodologies to assess the efficacy of health promotion and disease prevention programs and services, the effectiveness of broad-based programs to carry out these strategies, and the cost-effectiveness of applying and disseminating these programs and services to broad-based constituencies.

G. To foster collaborative relationships among health promotion and disease prevention research centers, both nationally as well as within the Network of CDC-Supported Prevention Research Centers. Prevention Research Centers are expected to make their expertise available to prevention, surveillance, and health programs conducted by Federal, State, and local governments, or other public and private organizations.

H. To develop a multidisciplinary approach to health promotion and disease prevention that includes developing, testing, evaluating, and disseminating model programs.

I. To provide a multidisciplinary base for education and training activities in the area of prevention and promotion.

Purpose

The purpose of this program is to support health promotion and disease prevention research that focuses on the major causes of death and disability. Prevention Research Centers (PRCs) are to conduct research and demonstration projects to develop improved methods of appraising health hazards and risk factors, and to initiate research and demonstration projects to develop and test new and innovative public health practices that can be rapidly applied to prevent and ameliorate disease and disability in the community. PRCs should help design programs that meet the needs of their communities to increase their capabilities in the areas of public health knowledge, skills, and policymaking, as well as to help communities better understand and evaluate public health research by fostering community involvement in all aspects of prevention research.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities

1. Conduct and evaluate a demonstration project in health promotion and disease prevention or preventive health services, within a defined community or special population. The project must reflect the needs of the community within the applicant's jurisdiction and show evidence of having used an appropriate planning process in determining project selection. Consistent with the discussion in the Background and CDC Program Objectives sections, the project should specify how the research project will heighten public health practice and advance research translation.

2. Establish an advisory committee to provide input on the major program activities. Membership may include but is not limited to a variety of local health-care providers, health and education agency officials, community leaders and organizers, and representatives of local businesses, churches, voluntary organizations, and consumers.

3. Conduct applied community-based training in research methods to foster community involvement and build community capacity for participatory research. If appropriate, this training may include a distance-learning-based format.

4. Establish collaborative activities with appropriate organizations, individuals, and State health departments.

5. Establish and document activities that support a multidisciplinary approach to health promotion and disease prevention, and provide multidisciplinary education and training programs in prevention research.

6. Demonstrate how the PRC will ensure dissemination of results to appropriate constituencies.

B. CDC Activities

1. Collaborate as appropriate with the recipient in all stages of the project.

2. Provide programmatic and technical assistance.

3. Participate in improving program performance through consultation based on information and activities of other projects.

4. Provide scientific collaboration.

5. At the request of the applicant, assign Federal personnel in lieu of a portion of the financial assistance to assist with developing the curriculum, training, or conducting other specific necessary activities.

Technical Reporting Requirements

An original and two copies of a progress report and financial status report are due no later than 90 days after the end of the budget period. The progress reports must include the following for each program, function, or activity involved: (1) A comparison of actual accomplishments to the goals established for the period; (2) the reasons for slippage if established goals are not met; and (3) other pertinent information including, when appropriate, analysis and explanation of unexpectedly high costs for performance.

Final financial and performance reports are required no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Branch, CDC.

Application Content

All applications must be developed in accordance with the instructions for PHS Form 398, information that is contained in this program announcement, and the instructions outlined below.

The narrative must not exceed 90 double-spaced pages, excluding appendixes and PHS Form 398. Appendices must not exceed 25 pages and must be hard copy documents (i.e., no audiovisual materials, posters, etc.).

A. Research Theme

Identify a research theme and describe activities designed to focus on the theme that will result in innovative approaches to prevention research. Clearly identify the need of the partner community, and describe the PRC's experience working with communities on the identified research theme. Applicants may wish to refer to products from the community prevention task force when considering their research theme. (For detailed information, visit the Guide to Community Preventive Services on the Web at http://web.health.gov/communityguide).

Examples of research themes from current Research Prevention Centers include:

1. Risk Reduction Among African-Americans, and Other Underserved Populations.
2. Families, Neighborhoods, and Communities: A Model for Action in Chronic Disease Prevention.
3. Reduction of Excess Morbidity and Mortality in the Harlem Community.
4. Health Promotion and Disease Prevention Across the Lifespan.
5. Promoting Health and Preventing Disease Among Urban and Rural Adolescents.
6. Teen Pregnancy Prevention.
7. Promoting Healthy Lifestyles in American Indians.
8. Workplace Health Promotion.
9. Promoting Healthy Behavior and Disease Prevention in Native American Populations.
10. Cardiovascular Disease Prevention in Low-Income Rural Communities.
11. Promoting Health Through Physical Activities.
12. From Healthy Children To Healthy Adults.
13. Keeping Older Adults Healthy and Independent.
14. Risk Factors in Appalachia.

B. PRC Plan

Submit a PRC plan with clear goals, objectives, and activities, to include:

1. A description of goals, and objectives for the budget period that are consistent with the research theme. Objectives should be specific, measurable, and realistic.
2. A description of the scope, methods of operation, evaluation, and a timeline for implementation.
3. A description of the use of other federal funds that will impact on stated program objectives.
4. A description of any financial and in-kind contributions from nonfederal sources.
5. Documentation of how the Advisory Committee will facilitate collaboration with community organizations, State and local health or education departments. Documentation should include a description of composition, membership, rationale for membership, and objectives for the community advisory committee.
6. A description of any community-based applied training.
7. A description of needed prevention research training for professionals.
8. Documentation of commitment to minority and underserved populations, or other defined populations or communities.
9. A description of significant factors which may favorably or adversely impact on program performance.

C. Management and Staffing Plan

Provide a management plan that includes a description of all organizational units and functions in the PRC. The plan should reflect the ability of the PRC to carry out the chosen research theme. Describe how the applicant will integrate the PRC within the parent institution. The following areas should be considered in developing a management and staffing plan:

1. Describe the PRCs personnel infrastructure.
2. Describe how proposed staffing will support center activity. Current resumes must be included.
3. No less than two full-time FTE's must be allocated for the following functions: (Percentages of an FTE may be used for several positions.)

(a) Scientific oversight: Accountable for center research and development, design, methodology, project evaluation, and publications.

(b) Community Development: Community liaison, advisory committee, community training activities, oversight of IRB protocols, community dissemination.

(c) Program and Project Management: Oversight of center supported research, coordination of center studies, mentorship of junior investigators, dissemination activities, and professional training in prevention research.

(d) Center Administration: Responsible for communication with CDC's Prevention Research Centers Program staff and Procurement and Grants Office. Responsibilities will include submission of fiscal reports, fiscal tracking and reports, personnel, and center procurement.

D. Research Project

Submit a description of the research project that is consistent with the CDC PRC Program objectives. Describe the project's community involvement. The narrative for specific project should contain:

1. A description of the research project including goals, objectives, timeline, and evaluation.
2. A description of the research activities that can ensure progress toward the achievement of objectives stated in the research project.
3. A description of project staff (number and types of positions).
4. A project budget.
5. A description of the efforts to conduct dissemination of research findings.

E. Evaluation Plan

Provide an evaluation plan that is directly linked to the research theme, the research project, and the objectives of the PRC. Describe a methodology to evaluate the overall prevention center theme and objectives with regard to program process, impact, fulfillment of outcome objectives, and community involvement; the PRCs community-based objectives; and any other indicators, such as cost-benefit analyses.

F. Budget Information

Provide a line-item budget and narrative justification for all requested costs that are consistent with the purpose, objectives, and proposed research activities, to include:

1. Line-item breakdown and justification for all personnel, i.e., name, position title, annual salary, percentage of time and effort, and amount requested.
2. Line-item breakdown and justification for all contracts and consultants, to include:

(a) Name of contractor or consultant.

(b) Period of performance.

(c) Method of selection (e.g., competitive or sole source).

(d) Scope of work.

(e) Method of accountability.

(f) Itemized budget

3. Requests for any direct assistance in the form of field assignees must also include the following:

(a) The number of assignees requested.

(b) A description of the position and proposed duties for each assignee.

(c) Justification for request.

(d) An organizational chart and the name of the intended supervisor.

(e) The availability of career-enhancing training, education, and research experience opportunities for the assignee(s).

(f) Assignee access to computer equipment for electronic communication between CDC headquarter's office and PRC.

4. A brief five-year budget projection should be submitted that clearly separates and distinguishes direct from indirect costs.

Evaluation Criteria

Applications will be reviewed and evaluated through a dual review process. The first review will be a peer evaluation of the scientific and technical merit of the application conducted by an external review committee. The second review will be conducted by senior Federal staff, who will consider the results of the first review together with national program need and relevance to the mission of CDC. Awards will be made on the basis priority score ranking by the external peer review, recommendations based on program review by senior Federal staff, and the availability of funds.

A. The Prevention Research Centers Objective Review Committee may recommend approval or disapproval based on the intent of the application and the following criteria:

1. PRC Theme (10 points)

The extent to which the research theme results in approaches or interventions that meet health priorities and emerging public health needs of identified communities or special groups; and the relevance and validity of the process used to identify the PRC theme.

2. PRC Plan (40 points)

(a) The PRC plan has objectives that are clear, specific, measurable, and realistic, and makes effective use of both the PRC and community resources to advance the PRC theme.

(b) Includes the technical and scientific merits of the proposed PRC plan, and its potential to achieve the stated objectives.

(c) Consistent with the PRC purpose, and includes a five-year timeline.

(d) Composition of Community Advisory Committee and rationale for its membership, relevance and feasibility of committee objectives and its role within the PRC.

(e) The existence of a clear plan for curriculum development, pilot-testing, and possible institutionalization.

(f) Capacity for providing professional multidisciplinary prevention research training in the area of health promotion and disease prevention, and the appropriateness of training goals and intended audience.

3. Management and Staffing Plan (15 points)

The extent to which the applicant demonstrates the ability, capacity, organizational structure, and staffing to carry out the overall theme, objectives, and specific project plans.

4. Research Project (20 points)

The extent, feasibility, and capacity for the proposed demonstration project, multidisciplinary input; implementation plan; research methodology; and dissemination plan.

5. Evaluation (15 points)

Feasibility of the methodology to evaluate the overall prevention center theme and objectives with regard to the PRC plan, process, impact, fulfillment of outcome objectives, demonstration project(s), and community involvement; the PRC's community-based objectives; and any other indicators, such as cost-benefit analyses.

G. Budget (Not Scored)

The extent to which the budget and justification are consistent with the program objectives and purpose.

7. Human Subjects (Not Scored)

If the proposed project involves human subjects, whether or not exempt from the Department of Health and Human Services (DHHS) regulations, the extent to which adequate procedures are described for the protection of human subjects. Recommendations on the adequacy of protections include: (1) Protections appear adequate and there are no comments to make or concerns to raise, or (2) protections appear adequate, but there are comments regarding the protocol, or (3) protections appear inadequate and the ORG has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable, and (5) protections appear adequate that women, racial and ethnic minority populations are appropriately represented in applications involving human research.

B. Review by senior Federal staff:

Further review will be conducted by senior Federal staff.

Factors to be considered are:

1. Results of the peer review.

2. Program needs and relevance to community and national goals.

3. Budgetary considerations.

Typing and Mailing

Applicants should submit an original and five copies of the application to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–18, Atlanta, GA 30305, on or before June 15, 1998. All pages must be clearly numbered, and a complete Table of Contents for the application and any appendices must be included. The original and each copy of the application must be submitted unstapled and unaffixed, bound with rubber bands only. All materials must be typewritten, single-spaced, with unreduced type on 8.5″ by 11″ paper, with at least 1″ margins, headers and footers, and printed on one side only.

Noncompeting Continuation Application Contents

Noncompeting continuation applications submitted within the project period need only include:

A. A brief progress report describing the accomplishments of the previous budget period.

B. Any new or *significantly* revised items or information (objectives, scope of activities, operational methods, evaluation, key personnel, work plans, etc.) not included in the 01 Year or subsequent continuation applications.

C. An annual detailed budget and justification. Existing budget items that are unchanged from the previous budget period do not need rejustification. Simply list the items in the budget and indicate that they are continuation items.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.135.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more persons and funded by the cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review board. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Women and Racial and Ethnic Minorities

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and Hispanic or Latino. Applicants shall ensure that women and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Application Submission and Deadlines

A. Letter of Intent (LOI)

Potential applicants should submit an original and two copies of a one page, typewritten LOI to: Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Mailstop E–18, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305.

The LOI must briefly describe the proposed theme for the prospective Prevention Research Center (maximum of one paragraph), the applicant's experience and expertise on the proposed theme (maximum of one paragraph), and a brief description of the proposed community partner (maximum of one paragraph). The LOI must also include the name, address, telephone number, facsimile (fax) number, and E-mail address of a contact person from the applicant institution.

Attachments, booklets, or other documents will not be accepted with the LOI. LOIs will be reviewed by program staff, and the information used in planning the review process and the selection of reviewers. The original and two copies of the LOI must be postmarked by the deadline May 11, 1998. Facsimiles are not acceptable.

B. Application Due Date

One original and five copies of the application PHS 398 form (Revised 9/91) must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–18, Atlanta, GA 30305, on or before June 15, 1998.

Deadline: Applications shall be considered as meeting the deadline above if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the External Review Committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Late Applications: Applications which do not meet the criteria in B.(1) and B.(2) above are considered late applications. Late applications will not be considered in the competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement Number of interest. A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Glynnis Taylor, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6593, by fax (404) 842–6513, or by Internet or CDC WONDER electronic mail at GLD1@CDC.GOV. Programmatic technical assistance may be obtained from Enrique Nieves, Jr., M.S., Senior Project Officer, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–30, Atlanta, GA 30341–3717, telephone (770) 488–5482, or by Internet or CDC WONDER electronic mail at EXN2@CDC.GOV.

Please refer to Program Announcement Number 98047 when requesting information and submitting an application.

You may obtain this announcement from one of two Internet sites on the actual publication date: CDC's homepage at http://www.cdc.gov or at the Government Printing Office homepage (including free on-line access to the **Federal Register** at http://www.access.gpo.gov).

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock number 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock number 017–001–00473–1) referenced in the ''Introduction'' through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325, Telephone (202) 512–1800.

Forum for Questions and Answers

The forum for questions and answers during the application process will be in the form of a mailing listing for the PRCs. The PRC mailing list will be titled PREV-CENTERS. A mailing list or LISTSERV is a system that allows you to create, manage, and control mailing lists on a network or on the Internet. Mailing lists make it possible to confer in a rapid manner via the written word. It can replace a telephone conference call for questions and answers because questions via electronic mail are delivered in a matter of seconds, or occasionally minutes. Answers are sent to everyone on the list simultaneously.

PREV-CENTERS is a closed list available only to persons and entities associated with the cooperative agreement application process for Announcement Number 98047. It is to be used as a communication tool for CDC and applicants.

To subscribe to the listserv the applicant must send an E-mail message to: LISTSERV@LISTSERV.CDC.GOV with the following command in the BODY of the message: SUBSCRIBE PREV-CENTERS. There is no need to write a ''Subject,'' or anything else in the message. The subscriber will then receive a welcome E-mail message from the list server with additional instructions on how to use commands for the mailing list. After the applicant is subscribed, questions to the PREV-CENTERS list may be sent to the following E-mail address: PREV-CENTERS@listserv.cdc.gov. Do not post confidential information on the list because every member of the PREV-CENTERS list will receive the message and the reply. All confidential matters should be conducted through normal channels; i.e., direct E-mail, correspondence, or telephone.

Please use the PREV-CENTERS LIST exclusively for posting any questions you may have on the application process for Announcement Number 98047. Questions will be accepted until the application deadline. All subscribers to the list will be deleted from the listserv after the application due date.

Program Definitions

Advisory Committee: A group of persons with implied or pretended knowledge and expertise in a particular research theme that have delegated powers to investigate, consider, and recommend courses of action regarding research, operation, and management of a Prevention Research Center.

Capacity-Building: The endeavoring that will lead to increasing the ability of a community to engage in participatory research.

Community: An interacting population of various kinds of individuals with common conditions defined by geographical and demographic factors.

Community-Based Applied Training: Training in research methods, epidemiology, and health policy designed to assist local health workers and community leaders in identifying

public health priorities and health-related problems.

Field Assignee: A CDC employee assigned to a grantee, through the cooperative agreement mechanism, for a specified purpose and time period.

Health Promotion: As defined by the Ottawa Charter for Health Promotion (WHO [1987]. Ottawa Charter for Health Promotion. Health Promotion, 1 (4), iii.), refers to the ''process of enabling people to increase control over, and to improve, their health.'' The implementation of this definition requires that health promotion initiatives (i.e., programs, policies, or other organized activities) should be empowering, participatory, holistic, intersectoral, equitable, sustainable, and multistrategy.

Impact Objective: The desired impact of prevention research is change in the behavior or norm of a special group or community that heightens the likelihood of generalizing the research outcomes to reduce disease and death. The measurement of behaviors is the most significant and basic component of an impact evaluation. Knowledge and attitudes are also very important. Within the Prevention Research Centers, impact is measured by attaining outcomes that can be rapidly applied to targeted communities (translation), which includes building the capacity of the community to initiate its own research.

Indicators: A value that exposes the condition of a particular situation or activity without bias or judgment.

Outcome Objective: Outcome objectives focus on the long-term effects (rates of death and illness) of prevention research and translation of outcomes to a specific targeted population. Outcome evaluations are conducted long enough after the translation takes place for behavioral changes to show an affect. For the Prevention Research Centers, outcome is determined by changes in behavior of the targeted population or community.

Participatory Research: Community involvement in all stages of planning, developing, and evaluating the research.

Process Objective: Process objectives indicate the activities that are to be done and how they will be accomplished. Process involves administrative and community activities necessary to efficiently and effectively achieve a positive program impact (behavior change). Process for most prevention research projects include Center Administration; Research and Development; Community Involvement Plans; Professional Education; Applied Community Training; and Monitoring and Evaluation.

Special Interest Project: A research project that supplements the Prevention Research Center's Cooperative Agreement funded by Centers, Institutes, or Offices (CIO's) within CDC, or other federal agencies.

Special Population: A group of persons with common characteristics or conditions.

Dated: April 3, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–9329 Filed 4–8–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CRADA 98–001]

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases, announces the opportunity for potential collaborator(s) to enter into a Cooperative Research and Development Agreement (CRADA) for the development of a worldwide sentinel surveillance system to isolate, characterize, and monitor for the emergence of new retroviruses and divergent HIV variants of public health importance. The reagents generated from this project will be used to validate the sensitivity and specificity of the current HIV screening tests. This research effort is designed to further the development of diagnostics to test for new HIV variants to ensure protection of the blood supply.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. There is a single restriction in this exchange: CDC MAY NOT PROVIDE FUNDS to the other participants in a CRADA. This opportunity is available until May 11, 1998. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT:

Technical: Thomas M. Folks, Ph.D., Chief, HIV/Retrovirus Diseases Branch, Division of AIDS, STD and TB Laboratory Research, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd. NE., Mailstop G–19, Atlanta, GA 30333, telephone (404) 639–1010.

Business: Lisa Blake-DiSpigna, Technology Transfer Representative, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd. NE., Mailstop C–19, Atlanta, GA 30333, telephone (404) 639–3227, (E-Mail: LCB3@CDC.GOV).

SUPPLEMENTARY INFORMATION: Efforts will be made to sample various regions and risk groups in geographically dispersed countries. Where possible, the optimal sample size will be sufficient to have a high probability of detecting HIV variants present in these populations even if their prevalence is low (<1%). Samples will be tested for antibodies to HIV–1 and HIV–2; sero-reactive specimens will be further processed for sera, plasma, and cells. Attempts will be made to target populations attending STD clinics, counseling and testing centers, antenatal clinics, and TB treatment centers. Asymtomatic individuals reporting high risk behaviors and seronegative persons with elevated reactivity in screening assays will be further investigated. In addition, samples will be obtained whenever possible from sero-discordant couples and symptomatic individuals who have remained seronegative. Such samples will be evaluated using generic retroviral testing to identify new or highly divergent viruses which lack common epitopes with prototypic HIV strains. Specimen collection will be in accordance with CDC Institutional Review Board (IRB) approved protocols. An initial site assessment will be done to determine the prevalence of HIV infection and the feasibility of collecting and processing the requisite number of specimens.

Goals: The primary goal of this project is to collect isolates of representative emerging retroviruses and divergent HIV strains from persons with various transmission risk factors, representing different regions worldwide to help in understanding the degree of genetic diversity among emerging variants and what HIV strains predominate in these populations. Special emphasis will be given to monitoring for the presence of divergent HIV variants that are distinct from already characterized HIV–½

subtypes and to define the extent of variability within recognized subtypes. The secondary goal is to collect specimens representing these variants and recognized subtypes (A–I) to prepare a panel of sera collected from people whose infecting virus has been sequenced. The panel will be used to evaluate the sensitivity and specificity of existing and newly developed HIV antibody tests with regard to these strains and to assist, if necessary, in modifying these tests to broaden their sensitivity. Specimens will primarily be blood, but may include urine or oral fluids to evaluate diagnostic tests using these specimens. The research efforts in support of this CRADA are focused on the combined use of molecular and epidemiologic data to examine the question of whether certain HIV strains have distinctive patterns of transmission and disease progression in infected individuals.

The CRADA partner will be expected to provide both financial as well as scientific resources. Substantial involvement in specimen testing including molecular and biochemical analysis of viruses and viral components would be anticipated from the CRADA partner.

Respondents should provide evidence of expertise in the development and marketing of clinical diagnostics (prior experience with HIV preferred) and supporting data (e.g., publications, proficiency testing, certifications, resumes, etc.) of qualifications for the laboratory director and laboratory personnel who would be involved in the CRADA. The respondent will develop the final research plan in collaboration with CDC but should provide an outline of a research plan for review by CDC in judging applications.

Applicant submissions will be judged according to the following criteria:

1. Knowledge of molecular diagnostics including: epitope specific and recombinant based immunoassays, rapid tests, and nucleic acid based detection assays.
2. Working knowledge of nucleic acid sequencing, PCR, eukaryotic expression of recombinant antigens, and the large scale production of said products.
3. Operational experience in an international setting.
4. Procedural understanding of and experience in the development and marketing of HIV diagnostics in the United States.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act: Public Law 99–502, as amended.

The responses must be made to: Lisa Blake-DiSpigna, Program Analyst, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333.

Dated: April 3, 1998.

Joseph R. Carter

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–9335 Filed 4–8–98; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Ethics Subcommittee of the Advisory Committee to the Director, Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: Ethics Subcommittee of the Advisory Committee to the Director, CDC.

Time and Date: 9 a.m.–3 p.m., April 27, 1998.

Place: CDC, Building 16, Room 5126, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 25 people.

Purpose: This subcommittee will anticipate, identify, and propose solutions to strategic and broad ethical issues facing CDC.

Matters To Be Discussed: Agenda items will include updates from the Associate Director for Science, Dixie E. Snider, M.D., followed by a discussion on issues surrounding the potential destruction of the smallpox virus, privacy and confidentiality of data collection, and scientific misconduct other than falsification, fabrication, and plagiarism.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Linda Kay McGowan, Acting Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, M/S D–24, Atlanta, Georgia 30333, telephone 404/639–7080.

Dated: April 2, 1998.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–9332 Filed 4–8–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Consolidation of United States Ports Designated To Conduct Rodent Infestation Inspections and Issue Deratting and Deratting Exemption Certificates

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services, HHS.

ACTION: Notice.

SUMMARY: In accordance with International and U.S. Federal regulations, the Centers for Disease Control and Prevention (CDC) has, for many years, inspected ships for rodent infestation and issued Deratting and Deratting Exemption Certificates at 18 major U.S. ports, as well as, by special arrangement, more than 100 smaller ports. To streamline these operations and increase cost effectiveness, CDC has consolidated the ports where it conducts these activities. As of October 1, 1997, CDC began conducting these inspections only at the ports of Baltimore, MD; Honolulu, HI: Houston, TX; Jacksonville, FL; Los Angeles, CA; Miami, FL; New Orleans, LA; New York, NY; San Francisco, CA; Savannah, GA; and Seattle, WA.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: David F. Rogers, Acting Chief, Program Operations Branch, Division of Quarantine, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Mailstop E–03, Atlanta, Georgia 30333, (404) 639–8107, FAX (404) 639–2599, E-mail dfr1@cdc.gov.

SUPPLEMENTARY INFORMATION:

Purpose and Background

This announcement provides notification of CDC's consolidation of the ports in the U.S. where rodent infestation inspections of ships are conducted and Deratting and Deratting Exemption Certificates are issued.

In accordance with Article 17 of the International Health Regulations, published by the World Health Organization (WHO), Geneva, the United States is required to (1) ensure that a sufficient number of U.S. ports have the capacity to inspect ships for the issue of Deratting Exemption Certificates and (2) depending upon the volume and incidence of international traffic, approve a number of these ports and maintain the capacity to perform rodent infestation inspections and issue

Deratting Certificates. The U.S. Public Health Service (PHS), specifically CDC, is delegated the responsibility for providing these services, as provided in 42 CFR Section 71.46.

Until a major restructuring in the 1970's greatly reduced the number of ports at which PHS assigned staff, these services were regularly performed by PHS staff at 18 large ports and more than 100 smaller ports, as manpower permitted. Since 1977, almost all inspections have been performed under contract by qualified pest control operators at these same ports, at no cost to the owners or agents of the ships inspected. In contrast, most nations pass along the costs associated with these services to those who benefit from them.

Deratting Exemption Certificates Not Required Since 1985

Because of worldwide derat certification activities and modern rat-proofing of ships, CDC determined in 1985 that no adverse impact on the public health would result from not requiring vessels from foreign ports to have a valid Deratting Exemption Certificate. As a result, the United States has not required Deratting Exemption Certificates for the last twelve years. This change resulted in a more economical rodent inspection program without any adverse consequences or increased risk to the public health.

Consolidation of Inspections and Deratting Certificate Issuance

CDC has now determined that consolidation of the number of ports at which inspections are conducted and Deratting Certificatess are issued will further economize the program without jeopardizing the public health.

Accordingly, beginning October 1, 1997, CDC started conducting rodent infestation inspections at eleven specified ports. Six of these ports were selected because of the proximity of PHS staff who can conduct inspections as necessary and ensure quality control. The five additional ports add geographic dispersion and provide additional opportunities for those seeking inspection services.

Article 20 of the International Health Regulations requires that notice be given to WHO when the list of ports designated in application of the International Health Regulations is changed. This notification has been made.

Applicability

The list of ports at which rodent infestation inspections are conducted and Deratting and Deratting Exemption Certificates are issued represents the only ports designated for this purpose. CDC staff or contract representatives are not available to conduct inspections at any other port.

Dated: April 3, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–9334 Filed 4–8–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N–0474]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by May 11, 1998.

ADDRESSES: Submit written comments on the collection of information to Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attention: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Geriatric Use Labeling for Human Prescription Drugs—21 CFR 201.57(f)(10)

In a final rule published on August 27, 1997 (62 FR 45313), FDA amended its regulations governing the content and format of labeling for human prescription drug products, including biological products, to include information on the appropriate use of drugs for persons age 65 years and older. The regulations facilitate access to this information by establishing a new ''Geriatric Use'' subsection in the labeling. The purpose of the regulation that will become effective on August 27, 1998, is to promote safe and effective use of prescription drugs among older people.

The regulations were issued under FDA's authority to regulate the labeling of prescription drugs and biological products, including sections 502(a), (f), and (j), and 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(a), (f), and (j), and 355) and section 351 of the Public Health Service Act (42 U.S.C. 242).

In the final rule (62 FR 45313 at 45324), FDA requested comments on the information collection provisions of the new regulations. No comments were received in response to this request.

Respondents to this collection of information will be business, and other for-profit organizations, including small business and manufacturers.FDA estimated the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
201.57(f)(10)	290	1	290	120	34,800

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 2, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–9349 Filed 4–8–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0149]

Guidance for Industry on National Uniformity for Nonprescription Drugs—Ingredient Listing for OTC Drugs; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''National Uniformity for Nonprescription Drugs—Ingredient Listing for OTC Drugs.'' This guidance is intended to clarify the administrative processes that will be followed in implementing the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Written comments on the guidance may be submitted at any time.

ADDRESSES: Copies of this guidance for industry may be obtained on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the guidance entitled ''National Uniformity for Nonprescription Drugs—Ingredient Listing for OTC Drugs'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas C. Kuchenberg, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance for industry entitled ''National Uniformity for Nonprescription Drugs—Ingredient Listing for OTC Drugs.'' Section 412 of Title IV of FDAMA, signed into law by President Clinton on November 21, 1997, amended section 502(e)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(e)(1)) to add as a requirement that the established name and quantity or, if determined to be appropriate, the proportion of each active ingredient appear on the label of all over-the-counter (OTC) drug products intended for human use. FDAMA amended section 502(e)(1) of the act to require the listing of inactive ingredients on drug product labels, including the labels of OTC drug products intended for human use.

In addition, in the **Federal Register** of February 27, 1997 (62 FR 9024), FDA issued a proposed rule that would establish a standardized format for the labeling of OTC drug products. The rule, which is being finalized, is intended to make labeling for OTC drug products easier to read and understand. This guidance for industry advises manufacturers, packers, and distributors of the agency's current thinking on implementing these provisions of FDAMA, as they apply to OTC drug products, in coordination with the forthcoming finalization of the proposed OTC labeling rule.

This guidance does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday

Dated: March 12, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–9350 Filed 4–8–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2246–N]

Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Continuance of Approval as an Accrediting Organization: the Joint Commission on Accreditation of Healthcare Organizations, the American Association of Blood Banks, and the American Osteopathic Association

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the continued approval of accrediting organizations for clinical laboratories under the Clinical Laboratory Improvement Amendments (CLIA) program for the following organizations: The Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the American Association of Blood Banks (AABB), and the American Osteopathic Association (AOA). This represents a continuation of the initial exemptions published in the **Federal Register** on—

- January 3, 1995 (60 FR 130)—JCAHO.
- July 21, 1995 (60 FR 37660)—AABB.
- July 21, 1995 (60 FR 37657)—AOA.

We have found that the accreditation process of these organizations provides reasonable assurance that the laboratories accredited by them meet the conditions required by Federal law and regulations. Consequently, laboratories that voluntarily become accredited by one or more of these organizations (as applicable) and continue to meet the organization's requirements would meet the CLIA condition level requirements for laboratories. Therefore, laboratories accredited by one or more of these organizations (as applicable) are not subject to routine inspection by State survey agencies to determine their compliance with Federal requirements. They are, however, subject to validation and complaint investigation surveys.

EFFECTIVE DATE: This notice is effective on April 9, 1998 through June 30, 1999 for the JCAHO, and July 21, 2001 for the AABB and the AOA.

FOR FURTHER INFORMATION CONTACT:
Joan Simmons, (410) 786–3408 (JCAHO)
Virginia Wanamaker, (410) 786–3384 (AABB)
Kathleen Todd, (410) 786–3385 (AOA)

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

Section 353 of the Public Health Service Act (PHSA), as amended by the Clinical Laboratory Improvement Amendments of 1988 (CLIA), requires any laboratory that performs tests on human specimens to meet requirements established by the Department of Health and Human Services (HHS). Under the provisions of sections 1861(s)(14) and (s)(16) of the Social Security Act, any laboratory that also wants to be paid for services furnished to Medicare beneficiaries must meet the requirements of section 353 of the PHSA. Subject to specified exceptions, laboratories must have a current and valid CLIA certificate to test human specimens or be eligible for payment from the Medicare or Medicaid programs. Regulations implementing section 353 of the PHSA are contained in 42 CFR part 493. Section 353(e)(2) of the PHSA permits HCFA to approve a private, nonprofit organization as an accreditation organization for clinical laboratories under the CLIA program if that organization's requirements for its accredited laboratories are equal to, or more stringent than, the applicable CLIA program requirements established at 42 CFR part 493.

Section 493.501 allows us to deem a laboratory to meet the CLIA requirements if the accreditation process of the organization requesting approval provides reasonable assurance that the laboratories accredited by it meet the conditions required by Federal law and regulations, including the requirements at § 493.506. Under § 493.501, the accreditation organization must also—

- Use inspectors qualified to evaluate laboratory performance and agree to inspect laboratories with the frequency determined by HHS;
- Apply standards and criteria that are equal to, or more stringent than, those condition level requirements established by HHS; and
- Provide reasonable assurance that these standards and criteria are continually met by its accredited laboratories.

A laboratory can be accredited if it meets the standards of an approved accreditation body and meets the requirements at § 493.501(b).

II. Requirements for Granting CLIA Approval

In order to determine whether we should grant or continue an existing CLIA approval to laboratories accredited by a private accrediting organization, we conduct a detailed and in-depth comparison between the organization's requirements and the CLIA requirements at § 493.501 to determine whether the organization meets the CLIA requirements.

As specified at § 493.506, our review of an accrediting organization's laboratory program includes (but is not necessarily limited to) an evaluation of the following:

- Whether the organization's requirements for laboratories are equivalent to, or more stringent than, the CLIA condition level requirements.
- The organization's inspection process requirements to determine the following:
  + The comparability of the full inspection and complaint inspection procedures to those of HCFA;
  + The ability of the organization to provide us with electronic data and reports with the adverse or corrective actions resulting from proficiency testing (PT) results that constitute unsuccessful participation in HCFA-approved PT programs and with other data we determine to be necessary for validation and assessment of the organization's inspection process requirements.
- The organization's agreement with us to ensure that the organization agrees to do the following:
  + Notify us within 30 days of all newly accredited laboratories, including the specialties and subspecialties for which any laboratory performs testing.
  + Notify us within 30 days of the name of any laboratory that has had its accreditation denied, suspended, withdrawn, limited, or revoked.
  + Notify us within 10 days of any deficiency identified in an accredited laboratory when the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public.
  + Notify us at least 30 days prior to changing its standards.
  + Notify each laboratory accredited by the organization within 10 days of our withdrawal of approval.
  + Disclose any laboratory's PT results upon the reasonable request by any person.
  + Provide us, as requested, with inspection schedules for validation purposes.

Under § 493.501(d), the approval period may not exceed 6 years. Section 493.501(e) provides that we publish a notice in the **Federal Register** announcing the names of accrediting organizations whose laboratories are deemed as meeting requirements equivalent to those of part 493. This notice must describe the basis for granting deeming authority to the accreditation organization. In addition, the notice must describe how the accreditation organization provides reasonable assurance to us that laboratories accredited by it meet CLIA requirements equivalent to those specified in part 493 and would, therefore, meet the CLIA requirements if, rather than being granted deemed status, they had been inspected against CLIA condition level requirements.

We published notices in the **Federal Register** announcing that the JCAHO (January 3, 1995; 60 FR 130), the AABB July 21, 1995; 60 FR 37660) and the AOA (July 21, 1995; 60 FR 37657) had applied for approval of their accreditation program for laboratories under the CLIA program; that the evaluation of these organizations' applications demonstrated that all requirements for approval were met; and that these organizations were granted approval as accreditation organizations under CLIA.

III. Evaluation of Requests for Continued CLIA Approval

The JCAHO, the AABB, and the AOA applied to us for continued approval of their laboratory accreditation programs under CLIA. As with the initial application, we evaluated the requests for continuation of these organizations' approvals for equivalency against the three major categories of CLIA rules: The implementing regulations, the enforcement regulations, and the deeming/exemption requirements.

We evaluated the applications to verify these organizations' assurances of continued compliance with the following subparts of part 493: Subpart H, Participation in Proficiency Testing for Laboratories Performing Tests of Moderate Complexity (including the Subcategory), High Complexity, or any Combination of These Tests; Subpart J, Patient Test Management For Moderate Complexity (including the Subcategory), High Complexity, or any Combination of These Tests; Subpart K, Quality Control for Tests of Moderate Complexity (including the Subcategory), High Complexity, or any Combination of These Tests; Subpart M, Personnel for Moderate Complexity (including the Subcategory) and High Complexity Testing; Subpart P, Quality Assurance for Moderate Complexity (including the Subcategory), or High Complexity Testing, or any Combination of These Tests; Subpart Q, Inspection; and Subpart R, Enforcement Procedures.

These organizations continue to meet the requirements of subparts H, J, K, M, P, Q, and R as they were described in

the January 3, 1995 and July 21, 1995 **Federal Register** notices.

IV. Federal Validation Inspections and Continuing Oversight

Federal validation inspections and continuing oversight of these accredited laboratories are conducted based on §§ 493.507 and 493.509; that is, they are conducted on a representative sample basis as well as in response to substantial allegations of noncompliance (complaint inspections). We have conducted Federal validation inspections of a sample of these accredited laboratories, as specified in § 493.507, and evaluated the findings. The evaluations confirmed the satisfactory performance of these organizations as accrediting organizations for clinical laboratories under the CLIA program. These organizations are maintaining their workloads at the proper level to ensure that all laboratories using one or more of these laboratory accreditation programs (as applicable) to meet CLIA requirements will be inspected in a 24-month cycle. All parameters monitored by HCFA staff to date indicate that these organizations are meeting all requirements under the CLIA approvals. This Federal monitoring process will continue as an ongoing process.

The CLIA approval of laboratories accredited by these organizations may be removed if we determine the outcome and comparability reviews of validation inspections are not acceptable as described under § 493.511.

V. Approval as an Accrediting Organization

HCFA grants continuation of the CLIA approval for all specialties and subspecialties for which the JCAHO, the AABB, and the AOA were previously approved (as noted below) to all laboratories accredited by and using one or more of these organizations' laboratory accreditation programs (as applicable) to meet CLIA requirements. The CLIA approval for these organizations continues until the following dates and for the following areas:

- JCAHO—June 30, 1999; all specialties and subspecialties.
- AABB—July 21, 2001; limited to the Immunohematology, Diagnostic Immunology, Hematology, Histocompatibility, Routine Chemistry, and Toxicology.
- AOA—July 21, 2001; all specialties and subspecialties.

VI. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice such as this would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all laboratories to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such analysis must conform to the provisions of sections 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than fifty beds.

This notice announces the continuance of the approvals of laboratories accredited by one or more of these organizations' accreditation programs as meeting the CLIA requirements. These organizations have established that their standards in determining whether or not to accredit a laboratory are equal to, or more stringent than, those of the CLIA program, and also have established that they have a comparable program to monitor and evaluate compliance with the standards. The effect of the continued approval of these organizations' accreditation programs as meeting the CLIA requirements is that laboratories will continue to be allowed to use these respective accreditation programs to meet the requirements of CLIA with no discernable difference in the operations of the program. Consequently, we anticipate that our continuation of these organizations' CLIA approval will not affect the laboratories or the quality and availability of services furnished.

We have determined, and the Secretary certifies, that this notice will not result in a significant impact on a substantial number of small entities and will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or sections 1102(b) of the Act.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Sec. 353(e)(2) of the Public Health Service Act (42 U.S.C. 263a).

Dated: February 17, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–9263 Filed 4–8–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: March 1998

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of March 1998, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
Program-Related Convictions	
Bigelsen, Harvey, San Diego, Ca	04/20/1998
Blackwell, Robert Earl, Little Rock, AR	04/20/1998
Burton, Richard James, Little Rock, AR	04/20/1998
Daw, Michael Edward, Goodyear, AZ	04/20/1998
Fontaine, Barbara, Culver City, CA	04/20/1998

Subject, city, state	Effective date
Gardner, John D, Caruthersville, MO	04/20/1998
Giles, Martha Raye, Ontario, CA	04/20/1998
Gonzales, Riccardo H, Fort Worth, TX	04/20/1998
Karpo, Stanley, Sunrise, FL	04/20/1998
Lazaro, Dionisio, Vacaville, CA	04/20/1998
Max, Agustin Lazaro, Miami, FL	04/20/1998
Midwest Hospital Pharmacy, Inc, Omaha, NE	04/20/1998
Miller, Dina, Brooklyn, NY	04/20/1998
Ostrovsky, Rachel, Brooklyn, NY	04/20/1998
Park, Alice Nohyun, Edmonds, WA	12/08/1997
Perez, Temis M, Miami, FL	04/20/1998
Persad, Garfield, W Palm Beach, FL	04/20/1998
Rivera, Mayra, Miami, FL	04/20/1998
Schinitsky, Arthur Seth, Bradenton, FL	04/20/1998
Scruggs, Peggy Sue, Hugo, OK	04/20/1998
Shanley, William, Bay Shore, NY	04/20/1998
Simon, Gream, W Palm Beach, FL	04/20/1998
Sutton, Charles, W Palm Beach, FL	04/20/1998
Truelson, Lance, Levittown, NY	04/20/1998
Vincent, Nathan, Lake Worth, FL	04/20/1998
Wiegand, Viola, Fort Worth, TX	04/20/1998
Patient Abuse/Neglect Convictions	
Benjamin, David, Stormville, NY	04/20/1998
Boatner, Bonnette Beard, State Line, MS	04/20/1998
Chamblee, Elizabeth R, Anderson, SC	04/20/1998
Choyce-El, Apollo, Lawton, OK	04/20/1998
Clanton, Gale, Rochester, NY	04/20/1998
Flippen, Tiasha, Buffalo, NY	04/20/1998
Foley, Dean Michael, Jackson, MS	04/20/1998
Francisco, Simonette J, Colorado Spngs, CO	04/20/1998
Glover, Martha, Sumter, SC	04/20/1998
Guyton, Terri Denise, Moreno Valley, CA	04/20/1998
Lunsman, Leticia Ann, Lindstrom, MN	04/20/1998
Meroski, Frank Paul, Warrensburg, NY	04/20/1998
Millsap, Alluna Tiana, Laurel, MS	04/20/1998
Omsberg, Kristen, Kalispell, MT	04/20/1998
Trenerry, Ruth A, Weiser, ID	04/20/1998
Velez, David, Yuba City, CA	04/20/1998
Verbrugge, Joseph J Jr, Englewood, CO	04/20/1998
Williams, Deena, Vicksburg, MS	04/20/1998
Zinaman, Richard, New York, NY	04/20/1998
Conviction for Health Care Fraud	
Cottrill, Cathreen Kay, White Lake, MI	04/20/1998
Edwards, Keith K, Memphis, TN	04/20/1998
Garrett, Alex C, Surfside Beach, SC	04/20/1998
Jensen, Riveka I, Las Vegas, NV	04/20/1998
Konst, James H, Boulder City, NV	04/20/1998
Nwachuku, Helen, Danbury, CT	04/20/1998
Russell, James, Flushing, MI	04/20/1998
Shea, Danielle M, Loveland, CO	04/20/1998
Shea, Rachel Anne, Loveland, CO	04/20/1998
Singer, Crystal Lynn, Bryan, TX	04/20/1998
License Revocation/Suspension/Surrender	
Alexander, Susan, Pawtucket, RI	04/20/1998
Anderson, Deborah A, Spencer, MA	04/20/1998
Andrews, Fred, Denver, CO	04/20/1998
Angell, Walter Frederick, Altamonte Spngs, FL	04/20/1998
Ashlock, Ellen C, Arlington, MA	04/20/1998
Banyan, Marjorie, Gales Ferry, CT	04/20/1998
Beltz, Charles Robert III, Athens, GA	04/20/1998
Bernard, Sheryl A, Pelham, NH	04/20/1998
Blank, Louis Arnold, Huntington, NY	04/20/1998
Brown, Robert C, Jacksonville, FL	04/20/1998
Burrow, Debbie Faye, Bassfield, MS	04/20/1998
Chambless, William House, Montgomery, AL	04/20/1998
Chappell, Margaret M, S Boston, MA	04/20/1998
Collings, Charlotte Constable, Church Hill, TN	04/20/1998
Cook, Mickey Jean, Stockton, CA	04/20/1998

Subject, city, state	Effective date
Cook-Lamkin, Olivia D, Hopkinsville, KY	04/20/1998
Cowan, Patrick, Everett, WA	04/20/1998
Diego, Roque P, Mahopac, NY	04/20/1998
Dudnath, Taramattie, Sacramento, CA	04/20/1998
Duke, Russell, Lewisburg, FL	04/20/1998
Ellis, Terry Kent, Biloxi, MS	04/20/1998
Evans, George A, Moberly, MO	04/20/1998
Ewing, Dean, Alton, IL	04/20/1998
Ferguson, Deanna Dee, Baytown, TX	04/20/1998
Garner, Jeanette Katherine, Stockton, CA	04/20/1998
Goddard, Bea, Lakewood, CO	04/20/1998
Gomez, Raul Fernando, Jacksonville, FL	04/20/1998
Grigsby, Sidney, Denver, CO	04/20/1998
Hanson, Terry Lynn, Richland, MS	04/20/1998
Harden, Clifford Bruce, Tuscaloosa, AL	04/20/1998
Harris, Albert B, Louisville, KY	04/20/1998
Holmes, Jeannette G, Sweeny, TX	04/20/1998
Jeffrey-Smith, Errol, Shoals, IN	04/20/1998
Kane, Burton E, Rancho Palos Verdes, CA	04/20/1998
Keller, Dawn K, Franklin, VT	04/20/1998
Kim, Shin OH, Franklin Lakes, NJ	04/20/1998
Kotler, Gary M, Westwood, MA	04/20/1998
Laclair, Aime, East Barre, VT	04/20/1998
Laferriere, Claire, Lowell, MA	04/20/1998
Logsdon, John T, Elizabethtown, KY	04/20/1998
Marchand, Janice, Little Compton, RI	04/20/1998
McKee, Catherine F, Dover, NH	04/20/1998
Melber, Diane M, Clifton Park, NY	04/20/1998
Monserrate, Rose-Marie, Sanibel, FL	04/20/1998
Montagano, Leanne, Watertown, CT	04/20/1998
Moore, Darrell, Denver, CO	04/20/1998
Morgan, Sara June Sacramento, CA	04/20/1998
Moses, William M. Louisville, KY	04/20/1998
Newsome, Eddie Leanders, Oakland, CA	04/20/1998
Nosel-Kates, Sarah, New York, NY	04/20/1998
Pant, Bhanu, Louisville, KY	04/20/1998
Patel, Rebecca M, Whiting, ME	04/20/1998
Pfeiffer, Carol, Cromwell, CT	04/20/1998
Piasecki, Alice, New York, NY	04/20/1998
Pillsbury, Mary A, Gilmanton, NH	04/20/1998
Porter, Dennis Ray, W Palm Beach, FL	04/20/1998
Post, Gregory D, E Amherst, NY	04/20/1998
Raniolo, George R, Nissequogue, NY	04/20/1998
Reddan, Joan, Bennington, VT	04/20/1998
Riddle, Sara E, E Decatur, IL	04/20/1998
Romsa, Kristi, Canon City, CO	04/20/1998
Rowan, Gilbert, Wilton, CT	04/20/1998
Saline, Myron, Boca Raton, FL	04/20/1998
Sanders, Lois, Bristol, CT	04/20/1998
Shellabarger, Steven, Lakeland, FL	04/20/1998
Smith, Michael, Colorado Springs, CO	04/20/1998
Sorohan, Jonathan Griffin, Conyers, GA	04/20/1998
Sprague, Deborah Gale, Claremont, NH	04/20/1998
Stouder, Susanna B, Ft Madison, IA	04/20/1998
Swiller, Michael, Hartford, CT	04/20/1998
Swindell, John William, Paso Robles, CA	04/20/1998
Tapia, Eugene H, Miami Beach, FL	04/20/1998
Taylor, Cynthia Ann, Stowe, VT	04/20/1998
Teitelbaum, Scott, Gainesville, FL	04/20/1998
Vilimas, Joseph G, Newton, MA	04/20/1998
Wallrath, Robert, Fort Myers, FL	04/20/1998
Ward, David Townsend, Winston-Salem, NC	04/20/1998
Warren, Kenneth Robert, Ithaca, NY	04/20/1998
Whatley, Patricia A, Gautier, MS	04/20/1998
Whitelaw, Phillip, Plainview, NY	04/20/1998
Whitten, Rebecca Surratt, Olive Branch, MS	04/20/1998
Wilkins, Jean, Seymour, CT	04/20/1998
Wilkinson, William H, Jamestown, NY	04/20/1998
Yacullo, Marie, Glenview, IL	04/20/1998
Zapko, Donna Marie, Hilton Head, SC	04/20/1998

Federal/State Exclusion/Suspension

Cooper, Dale L, Moscow, ID	04/20/1998

Subject, city, state	Effective date
Reliable Home Health Agency, Dania, FL	04/20/1998
Rotwein, Paul S, New York, NY	04/20/1998
Scott, Pamela S, Orofino, ID	04/20/1998
Solomon, Michael A, Millwood, NY	04/20/1998
We Care Health Supply, Inc, Gloversville, NY	04/20/1998
Fraud/Kickbacks	
Gorokhov, Aleksandr, Brooklyn, NY	07/02/1997
Landelman, Leonid (ELI), Brooklyn, NY	07/02/1997
Vaynshteyn, Alexander, Brooklyn, NY	07/02/1997
Volkov, Valery (PESACH), Brooklyn, NY	07/02/1997
Owned/Controlled by Convicted Excluded	
A T N S, Inc, Ft Lauderdale, FL	04/20/1998
Accredited Nursing SVCS of FL, Lauderhill, FL	04/20/1998
American Medical Holding Co, Lauderhill, FL	04/20/1998
Aryan Patient Care, Miami, FL	04/20/1998
Ask Medical & Surgical Supply, N Miami Beach, FL	04/20/1998
Bay Area Home Health, Goldsboro, NC	04/20/1998
Bulldog Medical of Kissimmee, St Cloud, FL	04/20/1998
Caring Hands HHA, Goldsboro, NC	04/20/1998
Charity Medical Supply, Miami, FL	04/20/1998
Community Home Care, Goldsboro, NC	04/20/1998
Comp-Care of Florida, Inc, Plantation, FL	04/20/1998
Comp-Care Oxygen Services, Inc, Plantation, FL	04/20/1998
Comp-Care Respiratory SVCS Inc, Lauderhill, FL	04/20/1998
Comp-Care USA Inc, Bradenton, FL	04/20/1998
Compcare of Florida, Lauderhill, FL	04/20/1998
Compcare of Manatee County Inc, Bradenton, FL	04/20/1998
Concord Medical Supply, Miami, FL	04/20/1998
Datalogic Technologies, Inc, Plantation, FL	04/20/1998
Dickenson Medical Center HHA, Goldsboro, NC	04/20/1998
El Sol Home Health Agency, Goldsboro, NC	04/20/1998
Elite Health Supplies, Inc, Brooklyn, NY	04/20/1998
Extended Home Care, Goldsboro, NC	04/20/1998
Health Plan Medical Supplies, Brooklyn, NY	04/20/1998
Lewis Community Home Health, Goldsboro, NC	04/20/1998
Longview Prosthetics Center, Fort Worth, TX	04/20/1998
Medical & Nutritional Support, Lauderhill, FL	04/20/1998
Medical Joint Ventures, Inc, Lauderhill, FL	04/20/1998
Nova Health Medical Supplies, Bradenton, FL	04/20/1998
Perry County Home Health, Goldsboro, NC	04/20/1998
Premier Medical Center, Miami, FL	04/20/1998
Remax Medical Services, Miami, FL	04/20/1998
Respiratory Wellness of Miami, Miami, FL	04/20/1998
Rocket Marine, Inc, St Cloud, FL	04/20/1998
Royal Medical Supplies, Inc, Brooklyn, NY	04/20/1998
South Shore Hearing Aid Ctr, Bayshore, NY	04/20/1998
Sovereign Medical, Inc, Bradenton, FL	04/20/1998
Texas Orthotics Prosthetics, Fort Worth, TX	04/20/1998
Topical Medical Corp, Miami, FL	04/20/1998
Wound Care Management Inc, St Cloud, FL	04/20/1998
Default on Heal Loan	
Abilez, Gilbert J Jr, Westlake Village, CA	04/20/1998
Aromola, Joseph J, Hebron, KY	04/20/1998
Bopp, Lorraine C, Brick, NJ	04/20/1998
Delpratt (Sampson), Denise A, E Elmhurst, NY	04/20/1998
Dickinson (Branch), Phyllis A, Memphis, TN	04/20/1998
Fordiani, Thomas R, Lakeville, MN	04/20/1998
Garcia, Javier, San Antonio, TX	12/18/1997
Heckler, Rodney R, Glen Ellyn, IL	04/20/1998
Holloway, Dennis III, Ridgeland, MS	04/20/1998
Huminski, Richard J, E Norwich, NY	04/20/1998
Hurley, Paul David, Kemah, TX	04/20/1998
Jackson, Catherine S, Brooklyn, NY	04/20/1998
Khalsa, Gururakha S, Kansas City, MO	04/20/1998
Knox, Herbert C Jr, Buffalo, NY	04/20/1998
Lambert, John P, Shoreview, MN	04/20/1998
Lanier, William C, Cullman, AL	04/20/1998
Leipzig, David C, Kenosha, WI	04/20/1998

Subject, city, state	Effective date
Littleton, Charles R Jr, Oklahoma City, OK	04/20/1998
Lovoi, Michael S, Robstown, TX	04/20/1998
Loy, Lamont S, Solana Beach, CA	04/20/1998
Manvel, Barry J, Calistoga, CA	04/20/1998
Masias, Michael A, Tarrytown, NY	04/20/1998
Michail, Medhat, Jersey City, NJ	04/20/1998
Patrus, Robert G, Roseville, MI	04/20/1998
Weiser, Henry E, Brooklyn, NY	04/20/1998
Exclusion Based on Settlement Agreement	
Antoo, Bisram Sr, Miami, FL	08/14/1997
Antoo, Bisram Jr, Miami, FL	08/14/1997
Medical Equipment, Inc, Miami, FL	08/14/1997
Melendez, Oneida, Miami, FL	08/14/1997
Melendez, Hector J Jr, Miami, FL	08/14/1997
Stat Oximetries, Inc, Miami, FL	08/14/1997
Vital-Care Medical Equipment, Miami, FL	08/14/1997

Dated: April 1, 1998.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 98–9371 Filed 4–8–98; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the following meetings of the SAMHSA Special Emphasis Panel I in April and May 1998.

A summary of the meetings and rosters of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–7390.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The first meeting will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, section 10(d).

Committee name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting dates: April 27–May 1, 1998.

Place: Holiday Inn, New Jersey Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Closed: April 27–30, 1998, 8:30 a.m.—5 p.m.; May 1, 1998, 8:30 a.m.—adjournment.

Panel: Center for Substance Abuse Prevention State Incentive Cooperative Agreements.

Contact: William Claude Reeder, Room 17–89, Parklawn Building, Telephone: 301–443–5062 and FAX: 301–443–3437.

The second meeting will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, sec. 10(d).

Committee name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting dates: May 18–20, 1998.

Place: Residence Inn, Missouri Room, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Closed: May 18–19, 1998, 8:30 a.m.—5 p.m.; May 20, 1998, 8:30 a.m.—adjournment.

Panel: Center for Mental Health Services Cooperative Agreements for the Mental Health Care Provider Education in HIV/AIDS Program II.

Contact: Raquel Crider, Ph.D., Room 17–89, Parklawn Building, Telephone: 301–443–5063 and FAX: 301–443–3437.

Dated: April 3, 1998.

Jeri Lipov,

Committee Management Officer, SAMHSA.

[FR Doc. 98–9348 Filed 4–8–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–839108

Applicant: Russell Jacobs, California Institute of Technology, Pasadena, CA

The applicant has requested a permit to import 10 captive-born gray lesser mouse lemurs (*Microcebus murinus*) for the purpose of breeding, and scientific research related to neurologic development and primate brain function using non-invasive techniques.

PRT–840905

Applicant: John C. Morgan, Okeechobee, FL

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–840202

Applicant: Illinois Natural History Survey, Champaign, IL

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species of plants and animals previously accessioned into the permittee's collection for scientific research. This notification covers activities conducted by the applicant for a five year period.

PRT–840261

Applicant: Elizabeth Stone, Little Falls, MN

The applicant requests a permit to import from Mexico biological samples taken from 40 wild thick-billed parrots (*Rhynchopsitta pachyrhyncha*) for the purpose of scientific research.

PRT–826682

Applicant: Ernest B. Shawver, Augusta, KS

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd

maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 et seq.) and the regulations governing marine mammals (50 CFR 18).

PRT–840350

Applicant: Long Beach Aquarium, Long Beach, CA

Permit Type: Take for enhancing the survival or recovery of the species [Sec 104(c)(4)(A) of the Marine Mammal Protection Act]

Name and Number of Animals: Southern sea otter (*Enhydra lutris nereis*), opportunistic rehabilitation of beached/stranded animals.

Summary of Activity to be Authorized: The applicant requests a permit to acquire southern sea otters from other recovery facilities for the purpose of enhancing survival of the species through continued rehabilitation, including development of a surrogate care program using sea otters, and public education. The applicant also requests authorization for these facilities to be used as temporary holding for emergency care events (e.g., in the event of an oil spill or disease/die-off event).

Source of Marine Mammals: Entire range of sea otters in California, and other rehabilitation facilities.

Period of Activity: Up to 5 years from issuance date of permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

PRT–840852

Applicant: Harald Mueller, Albuquerque, NM

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994 from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–840944

Applicant: Lewis E. Misterly, Jr., Anaheim Hills, CA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

PRT–840789

Applicant: Michael J. Moir, Gaylord, MI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994 from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: April 3, 1998.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–9288 Filed 4–8–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit; Extension of Comment Period

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–839520

Applicant: Ringling Bros. and Barnum & Bailey, Vienna, VA

The applicant requests a permit to export and reimport captive born Asian elephants (*Elephas maximus*), tigers (*Panthera tigris*), and a leopard (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period. This notification was previously published February 27, 1998 [63 FR, No. 39, Page 10032] and written comments will continue to be accepted until April 15, 1998.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director by April 15, 1998.

Documents and other information submitted for this application are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: April 3, 1998.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–9274 Filed 4–8–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. 702631

Applicant: Assistant Regional Director-Ecological Services, Region 1, Fish and Wildlife Service, Portland, Oregon

The applicant requests a permit amendment to take (harass by survey, capture, hold, radio collar, mark, draw biological samples, release, captive breed and release progeny into the wild) the Peninsular bighorn sheep (*Ovis canadensis*) throughout the species' range in California in conjunction with recovery efforts, for the purpose of enhancing its survival.

Permit No. 802104

Applicant: Carolee Caffrey, Stillwater, Oklahoma

The applicant requests a permit amendment to take (harass by survey) the California least tern (*Sterna antillarum browni*) throughout the species' range in California in conjunction with scientific research, for the purpose of enhancing its survival.

Permit No. 840895

Applicant: State of Hawaii, Honolulu, Hawaii

The applicant requests an amendment to his permit to take (capture, collect, and release) the nene or Hawaiian goose (*Nesochen sandvicensis*), po'o'li (*Melamprosops phaeosoma*), Maui parrotbill (*Pseudonestor xantophrys*), 'akohikohe or crested honeycreeper (*Palmeria dolei*), and 'alala or Hawaiian crow (*Corvus hawaiiensis*) throughout their ranges in Hawaii in conjunction with captive breeding and population management activities, for the purpose of enhancing their survival. These activities have been previously authorized under subpermit HIDLNR.

DATES: Written comments on these permit applications must be received on or before May 11, 1998.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Ecological Services, Chief, Division of Consultation and Conservation Planning, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; FAX: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: March 26, 1998.

Cynthia U. Barry,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–9326 Filed 4–8–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

ACTION: Notice of receipt of application.

Permit No. PRT–676811

Applicant: Assistant Regional Director—Ecological Services, Region 2, U.S. Fish and Wildlife Service, Albuquerque, New Mexico

Applicant requests authorization to renew U.S. Fish and Wildlife Service Endangered Species Permit PRT–676811, from June 15, 1998, through December 31, 2003. This permit would allow ''take'' of species listed as threatened or endangered under the Endangered Species Act. Taking would be for scientific research and recovery purposes or the enhancement of propagation or survival for approved recovery activities.

SUMMARY: The applicant listed above has applied for a permit renewal to conduct certain activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written comments on this permit application must be received on or before May 11, 1998.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the permit number for this application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service (see address above). Please refer to the permit number for this application when requesting copies of documents. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

Renne Lohoefener,

ARD—Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 98–9327 Filed 4–8–98; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No's. 834488, 780566

Applicants: Gregg Miller, Tustin, California; Ruben Ramirez, Jr., Diamond Bar, California

The applicants request amendments to their permits to take (capture, handle, and release) the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) in conjunction with presence or absence surveys and population monitoring in San Bernardino and Riverside counties, California for the purpose of enhancing its survival.

Permit No. 839890

Applicant: Gregory P. Smith, Arroyo Grande, California

The applicant requests a permit to take (harass by survey, nest monitor, and band) the California least tern (*Sterna albifrons browni*) in the Oceano Dunes State Vehicular Recreation Area in San Luis Obispo and Santa Barbara counties, California in conjunction with presence or absence surveys and nest monitoring for the purpose of enhancing its survival.

Permit No's. 840036, 839894, 820306, 839896, 840619, 800930, 840623, 840624

Applicants: Gilbert B. Ruiz, Santa Monica, California; Gladys T. Baird, San Diego, California; KEA Environmental, San Diego, California; Samuel J. Reed, Temecula, California; Jeff Preist, San Diego, California; Viviane Marquez, Chula Vista, California; Anita Eng, San Diego, California; Chris Nordby, San Diego, California

The applicants request a permit or permit amendment to take (harass by survey) the Quino checkerspot butterfly

(*Euphydryas editha quino*) in conjunction with presence or absence surveys and ecological research throughout the species' range in California for the purpose of enhancing its survival.

Permit No. 839960

Applicant: John W. Dicus, Flagstaff, Arizona

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) and the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with presence or absence surveys throughout each species' range in California for the purpose of enhancing their survival.

Permit No. 795934

Applicant: Jones and Stokes Associates, Inc., Sacramento, California

The applicant requests a permit amendment to take (harass by survey, nest monitor, and remove brown-headed cowbird eggs) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with presence and absence surveys and population monitoring throughout the species range, for the purpose of enhancing its survival.

Permit No. 816187

Applicant: David Cook, Cotati, California

The applicant requests a permit amendment to take (capture and handle) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with scientific research throughout the species range for the purpose of enhancing its survival.

Permit No. 811081

Applicant: Bureau of Land Management, Las Vegas, Nevada

The applicant requests a permit amendment to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with presence or absence surveys in Clark County, Nevada for the purpose of enhancing its survival.

Permit No. 840621

Applicant: Kathy Molina, Los Angeles, California

The applicant requests a permit to take (nest monitor) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with reproductive studies in Riverside County, California for the purpose of enhancing its survival.

Permit No. 780566

Applicant: Ruben Ramirez, Jr., Santa Monica, California

The applicant requests a permit amendment to take (capture and tag) the arroyo southwestern toad (*Bufo microscaphus californicus*) in conjunction with scientific studies on the San Bernardino National Forest and Cleveland National Forest for the purpose of enhancing its survival.

Permit No. 839213

Applicant: David Muth, Jr., Martinez, California

The applicant requests a permit to take (harass by survey; collect voucher specimens) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*), and take (capture, handle, and release) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) and the Alameda whipsnake (*Masticophis lateralis euryxanthus*) in conjunction with presence or absence surveys throughout each species range for the purpose of enhancing their survival.

Permit No. 839891

Applicant: Jack N. Levy, Econdido, California

The applicant requests a permit to take (harass by survey) the El Segundo blue butterfly (*Euphilotes battoides allyni*), Quino checkerspot butterfly (*Euphydryas editha quino*), Lange's metalmark butterfly (*Apodemia mormo langei*), Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesensis*) and take (harass by survey; disturb during habitat manipulation) the Laguna mountains skipper (*Pyrgus ruralis lagunae*) in conjunction with presence or absence surveys and scientific research throughout each species range in California for the purpose of enhancing their survival.

Permit No. 787392

Applicant: San Bernardino County Museum, Redlands, California

The applicant requests an amendment of his permit to take (harass by survey, locate and monitor nests, capture, band, color-band, and release) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with life history studies and population monitoring to include the following locations: southern Nevada, Imperial, Riverside, and San Bernardino Counties, California and Mojave, La Paz, and Yuma Counties, Arizona for the purpose of enhancing its survival.

Permit No. 840622

Applicant: Coralie Hull Cobb, San Diego, California

The applicant requests a permit to take (harass by survey; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) and Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys in San Diego County, California for the purpose of enhancing their survival.

Permit Nos. 838191 and 838197

Applicant: Shareen J. Morris, Littlerock, California and Gail Ellen Abel, Littlerock, California

The applicants request a permit to purchase, in interstate commerce, one female and three male captive bred Hawaiian (=nene) geese (*Nesochen* [=*Branta*] *sandvicensis*) for the purpose of enhancing its propagation and survival.

Permit No. 836594

Applicant: Maria Sanchez, Cayey, Puerto Rico

The applicant requests a permit to purchase, in interstate commerce, two pairs of captive bred Hawaiian (=nene) geese (*Nesochen* [=*Branta*] *sandvicensis*) for the purpose of enhancing its propagation and survival.

DATES: Written comments on these permit applications must be received on or before May 11, 1998.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses received, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: March 26, 1998.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–9328 Filed 4–8–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On January 29, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 19, Page 4464, that an application had been filed with the Fish and Wildlife Service by Robert C. Senter, Sr.,for a permit (PRT 838243) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken prior to April 30, 1994, from the Viscount Melville population, Northwest Territories, Canada, for personal use.

Notice is hereby given that on March 16, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On December 19, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 244, Page 66660, that an application had been filed with the Fish and Wildlife Service by Jack R. Cook for a permit (PRT 837437) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken prior to April 30, 1994, from the Lancaster Sound population, Northwest Territories, Canada, for personal use.

Notice is hereby given that on March 19, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On January 15,1998, a notice was published in the **Federal Register**, Vol. 63, No. 10, Page 2407, that an application had been filed with the Fish and Wildlife Service by Thomas H. Cochran for a permit (PRT 838178) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken prior to April 30, 1994, from the Gulf of Boothia population, Northwest Territories, Canada, for personal use.

Notice is hereby given that on March 3, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On September 11, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 176, Page 47825, that an application had been filed with the Fish and Wildlife Service by Bruce Schoeneweis for a permit (PRT–833661) to import a sport-hunted polar bear (*Ursus maritimius*) trophy taken from the M'Clintock Channel population, Northwest Territories, Canada.

Notice is hereby given that on March 3, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On January 6, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 3, Page 571, that an application had been filed with the Fish and Wildlife Service by David Dybvig for a permit (PRT–837757) to import a sport-hunted polar bear (*Ursus maritimius*) trophy taken from the M'Clintock Channel population, Northwest Territories, Canada. .

Notice is hereby given that on March 3, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: April 3, 1998.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–9275 Filed 4–8–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Comment on the Proposal To Develop the ''Hydrographic Data Content Standard for Coastal and Inland Waterways'' as a Federal Geographic Data Committee Standard

ACTION: Request for comments.

SUMMARY: The FGDC is soliciting public comments on the proposal to develop a ''Hydrographic Data Content Standard for Coastal and Inland Waterways.'' If the proposal is approved, the standard will be developed following the FGDC standards development and approval process. If the standard is adopted by the FGDC, it must be followed by all Federal agencies gathering and using hydrographic data for the purpose of navigation and engineering applications directly or indirectly (through grants, partnerships, or contracts).

In its assigned Federal leadership in the development of the National Spatial Data Infrastructure (NSDI), the FGDC recognizes that FGDC standards must also meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is to solicit such views. The FGDC invites the community to review the proposal and comment on the objectives, scope, approach, and usability of the proposed standard; identify existing related standards; and indicate their interest in participating in the development of the standard.

DATES: Comments must be received on or before June 1, 1998.

CONTACT AND ADDRESSES: The complete proposal is included in this notice. It is also posted at Internet address: http://www.fgdc.gov/Standards/Documents/Proposals/hydrocont.html.

Comments may be submitted via Internet mail or by submitting an electronic copy on diskette. Send comments via Internet to: gdc-hydrocont@www.fgdc.gov. Comments e-mailed as attachments must be in ASCII format.

A soft copy version may be submitted on a 3.5 x 3.5 diskette in WordPerfect 5.0 or 6.0/6.1 format, along with one hardcopy version of the comments, to the FGDC Secretariat (attn: Jennifer Fox) at U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192.

SUPPLEMENTARY INFORMATION: Following is the complete proposal for the ''Hydrographic Data Content Standard for Coastal and Inland Waterways.''

Project Title: Development of an NSDI Hydrographic Data Content Standard for Coastal and Inland Waterways.

Point of Contact: Kevin Backe, U.S. Army Corps of Engineers, 703–428–6505, email: kevin.backe@usace.army.mil.

Submitting Organization: FGDC Bathymetric Subcommittee.

Objectives: To develop a nationally focused Hydrographic Data Content Standard for Inland Waterways (hereafter called Hydrographic Standard) from the combination of information from existing standards (specified in the related standards paragraph).

Scope: This activity will first focus on developing a nationally focused standard for geospatial data pertaining to coastal and inland waterways that supports navigation applications. It will include an informative annex that

contains additional information about presentation of this information for charting and electronic chart display applications. The project team will further refine the scope of this project as this project proceeds.

This Standard will consist of a feature/attribute/domain catalog and will use a logical data model that is consistent with the Spatial Data Transfer Standard/Federal Information Processing Standard (SDTS/FIPS 173 part 2).

Justification/Benefits: There is currently no national data content standard for hydrographic data that support navigation and engineering applications; yet there has been considerable interest from Federal Agencies, the private industry, and the public for this type of information. A comprehensive data content standard that supports waterway navigation applications will ensure effective use of geospatial data across different agencies, organizations, and other users. Inclusion of graphic representation information and symbology will increase consistency and accuracy of interpreted information displayed on electronic charting.

Development Approach: The Bathymetric Subcommittee will create a project team to develop a draft of this standard. This project team will extract feature/attribute information available from existing standards and other sources and package and present this information as an FGDC Standard. The project team will provide a draft standard for the Bathymetric Subcommittee review and approval. Upon its approval the Bathymetric Subcommittee will submit the Hydrographic Standard to the FGDC Standards Working Group for their review and approval prior to it going out for public review. The Bathymetric Subcommittee will also submit this information to the FGDC Feature Registry to discover any potential overlap with other FGDC Standards.

Development and Completion Schedule: The Bathymetric Subcommittee will form a project team and begin work on the development of this standard as soon as this project is approved by the FGDC Standards Working Group. The development of a working draft of the Hydrographic Standard is expected to take 3–6 months. Once the Bathymetric Subcommittee is satisfied with the content of this Standard it will be forwarded to the Standards Working Group for their review and consideration of its readiness for public review. The Bathymetric Subcommittee expects to accomplish the development of this standard in one year to eighteen months.

Resources Required: The Bathymetric Subcommittee has adequate resources to accomplish most of the development of this Hydrographic Standard. If there is interest in participation on the development of this standard from the non-Federal sector, additional resources may be required.

Potential Participants: The primary participants will be the members of the Bathymetric Subcommittee that includes representatives from federal agencies. Other members of the public and private sector will be sought for the development of this Standard.

Related Standards: There are several significant standards that relate to the standard being proposed for development. As mentioned above the project team is planning on producing this Hydrographic Standard by extracting relevant information from these existing standards and other sources. These standards and other sources are:

International Hydrographic Organization's S57 Appendix A ''Object Catalog for Digital Hydrographic Data,''

USACE Regional Engineering and Environmental GIS project's data dictionary for inland waterways information,

Tri-Service Spatial Data Standard,

Potentially the National Mapping and Imagery Agency (NIMA) Feature Attribute Coding Catalog, potentially the NIMA Hydrographic Data Model, and potentially the USGS DLG–F feature dictionary.

Target Authorization Body: The Bathymetric Subcommittee proposes pursuing the development of this Hydrographic Standard as a FGDC standard. The Bathymetric Subcommittee may consider pursuing (at a later date) the promoting of parts of this standard (e.g., inland waterways information) that are not currently part of the S57 standard to International Hydrographic Organization for inclusion in their standard.

Dated: April 2, 1998.

Kathryn R. Clement,

Associate Chief, National Mapping Division.

[FR Doc. 98–9357 Filed 4–8–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–933–98–1320–01; COC 61209]

Notice of Public Hearing and Request for Comments on Environmental Assessment, Maximum Economic Recovery Report, and Fair Market Value; Application for Competitive Coal Lease COC 61209; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood Colorado, hereby gives notice that a public hearing will be held to receive comments on the environmental assessment, maximum economic recovery, and fair market value of federal coal to be offered. An application for coal lease was filed by Bowie Resources Limited requesting the Bureau of Land Management offer for competitive lease 3,403.27 acres of federal coal in Delta County, Colorado.

DATES: The public hearing will be held at 7 p.m., April 22, 1998. Written comments should be received no later than May 12, 1998.

ADDRESSES: The public hearing will be held in the Paonia Town Hall, 214 Grand Avenue, Paonia, Colorado. Written comments should be addresses to the Bureau of Land Management, Area Manager, Uncompahgre Basin Resource Area, 2505 South Townsend Avenue, Montrose, Colorado 81401.

FOR FURTHER INFORMATION CONTACT: Allan Belt, Area Manager, Uncompahgre Basin Resource Area Office at the address above, or by telephone at (970) 240–5315.

SUPPLEMENTARY INFORMATION: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held on April 22, 1998, at 7 p.m., in the Paonia Town Hall at the address given above.

An application for coal lease was filed by Bowie Resources Limited requesting the Bureau of Land Management offer for competitive lease federal coal in the lands outside established coal production regions described as:

T. 12 S., R. 91 W., 6th P.M.
Sec. 33, lots 1 to 16, inclusive, S½N½;
Sec. 34, lots 1 to 16, inclusive, S½N½.
T. 13 S., R. 91 W., 6th P.M.
Sec. 2, SW¼NW¼, NW¼SW¼, and E½SW¼;
Sec. 3, lots 1 to 4, inclusive, S½N½, and N½S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;

Sec. 5 S½SE¼, and SE¼SW¼;
Sec. 8 NE¼;
Sec. 9 NW¼, and N½SW¼;
Sec. 11, NE¼NW¼.

Containing 3,403.27 acres.

The coal resource to be offered is limited to coal recoverable by underground mining methods.

The purpose of the hearing is to obtain public comments on the environmental assessment and on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal,

(2) The impact that mining the coal in the proposed leasehold may have on the area, and

(3) The methods of determining the fair market value of the coal to be offered.

Written requests to testify orally at the April 22, 1998, public hearing should be received at the Uncompahgre Basin Resource Area Office prior to the close of business April 22, 1998. Those who indicate they wish to testify when they register at the hearing may have an opportunity if time is available.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resource. Public comments will be utilized in establishing fair market value for the coal resource in the described lands. Comments should address specific factors related to fair market value including, but not limited to:

1. The quality and quantity of the coal resource.
2. The price that the mined coal would bring in the market place.
3. The cost of producing the coal.
4. The interest rate at which anticipated income streams would be discounted.
5. Depreciation and other accounting factors.
6. The mining method or methods which would achieve maximum economic recovery of the coal.
7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease area, and
8. Any comparable sales data of similar coal lands.

Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Written comments on the environmental assessment, maximum economic recovery, and fair market value should be sent to the Uncompahgre Basin Resource Area Office at the above address prior to close of business on April 22, 1998.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The Draft Environmental Assessment and Maximum Economic Recovery Report are available from the Uncompahgre Basin Resource Area Office upon request.

A copy of the Draft Environmental Assessment, the Maximum Economic Recovery Report, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, 2850 Youngfield, Lakewood, Colorado 80215.

Dated: March 31, 1998.

Karen A. Purvis,

Solid Minerals Team, Resource Services.

[FR Doc. 98–9365 Filed 4–8–98; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW107164]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW107164 for lands in Lincoln County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW107164 effective November 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 98–9368 Filed 4–8–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1040–00]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. April 1, 1998.

The plat representing the dependent resurvey of a portion of the north boundary, subdivisional lines, and 1869 meanders of the left bank of the Snake River, and the subdivision of section 4, T. 6 S., R. 6 E., Boise Meridian, Idaho, Group 1010, was accepted April 1, 1998.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the surveys of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: April 1, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98–9363 Filed 4–8–98; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–940–1910–00–4677]

Idaho: Filing of Protraction Diagrams in Idaho

The protraction diagrams (7) of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. April 1, 1998.

The protraction diagrams (7) for partially surveyed T. 10 S., R. 41 E.; T. 10 S., R. 42 E; T. 11 S., R. 42 E.; T. 12 S., R. 41 E.; T. 13 S., R 41 E.; T. 14 N., R. 41 E.; and T. 15 S., R. 41 E., Boise Meridian, Idaho were accepted April 1, 1998. The preparation of these diagrams was requested by the USDA Forest Service, Geometronics Service Center, to support its mapping program.

All inquiries concerning the survey of the above described land must be sent

to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho, 83709–1657.

Dated: April 1, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98–9364 Filed 4–8–98; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–4513] ES–49584, Group 12, Maine

Filing of Plat of Survey; Maine

The plat of the dependent resurvey of the boundaries of the land held in trust for the Penobscot Indian Nation, Township 2, Range 5, West of Bingham's Kennebec Purchase, Franklin County, Maine, was officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on March 27, 1998.

The survey was requested by the Bureau of Indian Affairs.

Copies will be furnished upon request and prepayment of the appropriate fee.

Dated: March 27, 1998.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 98–9370 Filed 4–8–98; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–989–1050–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 45 N., R. 75 W., accepted March 27, 1998
T. 18 N., R. 107 W., accepted March 27, 1998
T. 31 N., R. 119 W., accepted March 27, 1998

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protests(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: March 31, 1998.

John P. Lee,

Chief, Cadastral Survey Group.

[FR Doc. 98–9438 Filed 4–8–98; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: watershed management strategy and proposals for phased and staged program implementation in Phase III. In addition, a panel of representatives from Northern California will present their comments to BDAC on the CALFED Program from the Northern California and upper watershed perspectives. BDAC members will also discuss Program financing principles and are invited to participate in a tour of local restoration efforts on Friday, May 15, 1998. This meeting is open to the public. Interested persons may oral statements to the BDAC or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held from 9:30 a.m. to 5:00 p.m. on Thursday, May 14, 1998.

ADDRESSES: The Bay-Delta Advisory Council will meet at the Doubletree Hotel, 1830 Hilltop Drive, Redding, CA (530) 221–8700.

FOR FURTHER INFORMATION CONTACT: Mary Selkirk, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact that Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disaster, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety or beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other material prepared by CALFED staff, BDAC has established a subcommittee called the

Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: April 2, 1998.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 98–9325 Filed 4–8–98; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–794–796 (Preliminary)]

Certain Emulsion Styrene-Butadiene Rubber From Brazil, Korea, and Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–794–796 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, Korea, and Mexico of certain emulsion styrene-butadiene rubber,[1] provided for in subheading 4002.19.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by May 18, 1998. The Commission's views are due at the Department of Commerce within five business days thereafter, or by May 26, 1998.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on April 1, 1998, by Ameripol Synpol Corporation of Akron, OH, and DSM Copolymer of Baton Rouge, LA.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of 3 this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on April 22, 1998, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (202–205–3187) not later than April 20, 1998, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 27, 1998, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: April 2, 1998.

[1] For purposes of these investigations, emulsion styrene-butadiene rubber (ESBR) is a synthetic polymer made via free radical cold emulsion copolymerization of styrene and butadiene monomers in reactors with water, initiator system, emulsifier system and molecular weight modifiers consisting of cold non-pigmented rubbers and cold oil extended non-pigmented rubbers and containing at least 1 percent of organic acids from the emulsion polymerization process. Only the 1500 and 1700 series types of synthetic rubbers under the IISRP numbering system are covered by the term ''emulsion styrene-butadiene rubber'' or ''ESBR'' in these investigations. ESBR is covered by statistical reporting number 4002.19.0010 of the Harmonized Tariff Schedule of the United States (HTS).

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–9266 Filed 4–8–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–375 (Preliminary) and 731–TA–787 (Preliminary)]

Extruded Rubber Thread From Indonesia

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation No. 701–TA–375 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act) and antidumping investigation No. 731–TA–787 (Preliminary) under section 733(a) of the Act (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Indonesia of extruded rubber thread, provided for in heading 4007.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Indonesia and sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B)) or to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping investigations in 45 days, or in this case by May 15, 1998. The Commission's views are due at the Department of Commerce within five business days thereafter, or by May 22, 1998.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on March 31, 1998, by North American Rubber Thread Co., Ltd., Fall River, MA.

Participation in the Investigations and Public Service List

Persons (other than petitioner) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on April 20, 1998, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202–205–3180) not later than April 15, 1998, to arrange for their appearance. Parties in support of the imposition of countervailing or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 23, 1998, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: April 3, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–9353 Filed 4–8–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–396]

Certain Removable Electronic Cards and Electronic Card Reader Devices and Products Containing Same; Notice of Commission Decisions To Extend Deadline for Determining Whether to Review Final Initial Determination and To Extend Target Date for Completion of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by seventeen calendar days (1) the deadline for deciding whether to review the presiding administrative law judge's (''ALJ's'') final initial determination (ID) issued on March 24, 1998, and (2) the target date for completion of the investigation. The deadline for deciding whether to review the ID is now May 28, 1998; the target date for completion of the investigation is now July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, *Esq.*, Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3095.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 2, 1997, based on a complaint filed by Innovatron S.A. of Paris, France, in which Innovatron alleged that Thomson Multimedia, S.A. of Paris, France, and Thomson Consumer Electronics, Inc. of Indianapolis, Indiana, violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by importing and selling certain removable electronic cards and electronic card reader devices and products containing same that infringe claim 8 of U.S. Letters Patent 4,404,464.

The presiding ALJ initially set April 2, 1998, as the target date for completion of the investigation, with his final ID to be issued by January 2, 1998. He subsequently extended the target date for completion to July 2, 1998, with his final ID to be issued by April 2, 1998. The final ID was actually issued on March 24, 1998.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rules 210.42 and 210.51, 19 CFR 210.42 and 210.51. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Issued: April 3, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–9354 Filed 4–8–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–376–379 (Preliminary) and Investigations Nos. 731–TA–788–793 (Preliminary)]

Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigations Nos. 701–TA–376–379 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium, Italy, Korea, and South Africa of certain stainless steel plate in coils, provided for in subheadings 7219.11.00, 7219.12.00, 7219.31.00, and 7220.11.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the respective Governments of Belgium, Italy, Korea, and South Africa. The Commission also gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–788–793 (Preliminary) under section 733(a) of the Act (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of such imports from Belgium, Canada, Italy, Korea, South Africa, and Taiwan that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. § 1671a(c)(1)(B) or 19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping investigations in 45 days, or in this case by May 15, 1998. The Commission's views are due at the Department of Commerce within five business days thereafter, or by May 22, 1998.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Olympia Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on March 31, 1998, by Armco, Inc., Pittsburgh, PA; J&L Specialty Steel, Inc., Pittsburgh, PA; Lukens Inc., Coatesville, PA; and the United Steelworkers of America, AFL–CIO/CLC.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users

and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on April 21, 1998, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Parties wishing to participate in the conference should contact Olympia Hand (202–205–3182) not later than April 20, 1998, to arrange for their appearance. Parties in support of the imposition of countervailing or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 24, 1998, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

Issued: April 2, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–9267 Filed 4–8–98; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: June 18–19, 1998.

TIME: 8:30 a.m.–5:00 p.m.

ADDRESSES: Hotel Loretto, 211 Old Santa Fe Trail, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committees Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: April 2, 1998.

John K. Rabiej,

Chief, Rules Committees Support Office.

[FR Doc. 98–9262 Filed 4–8–98; 8:45 am]

BILLING CODE 5000–25–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Chancellor Media Company, Inc. and SFX Broadcasting, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of New York in *United States* v. *Chancellor Media Company, Inc. and SFX Broadcasting, Inc.* Civil Action No. CV97–6497. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

Plaintiff filed a civil antitrust Complaint on November 6, 1997, alleging that Chancellor Media Corporation's (successor in interest to Chancellor Media Company, Inc.) (''Chancellor'') proposed acquisition of four radio stations in Suffolk County, Long Island, New York owned by SFX Broadcasting, Inc. (''SFX'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18 and Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint alleges, among other things, that Chancellor and SFX are the number one and number two radio companies on Long Island and that they each own radio stations in Suffolk County, New York. The Complaint also alleges that the proposed acquisition would increase Chancellor's share of the radio advertising market in Suffolk County, New York from 33 percent to over 65 percent. It further alleges that prices for radio advertising for coverage of Suffolk County would likely increase and the quality of promotional services would likely decline—especially to regional and local customers.

The prayer for relief seeks: (a) Adjudication that Chancellor's proposed acquisition would violate Section 7 of the Clayton Act and Section 1 of the Sherman Act; (b) permanent injunctive relief preventing the consummation of the proposed acquisition; (c) a finding that the Local Marketing Agreement (LMA) between Chancellor and SFX regarding SFX's Suffolk County radio stations violates Section 1 of the Sherman Act and an Order terminating the LMA; (d) an award to the United

States of the costs of this action; and (e) such other relief as is proper.

The United States and the defendants in this action have reached a proposed settlement in this proceeding, and a Stipulation and Order, and a proposed Final Judgment embodying the settlement have been filed with the Court. The proposed Final Judgment prohibits Chancellor and SFX from consummating their acquisition and orders them to terminate the LMA as soon as possible, but no later than August 1, 1998. In addition, the proposed Final Judgment would prevent Chancellor, SFX, and any of their successor companies from combining WALK–FM/AM with WBLI–FM and WBAB–FM. The proposed Final Judgment also requires Chancellor to ensure that, until termination of the LMA mandated by the Final Judgment has been accomplished, Chancellor will maintain the SFX radio stations as viable entities, including the obligation that Chancellor work to increase the sale of advertising and maintain promotional and marketing levels for the SFX stations. Further, the proposed Final Judgment requires defendants to give plaintiff prior notice regarding future radio station acquisitions or certain agreements pertaining to the sale of radio advertising time in Suffolk County, New York.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530 (telephone: (202) 307–0001). Copies of the Complaint, Stipulation and Order, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, D.C. 20530 (telephone: (202) 514–2481) and at the office of the Clerk of the United States District Court for the Eastern District of New York, United States Courthouse, 2 Uniondale Avenue, Uniondale, New York 11553.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

Stipulation and Order

Whereas, plaintiff, the United States of America, and defendants, Chancellor Media Corporation (successor in interest to Chancellor Media Company, Inc.) (''Chancellor'') and SFX Boardcasting, Inc. (''SFX''), acknowledge that this stipulation and order, wherein defendants consent to the entry of a Final Judgment trial, (i): Is made without there having been a trail or adjudication of any issue of fact or law and without the Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact, and (ii) is not intended to expand the effect of the Final Judgment before or after its entry,

Now, Therefore, it is stipulated by and between plaintiff and defendants, Chancellor and SFX, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Eastern District of New York.

(2) Plaintiff and defendants stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of plaintiff or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

(3) Each defendant shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by plaintiff and defendants, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an Order of the Court.

(4) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by plaintiff and defendants and submitted to the Court.

(5) In the event plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then plaintiff and defendants are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(6) Each defendant represents that the obligations ordered in the proposed Final Judgment can and will be fulfilled, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the obligations contained therein.

Dated: March 30, 1998.

For Plaintiff United States of America:

Allee A. Ramadhan, Esq., (AR–0142).

Theresa H. Cooney, (TC–4933).

U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, NW., Suite 4000, Washington, D.C. 20530, (202) 307–0001.

For Defendant Chancellor Media Corporation:

Edward P. Henneberry, Esq.,

(EP–9043).

Howrey & Simon, 1299 Pennsylvania Avenue, NW., Washington, D.C. 20004, (202) 783–0800.

For Defendant SFX Broadcasting, Inc.:

David A. Clanton,

(DC–2683).

Howard Adler, Jr.,

(HA–0425).

David J. Laing,

(DL–2400).

Baker & McKenzie, 815 Connecticut Avenue, NW., Washington, D.C. 20006, (202) 452–7000

and

Michael Burrows,

(MB–2863).

Vincent A. Sama,

(VS–9027).

Baker & McKenzie, 805 Third Avenue, New York, New York 10022, (212) 751–5700.

SO ORDERED.

Dated, _____, New York, 1998.

_____

United States District Judge

Certificate of Service

I hereby certify that, on March 31, 1998, I caused the foregoing Stipulation and Order to be served by having a copy hand delivered to:

Edward P. Henneberry, Esq., Howrey & Simon, 1299 Pennsylvania Avenue,

N.W., Washington, D.C. 20004, Counsel for Defendant, Chancellor Media Corporation

and

Howard Adler, Jr., Baker & McKenzie, 815 Connecticut Avenue, N.W., Washington, D.C. 20006, Counsel for Defendant, SFX Broadcasting, Inc.

Seth E. Bloom.

United States District Court for the Eastern District of New York

Whereas, plaintiff, the United States of America, filed its Complaint in this action on November 6, 1997, and plaintiff and defendants, Chancellor Media Corporation (successor in interest to Chancellor Media Company, Inc.) (''Chancellor'') and SFX Broadcasting, Inc. (''SFX'') by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, defendants have represented that the obligations ordered in this Final Judgment can and will be fulfilled, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the obligations contained herein;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged, and Decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18) and Section 1 of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

A. ''Chancellor'' means defendant Chancellor Media Corporation (successor in interest to Chancellor Media Company, Inc.), a Delaware corporation with its headquarters in Irving, Texas, and includes its predecessors, successors and assigns, divisions, subsidiaries, companies, groups, partnerships and joint ventures that Chancellor controls, directly or indirectly, and their directors, officers, managers, agents and representatives, and their respective successors and assigns.

B. ''SFX'' means defendant SFX Broadcasting, Inc., a Delaware corporation with its headquarters in New York, New York, and includes its predecessors, successors and assigns, divisions, subsidiaries, companies, groups, partnerships and joint ventures that SFX controls, directly or indirectly, and their directors, officers, managers, agents and representatives, and their respective successors and assigns.

C. ''SFX Long Island Assets'' means all of the assets, tangible or intangible, used in the operations of the WBLI 106.1 FM radio station in Patchogue, Long Island, New York, the WBAB 102.3 FM radio station in Babylon, Long Island, New York, the WHFM 95.3 FM radio station in Southampton, New York, and the WGBB 1240 AM radio station in Freeport, New York including but not limited to: all real property (owned or leased) used in the operation of these stations; all broadcast equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies and other tangible property used in the operations of these stations; all licenses, permits, authorizations, and applications therefor issued by the Federal Communications Commission (''FCC'') and other governmental agencies related to these stations; all contracts, agreements, leases and commitments of defendants pertaining to these stations and their operation; all trademarks, service marks, trade names, copyrights, patents, slogans, programming material and promotional materials relating to these stations; and all logs and other records maintained by defendants or these stations in connection with their business.

D. ''WALK Assets'' means all of the assets, tangible or intangible, used in the operation of the WALK 97.5 FM and WALK 1370 AM radio stations in Patchogue, New York, including but not limited to: all real property (owned or leased) used in the operation of these stations; all broadcast equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies and other tangible property used in the operation of these stations; all licenses, permits, authorizations, and applications therefor issued by the FCC and other governmental agencies related to these stations; all contracts, agreements, leases and commitments of defendant pertaining to these station and their operation; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to these stations; and all logs and other records maintained by defendant Chancellor or these stations in connection with their business.

E. ''Nassau-Suffolk Area'' means Nassau and Suffolk Counties, New York.

F. ''Chancellor Radio Station'' means any radio station owned, operated, or controlled by Chancellor and broadcasting from a transmitter site located in the Nassau-Suffolk Area.

G. ''SFX Radio Station'' means any radio station owned, operated, or controlled by SFX and broadcasting from a transmitter site located in the Nassau-Suffolk Area.

H. ''Non-Chancellor Radio Station'' means any radio station broadcasting from a transmitter site located in the Nassau-Suffolk Area that is not a Chancellor Radio Station.

I. ''Non-SFX Radio Station'' means any radio station broadcasting from a transmitter site located in the Nassau-Suffolk Area that is not an SFX Radio Station.

J. ''LMA'' means the Local Marketing Agreement that Chancellor and SFX entered into on or about July 1, 1996, as part of their July 1, 1996, asset exchange agreement whereby SFX agreed to exchange its four Long Island-based radio stations for Chancellor's two Jacksonville, Florida radio stations and an additional $11 million.

III. Applicability

A. The provisions of this Final Judgment apply to each of the defendants, their successors and assigns, subsidiaries, affiliates, companies, groups, partnerships, and joint venturers, their directors, officers, managers, agents and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Each defendant shall require, as a condition of the sale or other disposition of all or substantially all of the assets used in its businesses of owning and operating the WALK Assets (in the case of Chancellor) of the SFX Long Island Assets (in the case of SFX), that the acquiring party agrees to be bound, as a successor or assign, by the provisions of this Final Judgment.

IV. Prohibition of Acquisition

Defendants shall not directly or indirectly consummate the acquisition contract that is a subject of the complaint in this action. Defendant Chancellor shall not acquire, directly or

indirectly, the SFX Long Island Assets that encompasses WBLI–FM and WBAB–FM (hereinafter the ''SFX Long Island WBAB/WBLI Assets'') or any interest in the SFX Long Island WBAB/WBLI Assets. Defendant Chancellor shall not sell or otherwise convey, directly or indirectly, the WALK Assets or any interest in the WALK Assets to SFX or to any future owner or operator of the SFX WBAB/WBLI Long Island Assets. Defendant SFX shall not acquire, directly or indirectly, the WALK Assets or any interest in the WALK Assets. Defendant SFX shall not sell or otherwise convey, directly or indirectly, the SFX Long Island WBAB/WBLI Assets or any interest in the SFX Long Island WBAB/WBLI Assets to Chancellor or to any future owner or operator of the WALK Assets.

V. Termination of LMA

Defendants shall terminate the LMA as soon as possible, but no later than August 1, 1998. Defendants shall not enter into any agreement or understanding (including a Local Marketing Agreement or similar agreement (such as a joint sales agreement (JSA))) that would allow joint marketing or sale of advertising time or joint establishment of advertising prices, with respect to the WALK Assets and the SFX Long Island Assets.

VI. Preservation of Assets

Until the termination of the LMA, as required by Section V of this Final Judgment, has been accomplished:

A. Defendant Chancellor shall take all steps necessary to operate the SFX Long Island Assets as ongoing, economically viable radio stations.

B. Defendant Chancellor shall use all reasonable efforts to maintain and increase sales of advertising time by the SFX Long Island Assets and shall maintain at 1997 or previously approved levels for 1998, whichever are higher, promotional advertising, sales, marketing and merchandising support for the SFX Long Island Assets.

C. Defendant Chancellor shall take all steps necessary to ensure that the assets used in the operation of the SFX Long Island Assets are fully maintained. WBLI–FM, WBAB–FM, WHFM–FM, and WGBB–AM sales and marketing employees shall not be transferred or reassigned to any other station, except for transfer bids initiated by employees pursuant to defendant's regular, established job posting policies, provided that defendant Chancellor gives plaintiff ten (10) days' notice of any such transfer.

D. Defendant Chancellor shall appoint a person or persons to be responsible for defendant Chancellor's compliance with this Section VI.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment, defendant Chancellor shall deliver to plaintiff an affidavit which describes in reasonable detail all actions defendant Chancellor has taken and all steps defendant Chancellor has implemented on an on-going basis to preserve the SFX Long Island Assets, pursuant to Section VI of this Final Judgment. Defendant Chancellor shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in its earlier affidavit(s) filed pursuant to this Section VII within fifteen (15) calendar days after such change is implemented.

B. Defendant Chancellor shall preserve all records of efforts made to maintain or preserve the SFX Long Island Assets.

VIII. Notice

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), defendants, without providing advance notification to the plaintiff, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any Non-Chancellor Radio Station (in the case of an acquisition by Chancellor) or in any Non-SFX Radio Station (in the case of an acquisition by SFX).

B. Defendants, without providing advance notification to the plaintiff, shall not directly or indirectly enter into any agreement or understanding (including a Local Marketing Agreement or similar agreement (such as a joint sales agreement (JSA)) that would allow either defendant to market or sell advertising time or to establish advertising prices for any Non-Chancellor Radio Station (in the case of Chancellor) or any Non-SFX Radio Station (in the case of SFX).

C. The notification obligations required by paragraphs (A) or (B) of this Section VIII shall not apply to defendant Chancellor following its sale of all of the WALK Assets to a third party that is in no way affiliated with defendant Chancellor, provided that the provisions of Section III have been complied with. The notification obligations required by paragraphs (A) or (B) of this Section VIII shall not apply to defendant SFX following its sale of the SFX Long Island Assets to a third party that is in no way affiliated with SFX, provided that the provisions of Section III have been complied with.

D. Notification described in (A) and (B) of this Section VIII shall be provided to the United States Department of Justice (''the Department'') in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5–9 of the instructions must be provided, in the case of Chancellor, only with respect to any Chancellor Radio Station, and in the case of SFX, only with respect to any SFX Radio Station. Notification shall be provided at least thirty (30) days prior to acquiring any such interest covered in (A) or (B) above, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Department make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph (C) may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

E. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

IX. Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the plaintiff, upon written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to each defendant made to their principal offices, shall be permitted:

(1) Access during office hours of each defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of each defendant, who may have counsel present, relating to the

matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of each defendant and without restraint or interference from it, to interview, either informally or on the record, directors, officers, employees and agents of each defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, made to defendants' principal offices, each defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in Section VII or this Section IX shall be divulged by any representative of plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, and defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

X. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XI. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____.

_____

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The plaintiff filed a civil antitrust Complaint on November 6, 1997, alleging that Chancellor Media Corporation (successor in interest to Chancellor Media Company, Inc.) (''Chancellor'') proposed acquisition of four radio stations in Suffolk County, N.Y. owned by SFX Broadcasting, Inc. (''SFX'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18 and Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint alleges, among other things, that Chancellor and SFX are the number one and number two radio companies on Long Island and that they each own radio stations is Suffolk County, N.Y. The Complaint also alleges that WALK–FM (Chancellor) and WBLI–FM/WBAB–FM (SFX) have been locked in a daily battle against each other for radio advertising revenues in Suffolk County, N.Y. The Complaint further alleges that the proposed acquisition would substantially lessen competition in the sale of radio advertising time in Suffolk County, N.Y. Specifically, the Complaint alleges that the proposed acquisition would increase Chancellor's share of the radio advertising market in Suffolk County, N.Y. from 33 percent to over 65 percent, and would give to Chancellor the ability to raise prices to many advertisers, and to reduce promotional services to regional and local customers. Finally, the Complaint alleges that meaningful entry into the market is blockaded and entry would not undermine an anticompetitive price increase imposed by the Chancellor/SFX radio stations.

The prayer for relief seeks: (a) Adjudication that Chancellor's proposed acquisition of WBLI–FM and WBAB–FM from SFX would violate Section 7 of the Clayton Act and Section 1 of the Sherman Act; (b) permanent injunctive relief preventing the consummation of the proposed acquisition; (c) a finding that the Local Marketing Agreement (LMA) between Chancellor and SFX regarding SFX's Suffolk County radio stations violates Section 1 of the Sherman Act and an Order terminating the LMA [1]; (d) an award to the United States of the costs of this action; and (e) such other relief as is proper.

The United States has reached a proposed settlement with Chancellor and SFX which is memorialized in the proposed Final Judgment which has been filed with the Court. Under the terms of the proposed Final Judgment, defendants Chancellor and SFX will terminate the LMA as soon as possible, but not later than August 1, 1998. Chancellor will thus cease operating the four stations it sought to acquire from SFX in Suffolk County—WBLI–FM, WBAB–FM, WGBB–AM, and WHFM–FM—by August 1, 1998 and the market will return to its pre-LMA structure.[2] Also under the terms of the agreement, Chancellor will not acquire the radio stations at issue. Finally, defendants have agreed that they and their successors will not convey the radio assets in any way that would allow the entity controlling WALK–FM to control either WBLI–FM or WBAB–FM or the entity controlling either WBLI–FM or WBAB–FM to control WALK–FM.[3]

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA and that they can fulfill their obligations under the Final Judgment. Entry of the proposed final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. The Alleged Violation

A. The Defendants

Chancellor is a Delaware corporation headquartered in Irving, Texas. At the time this action was commenced in November 1997, it was the second largest owner of radio stations in the

[1] The LMA is an agreement between Chancellor and SFX which permits Chancellor to take operating control of the SFX stations before taking ownership. Under the LMA Chancellor is permitted to program the SFX stations and to sell advertising time on them.

[2] Although Chancellor sought to acquire four radio stations from SFX—WBLI–FM, WBAB–FM, WHFM–FM and WGBB–AM—in the transaction at issue in this case, the competitive concern arose from the proposed acquisition of WBLI and WBAB.

[3] The proposed final Judgment does not prevent Chancellor or another party from owning WHFM–FM and WGBB–FM as well as WALK–FM. As previously noted, the competitive concern of the proposed transaction arose from Chancellor's proposed acquisition of WBLI and WBAB.

United States and owned 95 radio stations in 21 major U.S. markets, including in each of the 12 largest markets. Chancellor owns two radio stations in Suffolk County, WALK–FM and WALK–AM. Chancellor's revenues in 1996 from WALK–FM and WALK–AM was approximately $13.3 million. Virtually all of Chancellors revenues on Long Island were generated by WALK–FM.

SFX is a Delaware corporation headquartered in New York, N.Y. SFX owns or operates 85 radio stations located in 23 markets in the United States, including WBLI–FM, WBAB–FM, WHFM–FM, and WGBB–AM in Suffolk County, New York (hereinafter, ''the SFX stations''). In 1996, SFX had revenues of approximately $11 million from its Suffolk County-based radio stations.

B. Description of the Events Giving Rise to the Alleged Violation

Prior to July 1, 1996, the Chancellor and SFX radio stations in Suffolk County were vigorous and direct competitors for advertisers seeking to reach potential customers in Suffolk County, New York. Competition among these stations was an essential element in keeping down radio advertising prices for Suffolk County advertisers. In fact, WALK's Director of Sales wrote that WALK was ''[f]ighting WBLI['s] and WBAB['s] low 'firesale' rates.'' On or about July 1, 1996, Chancellor and SFX entered into an asset exchange agreement whereby SFX agreed to exchange its four Suffolk County-based radio stations—WBLI–FM, WBAB–FM, WHFM–FM, and WGBB–AM—for Chancellor's two Jacksonville, Florida radio stations and an additional $11 million. In addition, at approximately the same time, the defendants entered into an LMA where Chancellor took over control of programming and advertising sales at the SFX stations in Suffolk County, N.Y. The result of the LMA was to place in Chancellor's hands control over SFX's radio stations on Long Island. The proposed acquisition would have made that control over SFX's stations complete.

In evaluating the proposed acquisition, Chancellor wrote that ''WALK, WBLI and WBAB combined own about 63% of a market with 36 million in net revenues.'' Chancellor's chief financial officer told the board of directors, the acquisition ''will make Chancellor the dominant radio broadcaster'' on Long Island. Chancellor's marketing executives wrote that the proposed acquisition ''will result in less competitive undercutting'' and that ''[r]ates will increase as a result of the removal of competitive pressures.'' Chancellor's Director of Sales and Chancellor's General Sales Manager told the General Manager heading Chancellor's Long Island operations that the proposed accusation means ''The War is Won.''

C. Anticompetitive Consequences of the Proposed Merger

1. The Sale of Radio Advertising Time in Suffolk County, N.Y.

The Complaint alleges that the provision of advertising time on radio stations serving Suffolk, N.Y. constitutes a line of commerce and section of the country, or relevant market, for antitrust purposes. It is important to note that radio stations by their music mix, attention to local community news and events, and promotions seek to attract listeners who they then sell advertisers access to by radio. Radio's unique characteristics as an inexpensive drive-time and workplace news and entertainment companion has given it a distinct and special place in our lives. Retailers, in an effort to reach potential customers have resorted to a mix of electronic and print media to deliver their advertising message. In so doing, they have learned that certain mediums are more cost-effective than others in meeting their advertising goals. Radio advertising is such a medium.

When radio advertisers use radio as part of a ''media mix,'' they often view the other advertising media (such as television or newspapers) as a complement to, and not a substitute for, radio advertising. Many advertisers who use radio as part of a multi-media campaign do so because they believe that the radio component enhances the effectiveness of their overall advertising campaign. They view radio as giving them unique and cost-effective access to certain audiences. They recognize that since radio is portable people can listen to it anywhere especially in places and situations where other media are not present, such as in the office and car. In addition, they know that radio formats are designed to target listeners in specific demographic groups. Defendants' documents clearly confirm these facts. Their documents show that radio stations see other radio stations as their principal competition. For example, one such document acknowledged that ''pressure from other [radio] stations keep [sic] us from selling new business at the rates we want to get.'' Another high level management strategic document unearthed in the files of WBLI and WBAB echoed the same sentiments by noting that ''WALK and WBZO are the primary barriers to increasing rate[s].'' The quality and magnitude of evidence such as this showing that radio stations constrain the price of other radio stations in their efforts to charge higher prices to advertising customers is powerful evidence supporting the allegation in the Complaint that the sale of radio advertising time constitutes a line of commerce for antitrust purposes.

2. Harm to Competition

The Complaint alleges that Chancellor's acquisition of SFX's Long Island stations would join under single ownership the principal stations serving Suffolk County, New York and give to Chancellor the ability to raise radio advertising prices to its customers. Local and national advertising placed on radio stations within Suffolk County, N.Y. are aimed at reaching listening audiences in Suffolk County, and radio stations located outside of Suffolk County do not provide cost-effective access to this audience. Thus, if Chancellor were to impose a small but significant non-transitory increase in radio advertising prices on the radio stations it owns or controls in Suffolk County, radio stations located outside of Suffolk County would not be able to defeat it. In fact, defendants in marketing their radio stations to Suffolk County radio advertisers emphasized the fact that New York City radio stations do not provide cost-effective access to Suffolk County customers. Defendants characterized New York City radio stations' ability to reach the tri-state metropolitan area as ''waste'' to those Suffolk County advertisers not seeking to attract customers from New York City, New Jersey, or Connecticut to their local Suffolk County establishments.

Defendants' documents further disclosed that when Chancellor's and SFX's radio stations on Long Island operated independently, advertisers obtained lower prices by ''playing off'' Chancellor's WALK–FM against SFX's WBLI–FM and WBAB–FM. Advertisers used the threat to move their business between the Chancellor and the SFX stations to get more favorable prices and services at each. That documentary evidence is corroborated by the testimony of local and regional advertisers who testified how they feared the joining of WALK with WBLI and WBAB would mean that Chancellor could raise prices to them. In short, advertisers in Suffolk County paid less for radio advertising as a result of price competition between the Chancellor and SFX radio stations. The proposed acquisition would have ended that price

competition harming consumers on Long Island.

a. Advertisers Could Not Turn to Other Suffolk County Radio Stations to Prevent Chancellor From Imposing an Anticompetitive Price Increase

Barnstable is the only company other than Chancellor and SFX that generates more than five percent of the total radio revenues spent by advertisers on Long Island-based radio stations that offer coverage of Suffolk County (''Suffolk County stations''). Barnstable owns WBZO–FM, the only other Suffolk County station that generates ratings and advertising revenues comparable to the Chancellor and SFX stations. Barnstable is not able to offer, individually or in combination with any non-Chancellor owned or operated stations, enough listeners in the Chancellor/SFX-dominated market to provide a non-Chancellor alternative for many advertisers who want access to Suffolk County radio listeners. Moreover, if Chancellor were to impose a non-competitive price increase on its Chancellor/SFX radio stations, Barnstable would not be able to present itself as a credible alternative to those advertisers seeking to escape the price increase on the Chancellor/SFX radio stations. That is so, because an increase in demand for WBZO as a result of radio advertisers trying to flee a price increase on the Chancellor/SFX stations could undermine the attractiveness of WBZO to listeners who would have to contend with a larger number of advertising commercials and less music and news on WBZO. Recognizing that fact, WBZO would likely increase its price to dampen the demand on its station in order to maintain its attractiveness to listeners. Thus, a price increase on the Chancellor/SFX stations would likely provide an opportunity for Barnstable to increase its prices as well.

To the degree there are a number of other radio broadcasters on Long Island, individually or in combination they are less able than Barnstable to offer an alternative for those advertisers—especially local and regional advertisers—who would have to deal with Chancellor to gain access to Suffolk County radio listeners after the proposed acquisition.

b. The Effect of the Acquisition Would Be Substantially To Lessen Competition in the Relevant Market

As previously noted, Defendants' documents tell a compelling story of how the proposed acquisition would enable Chancellor to increase rates by stifling the ''competitive undercutting'' that went on among the Chancellor/SFX stations. The dominant market share Chancellor would have attained from the proposed acquisition would have the following effects, among others:

a. Competition in the sale of radio advertising time for coverage of Suffolk County would be substantially lessened;

b. Actual and potential competition between Chancellor and SFX radio stations in the sale of advertising time—especially to regional and local advertisers—would be eliminated;

c. Chancellor's share of the relevant market would have increased from 33 percent to over 65 percent, whether measured by radio advertising revenues or by listenership. Using a measure of market concentration called the Herfindahl-Hirschman Index (''HHI''), explained in Appendix A, the acquisition would yield a post-merger HHI of at least 4975, representing an increase of 2085; and

d. Prices for radio advertising for coverage of Suffolk County would likely increase, and the quality of promotional services would likely decline—especially to regional and local customers.

The proposed Final Judgment will remedy the competitive concerns raised by the proposed acquisition.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of radio advertising time in Suffolk County, N.Y. It requires Chancellor and SFX to terminate their LMA as soon as possible, but no later than August 1, 1998. In addition, the proposed Final Judgment provides that neither defendant, nor their successors, can own or control at the same time WALK–FM and either WBLI–FM or WBAB–FM. This relief will terminate the LMA and return the market pre-LMA structure. If Chancellor had acquired the stations, it would have controlled about 65% of the Suffolk County radio market. Under the proposed Final Judgment, Chancellor will return to it pre-LMA market shares of approximately 35% while another party or parties will control the approximately 30% of the market that WBLI–FM and WBAB–FM possess. The proposed Final Judgment will preserve choices for advertisers. In addition, the proposed Final Judgment will help insure that WALK's, WBLI's and WBAB's radio advertising rates will be subject to the ''playing off'' by advertisers that they were subject to prior to the LMA.

In addition to requiring the defendants to terminate the LMA and prohibiting them from consummating the transaction, the proposed Final Judgment requires Chancellor to preserve the assets of the SFX stations until termination of the LMA. Specifically, the proposed Final Judgment requires that Chancellor maintain the stations as viable entities, including the obligation that Chancellor work to increase the sale of advertising and maintain promotional and marketing levels for the SFX stations. The proposed Final Judgment also contains provisions to ensure that Chancellor will not divert resources from the SFX stations to its own radio stations during the course of the LMA. To determine and secure compliance with the proposed Final Judgment, the United States has the authority to monitor and review the activities of the stations. Nothing in this proposed Final Judgment is intended to limit the plaintiff's ability to investigate or bring actions, where appropriate, challenging other past or future activities of defendants in Suffolk County or any other markets, including their entry into an LMA or any other agreements related to the sale of advertising time.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments.

All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Any such written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its complaint against defendants. The plaintiff is satisfied, however, that the termination abandonment of the proposed and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of radio advertising time in the Suffolk County, N.Y. area. Thus, the proposed Final Judgment would achieve the relief of the Government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the United States Court of Appeals for the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* versus *Microsoft,* 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.''[4] Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F. 2d 456, 462 (9th Cir. 1988), *citing United States* v. *Bechtel Corp.,* 648 F. 2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981); *see also Microsoft,* 56 F. 3d at 1460–62. Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *''within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[5]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' ''[6]

In this case, the proposed Final Judgment reflects the Defendants desire to abandon the proposed acquisition and end the LMA. Moreover, it insures that the present and any future owner of WALK–FM may not own either WBLI–FM or WBAB–FM. In sum, the Final Judgment represents every objective the government sought through bringing its action.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Respectfully submitted,

Allee A. Ramadhan,

(AR 0142).

Seth E. Bloom,

(SB 3709).

Theresa H. Cooney,

(TC 4933).

Merger Task Force, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530, (202) 307–0001.

Dated: March 30, 1998.

Appendix A—Herfindahl-Hirschman Index Calculations

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of

[4] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *reprinted in* U.S.C.C.A.N. 6535, 6538.

[5] *Bechtel,* 648 F. 2d at 666 (citations omitted) (emphasis added); *see BNS,* 858 F. 2d at 463; *United States* v. *National Broad. Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette,* 406 F. Supp. at 716. *See also Microsoft,* 56 F. 3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '') (citations omitted).

[6] *United States* v. *American Tel. and Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983) (*quoting Gillette Co.,* 406. F. Supp. at 716 (citations omitted)); *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2+30^2+20^2+20^2=2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See Merger Guidelines § 1.51.

Certificate of Service

I hereby certify that, on this 30th day of March 1998, I caused to be served via hand delivery a copy of the foregoing Competitive Impact Statement upon the following:

Edward P. Henneberry, Esq., Roxann E. Henry, Esq., Howrey & Simon, 1299 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Howard Adler, Jr., Esq., David J. Laing, Esq., Baker & McKenzie, 815 Connecticut Avenue, N.W., Washington, D.C. 20006.

Seth E. Bloom.

[FR Doc. 98–9373 Filed 4–8–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Lehman Brothers Holdings Inc. and L–3 Communications Holdings, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. sections 16(b)–(h), that a Complaint, proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia, in *United States* v. *Lehman Brothers Holdings Inc.* and L–3 Communications Holdings, Inc., Civil Action No. 1:98CV00796.

On March 27, 1998, the United States filed a Complaint seeking an injunction enjoining L–3 Communications Holdings, Inc. and its parent Lehman Brothers Holdings Inc. from acquiring AlliedSignal Inc.'s Ocean Systems and ELAC Nautik GmbH sonar business, or from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the sonar business of AlliedSignal Inc. (''AlliedSignal'') and L–3 Communications Corp. (''L–3 Communications''), a wholly owned subsidiary of L–3 Communications Holdings, Inc. The Complaint alleges that because Lockheed Martin Corporation (''Lockheed Martin'') owns 34.0 percent of the common stock of L–3 Communications and controls three seats on the L–3 Communications Board of Directors, the acquisition by L–3 Communications of the sonar business of AlliedSignal would lessen competition substantially in the production and sale of towed sonar arrays to the U.S. Department of Defense (''DoD'') in violation of Section 7 of the Clayton Act, 15 U.S.C. Section 18. Under the proposed Final Judgment, filed the same day as the Complaint, L–3 Communications has agreed to: (1) Maintain a ''firewall'' whereby it prevents the sharing of non-public information relating to the sonar businesses of L–3 Communications and Lockheed Martin, and (2) not enter into any joint bidding or teaming agreements with Lockheed Martin to bid on DoD contracts relating to towed sonar arrays.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530 [telephone: (202) 307–0924].

Constance K. Robinson,

Director of Operations & Merger Enforcement Antitrust Division.

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) Defendant shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an Order of the Court.

(4) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(5) In the event plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event the proposed Final Judgment is not entered pursuant to this Stipulation, and the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(6) Defendants represent that the provisions ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained therein.

Dated: March 26, 1998.

For Plaintiff United States of America:

Willie L. Hudgins, Esquire,

(D.C. Bar # 37127), U.S. Department of Justice, Antitrust Division, Litigation II, Suite 3000, Washington, D.C. 20005, (202) 307–0924.

For Defendant Lehman Brothers Holdings Inc.

Karen Muller,

Vice President, Lehman Brothers Holdings Inc., 3 World Financial Center, New York, NY 10285, (212) 526–2728.

For Defendant L–3 Communications Holdings, Inc.

Christopher C. Cambria,

Vice President, Secretary and General Counsel, L–3 Communications Corporation, 600 Third Avenue, New York, NY 10016, (212) 805–5634.

IT IS SO ORDERED by the Court, this _____ day of March, 1998.

_____

United States District Judge

Final Judgment

Whereas, plaintiff, the United States of America, filed its Complaint in this action on March 27, 1998, and plaintiff and defendants by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, plaintiff intends to require defendants to preserve competition by: (1) Preventing employees, officers or directors of Lockheed Martin who serve on the Board of Directors of L–3 Communications, or those nominated by Lockheed Martin to the Board of Directors of L–3 Communications, from influencing, directly or indirectly, the operation of the Ocean Systems and ELAC assets being acquired by L–3 Communications from Allied Signal, and (2) prohibiting the disclosure of non-public information between L–3 Communications and Lockheed Martin relating to the Ocean Systems and ELAC businesses and Lockheed Martin's sonar and mine warfare businesses;

And Whereas, defendants have represented to the plaintiff that they will not enter into any joint bidding or teaming agreements with Lockheed Martin to bid on DoD contracts relating to towed arrays, but that they will be permitted to enter into contracts or subcontracts with Lockheed Martin which relate to towed arrays after DoD has awarded a contract;

And Whereas, defendants have represented to the plaintiff that they can effectuate the preservation of competition by constructing and enforcing a firewall and agreeing not to enter into joint bidding or teaming agreements with Lockheed Martin to bid on DoD contracts relating to towed arrays and that defendants will later raise no claims to hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged, and Decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''AlliedSignal'' means AlliedSignal, Inc.

B. ''L–3 Communications'' means L–3 Communications Corporation and L–3 Communications Holdings, Inc., and their directors, employees, agents, representatives, predecessors, successors and assigns.

C. ''Lockheed Martin'' means Lockheed Martin Corporation, its directors, officers, employees, agents, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Lockheed Martin Corporation; businesses Lockheed Martin Corporation acquires or merges with; and the respective directors, officers, employees, agents, predecessors, successors and assigns of each.

D. ''Limited Officer or Director'' means (1) any employee, officer or director of Lockheed Martin, who is also a member of the Board of Directors of, or an officer of, L–3 Communications, or (2) any member of the Board of Directors of L–3 Communications nominated by Lockheed Martin.

E. ''Ocean Systems'' means the business units and assets of AlliedSignal to be acquired by L–3 Communications through operation of the Purchase Agreement dated December 22, 1997, including AlliedSignal Ocean Systems business unit and AlliedSignal ELAC Nautik GmbH.

F. (1) ''Non-Public Ocean Systems Information'' means any information relating to the business of Oceans Systems not in the public domain, including, but not limited to, Ocean Systems' plans concerning current and future DoD contracts.

(2) Non-Public Ocean Systems Information shall not include: (a) Information that, subsequent to the time L–3 Communications signs the Stipulation and Order in this matter, falls within the public domain through no violation of this order by L–3 Communications; or (b) information that, subsequent to the time L–3 Communications signs the Stipulation and Order in this matter, becomes known to Lockheed Martin from a third party not known by L–3 Communications or Lockheed Martin to be in breach of a confidential disclosure agreement.

G. (1) ''Non-Public Lockheed Martin Information'' means any information not in the public domain relating to sonar and mine warfare products of Lockheed Martin, including, but not limited to, Lockheed Martin's plans concerning current and future DoD contracts.

(2) Non-Public Lockheed Martin Information shall not include: (a) Information that, subsequent to the time L–3 Communications signs the Stipulation and Order in this matter, falls within the public domain through no violation of this order by L–3 Communications; or (b) information that, subsequent to the time L–3 Communications signs the Stipulation and Order in this matter, becomes known to L–3 Communications from a third party not known by L–3 Communications to be in breach of a confidential disclosure agreement.

H. DoD means U.S. Department of Defense.

III. Firewall

A. L–3 Communications shall not discuss, provide, disclose, or otherwise make available, directly or indirectly, to any Limited Officer or Director any Non-Public Ocean Systems Information.

B. L–3 Communications shall require each Limited Officer or Director to refrain from discussing, providing, disclosing or otherwise making available, directly or indirectly, any Non-Public Lockheed Martin Information to any employee or officer of L–3 Communications or to any member of the Board of Directors of L–3 Communications, except any other Limited Officer or Director.

C. The restrictions set forth in Paragraphs III.A and III.B of this Order

shall not prohibit the otherwise lawful exchange by L–3 Communications and Lockheed Martin of such Non-Public Ocean Systems Information or such Non-Public Lockheed Martin Information that may be necessary (1) to obtain or perform any contract or subcontract between L–3 Communications and Lockheed Martin, with the exception of the prohibitions set forth in Section IV, or (2) to obtain or perform any related contracts or subcontracts between or among L–3 Communications, Lockheed Martin and any third party (including any governmental agency).

D. L–3 Communications shall conduct all business relating to Ocean Systems without the vote, concurrence, attendance or other participation of any kind whatsoever of any Limited Officer or Director.

E. Limited Officers or Directors shall not be counted for purposes of establishing a quorum in connection with any matter relating to Ocean Systems.

F. L–3 Communications shall not provide any Limited Officer or Director with any type of compensation that is based in whole or in part on the profitability or performance of Ocean Systems; provided, however, that any Limited Officer or Director may receive as compensation for his or her serving on the L–3 Communications Board of Directors such compensation as is provided generally to other members of the L–3 Communications Board of Directors in accordance with L–3 Communications' ordinary practice, or compensation that is based on the overall profitability or performance of L–3 Communications.

IV. Prohibitions on Certain Joint Bidding and Teaming Agreements

A. L–3 Communications shall not enter into any joint bidding or teaming agreements with Lockheed Martin to bid on DoD contracts relating to towed arrays. L–3 Communications shall not provide any Non-Public Ocean Systems Information nor receive any Non-Public Lockheed Martin Information for the purpose of entering into any joint bidding or teaming agreements with Lockheed Martin for the purpose of bidding on DoD contracts relating to towed arrays. These prohibitions do not restrict L–3 Communications from entering into any contract or subcontract with Lockheed Martin which relates to towed arrays, after DoD has awarded a contract.

V. Affidavits

A. Within sixty (60) calendar days after the filing of the Complaint in this matter, L–3 Communications, shall certify to the Plaintiff whether it has complied with Sections III and IV above.

B. For each year during the term of this Final Judgment, L–3 Communications shall file with the Plaintiff, on or before the anniversary date of the filing of the Complaint, an affidavit as to the fact and manner of its compliance with the provisions of Sections III and IV above.

C. Until such time that this Final Judgment shall expire, L–3 Communications shall preserve all records of all efforts to comply with the Final Judgment.

VI. Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice (''DOJ''), upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to L–3 Communications made to its principal offices, shall be permitted:

1. Access during office hours of L–3 Communications to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of L–3 Communications, who may have counsel present, relating to the matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of L–3 Communications and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to L–3 Communication's principal offices, L–3 Communications shall submit written reports, under oath if requested, with respect to any matter relating to the Final Judgment.

C. No information or documents obtained by the means provided in Section V of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by L–3 Communications to DOJ, L–3 Communications represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and L–3 Communications marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by DOJ to L–3 Communications prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which L–3 Communications is not a party.

VII. Applicability

This Final Judgment applies to defendants; to each of their officers, directors, agents, employees, successors, assigns, subsidiaries, divisions, and any other organizational units of any kind; and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

VIII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

IX. Termination

This Final Judgment shall continue in force until such time as Lockheed Martin owns less than five percent of the voting securities of L–3 Communications and there are no Limited Officers or Directors on the L–3 Communications Board of Directors.

IX. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____, 1998.

_____

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final

Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On March 27, 1998, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by L–3 Communications Corporation (''L–3 Communications''), a wholly owned subsidiary of L–3 Communications Holdings, Inc., of the AlliedSignal Ocean Systems business unit (''Ocean Systems''), a wholly owned business unit of AlliedSignal Inc. (''AlliedSignal''), and AlliedSignal ELAC Nautik GmbH (''ELAC''), a wholly owned subsidiary of AlliedSignal Deutschland GmbH, which is a wholly owned subsidiary of AlliedSignal, would violate Section 7 of the Clayton Act, 15 U.S.C. 18.

The Complaint alleges that the acquisition would violate Section 7 of the Clayton Act because Lockheed Martin Corporation (''Lockheed Martin'') owns 34.0% of the common stock of L–3 Communications and controls three of ten seats on the L–3 Communications Board of Directors, and Lockheed Martin and Ocean Systems are the two leading competitors in the design, development, manufacture and sale of towed sonar arrays (''towed arrays'') to the U.S. Department of Defense (''DoD''). If L–3 Communications were to acquire Ocean Systems, L–3 Communications and Lockheed Martin would become competitors. Towed arrays are sonar systems consisting of very long hose-like structures that are towed behind surface ships and submarines for the purpose of detecting submarines or torpedoes, depending on the type of array. The arrays are linked to electronic signal processing equipment on board the ship or submarine towing the array. This equipment processes the sounds picked-up by the arrays to determine the source of the sound.

As described in the Complaint, since towed arrays are sold to DoD and there are no foreign producers to which DoD or its U.S. prime contractors could reasonably turn to purchase these arrays, the relevant geographic market is the United States.

The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing L–3 Communications from acquiring Ocean Systems and ELAC.

When the Complaint was filed, the United States also filed a proposed settlement that would permit L–3 Communications to complete its acquisition of Ocean Systems and ELAC, and preserve competition in the relevant market, by requiring L–3 Communications to establish and maintain a ''firewall'' whereby it would refrain from discussing with or disclosing to any employee, officer or director of Lockheed Martin, or person nominated by Lockheed Martin, who is also a member of the Board of Directors of, or an officer of, L–3 Communications any non-public information relating to the Ocean Systems and ELAC businesses. The firewall also requires that these same individuals not share with L–3 Communications any non-public information of Lockheed Martin relating to Lockheed Martin's sonar and mine warfare products. Additionally, the settlement prohibits L–3 Communications from entering into joint bidding or teaming agreements with Lockheed Martin for the purpose of bidding on DoD contracts for towed arrays. The settlement does not however, bar L–3 Communications from entering into a contract or subcontract with Lockheed Martin which relates to towed arrays, after DoD has awarded a contract. The settlement is embodied in a Stipulation and Order and a proposed Final Judgment.

The proposed Final Judgment requires L–3 Communications to implement the firewall and begin adding by the prohibitions on entering into joint bidding or teaming agreements with Lockheed Martin or DoD contracts for towed arrays immediately upon the filing of the proposed Final Judgment and the Complaint in this matter. L–3 Communications must maintain the firewall and abide by the prohibitions on certain joint bidding and teaming agreements for the duration of the proposed Final Judgment. The proposed Final Judgment continues in force until such time as Lockheed Martin owns less than five percent of the voting securities of L–3 Communications and there are no employees, officers or directors of Lockheed Martin, or persons nominated by Lockheed Martin, on the L–3 Communications Board of Directors. L–3 Communications must certify to DOJ sixty (60) calendar days after the filing of the Complaint in this matter and annually thereafter the steps it has taken to comply with the provisions set forth in the proposed Final Judgment.

The terms of the Stipulation and Order entered into by the parties apply to ensure that the Ocean Systems and ELAC businesses to be acquired by L–3 Communications shall be maintained as independent competitors of Lockheed Martin.

The plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Lehman Brothers Holdings, Inc. is a Delaware corporation headquartered in New York, New York. Its business activities are in financial services and merchant and investment banking. In 1997, Lehman Brothers Holdings, Inc. had net revenues of $3.8 billion.

L–3 Communications Holdings, Inc. is a Delaware corporation headquartered in New York, New York. L–3 Communications is a leading provider of sophisticated secure communication systems and specialized communication products including high data-rate communications systems, microwave components, avionics, and telemetry and instrumentation products. In 1997, L–3 Communications had sales of approximately $700 million.

On December 22, 1997, L–3 Communications and AlliedSignal entered into a Purchase Agreement, whereby L–3 Communications would acquire from AlliedSignal its Ocean Systems and ELAC businesses. This transaction, which would give Lockheed Martin, through its ownership interest in L–3 Communications, influence over, and access to non-public information of, the other leading competitor in the design, development, manufacture and sale of towed arrays to DoD, precipitated the government's suit.

B. Towed Arrays Market

Towed arrays are sonar systems designed to be towed by a submarine or a surface vessel. Towed arrays deployed by submarines are designed to detect other submarines. The arrays are long, hose-like structures measuring up to a thousand feet or longer that contain specially designed acoustic sensors, called hydrophones, which pick up sound. The arrays include electronics that convert the acoustical waves from analog to digital form and transmit that data to electronic processors on board the submarine. Processing the data involves such functions as distinguishing the sounds generated by submarines from the sounds made by other sources, such as whales. The construction of the hose-like structure containing the hydrophones and

electronics requires specialized skills which few companies possess. Towed arrays deployed by submarines must be designed to withstand the extreme environmental stresses of operation in the ocean depths.

Towed arrays deployed by surface combat vessels are designed to detect submarines and torpedoes. They have different mechanisms for deploying, reeling in and storing the arrays and face different environmental stresses than those deployed by submarines. Towed arrays used by surface combat vessels are towed at much greater speed than those towed by submarines or non-combat ships and require engineering solutions to deal with the ''noise'' generated by dragging the array through the water. Towed arrays deployed by non-combat surface ships are designed to detect submarines, but not torpedoes. Only about ten percent of towed arrays for surface ships are those designed for non-combat ships.

There are no substitutes for towed arrays and therefore no other products to which DoD or U.S. prime contractors could turn in the face of a small but significant and non-transitory price increase by suppliers of towed arrays.

C. Harm to Competition as a Consequence of the Acquisition

Ocean Systems and Lockheed Martin are the two leading firms in the design and production of towed arrays. Over ninety percent of the towed arrays deployed by submarines have been designed and built by Lockheed Martin and Ocean Systems. Over eighty percent of the towed arrays deployed by surface combat ships were built by Ocean Systems and Lockheed Martin (and companies it acquired). The other company that previously built towed arrays for surface combat ships has not won a DoD contract for towed arrays in over a decade. Because of their prior experience and repeated success in winning DoD towed array contracts, Lockheed Martin and Ocean Systems are likely to be the primary providers of towed arrays purchased by DoD in the future.

In 1998, DoD is expected to conduct a competition, known as the Omnibus Competition, for the next generation of towed arrays to be deployed by submarines and surface combat and non-combat vessels. The award of this contract is expected to cover both design and production. This contract will likely be awarded on the basis of ''best value'' which considers a bidder's price and the quality of its technical proposal. The evaluation of the technical proposal generally includes an assessment of the riskiness of the proposal and the bidder's prior experience. Given their long history in designing and producing towed arrays for DoD, Ocean Systems and Lockheed Martin likely will be the leading contenders for the Omnibus contract, as well as for any future DoD towed array contracts. Other potential competitors do not have the experience of these two companies in the design and production of towed arrays.

L–3 Communications' acquisition of Ocean Systems is likely significantly to lessen competition for towed array contracts awarded by DoD. Because Lockheed Martin sits on the Board of Directors of L–3 Communications, the acquisition could result in the two leading providers of towed arrays to DoD having access to each other's business plans, costs, pricing data and decisions, and other internal and competitively sensitive information. The exchange of such information could significantly decrease the willingness and ability of L–3 Communications and Lockheed Martin to engage in vigorous competition for DoD contracts for towed arrays. Access to information revealing each other's costs, pricing and technical efforts would provide them with information that could decrease their incentive to bid aggressively on DoD contracts and therefore could lead to higher prices paid by DoD. Access to such information could also decrease their incentive to minimize costs or to innovate in the design or manufacture of towed arrays.

Successful entry into the production and sale of towed arrays is difficult, and costly. Entry requires advanced technology, skilled engineers, specialized know-how and costly customized equipment and facilities. A potential entrant would have to engage in difficult, expensive, and time consuming research to develop designs and production processes that can economically and reliably produce towed arrays. These designs and production processes must be perfected before an entrant can successfully bid for a DoD towed array contract. It is unrealistic to expect new entry in a timely fashion to protect competition in upcoming DoD towed array competitions.

The Armed Forces of the United States rely on the ongoing, vigorous competition between Ocean Systems and Lockheed Martin for the development and production of towed arrays. The proposed acquisition will lessen this competition, and will result in an increase in prices paid by the United States and a decrease in innovation for towed arrays and will, therefore, violate Section 7 of the Clayton Act.

The Complaint alleges that the transaction would have the following effects, among others: competition generally in the innovation, development, production and sale of towed arrays for military purposes in the United States would be lessened substantially; actual and future competition between Ocean Systems and Lockheed Martin in the innovation, development, production and sale of towed arrays for military purposes in the United States would be lessened substantially; and prices for towed arrays for military purposes in the United States would likely increase.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition of Ocean Systems by L–3 Communications.

The proposed Final Judgment requires L–3 Communications to implement a firewall immediately upon the filing of the Complaint in this matter and to certify with sixty (60) calendar days after the filing of the Complaint that it has implemented the firewall provisions set forth in the proposed Final Judgment. The firewall provisions require that L–3 Communications shall not discuss, provide, disclose or otherwise make available, directly or indirectly, any non-public information relating to the Ocean Systems and ELAC businesses, to (1) any employee, officer or director of Lockheed Martin, who is also a member of the Board of Directors of, or an officer of, L–3 Communications, or (2) any member of the Board of Directors of L–3 Communications nominated by Lockheed Martin. Additionally, L–3 Communications must require that any member of the Board of Directors of L–3 Communications who was either nominated by Lockheed Martin or who is an employee, officer or director of Lockheed Martin refrain from discussing, providing, disclosing or otherwise making available, directly or indirectly, any non-public information of Lockheed Martin relating to its sonar or mine warfare products. The firewall provisions also require that L–3 Communications shall conduct all business relating to Ocean Systems and ELAC without the vote, concurrence, attendance or other participation of any individuals serving on the L–3 Communications Board of Directors who is an employee, officer or director of Lockheed Martin or who was nominated by Lockheed Martin. Finally,

the proposed Final Judgment prohibits L–3 Communications from entering into joint bidding or teaming agreements with Lockheed Martin for the purpose of bidding on DoD contracts for towed arrays. This prohibition does not bar L–3 Communications from entering into a contract or subcontract with Lockheed Martin after DoD has awarded a towed array contract.

The provisions of the Final Judgment preserve competition because they will ensure that any business decisions made by L–3 Communications concerning the Ocean Systems and ELAC businesses it is acquiring from AlliedSignal will be made without sharing any non-public information with Lockheed Martin or receiving any non-public information from Lockheed Martin and because L–3 Communications and Lockheed Martin will be required to compete separately for DoD towed array contracts.

IV. Remedies Available To Potential Private Litigants

Section 4 of Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as cost and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *primi facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: J. Robert Krammer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Lehman Brothers Holdings Inc. and L–3 Communications Holdings, Inc. The United States could have brought suit and sought preliminary and permanent injunctions against L–3 Communications' acquisition.

The United States is satisfied that the provisions set forth in the proposed Final Judgment will encourage viable competition in the research, development, and production of towed arrays. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in this market. The provisions of the Final Judgment will restore the towed array market to the competitive conditions that existed prior to the acquisition.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court *may* consider—

> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, in any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest findings, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.* 1977–1 Trade Cas ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also, Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but

[1] 119 Cong. Rec. 24598 (1973). *See also United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & News 6535, 6538.

whether the settlement is *'within the reaches of the public interest.'* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted).'' [3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

For Plaintiff United States of America:

J. Robert Kramer II,

Chief, Litigation II Section, PA Bar #23963.

Willie L. Hudgins,

Assistant Chief, Litigation II Section, DC Bar #37127.

and

Justin M. Dempsey,

Robert W. Wilder,

Trial Attorneys, U.S. Department of Justice, Antitrust Division, 1401 H St., N.W., Suite 3000, Washington, D.C. 20530, 202–307–0924, 202–307–6283 (Facsimile).

Dated: March 31, 1998.

Certificate of Service

I hereby certify under penalty of perjury that on this 1st day of April, 1998, I caused copies of the foregoing COMPETITIVE IMPACT STATEMENT to be served by first-class mail postage prepaid, upon the following:

Christopher C. Cambria, Esq.,

Counsel for L–3 Communications Holdings, Inc., Vice President, Secretary, and General Counsel, L–3 Communications Corp., 600 Third Avenue, New York, NY 10016.

Joseph F. Wayland, Esq.,

Counsel for L–3 Communications Holdings, Inc., Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, NY 10017.

Karen Muller,

For Lehman Brother Holdings Inc., Vice President, Lehman Brothers Holdings Inc., 3 World Financial Center, New York, NY 10285.

Justin M. Dempsey,

Attorney, Litigation II Section, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307–0924.

[FR Doc. 98–9372 Filed 4–8–98; 8:45 am]

BILLING CODE 4410–11–M

[2] *United States* v. *Bechtel,* 648 F.2d at 666 (internal citations omitted) (emphasis added); *see United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.,* 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983).

[3] *United States* v. *American Tel. and Tel Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom, Maryland* v. *United States,* 460 U.S. 1001 (1983), *quoting United States* v. *Gillette Co.,* supra, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky 1985).

DEPARTMENT OF LABOR

Employment and Training Administration

ETA 207, Nonmonetary Determination Activities Report

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension collection of the ETA 207, Nonmonetary Determinations Report.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before June 8, 1998.

The Department of Labor 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 submissions of responses.

ADDRESSES: Diann Lowery, U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Service, 200 Constitution Avenue NW, Frances Perkins Bldg. Room S–4516, Washington, D.C. 20210. Telephone number 202–219–5340x179 (this is not a toll-free number). Fax number 202–219–8506.

SUPPLEMENTARY INFORMATION:

I. Background

The ETA 207 Report, Nonmonetary Determinations, contains State data on the number and types of issues that arise and data on the denials of benefits that may result due to reasons associated with a claimants reason for separation from work such as voluntary leaving, or questions of continuing eligibility such as refusal of suitable work. These data are used by the Unemployment Insurance Service (UIS) to determine workload counts, to enable the UIS to evaluate the adequacy and effectiveness of nonmonetary determination procedures, and to evaluate the impact of State and Federal legislation with respect to disqualifications.

II. Current Actions

The continued collection of the information contained on the ETA 207 report is necessary to enable the national office to continue evaluating State performance in the nonmonetary determination area and to continue using the data as a key input to the administrative funding process.

Type of Review: Extension without change.

Agency: Employment and Training Administration (ETA).

Title: Nonmonetary Determinations Report.
OMB Number: 1205–0150.
Agency Number: ETA 207.
Affected Public: State and Local Governments.
Total Respondents: 53.
Frequency: Quarterly.
Total Responses: 212.
Average Time per Response: 4.06 hours.
Estimated Total Burden Hours: 910 hours.
Total Burden Cost (capital/startup: 0.
Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 3, 1998.

Grace A. Kilbane,

Director, Unemployment Insurance Service.

[FR Doc. 98–9378 Filed 4–8–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

ETA–9016 Report on Alien Claimant Activity; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension collection of the ETA–9016 Report on Alien Claims Activity. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before June 8, 1998. The Department of Labor 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 submissions of responses.

ADDRESSES: Bob Whiting, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S–4522, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone number (202) 219–5211, ext. 143 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The ETA–9016 report is used by the Department of Labor to assess whether (and the extent to which) the requirements of the Immigration and Naturalization Service (INS), Systematic Alien Verification for Entitlement (SAVE) verification system required by the Immigration Reform and Control Act (IRCA) are cost-effective and other-wise appropriate for the Unemployment Insurance (UI) program and whether a waiver should be applied to State Employment Security Agency (SESA) participation. In addition, data from the Alien Claims Activity Report is being used to assist the Secretary of Labor in determining whether a SESA's administrative costs associated with the verification program are reasonable and reimbursable. There is no other report or system available for collecting this required information. The report allows the Department of Labor to determine the number of aliens filing for UI, the number of benefit issues detected, the denials resulting from the INS SAVE system, the extent to which SESAs use the system, and the overall effectiveness and cost efficiency of the INS SAVE verification system. If SESAs are not required to submit the information on the Alien Claims Activity Report, the Department of Labor and Secretary of Labor would not be able to fulfill their responsibilities under IRCA. It is only through the collection of this basic information that the Department of Labor can make an assessment of the over-all effectiveness and cost efficiency of the INS SAVE program and whether a State's participation in the system should be waived. Finally, the absence of this information would greatly limit the ability of the Department of Labor to make sound policy decisions involving the verification program.

II. Current Actions

Continued collection of the ETA–9016 data will provide for a comprehensive evaluation of alien claimant activities. The data is collected quarterly, and an analysis of the data received is formulated into a report summarizing the alien claimant activity occurring in the 53 SESAs.

Type of Review: Extension.
Agency: Employment and Training Administration.
Title: Report on Alien Claims Activity.
OMB Number: 1205–0268.
Agency Number: ETA–9016.
Affected Public: State and Local Governments.
Total Respondents: 53
Frequency: Quarterly.
Total Responses: 212.
Average Time per Response: 1 hour.
Estimated Total Burden Hours: 212 hours.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 3, 1998.

Grace A. Kilbane,

Director, Unemployment Insurance Service.

[FR Doc. 98–9379 Filed 4–8–98; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–048]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, Lewis Research Center, Mail Code 500–118, Cleveland, OH 44135–3191; telephone (216) 433–8855, fax (216) 433–6790.

NASA Case No. LEW–16,221–1: Method for Forming Fiber Reinforced Composite Bodies with Graded Composition and Stress Zones;

NASA Case No. LEW–16,384–1: Polyimides Based on 4,4'-Bis (4-Aminophenoxy—substituted biphenyl);

NASA Case No. LEW–16,542–1: Optical Power Extracted from Engine Combustion Chambers to Provide Optical Sources for Optical Sensors and Optical Data Networks.

Dated: April 2, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–9423 Filed 4–8–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–051]

NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Flight Research Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Flight Research Subcommittee meeting.

DATES: Wednesday, May 13, 1998, 2 p.m. to 5 p.m. and Thursday, May 14, 1998, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Dryden Flight Research Center, Building 4800, Executive Council Room (#2020), Edwards, CA, 93523.

FOR FURTHER INFORMATION CONTACT: Mr. Dwain A. Deets, National Aeronautics and Space Administration, Dryden Flight Research Center, Edwards, CA, 93523, 805/258–3136.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—Review of Flight Research Base R&T Program
—Review of Flight Research as a Means of Maturing Technology Across the Aeronautics and Space Transportation Technology Enterprise Three Pillars and Ten Goals

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: April 3, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–9426 Filed 4–8–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–049]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Microgravity Research Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Microgravity Research Advisory Subcommittee.

DATES: Wednesday, May 6, 1998, 9 a.m. to 5:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room MIC–6, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley M. Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202–358–0813.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Program Status Report
—Status of the Microgravity Research Advisory Subcommittee Recommendations
—Microgravity Research Performance Goals
—Informal Discussion

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: April 6, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–9424 Filed 4–8–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–050]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health Advisory Subcommittee.

DATES: Wednesday, May 6, 1998, 8:30 a.m. to 5:00 p.m.

ADDRESSES: NASA Headquarters, Room MIC–7, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sam L. Pool, Code SD, Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, TX 77058, 281–483–7190.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Report on Occupational Health Program
—Credentialing of Flight Surgeons for the International Space Station
—Trans-Hab Concept
—Iodine/Thyroid Longitudinal Study
—Decompression Sickness Risk Mitigation Program
—Multilateral Medical Operations Panel Status
—International Space Station Medical Operations
—Work Instruction

—Critical Path
—Health Metrics
—Physician in Space Policy
—Mission Update
—Headquarters ''Go To'' Update
—Medical Policy Board Document Revision
—Discussion of Action Items
—Summary of Finding and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: April 1, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–9425 Filed 4–8–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–047]

Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: NASA hereby gives notice that Fusion Lighting Corporation of Rockville, MD 20855, has applied for a partially exclusive license to practice the invention described and claimed in NASA Case Nos. LAR 14448–1–SB, entitled ''Lightweight Protective Coating,'' and LAR 14448–3–SB, entitled ''Multi-Layer Light-Weight Protective Coating and Method for Application,'' for which United States Patent Applications were filed by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Langley Research Center.

DATE: Responses to this notice must be received by June 8, 1998.

FOR FURTHER INFORMATION CONTACT:

Kimberly A. Chasteen, Patent Attorney, NASA Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001, telephone (757) 864–3227; fax (757) 864–9190.

Dated: April 2, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–9422 Filed 4–8–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunications Recommendation 1047/3–1998

AGENCY: National Communications System (NCS).

ACTION: Notice of publication.

SUMMARY: Federal Telecommunications Recommendation (FTR) 1047/3–1998, ''High Frequency Radio Automatic Link Establishment Addressing and Registration'' was approved for publication on March 6, 1998. This recommendation establishes a standardized addressing and registration system for Government high frequency (HF) automatic link establishment (ALE) radio systems.

FOR FURTHER INFORMATION

Contact: Janet Orndorff at telephone (703) 607–6204 or write to the National Communications System, Attn:; N6, 701 South Court House Road, Arlington, VA 22204–2198.

Dennis Bodson,

Chief, Technology and Standards Division.

[FR Doc. 98–9280 Filed 4–8–98; 8:45 am]

BILLING CODE 3610–05–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on April 14, 1998. The meeting will convene by teleconference from 3:00 p.m. to 4:00 p.m. The teleconference will be held in Room 520 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506.

The meeting will be open to the public, and will be for the purpose of application review of Leadership Initiatives.

If, in the course of discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Yvonne Sabine, National Endowment for the Arts, Washington, D.C. 20506, at 202/682–5533.

Dated: April 6, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 98–9479 Filed 4–8–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Anthropological and Geographic Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following two meetings:

Name: Advisory Panel for Geography & Regional Science (#1757).

1. *Date and Time:* April 30–May 1, 1998.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

Contact Person: Dr. Bernie Bauer, Program Director for Geography & Regional Science, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1754.

Agenda: To review and evaluate Geography & Regional Science doctoral dissertation proposals as part of the selection process for awards.

2. *Date and Time:* April 24–25, 1998.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 970, Arlington, VA 22230.

Contact Person: Dr. Bernie Bauer, Program Director for Geography & Regional Science, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1758.

Agenda: To review and evaluate Geography & Regional Science proposals as part of the selection process for awards.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information

concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–9403 Filed 4–8–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences (1186); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Astronomical Sciences.

Date and Time: April 29 and 30 & May 1, 1998 8:30 AM–5:00 PM.

Place: Room 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Morris L. Aizenman, Executive Officer, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: 703/306–1820.

Purpose of Meeting: To provide advice and recommendations on proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CDMS II proposal submitted to the Division of Astronomical Sciences.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–9406 Filed 4–8–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biomolecular Structure and Function; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Biomolecular Structure and Function—(1134) (Panel B).

Date and Time: Monday, Tuesday, and Wednesday, April 27–29, 1998, 8:30 A.M. to 6 P.M.

Place: National Science Foundation, 4201 Wilson Blvd., Room 340, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Kamal Shukla & Dr. Pien-Chien Huang, Program Directors for Molecular Biophysics, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703/306–1444).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Molecular Biophysics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–9402 Filed 4–8–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the month of April 1998, the Special Emphasis Panel will be holding a Research Equipment Grants Panel Meeting to review and evaluate research proposals. The dates, contact person, and types of proposals are as follows:

Name: Special Emphasis Panel in Chemical and Transport Systems.

Date and Time: April 28, 1998, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA 22230, (703) 306–1371.

Type of Meeting: Closed.

Contact: Dr. Robert M. Wellek, Deputy Division Director and Dr. Morris S. Ojalvo, Program Director for Interfacial, Transport and Separation Processes, Division of Chemical and Transport Systems (CTS), Room 525 (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Division as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–9404 Filed 4–8–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cognitive, Psychological and Language Sciences; Notice of Meeting—Amendment

The following meeting notice is being amended to include an open session and to change the meeting from Closed to Part Open. For convenience of the reader, the entire meeting notice is being republished.

Name: Advisory Panel for Cognitive, Psychological and Language Sciences (#1758).

Date and Time: April 15–17, 1998; 9:00 a.m.–6:00 p.m. (PST).

Place: On the Campus of the University of California, Los Angeles, CA.

Contact Person: Dr. Paul G. Chapin, Program Director for Linguistics, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1731.

Type of Meeting: Part-open.

Agenda: Closed Session: April 15, 9:00 a.m.–6:00 p.m.; April 16, 9:00 a.m.–6:00 p.m.; April 17, 1:00 p.m.–6:00 p.m.—To review and evaluate linguistic proposals as part of the selection process for awards.

Open Session: April 17, 9:00 a.m.–12:00 p.m.—General discussion of the current status and future plans of Linguistic.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–9272 Filed 4–8–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering—(1115).

Date and Time: April 29, 1998; 8:30 a.m. to 5:00 p.m.; April 30, 1998; 8:30 a.m. to 3:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Yvonne Summers, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington, VA 22230. Telephone (703) 306–1900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community; to provide advice to the Assistant Director/CISE on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Day 1—CISEAC Working Groups meet, program updates (KDI, NGI, etc.), and CISE GPRA planning. Day 2—Summary reports from CISEAC Working groups and CISE Strategic Planning.

Dated: April 6, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–9410 Filed 4–8–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

Date and Time: May 1, 1998: 8:30 am–5 pm

Place: Room 1150, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Dr. Usha Varshney, Program Director, Physical Foundations of Enabling Technologies (PFET), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Room 675, Arlington, VA 22230. Telephone: (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Major Research Instrumentation proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–9412 Filed 4–8–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Elementary, Secondary and Informal Education (#59).

Date and Time: April 29, 1998, 8:00—5:00

Place: National Science Foundation, Exhibit Center, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. James R. Oglesby, Program Director, Division of Elementary, Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1616.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Public Understanding and Engagement Mathematics Initiative proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–9405 Filed 4–8–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel Engineering Education and Centers (#173).

Date/Time: April 27–28, 1998, 7:30 a.m.–5:30 p.m.

Place: National Science Foundation, Room 580, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mary Poats, Program Manager, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Combined Research-Curriculum Development Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–9400 Filed 4–8–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Genetics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetics (1149) (Panel B).

Date and Time: Wednesday and Thursday, April 29 & 30, 1998; 8:30 A.M. to 6:00 P.M.

Place: National Science Foundation, 4201 Wilson Blvd., Room 310, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. DeLill Nasser, Program Director for Eukaryotic Genetics, Room 655, National Science Foundation, 4201 Wilson Blvd., Room 310, Arlington, VA 22230. (703/306–1439).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Eukaryotic

Genetics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–9407 Filed 4–8–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: April 29–May 1, 1998; 8 a.m. to 6 p.m.

Place: Room 785, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Michael Mayhew, Program Director, Education and Human Resources Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1557.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Awards to Facilitate Geoscience Education (AFGE) in geosciences as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–9413 Filed 4–8–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following three meetings.

Name: Special Emphasis Panel in Materials Research (1203).

Dates & Times: April 30; May 1; May 6; and May 13, 1998; 8:30 AM–5:00 PM each day.

Place: Rooms 1020, 1020, 360 and 370 respectively, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Contact Persons: Andrew J. Lovinger, Program Director, Division of Materials Research (DMR), Room 1065.39, Telephone: (703) 306–1839; Liselotte J. Schioler, Program Director, DMR, Room 1065.41, Telephone: (703) 306–1836; David L. Nelson, Program Director, DMR, Room 1065.17, Telephone: (703) 306–1838; Dr. Schioler, respectively. National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate 1998 MRI Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–9411 Filed 4–8–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Neuroscience; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting;

Name: Advisory Panel for Neuroscience (1158)

Date and Time: April 27 & 28, 1998; 9 a.m. to 6 p.m.

Place: Room 680, 4201 Wilson Boulevard, Arlington, VA

Type of Meeting: Part-Open

Contact Persons: Dr. Christopher Platt, Program Director; Division of Integrative Biology and Neuroscience; room 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone (703) 306–1424

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact persons listed above.

Agenda: Open Session: April 28, 1998; 4 p.m. to 5 p.m., To discuss research trends and opportunities in Sensory Systems.

Closed Session: April 27, 1998; 9 a.m. to 6 p.m.; April 28, 1998, 9 a.m. to 4 p.m.; 5 p.m. to 6 p.m. To review and evaluate Sensory Systems proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–9398 Filed 4–8–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting;

Name: Advisory Panel for Neuroscience (1158).

Date and Time: April 30 & May 1, 1998; 9:00 a.m. to 6:00 p.m.

Place: Room 380, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Persons: Dr. Daniel Hartline, Program Director; Division of Integrative Biology and Neuroscience; room 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 306–1423.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact persons listed above.

Agenda: Open Session: May 1, 1998; 10:30 a.m. to 11:30 a.m., To discuss research trends and opportunities in Neuronal and Glial Mechanisms.

Closed Session: April 30, 1998; 9:00 a.m. to 6:00 p.m.; May 1, 1998, 9:00 a.m. to 10:30 a.m.; 11:30 a.m. to 6:00 p.m. To review and evaluate Neuronal and Glial Mechanisms proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–9408 Filed 4–8–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Physiology and Ethology; Meeting

In accordance with the Federal Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Intergrative Animal Biology Panel for Physiology and Ethology (1155)

Date and Time: April 27–28, 1998, 8:30 a.m.–6 p.m.

Place: NSF, Room 380, 4201 Wilson Blvd., Arlington, Virginia

Type of Meeting: Part-Open

Contact Persons: Dr. Elvira Doman, Program Director, Integrative Animal Biology, Division of Integrative Biology and Neuroscience, Room 685N, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1421

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact persons listed above.

Agenda: Open Session: April 28, 1998, 2 p.m. to 3 p.m.—discussion on research trends, opportunities and assessment procedures in Integrative Plant Biology.

Closed Session: April 27, 1998, 8:30 a.m.–6 p.m., April 28, 1998, 8:30 a.m. to 2 p.m. and 3 p.m. to 6 p.m. To review and evaluate Integrative Animal Biology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–9399 Filed 4–8–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Science and Technology Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Science and Technology Infrastructure (1373).

Date and Time: April 30–May 1—8:30 am–5:00 pm.

Place: Room 320, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Dr. Nathaniel G. Pitts, Director, Office of Science and Technology Infrastructure, Room 1270, 4201 Wilson Blvd., Arlington, Virginia 22230; Telephone: (703) 306–1040.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate applications submitted to the Awards for the Integration of Research and Education Program.

Reason for Closing: The meeting is closed to the public because the Panel is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. These matters are exempt under 5 U.S.C. 552B(c) (4) and (6) of the Government Sunshine Act.

Dated: April 6, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–9409 Filed 4–8–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis in Biological Sciences: Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis in Biological Sciences (1754).

Date and Time: April 27–29, 1998, 8:30 a.m–5 pm

Place: Holiday Inn Arlington at Ballston, 4610 North Fairfax Drive, Arlington, VA 22230

Type of Meeting: Closed

Contact Person: Lee Makowski and Arthur Kowalsky, Program Directors, Biological Instrumentation and Instrument Development, National Science Foundation, Rm. 615, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1472.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposal for acquisition of Biological Instrumentation and Instrument Development for the Major Research Instrumentation (MRI) Program as part of the selection process for awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–9401 Filed 4–8–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR Part 39—Licenses and Radiation Safety Requirements for Well Logging.

2. Current OMB approval number: 3150–0130.

3. How often the collection is required: Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every 10 years. Reports are submitted as events occur.

4. Who is required or asked to report: Applicants for and holders of specific licenses authorizing the use of licensed radioactive material in well logging.

5. The number of annual respondents: 51 NRC licensees and 102 Agreement State licensees.

6. The number of hours needed annually to complete the requirement or request: Approximately 3.4 hours annually per respondent for applications and reports, plus approximately 214 hours annually per recordkeeper. The industry total burden is 11,094 annually for NRC licensees and 22,188 annually for Agreement State licensees.

7. Abstract: NRC regulations in 10 CFR Part 39 establish radiation safety requirements for the use of radioactive material in well logging operations. The information in the applications, reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and byproduct material is in compliance with license and regulatory requirements.

Submit, by June 8, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 2nd day of April 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–9347 Filed 4–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Human Factors: Cancellation

A meeting of the ACRS Subcommittee on Human Factors scheduled to be held on Friday, April 17, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland, has been canceled due to the unavailability of documents. Notice of this meeting was published in the **Federal Register** on Monday, March 30, 1998 (63 FR 15236). Rescheduling of this meeting will be announced in a future **Federal Register** Notice.

For further information contact: Mr. Noel F. Dudley, cognizant ACRS staff engineer, (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: April 3, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98–9346 Filed 4–8–98; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed collection; comment request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on

(a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection

Earnings Information Request; OMB 3220–0184. Under Section 2 of the Railroad Retirement Act, an annuity is not payable, or is reduced for any month(s) in which the beneficiary works for a railroad or earns more than prescribed amounts. The provisions relating to the reduction or non-payment of annuities by reason of work are prescribed in 20 CFR 230.

The RRB utilizes form G–19–F, Earnings Information Request, to obtain earnings information not previously or erroneously reported by a beneficiary. Completion of the form is required to retain a benefit. One response is requested of each respondent.

The RRB proposes to revise Form G–19–F to add language required by the Paperwork Reduction Act of 1995. Minor non-burden impacting cosmetic and editorial changes are also proposed. The completion time for Form G–19–F is estimated at 8 minutes per response.

FOR FURTHER INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received on or before June 8, 1998.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–9277 Filed 4–8–98; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 1998–3662]

Development of a National Maritime Safety Incident Reporting System; Request for Written Material

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Coast Guard, in cooperation with the Maritime Administration, is holding a public meeting to invite ideas, comments, questions, and interest by individuals and organizations willing to, in an industry-led team, develop a national maritime safety incident reporting system. The team would design and implement an industry-based system that would receive, analyze, and disseminate information about unsafe occurrences, hazardous situations, and lessons, learned from corrective actions. The Coast Guard and the Maritime Administration expect the new system to promote a safer and more efficient maritime industry.

DATES: The meeting will be held on May 4, 1998, from 8:30 a.m. to 4 p.m. Written material must reach the Coast Guard on or before April 27, 1998.

ADDRESSES: The meeting will be held in Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 in room number 2415. You may send written material to the Docket Management Facility, (USCG 1998–3662), U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20593–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this notice. Written material, and documents as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may electronically access the public docket for this notice on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For information on the public docket, contact Carol Kelly, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone 202–366–9329. For information concerning this notice, contact LCDR Scott J. Ferguson, Office of Investigations and Analysis (G–MOA), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001; telephone 202–267–0715/1430, fax 202–267–1416, e-mail sferguson@comdt.uscg.mil.

SUPPLEMENTAL INFORMATION:

National Maritime Safety Incident Reporting System

The Coast Guard, in cooperation with the Maritime Administration, plans to assist in the creation of an industry-wide team that will design, develop, and implement a practical, voluntary, and confidential national maritime safety incident reporting system run by a non-regulatory party and/or a network of parties (public and/or private). The system would receive, analyze, and disseminate information about near-casualties (unsafe occurrences), hazardous situations, and lessons-learned from corrective actions. These near-casualties or problem events are an untapped source of information that can serve as leading indicators on safety in the maritime community providing information that can be used to prevent accidents before they happen. The information gleaned from this system will serve as a baseline to foster continuous improvement in safety throughout all segments of the maritime community. The system will help prevent marine casualties, injuries and property damage including environmental damage, and create a safer and more efficient marine transportation system and mariner work environment. Success will depend on the extent of industry involvement and leadership in this process; on the resulting mechanism for gathering the data; and on developing the means for effectively analyzing, using, and disseminating the information gleaned.

Procedure

The Coast Guard and the Maritime Administration will hold a joint public meeting on May 4, 1998 in Washington, DC to invite ideas, comments, questions, and interest by individual and organizations willing to participate as members and lead an industry-wide team to develop this system. The meeting will be in the form of an informal workshop open to the public. With advance notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify LCDR Scott J. Ferguson no later than the day before the meeting. Persons wishing to make their material available at the meeting should forward 25 copies to LCDR Scott J. Ferguson at Commandant (G–MOA), U.S. Coast Guard, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. These copies are in addition to the copy sent to the Docket Management Facility. Written comments may also be submitted during the meeting. Any material submitted after the meeting should be sent to the Docket Management Facility. Persons unable to attend the public meetings should submit written material as outlined above. It is anticipated that more public meetings will be held at later dates in various parts of the country. Dates and locations of these meetings will be published via a separate notice in the **Federal Register**.

Questions

We especially need your help in answering the following questions, although additional information is welcome. In responding to each question, please explain your reasons for each answer so that the consequences and impacts can be carefully weighed.

1. Would a national maritime safety incident reporting system such as described in this notice be beneficial? Why or why not? If yes, what are the potential benefits of such a system?

2. How should near-casualty and precursor events (hazardous situations) be defined? In responding consider the relationship with existing requirements to report marine casualties (46 CFR 4.05–10) and hazardous conditions (33 CFR 160.203 and 160.215).

3. What legislation and or regulatory changes, if any, should be considered to promote the use of the system?

4. How should the system be designed, developed, and implemented? Should this be done by the Government, by a cross sectional industry committee within an industry based organizational umbrella, or another combination? Who in industry should take a leadership role in the design, development, and implementation process with the Coast Guard and the Maritime Administration's assistance? The identification of industry members willing to lead this project is a key first step towards its success.

5. Who should run the system? The Coast Guard envisions a non-regulatory party or network of parties (public and/or private). Is there a better option? Who in the maritime community is willing and able to run this system? How should the system be funded? How much will it cost?

6. What are the potential problems with a national maritime safety incident reporting system? How would the system developers overcome these problems? Will mariners be willing to use the system? What could be done to promote mariner wholehearted support and use of the system?

7. What other issues must be resolved to turn this idea into a full fledged working system? In responding to this question please include your ideas on how they can be resolved. What is the next step(s)?

The Coast Guard and the Maritime Administration intend to do the following with the information received: Evaluate the information; identify industry leadership to run the project and participants; discuss the results in another Federal Register document; use it as a basis for other meetings; and develop a plan or blueprint to design, develop, and implement a national maritime safety incident reporting system.

Information on Services for Individual With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact LCDR Scott J. Ferguson as soon as possible, at least one week prior to the date of the meeting.

Dated: April 3, 1998.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–9381 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program, Forth Worth Meacham International Airport, Fort Worth, Texas

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing proposed modifications to

the previously approved noise compatibility program that was submitted for Fort Worth Meacham International Airport, Fort Worth, Texas under the provisions of Title 49, USC, Chapter 475 (hereinafter referred to as ''Title 49'') and 14 CFR Part 150 by the City of Fort Worth, Texas. The current noise compatibility program was approved on February 7, 1995. The proposed modifications will be approved or disapproved on or before September 23, 1998.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the noise compatibility program is March 27, 1998. The public comment period ends May 26, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Nicely, Federal Aviation Administration, Airports Division, Fort Worth, Texas 76193–0650, (817) 222–5606. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing proposed modifications to the previously approved noise compatibility program for Fort Worth Meacham International Airport which will be approved or disapproved on or before September 23, 1998. This notice also announces the availability of these proposed modifications for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title 49, may submit a noise compatibility program and subsequent amendments for the FAA's approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the proposed modifications to the noise compatibility program for Fort Worth Meacham International Airport, effective on March 27, 1998. It was requested that the FAA review this material and that the proposed noise mitigation measures, to be implemented by the airport, be approved as modifications to the existing noise compatibility program under Title 49. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the modifications. The formal review period, limited by law to a maximum of 180 days, will be completed on or before September 23, 1998.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed modification measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program modifications with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, the existing noise compatibility program, and the proposed modifications are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 2601 Meacham Boulevard, Fort Worth, Texas 76137.

Fort Worth Meacham International Airport, 4201 North Main Street, Suite 200, Fort Worth, Texas 76106–2736.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Forth Worth, Texas, March 27, 1998.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 98–9382 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[RTCA Special Committee 192]

National Airspace Review Planning and Analysis

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Special Committee 192 meeting to be held April 22, 1998, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Plenary Session: (a) Chairman's Introductory Remarks; (b) Approval of Proposed Meeting Agenda; (c) Review and Approval of Summary of the Previous Meeting; (2) Report from Design and Infrastructure Work Group; (3) Report from Modeling and Measurement Work Group; (4) Review and Approval of Final Draft, FAA/Industry Guidelines and Concepts for National Airspace Analysis and Redesign; (5) Discussion of Future Activities; (6) Set Agenda for Next Meeting; (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 3, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–9383 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 98–3664]

Notice of Request for Renewal of Currently Approved Information Collection; Outdoor Advertising and Junkyard Report

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to renew the information collection that measures the manner and extent to which the FHWA collects outdoor advertising sign and junkyard statistical information from the States.

DATES: Comments must be submitted on or before June 8, 1998.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this notice and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW.,

Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. and 5:00 p.m., E.T., Monday through Friday except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Silvio Cutuli, Office of Real Estate Services, Federal Highway Administration, U.S. Department of Transportation, HRE–20, Room 3221, 400 7th St., S.W. Washington, DC 20590–0001, telephone (202) 366–2025. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday thru Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION

Electronic Availability

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. An electronic copy of this document can be downloaded using a modem and suitable communications software from the **Federal Register** electronic bulletin board service (telephone number: 202–512–1661). Internet users may reach the Federal Register home page at: http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.gpo.gov/su__docs.

Title: Outdoor Advertising and Junkyard Report.

OMB Number: 2125–0030.

Background

The report on the status of control of outdoor advertising and junkyards is provided by highway agencies of each State, the District of Columbia, and Puerto Rico on Form FHWA–1424, Outdoor Advertising and Junkyard Report. The information on this form, which consists of the numbers of signs in specified categories is voluntarily submitted. These statistics are used to determine how the provisions of 23 U.S.C. 131 and 136 are being complied with and reflect actions taken by the States in this regard. Since the current form has been in use over 20 years, and was last revised in 1989, the FHWA is interested in comments regarding the validity and usefulness of the information requested as it relates to current state activities implementing provisions of 23 U.S.C. 131 and 136. Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) the continued necessity and utility of the requested statistics used to reflect the control of the outdoor advertising signs and junkyards; (2) ways to enhance or improve the relevance of requested information; (3) ways to minimize the collection burden without reducing the quality of the information submitted; and (4) the accuracy of the estimated burden. Comments submitted in response to this notice will be summarized and/or included in the request for OMB renewal of this information collection.

Respondents: State Departments of Transportation/State Highway Agencies.

Average Burden per Response: The average burden is 26 hours per response.

Estimated Total Annual Burden: The estimated total annual burden is 1,352 hours.

Frequency: Annually.

Authority: 23 U.S.C. 117 and 121.

Issued on: April 1, 1998.

George S. Moore, Jr.,

Associate Administrator for Administration.

[FR Doc. 98–9361 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Macon County, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed project in central Missouri.

FOR FURTHER INFORMATION CONTACT: Donald Neumann, Programs Engineer, FHWA Division Office, 209 Adams Street, Jefferson City, MO 65101, Telephone Number (573) 636–7104; or Fred A. Martin, Preliminary Studies, Division Engineer, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102, Telephone Number (573) 526–0991.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare an EIS for a proposed project to upgrade U.S. Route 63 to a four-lane relocation facility around the city of Macon in Macon County, Missouri.

The proposed action is considered necessary to improve safety and capacity for through traffic on U.S. Route 63 and to promote economic development for Macon County, the city of Macon, and communities north and south along the U.S. Route 63 Corridor. Alternatives under consideration include (1) taking no action, (2) implementing Transportation System Management (TSM) options, (3) upgrading and improving the existing roadway; and (4) constructing a four-lane roadway on new or partially-new location. The location study conducted during preparation of the EIS will provide definitive alternatives for evaluation by the EIS. The proposed action will likely include transportation improvements from approximately one mile south of Macon at the Route YY intersection and extend to the Route DD intersection approximately 3.0 miles north of Macon. The project is approximately 7.0 miles in length.

The scoping process will involve all appropriate federal, state, and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal. To date, preliminary information has been issued to local officials and other interested parties. Public meetings will be conducted as the location study process progresses. A public hearing will be held to present the findings of the Draft EIS (DEIS). The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or MoDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12373 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 31, 1998.

Donald L. Neumann,

Programs Engineer, Jefferson City.

[FR Doc. 98–9367 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Harris, Fort Bend, and Waller Counties, Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway expansion project in Harris, Fort Bend, and Waller Counties, Texas.

FOR FURTHER INFORMATION CONTACT: John Mack, P.E., District Engineer, Federal Highway Administration, Room 826, Federal Office Building, 300 East 8th Street, Austin, Texas 78701, Telephone (512) 916–5516, or James G. Darden, P.E., Project Development, Houston District, Texas Department of Transportation, P.O. Box 1386, Houston, Texas 77251–1386, Telephone (713) 802–5241.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation, (TxDOT), will prepare an EIS for a proposed expansion of the Interstate 10 West Katy Freeway (IH–10 Katy Freeway), from the Houston's central business district, extending along the IH–10 Katy Freeway to the Brazos River approximately 65.98 kilometers (41 miles). The study area includes major parallel arterials and the TxDOT right-of-way through Harris, Fort Bend, and Waller Counties (recently purchased from Union Pacific Railroad formerly known as the Missouri-Kansas-Texas Railroad). Cities and towns affected in this region include Houston, Brookshire, Hedwig Village, Bunker Hill Village, Hilshire Village, Hunters Creek Village, Katy, Piney Point Village, and Spring Valley.

A comprehensive transportation study of the 40 mile corridor along the IH–10 Katy Freeway between downtown Houston and the Brazos River, referred to as a Katy Freeway Corridor Major Investment Study (MIS) identified several strategies to meet the existing and future travel needs within the corridor. These strategies range from a No-Build and Transportation System Management (TSM) approach to a major emphasis on high occupancy vehicles (HOV) and transit, as well as the single occupancy vehicle (SOV). Combinations of these approaches were also evaluated. As a result of these evaluations, a preferred alternative for meeting the corridor's transportation needs was then selected. Strategies, approaches, and alternatives will be discussed in the Draft EIS. Other topics to be discussed (in detail) in the Draft EIS include land use; traffic and transportation; economic development; displacement and relocation; neighborhood quality and cohesion; access to community facilities; safety and security; geology and soils; hazardous materials; noise; visual and aesthetics; water resources; biological resources and endangered and threatened species; wetlands; air quality; and cultural resources.

Impacts caused by the construction and operation of the IH–10 Katy Freeway corridor will vary in accordance with the preferred alternative alignment. Generally, impacts would include construction detours, construction traffic, mobility improvement and evacuation route improvements, air and noise impacts from construction equipment and roadway operations, water impacts from construction areas and roadway storm water runoff, impacts to waters of the United States, and impacts to residents and businesses based on potential relocations.

In March 1995, the TxDOT Houston District initiated the Katy Freeway Corridor MIS study. This study followed guidelines designed by the Federal government for major investments in transportation, as outlined in the Intermodal Surface Transportation Efficiency Act of 1991. This study involved the development of key elements of a MIS encompassing the IH–10 Katy Freeway, major arterials, and the adjacent parallel Union Pacific ROW which has been purchased by the State. The Katy Freeway Corridor MIS was a cooperative effort between TxDOT and an interagency committee with representatives from the Houston-Galveston Area Council, the Metropolitan Planning Organization (MPO), the Metropolitan Transit Authority (METRO), the FHWA, the Federal Transit Administration, and the Texas Natural Resource Conservation Commission. The purpose of this MIS was to evaluate the transportation needs of the corridor and provide an opportunity for TxDOT and participating agencies to identify the most reasonable, effective, and efficient transportation option for addressing these needs. Goals and objectives were developed with the assistance of over 150 community and business representatives who participated in a round of public meetings held in July of 1995.

As a result of the July 1995 public meetings, a set of twenty-two alternative transportation improvement concepts were developed to address the problems and needs of the corridor. These twenty-two concepts included transportation modes such as highway, bus, and rail. The twenty-two initial concepts were then screened based on the goals and objectives for the MIS study, resulting in eleven corridor-wide conceptual alternatives. These eleven alternatives were presented for review and comment at a second round of public meetings in November of 1995.

Using the input from the second round of public meetings, the corridor-wide conceptual alternatives were again screened to a short list of seven alternatives to be carried forward for further analysis. Each alternative was evaluated based on travel forecasts, environmental impacts, capital costs, and financial feasibility. These alternatives are described as follows:

Alternative I: No-Build—This alternative includes improvements that are already committed to and expected to be in place by the year 2020, including additional arterial enhancement, reversible HOV connection from IH–10 east of Studemont into downtown, HOV direct connection between the Northwest Transit Center and the IH–10 Katy Freeway at the Interstate 610 West Loop (IH–610 West Loop), and localized intersection improvements. Transit service would be increased according to METRO 2020 plans, including a new transit center between Shepherd and Durham near the IH–10 Katy Freeway. The capacity of the No-Build alternative is the same as the current IH–10 Katy Freeway.

Alternative II: TSM/Transportation Demand Management (TDM)—The TSM/TDM alternative is designed to improve mobility in the corridor without major capital investment. The alternative is designed to improve the operating flow in the corridor rather than increase capacity. The TSM/TDM alternative includes the No-Build improvements plus synchronized traffic signals, ramp meterings, park and pool facilities, geometric improvements, motorist information systems, and other low-cost enhancements. Transit service would be further increased, including an expanded and relocated Kingsland Park & Ride lot and a new transit center at Memorial City Mall.

Alternative III–1: Moderate SOV, Moderate HOV—This alternative includes all No-Build and TSM/TDM improvements. From downtown to IH–610 West Loop, no SOV lanes are added; however, a two-lane, two-way HOV facility is added. From IH–610 West Loop to Katy, one SOV lane in each direction is added to provide a total of eight SOV lanes. The existing reversible HOV lane is upgraded and extended to provide a two-lane, two-way HOV facility to Katy. From Katy to Brookshire no additional SOV or HOV lanes are provided. From Brookshire to the Brazos River, one SOV lane in each direction is added, for a total of six SOV lanes. Transit service would benefit from increased speeds in both directions with the HOV lane improvements. The West

Belt Park & Ride lot would be expanded and relocated.

Alternative IV–2: Major SOV, Moderate HOV—This alternative includes all No-build and TSM/TDM improvements. From downtown to IH–610 West Loop, no SOV lanes are added but a two-lane, two-way HOV facility is added. From IH–610 West Loop to Katy, two SOV lanes in each direction are added to provide a total of ten SOV lanes. The existing reversible HOV lane is upgraded and extended to provide a two-lane, two-way HOV facility all the way to Katy. From Katy to Brookshire no additional SOV or HOV lanes are provided. From Brookshire to the Brazos River, one SOV lane in each direction is added, for a total of six SOV lanes. Transit service would benefit from increased speeds in both directions with the HOV lane improvements. The West Belt Park & Ride lot would be expanded and relocated.

Alternative V–2: Moderate SOV, Special Use Lane—This alternative includes all No-Build and TSM/TDM improvements. From downtown to IH–610 West Loop, no SOV lanes are added but a two-lane, two-way HOV facility is added. From IH–610 West Loop to Katy, one SOV lane in each direction is added to provide a total of eight SOV lanes. The existing reversible HOV lane is upgraded to provide a four-lane, two-way HOV/Special Use facility between IH–610 West Loop and State Highway 6 (SH 6). The special use lanes could be express lanes with an option of a toll charged for use. A two-lane, two-way HOV facility would be added between SH 6 and Katy. From Brookshire to the Brazos River, one SOV lane in each direction is added, for a total of six SOV lanes. Transit service would benefit from increased speeds in both directions with the HOV lane improvements. The West Belt Park & Ride lot would be expanded and relocated.

Alternative V–3: Low SOV, Fixed-Guideway—This alternative includes all No-Build and TSM improvements. From downtown to Brookshire, no SOV lanes are added. From Brookshire to the Brazos River, one SOV lane in each direction is added, for a total of six SOV lanes. A fixed-guideway system would be constructed from downtown to Katy. The fixed-guideway would allow service on three to four car trains on double tracks with grade separations at major arterials. Service would operate approximately every ten minutes in both directions during peak periods. The fixed-guideway system would provide connections to buses at each of the eleven stations, including the Northwest Transit Center for service to the Uptown/Post Oak and the terminus station at the north end of downtown for service to downtown.

Alternative VI–1: Major SOV, Special Use Lane—This alternative includes all No-Build and TSM improvements. From downtown to IH–610 West Loop, no SOV lanes are added but a two-lane, two-way HOV facility is added. From IH–610 West Loop to Katy, two SOV lanes in each direction are added to provide a total of ten SOV lanes. The existing reversible HOV lane is upgraded to provide a four-lane, two-way HOV/Special Use facility between IH–610 West Loop and SH 6. The special use lanes could be express lanes with an option of a toll charged for use. A two-lane, two-way HOV facility would be added between SH 6 and Katy. From Brookshire to the Brazos River, one SOV lane in each direction is added, for a total of six SOV lanes. Transit service would benefit from increased speeds in both directions with the HOV lane improvements. The West Belt Park & Ride lot would be expanded and relocated.

A detailed evaluation of the seven alternatives was presented to the public during a round of open house meetings in January of 1997 for input and feedback. The meetings were held January 27, 28, 29, and 30, 1997 at the following locations: Monday, January 27 at the City of Houston West End Multi Service Center, 170 Heights Boulevard, Houston, Texas; Tuesday, January 28 at the Brookshire Convention Center, 4027 Fifth Street, Brookshire, Texas; Wednesday, January 29 at the Spring Branch Community Center, 1721 Pech, Houston, Texas; and Thursday, January 30 at the Holiday Inn Select, 14703 Park Row, Houston, Texas.

Based on the detailed analysis of the seven alternatives and public input and feedback, it was determined that Alternative V–2: Moderate SOV, Special Use Lane, was selected as the locally preferred (recommended) alternative. In order to select the recommended alternative, the seven alternatives, including the No-Build Alternative and the TSM/TDM Alternative, were evaluated for their engineering feasibility, potential environmental and community impacts, financial feasibility, and their ability to meet the goals and objectives of the community.

The preferred alternative was then presented to the public during a final round of public meetings in July of 1997. The public meetings were held July 8, 9, and 10 at the following locations: Tuesday, July 8 at West Memorial Jr. High School Cafeteria, 22311 Provincial Blvd., Houston, Texas; Wednesday, July 9 at the Memorial Senior High School Cafetorium, Echo Lane at IH–10, Houston, Texas; and the First Baptist Church Fellowship Center, 7401 Katy Freeway at Post Oak Blvd., Houston, Texas. Each meeting format was set up as a combination open-house/public forum format. The first two hours of each meeting was an open-house where information was available regarding the locally preferred alternative and the decision-making process. Members of the study team were present during the open-house to answer questions and record comments. Immediately following the open-house, a short presentation was given. The floor was then opened for public comments. Members of the study team were also available after the public forum for additional questions or comments.

A summary of the public input and feedback regarding the final rounds of public meetings was presented to the Transportation Policy Committee of the MPO for review and concurrence in October 1997.

Letters describing the proposed action soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A Public Scoping meeting will be held at a later date to request public comments on the proposed action and the preferred alternative. A public hearing will also be held at a later date, with copies of the Draft EIS available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: March 23, 1998.

John Mack, P.E.,

District Engineer, Austin, Texas.

[FR Doc. 98–9284 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Talbot and Caroline Counties, Maryland

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Enviromental Impact Statement/Section 4(f) Evaluation (EIS/4(f)) will be prepared for a proposed bridge project in Talbot and Caroline Counties, Maryland.

FOR FURTHER INFORMATION CONTACT: Ms. Renee Sigel, Planning, Research and Environmental Team Leader, Federal Highway Administration. The Rotunda—Suite 220, 711 West 40th Street, Baltimore, Maryland 21211.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the U.S. Coast Guard, the National Marine Fisheries Service, and the Maryland State Highway Administration, will prepare an EIS/4(f) on a proposal to improve the MD 331 crossing of the Choptank River connecting Talbot and Caroline Counties, Maryland.

The purpose of this project is to provide a dependable crossing of the river which will safely accommodate both vehicular and marine traffic. The existing structure (Bridge No. 20023) is an historically significant swing span bridge which provides the only crossing of the river for thirteen miles. This crossing serves as a vital economic link between the towns of Easton and Preston and is also essential for providing rapid response for fire equipment and emergency services. From a maritime perspective, the bridge controls access to and from the upper twenty miles of the Choptank River, and provides the only access to Tuckahoe Creek.

The alternatives under consideration include the No-Build Alternate, rehabilitation of the existing bridge, several high level fixed span structures on new alignment both north and south of the existing bridge, and a Dual Bridge Alternate utilizing both a new high level fixed span structure and the existing bridge.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public informational meeting will be held in the Spring of 1998, followed by a public hearing in the Summer. Public notice will be given of the time and place of both the meeting and hearing. The draft EIS/4(f) will be available for public and agency review and comment prior to the public hearing.

An informal scoping meeting for this project was held in November of 1997. The scoping process includes on-going coordination with a number of agencies and the public including local marinas and the Marine Trade Association as well as presenting at interagency meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and EIS should be directed to the FHWA at the address provided above. In addition, the U.S. Army Corps of Engineers is reviewing the proposal for a Department of the Army Section 404 Clean Water Act and Section 10 Rivers and Harbors Act permit decision. Any questions or concerns regarding the aquatic environment can be forwarded to: U.S. Army Corps of Engineers, Baltimore District, CE NAB–OP–RX, Attn: Keith A. Harris, Chief Special Projects, Permit Section, P.O. Box 1715, Baltimore, MD 21203–1715.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program).

Issued: April 1, 1998.

Renee Sigel,

Planning, Research and Environment Team Leader, Baltimore, Maryland.

[FR Doc. 98–9362 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Driver History Initiative Projects; Fiscal Year 1998 Funding

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of solicitation.

SUMMARY: This notice solicits proposals from States for projects to evaluate their current citation issuance, conviction process, and driver licensing procedures and policies in meeting the goal of timely, accurate, and complete reporting and recording of traffic convictions within a State and between States. Where deficiencies are identified, a State is to develop new or revised systems, procedures, and/or policies to improve the reporting and recording of traffic convictions. The FHWA will provide grant funds to the selected States to carry out the projects from funds set aside in the Department of Transportation and Related Agencies Appropriations Act, 1998 (Pub. L. 105–66, 111 Stat. 1425) for driver improvements and enhancements.

DATES: Proposals must be submitted on or before July 8, 1998.

ADDRESSES: Submit all proposals to: Mr. Phillip Forjan, Federal Highway Administration, Department of Transportation, Office of Motor Carrier Research and Standards, HCS–20, Room 3107, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip Forjan, Office of Motor Carrier Research and Standards, (202) 366–4001, or Mr. Paul Claunch, Office of Motor Carrier Safety and Technology, (202) 366–2170, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of their proposal submission must include a self-addressed, stamped envelope or postcard.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/nara/fedreg and Government Printing's Office's database at http://www.acess.gpo.gov/su__docs.

Background

Extensive studies and research conducted over a period of years have found that driver error is a major cause of motor vehicle crashes. Driver error is a complex problem with many components including age, experience, time of day, extent of familiarity with the roadway, emotional/physical/mental state, traffic patterns, etc. Improving driver behavior is essential if highway safety is to be improved. Federal, State, and local governments spend millions of dollars annually on training, education, public information, and law enforcement efforts to protect the motoring public by detecting and

deterring unsafe driver behavior. The enforcement component of these programs produces thousands of citations for driving violations every day.

The backbone of what is known as the ''driver control system'' is the driver history, which should include a record of the driver's convictions as well as the dates of any license suspensions and reinstatements. This record provides licensing agencies, law enforcement, prosecutors, judges, insurance organizations, and potential employers with the information needed to make sound decisions involving an individual's driving and/or license status. The driver history system, however, does not always service the needs of the public in reporting timely, accurate, and reliable information.

State Citation Tracking Study

About two years ago, a large State with citation tracking capability sampled the disposition of a randomly selected group of commercial motor vehicle (CMV) driving citations. The State waited one year from the date of issuance to investigate the results of the citations on the driver history of the drivers cited. The State agency analyzed citations issued to 184 commercial drivers licensed by that State and 95 commercial drivers holding licenses issued by other States. The State's driver history records showed the following:

	In-state drivers (percent)	Out-of-state drivers (percent)
Nothing on record	27	49
Convicted of offense charged	56	9
Convicted of lesser offense or non-commercial violation	17	42

Of the citations written to in-State drivers, 75 were for serious traffic offenses as defined in the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (49 U.S.C. chapter 313). These offenses include speeding fifteen or more miles per hour over the limit, improper lane change, following too closely, or reckless driving as defined by State or local law. Of those citations written to in-State drivers, 63 percent resulted in convictions for the offense charged and are listed in the driver history, 23 percent did not appear on the driver history at all, and 14 percent appeared as a conviction of reduced charge or a non-commercial violation. Of the citations written to out-of State drivers, 56 were for serious traffic offenses. Fourteen percent of the citations resulted in convictions for the offense charged and are listed as such in the driver record, 54 percent did not appear on the driver history at all, and 32 percent appeared as convictions of either a reduced charge or a non-commercial violation.

It is very unlikely that acquittals account for all 23 percent of the citations issued to in-State drivers for serious traffic offenses, and 54 percent issued to out-of-State drivers, which were not listed in the driver history. Discussions with safety practitioners around the country bring general agreement that, in many cases, convictions simply do not result in entries in the driver history. This raises serious questions as to the efficacy of current enforcement efforts. If very large numbers of citations regularly do not result in convictions or convictions are not entered into the driver history, there is little chance of the driver control system working to identify problem drivers for corrective action.

Systemic reporting problems, including inconsistencies in reporting driving convictions among and within States, are another concern. An example would be where a State, upon receiving a driver history record or conviction from another State, either will not post a conviction because it is old or will not act on a history or conviction because it is from out-of-State. Given current reporting problems between and among courts and licensing agencies, a reporting delay in excess of six months is common.

The primary concern is those commercial drivers who continue to drive in spite of multiple disqualifying offenses. These multiple offenders are either undetected by the driver control system or granted hardship or limited licenses that allow them to continue to drive under restricted circumstances, which may or may not become part of the driver history. The outcome is that ''at-risk'' drivers often go undetected, their behavior unchanged, and they put others at risk of injury or death.

CDL Effectiveness Study Preliminary Conclusions: Harmonization of State Laws and Adjudication

The Senate Appropriations Committee in the Senate Report to the Department of Transportation and Related Agencies Appropriations Act, 1995, directed the FHWA to provide information regarding actions taken under the CDL program to suspend, revoke, or otherwise disqualify commercial motor vehicle operators who commit certain violations and to provide information in other areas of program performance. (S.Rep. No. 103–310, at page 101 (1994)). As a result, the FHWA's Office of Motor Carriers initiated the Commercial Driver License Effectiveness Study to examine the implementation of the Commercial Driver's License (CDL) program and to assess its effectiveness and benefits to highway safety, including the best methods of monitoring and restricting ''at-risk'' drivers of CMVs.

The following is a list of some of the CDL implementation study's significant findings in the area of harmonization of State laws and adjudication:

1. At least 15 States have programs which provide for masking convictions so that they are not visible to an employer if the driver attends a prescribed education or treatment program. Such programs compromise the intent of harmonization to the degree that they mask convictions for disqualifying offenses specified in 49 U.S.C. 31310.

2. Few judges, prosecutors, or law enforcement officers have received training or study materials on the CDL program. Many are not aware of the Federal statute addressing commercial motor vehicle driving offenses, the CDL program, or the harmonization of State laws regarding convictions defined in 49 U.S.C. 31310. Judges and prosecutors generally do not understand that CMV violations are materially different from other traffic violations.

3. The level of coordination which exist between a State's driver licensing agency and the State's traffic court system is inadequate in many instances to assure driver control measures are properly administered and occur in a timely fashion..

4. Data analysis of CDL holder convictions found 19 percent of all convictions are posted as ''UNKNOWN'' with respect to vehicle type, while an additional 64 percent are marked ''NO,'' i.e., the violation did not occur in a CMV. Omitting a check mark on the citation indicating that the violation occurred in a CMV, or ''losing'' the check mark during the adjudication and conviction posting process, eliminates application of the Federal requirements and sanctions.

5. This data sufficiency problem is further exacerbated for out-of-State convictions. Six State DMVs out of 41 responding automatically ''translate'' some CMVSA violations to a lesser offense when the conviction does not indicate the violation was in a CMV (e.g., a conviction for .04 percent Blood Alcohol Concentration (BAC) would be posted as a conviction for an ''open container''). The survey also indicates that statutes prohibit 5 of the 46

responding States from taking license withdrawal action against a driver for an out-of-State conviction, except those listed in 49 U.S.C. 31310. If an out-of-State conviction is not marked as occurring in a CMV, 43 of the 46 responding States automatically post the conviction as occurring in a non-CMV. The survey included all 50 States plus the District of Columbia. There were several questions on the survey that were not addressed by all the States.

Conviction Deferral Programs

Many States and localities have adopted programs that allow convictions for moving traffic offenses to be deferred, diverted, or otherwise prevented from becoming a part of a driver's permanent record. The assumption underlying many of these programs is that drivers should be afforded the opportunity to mend their ways without facing a fine plus ongoing, increased insurance costs if the offense becomes a part of the permanent driving record.

These programs often require drivers to attend driver improvement programs or other training sessions in order to avoid having the driving conviction entered on their permanent records. Some of these programs are managed Statewide by driver licensing agencies. The programs generally consist of systems to retain deferred convictions in State records, but to mask them if requested by certain parties (i.e., insurance companies). This enables the State to monitor the driver's behavior and, when the system works properly, to avoid allowing a driver to simultaneously participate in several diversion or deferral programs with multiple convictions. Other programs allow local jurisdictions to manage their own diversion or deferral programs. Under this system, local courts can collect and retain additional court costs to cover the deferral or diversion programs. These funds are retained by the local governments to be used for governmental programs. In Indiana, the diversion/deferral program does not require participation in a remedial driver training or driver improvement course.

In addition to giving the drivers a second chance and helping them to avoid potentially significant increased costs following a traffic conviction, diversion and deferral programs are a useful source of revenue for local governments. In States like Indiana, local jurisdictions can collect extra fines and fees as a part of the program and can retain those revenues for local use. Generally, traffic citations that are adjudicated locally and reported to the State allow for some type of State and local revenue sharing of fines collected by local jurisdictions. Clearly, diversion/deferral programs can be attractive to local jurisdictions as a means of retaining fine revenues collected in local courts. Some policies allow these funds to be given to civic organizations such as Mothers Against Drunk Driving (MADD). In addition to such not-for-profit organizations, funds are diverted to alcohol and drug services, city/county governments, courts, law enforcement agencies, and the prosecutor's office.

Use of deferral programs leads to traffic convictions not being reported to State licensing agencies. These omissions can have a potentially serious effect on safety, particularly where the programs are administered locally. In such cases, local jurisdictions are likely to be unaware of the identity of deferral program participants in neighboring communities. Consequently, an habitual offender could participate in several deferral programs at one time, with no record of the traffic convictions existing on the offender's driver history. Even where deferral/diversion programs are centrally administered, they are dependent on complete reporting by local jurisdictions to ensure that a driver is not participating in multiple programs.

Participation in these programs is particularly problematic for holders of a CDL. Commercial drivers generally drive significantly more miles annually than do passenger car drivers. Their exposure to crashes and to more hazardous driving conditions that can lead to crashes is much greater than that of the average driver. Also, commercial drivers operate larger, heavier vehicles that can cause significant damage in a crash with a passenger car. In addition, the CDL program includes specific, required penalties for drivers who commit more than one serious traffic offense as defined in 49 U.S.C. 31310. Drivers convicted of these offenses (including, among other things, improper or erratic lane changing or speeding 15 or more miles an hour over the speed limit) are subject to license suspension. Participation in a diversion/deferral program could allow these drivers to mask such offenses from judges, prosecutors, and licensing agencies and, thus, avoid statutorily required sanctions. The potential exists for chronic offenders to use the diversion/deferral system to continue to drive well beyond a point where they would otherwise be subject to some type of license sanction or remedial program under the CDL program.

The purpose of this discussion is to point out that while deferral/diversion programs can provide drivers an opportunity to avoid potentially large and continuing penalties for conviction of a single moving violation, they can also allow chronic offenders to avoid detection and CDL holders to avoid statutory penalties. Jurisdictions should weigh the safety impact of these programs and consider whether they need more controls to ensure that safety is not compromised. There is also the question of taxpayer confidence in a traffic enforcement program that allows local jurisdictions to collect and retain extra revenue for traffic convictions which are not reported to the State. Some citizens hold traffic enforcement programs in disdain as revenue generating mechanisms for local governments, rather than efforts to ensure and support public safety by limiting crashes and injuries. Diversion/deferral programs that allow local jurisdictions to raise fines and penalties and forego reporting of convictions could contribute to this type of criticism. States seeking to participate in this grant program will be asked to review and include in their grant proposal a summary of diversion/deferral programs in the State.

Driver History Initiative Projects

The FHWA is trying to improve the timeliness, completeness, accuracy, and clarity of State driver history files by promoting an integrated driver licensing system. Such a system will improve and enhance the driver history file by its ability to facilitate identification, prosecution, and adjudication of problem drivers. It will benefit drivers who have satisfied the penalties or conditions of a driving restriction by promptly updating their driving record. It will ensure that all drivers have complete, accurate, and up-to-date histories available as needed for employment and insurance purposes.

The initiative will begin with Federally funded State projects. It will involve States that are willing to explore and test new and proven methodologies and protocols, allowing for rapid electronic exchange of driver history information. A major component of the projects will be to test procedures that facilitate citation tracking from issuance to resolution. The project should also enhance the accuracy, speed, and completeness of driver history information exchange among the various components of the system, including law enforcement, prosecutors, the courts, and driver licensing agencies, both within the State and across State boundaries.

The scope of potential projects or plans should not be limited to system development, changes, or enhancements. The State may have a system that is technically sound but hampered by State procedures, policies, laws, or legislation preventing the State from utilizing its system in the most efficient and effective manner. The FHWA will entertain proposals that may not involve the system but would meet the project goals. One example of a procedure problem is out-of-State convictions. Some States treat paper notification of out-of-State convictions differently than electronic notification of similar convictions; several States lack the authority to assess points or penalties for convictions received electronically. As mentioned above, many States report there are certain out-of-State convictions which they cannot enter on drivers' records because of statutory inconsistencies, State-to-State.

The primary objective of this effort is to achieve enhancements in the development, exchange, retention, and reporting of driver histories of commercial motor vehicle operators. The FHWA believes that any enhancements to the commercial segment of the driver licensing system are also likely to have a positive effect on the non-commercial side. However, the FHWA will accept proposals on all aspects of the States' driver licensing recordkeeping and control systems.

Solutions developed as a result of the various projects will be shared with other States that wish to improve and upgrade their driver history tracking systems or revise existing licensing procedures.

The initiative will be a collaborative effort among the Federal Highway Administration (FHWA), and the National Highway Traffic Safety Administration (NHTSA), which jointly will provide the funding, as well as the American Association of Motor Vehicle Administrators (AAMVA), the National Association of Governors' Highway Safety Representatives (NAGHSR), the Commercial Vehicle Safety Alliance (CVSA), and the International Association of Chiefs of Police (IACP), which will all provide technical support during all phases of the projects.

Project Goal

The goal of the FHWA is to ensure timely, accurate, and complete reporting and recording of traffic convictions within States (courts, State licensing agencies, prosecutors), and between and among States to reliably identify potential problem drivers by enhancing existing systems, developing new systems, or revising existing procedural practices.

Proposal Submission

Required Content of Proposals

While providing the maximum possible flexibility to States, grant proposals must meet certain criteria. The grant proposal criteria are designed to ensure that key State agencies and organizations participate in approved grant activities. A thorough evaluation design is another key requirement. The proposal must include the following nine items:

1. Identify a lead Agency for the project.

2. Identify an interdisciplinary working group within the State, including but not limited to the motor vehicle licensing agency, court system, prosecutors, State law enforcement, Governor's Highway Safety Representative, and Motor Carrier Safety Assistance Program (MCSAP) representative.

3. Provide an analysis of existing systems or procedures, including discussion of any driver conviction/deferral programs, and outline strengths and define areas requiring attention or improvement. Include any statutory limitations that may affect communication and recording of convictions on the system.

4. Define system requirements, including project scope, whether new technologies would be tested, and methods of gathering, integrating, and facilitating data exchange between various users.

5. Provide and submit a project evaluation plan and time lines for completion. If your project is not system related, describe existing procedures, the problems they generate, proposed new procedures, anticipated outcome, and the means to measure the success or impact of the project or program.

6. Define, analyze, and document user procedures, including projected barriers to project success.

7. Define the methodology for implementing the system or procedures.

8. Provide plans for preparing a final report, including the evaluation findings and recommendations for other States regarding the strengths and weaknesses of this project or program.

9. Provide a budget for the project.

Submission of Proposals

There will be no formal Request For Proposals (RFP). Proposals responding to this notice must be valid for 180 days, and may be funded at any time during that validity period. Submit an original and three copies of your proposal, following the task requirements listed above to Mr. Phillip J. Forjan, Federal Highway Administration, Department of Transportation, Office of Motor Carrier Research and Standards, HCS–20, Room 3107, 400 Seventh Street, SW., Washington, DC 20590.

Evaluation of Proposals and Award

A panel comprised of representatives from the NHTSA, the AAMVA, the NAGHSR, the CVSA, and the IACP will assist the FHWA in its oversight of the project. Members of the panel will be available for technical assistance during all phases of the projects and will review the evaluations of each final product. The panel will evaluate each proposal, based on the following factors: (1) The intrinsic merit of the proposal; (2) the technical competency of the proposal; (3) the potential for utilization of results; (4) reasonableness of the initial cost proposed; and (5) adequacy of proposed resources to complete the project requirements satisfactorily and in a timely manner.

Project Funding

This notice announces the FHWA's intent to provide funding in FY 1998 for a number of projects relating to driver licensing systems and State driver license procedures. States are invited to submit proposals outlining their projects to the FHWA's Office of Motor Carriers. The FHWA will fund project management and implementation of State systems or revision of State procedures. This grant will not require matching funds. The FHWA has $500,000 available for this purpose in Fiscal Year 1998 and contemplates making several awards from the proposals submitted. The States are also encouraged to explore other funding sources in both the private and public sectors to implement integrated driver history tracking systems.

Authority: Pub. L. 105–66, 111 stat. 1425, 1432, 49 U.S.C. 31102, and 49 CFR 1.48.

Issued on: April 1, 1998.

Gloria J. Jeff,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 98–9380 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Request for Emergency Processing of Collections of Information by the Office of Management and Budget

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Railroad Administration (FRA) hereby gives notice that it has submitted the following information collection requests (ICRs) to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (P.L. 104-13, 44 U.S.C. Chapter 35). FRA requests that OMB authorize the collections of information identified below on or before April 6, 1998, for 180 days after the date of issuance of this notice in the **Federal Register**. A copy of these individual ICRs, with applicable supporting documentation, may be obtained by calling FRA's clearance officers, Robert Brogan (telephone number (202) 632–3318) or Maryann Johnson (telephone number (202) 632–3226). Comments and questions about the ICRs identified below should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for FRA, Washington, D.C. 20503.

Title: Railroad Safety Culture Survey.
OMB Number: 2130—new.
Frequency: One-time.
Affected Public: Railroad workers.
Number of respondents: 1100.
Estimated Time Per Respondent: 20 minutes.
Total Burden: 367 hours.

Title: Railroad Safety Culture Survey—Focus Group Sessions.
OMB Number: 2130—new.
Frequency: One-time.
Affected Public: Railroad workers.
Number of respondents: 420 employees attending 28 session groups.
Estimated Time Per Respondent: 2 hrs.
Total Burden: 840 hours.

Title: Railroad Safety Culture Survey—Key Interviews.
OMB Number: 2130—new.
Frequency: One-time.
Affected Public: Railroad managers.
Number of respondents: 16.
Estimated Time Per Respondent: 1 hr.
Total Burden: 16 hours.

Description: The above ICRs intend to expose cultural shortcomings in the railroad industry, including harassment and intimidation of subordinates, and frame a program to develop a corporate culture that advances and awards safety in the work environment. The project, in short, serves the objectives of FRA in promoting rail safety.

Therefore, FRA is seeking emergency clearance to obtain data necessary to measure and evaluate the corporate culture of the railroad industry.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, D.C. on March 30, 1998.

Maryann Johnson,

Information Collection Budget Officer, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 98–9281 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for a Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) §§ 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the Federal railroad safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being sought and the petitioner's arguments in favor of relief.

Kyle Railroad Company

FRA Waiver Petition No. WPS–97–9

Kyle Railroad Company (Kyle), a subsidiary of Kyle Railways, Inc. seeks a permanent waiver of compliance from certain provisions of the Federal Roadway Worker Protection Standards, subpart C of 49 CFR part 214. The waiver is requested for six railroads owned by Kyle Railways, Inc., namely:

Arizona Eastern Railway
Eastern Alabama Railway
Kyle Railroad Company
San Joaquin Valley RR Company
San Pedro & South Western RR Company
Kiamichi Railroad Company

Specifically, Kyle requests relief to the extent ''that working limits within Yard Limits or Restricted Limits be established by means of restricted speed and by placing red flags or red lights, ¼ mile or within sight distance, but not less than 400 feet, of both ends of the obstruction.''

In support of the petition, Kyle states that:

> When possible, on tracks other than mainline, a switch aligned to prevent access to the working limits and secured with an effective securing device, placed by the roadway worker in charge of the working limits, would be used. We have included the sight distance provision to insure that vandalism would not result in loss of protection.
>
> The reason for this request is primarily due to our conclusion that to comply with § 214.327, the use of portable derails to establish working limits, would be necessary. We believe that the use of portable derails poses a significant risk of personal injury to employees required to handle them. This due to the inherent awkwardness of the device and the weight of approximately sixty (60) pounds each. We do not believe the remaining alternatives included in this section, are economically feasible.

Interested parties are invited to participate in this proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number WPS–97–9) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) at FRA's docket room located at 1120 Vermont Avenue, NW., Room 7051, Washington, DC 20005.

Issued in Washington, DC on April 6, 1998.

Grady C. Cothen,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98–9430 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–3665 (PDA–21 (R))]

Application by Association of Waste Hazardous Materials Transporters for a Preemption Determination as to Tennessee Hazardous Waste Transporter Fee and Reporting Requirements

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: Interested parties are invited to submit comments on an application by the Association of Waste Hazardous Materials Transporters (AWHMT) for an administrative determination whether Federal hazardous materials transportation law preempts requirements of the State of Tennessee, applicable to transporters of hazardous waste, for the payment of a remedial action fee and the filing of a written report of any hazardous waste discharge within the State.

DATES: Comments received on or before May 26, 1998, and rebuttal comments received on or before July 8, 1998, will be considered before an administrative ruling is issued jointly by RSPA's Associate Administrator for Hazardous Materials Safety and FHWA's Administrator. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. The application and all comments are also available on-line through the home page of DOT's Docket Management System, at ''http://dms.dot.gov.''

Comments should be submitted to the Dockets Office at the above address. Three copies of each written comment should be submitted. Comments may also be submitted by E–mail to ''rspa.counsel@rspa.dot.gov.'' Each comment should refer to the Docket Number set forth above. A copy of each comment must also be sent to (1) Mr. Michael Carney, Chairman, Association of Waste Hazardous Materials Transporters, 2200 Mill Road, Alexandria, VA 22314, and (2) Mr. Milton Hamilton, Jr., Commissioner, Tennessee Department of Environment & Conservation, 401 Church Street, 21st Floor, L&C Tower, Nashville, TN 37243. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: ''I certify that copies of this comment have been sent to Messrs. Carney and Hamilton at the address specified in the **Federal Register**.'')

A list and subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determination issued, are available through the home page of RSPA's Office of the Chief Counsel, at ''http://rspa-atty.dot.gov.'' A paper copy of this list and index will be provided at no cost upon request to the individual named in ''For Further Information Contact'' below.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

AWHMT has applied for a determination that Federal hazardous material transportation law preempts Tennessee statutory and regulatory requirements that transporters of hazardous waste pay a remedial action fee and file written reports of any discharge of hazardous waste within the State.

According to AWHMT, each person who is issued a hazardous waste transporter permit under the Tennessee Hazardous Waste Management Act must pay both a registration fee and a Superfund Remedial Action Fee. The Superfund Remedial Action Fee is currently set at $650 per year, under Tennessee Code 68–212–203(a)(6) and Rule 1200–1–13–.03(1)(e) of the Tennessee Department of Environment & Conservation (DEC). It appears that a transporter must hold a permit from the Tennessee DEC in order to transport, within the State, hazardous waste that originates or terminates in Tennessee. DEC Rule 1200–1–11–.04(2)(a).

AWHMT also states that a transporter of hazardous waste must submit a written report to DEC of ''each hazardous waste discharge during transportation that occurs in this state.'' DEC Rule 1200–1–11–.04(4)(a)(4). The Note to that section states that a copy of DOT form 5800.1, as required by 49 CFR 171.16, ''shall suffice for this report provided that it is properly completed and supplemented as necessary to include all information required by this paragraph.''

AWHMT asserts that Tennessee's Superfund Remedial Action Fee is preempted because the proceeds are not used exclusively for purposes related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response. AWHMT also contends that this is a ''flat fee'' that is preempted because it has no relation to the transporter's operations within the State. AWHMT states that Tennessee's requirement to submit written reports of any hazardous waste discharge is preempted because it is not substantively the same as DOT's requirements in 49 CFR 171.16.

The text of AWHMT's application and a list of the attachments are set forth in appendix A. A paper copy of the attachments to AWHMT's application will be provided at no cost upon request to the individual named in ''For Further Information Contact'' above.

II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to AWHMT's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under section 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if

> (1) complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or
>
> (2) the requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to the accomplishing and carrying out of this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria which RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Public Law 93–633 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not ''substantively the same as'' a provision of Federal hazardous material transportation law or a regulation prescribed under that

law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be ''substantively the same,'' the non-Federal requirement must ''conform[] in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted.'' 49 CFR 107.202(d).

Subsection (g)(1) of 49 U.S.C. 5125 provides that a State, political subdivision, or Indian tribe may

impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose relating to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

These preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements.

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Public Law 101–615 section 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the ''linchpin'' in the design of the HMTA, including the 1990 amendments which expanded the original preemption provision. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, the HMTA was revised, codified and enacted ''without substantive change,'' at 49 U.S.C. Chapter 51. Pub. L. 103–272, 108 Stat. 745.)

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated authority to RSPA the authority to make determinations of preemption, except for those concerning highway routing which have been delegated to FHWA. 40 CFR 1.53(b). Under RSPA's regulations, preemption determinations are issued by RSPA's Associate Administrator for Hazardous Materials Safety. 49 CFR 107.209(a).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register.** Following the receipt and consideration of written comments, RSPA will publish its determination in the **Federal Register.** *See* 49 CFR 107.209(d). A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon,* above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policy set forth in Executive Order No. 12612, entitled ''Federalism'' (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

III. Public Comments

All comments should be limited to the issue whether 49 U.S.C. 5125 preempts the Tennessee requirements challenged by AWHMT. Comments should:

(A) Set forth in detail the manner in which the Tennessee Superfund Remedial Action Fee and discharge reporting requirements are applied and enforced, including but not limited to:

(1) The total amount of Superfund Remedial Action Fees collected by Tennessee for fiscal year 1996–97 and all purposes for which those fees were used (including an identification of the specific accounts into which those fees were deposited); and

(2) Whether the information required to be submitted on a written report of a hazardous waste discharge exceeds the information required to be reported to RSPA on DOT form 5800.1; and

(B) Specifically address the preemption criteria set forth in Part II, above.

Persons intending to comment should review RSPA's standards and procedures governing consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC, on April 2, 1998.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

Appendix A

Before the United States Department of Transportation Office of Hazardous Materials Safety

Application of the Association of Waste Hazardous Materials Transporters to initiate a proceeding to determine Whether Certain Fees and Incident Reporting Requirements Imposed By the State of Tennessee on Persons Involved in the Transportation of Hazardous Wastes to or From Locations Within The State are Preempted by the Hazardous Materials Transportation Act. March 23, 1998.

Application of the Association of Waste Hazardous Materials Transporters to initiate a proceeding to determine whether certain fees and incident reporting requirements imposed by the State of Tennessee on persons involved in the transportation of

hazardous wastes to or from locations within the State are preempted by the Hazardous Materials Transportation Act.

Interest of the Petitioner

The Association of Waste Hazardous Materials Transporters (AWHMT) represents companies that transport, by truck and rail, waste hazardous materials, including industrial, radioactive and hazardous materials, throughout the United States, including within the State of Tennessee (State). Despite full compliance with the hazardous materials regulations (HMRs), members of the AWHMT are precluded from transporting manifested shipments of hazardous waste within the State unless, among other things, certain fees are paid to the Department of Environment and Conservation (DEC). In addition, transporters are in violation of DEC requirements and in jeopardy of losing their permits to transport hazardous waste until they file written reports following any hazardous waste incident. The AWHMT asserts that the State requirements are in contravention to the Hazardous Materials Transportation Act (HMTA).

Background

The Association of Waste Hazardous Materials Transporters (AWHMT) was invited to provide comment on several bills before the Tennessee legislature earlier this year. These bills dealt with reforming permit requirements currently imposed on transporters of hazardous waste in the State. Part of our review disclosed that the DEC annually imposes a flat $650 remedial action fee on transporters of hazardous waste. We presented arguments that suggested the DEC's fee violates federal law. The DEC has rejected our argument.

Further review of the DEC requirements suggests to us that a requirement to file written incident reports with the Department also violates federal law.

Despite the questionable legality of these requirements, the DEC imposes such stringent penalties for non-compliance that transporters comply. First, the Code declares it ''unlawful to * * * refuse or fail to pay to the department fees assessed pursuant to the provisions of (the Code or to) fail to provide information in violation of the rules, regulations, or orders of the (DEC).'' [1] The Code then makes clear that transporters are precluded from transporting hazardous waste to or from any location in the state without first obtaining a permit from the DEC.[2] Failure of a permit applicant or permittee to pay the required annual remedial action fee is grounds for denial or revocation of a permit.[3] Finally, any person who violates or fails to comply with any provision, term or condition of any permit issued, or any rule, regulation or standard adopted pursuant to the Code is subject to a civil penalty of up to $50,000 per day for each day of violation. Each day upon which such violation occurs constitutes a separate punishable offense.[4] As proof that the DEC applies and enforces its fees, a current permit application package is attached.

State Requirement for Which A Determination is Sought

This application seeks preemption of the following State requirements:

- Tennessee Code (Code) section 68–212–203(a)(6) concerning remedial action fees
- Tennessee DEC Rule (Rule) section 1200–1–13–.03(1)(e) concerning remedial action fees
- Rule section 1200–1–11–.04(4)(a)4 concerning written incident reports

RCRA does not shield State Hazardous Waste Requirements from Scrutiny Under The HMTA

The challenged requirements pertain to the transportation of hazardous waste. Tennessee is authorized by the U.S. Environmental Protection Agency (EPA) to administer the federal hazardous waste program. Many states have pointed to such authorization as a defense against the preemptive authority of the Hazardous Materials Transportation Act (HMTA). This defense, however, is without merit.

All hazardous wastes are designated ''hazardous substances'' under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).[5] As such, hazardous wastes are explicitly required to be ''listed and regulated as * * * hazardous materials under the Hazardous Materials Transportation Act.'' [6] The U.S. Department of Transportation (DOT) defines the term ''hazardous material'' to include ''hazardous waste.'' [7] The hazardous materials regulations (HMR) issued pursuant to the HMTA apply to the transportation of hazardous wastes by intrastate, interstate, and foreign carriers.[8]

In enacting the Resource Conservation and Recovery Act (RCRA) in 1976, Congress provided that EPA's regulations on transporters of hazardous waste must be consistent with the requirements of the HMTA and the HMR.[9] The deferral to the HMTA and the HMR for the regulation of hazardous waste in transportation was intended to avoid duplicative requirements. EPA's concern about such inefficiency and confusion lead the Agency to state that the HMR are ''capable of being modified under the HMTA to address the transportation hazards of waste materials and that RCRA affirms the need for such a modification.'' [10] When EPA delegates its authority to issue regulations to a state, as it has in Tennessee, the state's hazardous waste program must be equivalent to the federal program and consistent with other state authorized programs.[11]

EPA has consistently maintained that its approval of a state's hazardous waste program does not preclude preemption under the HMTA.[12] Provisions of RCRA which allow states to impose ''more stringent'' requirements than those established by EPA,[13] must be read consistently with the HMTA.[14] Thus, while RCRA does not contain a procedure for prohibiting states from imposing requirements on the transportation of hazardous waste that are more stringent or broader in scope that those imposed by EPA, states may not rely on RCRA to shield such requirements from review under the HMTA.

The HMTA Provides for the Preemption of Non-Federal Requirements When Those Non-Federal Requirements Fail Certain Federal Preemption Tests

The HMTA was enacted in 1975 to give the DOT greater authority ''to protect the Nation adequately against the risks of life and property which are inherent in the transportation of hazardous materials in commerce.'' [15] By vesting primary authority over the transportation of hazardous materials in the DOT, Congress intended to ''make possible for the first time a comprehensive approach to minimization of the risks associated with the movement of valuable but dangerous materials.'' [16] As originally enacted, the HMTA included a preemption provision ''to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' [17] This preemption provision was implemented through an administrative process where DOT would issue ''inconsistency rulings'' as to, [w]hether compliance with both the State or political subdivision requirement and the Act or the regulations issued under the Act is possible; and [t]he extent to which the State of political subdivision requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.[18]

These criteria, commonly referred to as the ''dual compliance'' and ''obstacle'' tests, ''comport[ed] with the test for conflict between Federal and State statutes enunciated by the Supreme Court in *Hines* versus *Davidowitz*, 312 U.S. 52 (1941).'' [19]

In 1990, Congress codified the dual compliance and obstacle tests as the Act's general preemption provision.[20] The 1990 amendments also expanded on DOT's preemption authorities, setting four other standards under which non-federal requirements could be subject to preemption

[1] Tenn. Code 68–212–105(4) & (5).

[2] Tenn. Code 68–212–108(a)(1).

[3] Tenn. Code 68–212–110(d).

[4] Tenn. Code 68–212–114(b)(1).

[5] 42 U.S.C. 9601(14)(C).

[6] 42 U.S.C. 9656(a).

[7] 49 CFR 171.8, definition of ''hazardous materials.''

[8] 49 CFR 171.1(a).

[9] 42 U.S.C. 6923(b).

[10] 43 FR 22626 (May 25, 1978).

[11] 42 U.S.C. 6926.

[12] 57 FR 32726, 32728 (July 23, 1994), and letter to Cynthia Hilton, Chemical Waste Transportation Institute (CWTI), from Devereaux Barnes, EPA, October 29, 1992.

[13] 49 U.S.C. 6929.

[14] *Morton* versus *Mancari*, 417 U.S. 535, 551 (1974).

[15] Pub. L. 93–633 sec. 102.

[16] S. Rep. 1192, 93rd Cong., 2d Sess., 1974, page 2.

[17] S. Rep. 1192, 93rd Cong., 2d Sess, 1974, page 37.

[18] 41 FR 38171 (September 9, 1976).

[19] 41 FR 38168 (September 9, 1976).

[20] 49 U.S.C. 5125(a).

review. Two of these standards are of significance to this petition:

• First, Congress expressly preempted non-federal requirements in five covered subject areas if they are not ''substantively the same'' as the federal requirements. Among these covered subject areas is the written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.[21] ''Substantively the same'' was defined to mean ''conforms in every significant respect to the Federal requirement. Editorial and other similar de minimis, changes are permitted.''[22]

• Second, non-federal fees related to the transportation of hazardous materials are preempted unless the fees are ''fair and used for a purpose related to transporting hazardous materials.''[23]

DOT's preemption authority is limited only to the extent that non-federal requirements are ''otherwise authorized'' by federal law. As noted above, state requirements affecting transporters of hazardous waste are not ''authorized by another law of the United States,'' within the meaning of 49 U.S.C. 5125, simply because they are contained in an EPA-authorized state hazardous waste program.[24]

Our review of federal law and the Code leads us to believe that the following specific requirements, absent further modification and/or clarification, are subject to preemption pursuant to 49 U.S.C. 5125(a)(2) and (b)(1)(D).

The Remedial Action Fee Imposed by the Code and Rule is not ''Fair'' Or ''Used for a Purpose Related to Transporting Hazardous Material'' and is Subject to Preemption Under the Obstacle Test

Code § 68–212–203(a)(6) and Rule Section 1200–1–13–.03(1)(e) authorize and impose an annual assessment of $650 on transporters of manifested hazardous waste shipments moving to or from locations in the State. The revenue from this fee collection is deposited in the DEC's ''Hazardous Waste Remedial Action Fund'' (Fund)[25] Code § 68–212–205 outlines the uses to which the revenues in the Fund can be applied.

As noted above, the HMTA provides that ''a State * * * may impose a fee related to transporting hazardous materials only if the fee is fair and used for a purpose related to transporting hazardous materials, including enforcement and planning, developing, and maintaining a capability for emergency response.''[26] DOT considered ''transportation-related fees'' to include fees imposed ''as a condition for authority or permission to transport any hazardous materials into, through, or within'' a state.[27] DOT has affirmed that fees imposed by a State that did not meet the standards set forth in the law would ''create an obstacle to the accomplishment and execution of the [HMTA]'', and consequently, be subject to administrative preemption under the ''obstacle test.''[28]

• Used For Test

The DEC is in violation of federal law because the revenue collected from hazardous waste transporters in the Fund is used for ''identifying and investigating inactive hazardous substance sites * * * and for investigating and reasonably and safely containing, cleaning up, monitoring and maintaining such sites as provided in the [Code].''[29] The Fund may also be used, in conjunction with the above purpose, for consultants and personnel, for equipment, or ''other necessary expenses.''[30] The Fund may be used to match federal funds available under CERCLA.[31] Other authorized uses of the Fund are to provide technical assistance to generators; to promote the DEC's waste reduction and pollution prevention programs; to operate an information clearinghouse for generators; to coordinate an award program for innovative approaches to reducing hazardous waste generation; to conduct training sessions and publish reports targeted to segments of industry concerning hazardous waste reduction; to prepare an annual report to the State Legislature; to accept gifts and grants; to provide grants to generators of hazardous waste; to provide research grants to develop new technology for the reduction or better treatment of hazardous waste; and to review waste reduction plans. Despite the exhaustive uses of the Fund, none address enforcement and emergency response for transportation of hazardous materials within the meaning of 49 U.S.C. 5125(g)(1). DOT has already preempted non-federal fees based on the non-federal entity's unauthorized use of a hazmat transportation-related fee. DOT should not tolerate the continuation of the Remedial Action fee for the same reason.

• Fairness Test

The DEC's remedial action fee is set at a flat rate and unapportioned to each motor carrier's presence in the State. The U.S. Supreme Court has declared fees which are flat and unapportioned to be unconstitutional under the Commerce Clause because, among other things, such fees fail the ''internal consistency'' test.[32] The Court reasoned that a state fee levied on an interstate operation violates the Commerce Clause because, if replicated by other jurisdictions, such fees lead to interstate carriers being subject to multiple times the rate of taxation paid by purely local carriers even though each carrier's vehicles operate an identical number of miles.[33] In addition, because they are unapportioned, flat fees cannot be said to be ''fairly related'' to a feepayer's level of presence or activities in the fee-assessing jurisdiction.[34] In a number of subsequent cases, courts have relied on these arguments to strike down, enjoin, or escrow flat hazardous materials taxes and fees.[35]

We submit that the DEC's flat remedial action fee also runs afoul of the HMTA because it is inherently ''unfair.'' Some motor carriers, otherwise in compliance with the HMRs, will inevitably be unable to shoulder multiple flat fees, and thus be excluded from some sub-set of fee-imposing jurisdictions. If the State's flat fee scheme is allowed to stand, similar fees must be allowed in the Nation's other 30,000 non-federal jurisdictions. The cumulative effect of such outcome would be not only a generally undesirable patchwork of regulations necessary to collect the various fees, but the balkanization of carrier areas of operation and attendant, unnecessary handling of hazardous materials as these materials are transferred from one company to another at jurisdictional borders. The increased transfers would pose a serious risk to safety, since ''the more frequently hazardous material is handled during transportation, the greater the risk of mishap.''[36]

In recognition of these outcomes, Congress amended the HMTA, in 1990, to provide, in addition to the ''used for'' test, the hazardous materials transportation-related fee ''fairness'' test. Augmenting this authority, Congress further provided, in the 1994 amendments to the HMTA, that DOT collect information about the basis on which the fee is levied.[37] The then-Chairman of the Senate Subcommittee to authorize the amendment explained that DOT was to use this authority to determine if the hazardous materials fees are ''subject to preemption.''[38] When determining what constitutes, ''fair,'' the Chairman clarified that ''the usual constitutional commerce clause protections remain applicable and prohibit fees that discriminate or unduly burden interstate commerce.''[39] In closely analogous circumstances, the Supreme Court considered the meaning of 49 U.S.C. 1513(b), which authorizes States to impose ''reasonable'' charges on the users of airports. The Court read the statute to apply a ''reasonableness standard taken directly from * * * dormant Commerce Clause jurisprudence.''[40] In the absence of any

[21] 49 U.S.C. 5125(b)(1)(D).

[22] 49 CFR 107.202(d).

[23] 49 U.S.C. 5125(g).

[24] *Colo. Pub. Util. Comm'n* versus *Harmon*, 951 F.2d, 1571, 1581 n. 10, (10th Cir. 1991).

[25] Code section 68–212–204.

[26] U.S.C. 5125(g)(1).

[27] Letter to Robert Shinn, New Jersey Dept. of Environmental Protection, from Alan I. Roberts, RSPA, May 24, 1995.

[28] Letter to Cynthia Hilton, CWTI, from Alan I. Roberts, DOT, October 6, 1993.

[29] Code section 68–212–205(a).

[30] Code section 68–212–205(b).

[31] Code section 68–212–205(c).

[32] *American Trucking Assn's* versus *Scheiner*, 483 U.S. 266 (1987).

[33] *Ibid.*, 284–86.

[34] *Ibid.*, 290–291 (citing *Commonwealth Edison Co.* versus *Montana*, 453 U.S. 609, 629 (1981).

[35] *American Trucking Assn's, Inc.* versus *State of New Jersey*, No. 11562–92 (N.J.T.C., March 11, 1998) (oral opinion declaring flat, annual $250 per truck hazardous waste transporter fee unconstitutional under the Commerce Clause), *American Trucking Assn's Inc.* versus *State of Wisconsin*, No. 95–1714, 1996 WL 593806 (Wisc. App. Ct., October 1996) (holding flat, annual per-company hazardous materials fees to be violative of the Commerce Clause). *American Trucking Assn's Inc.* versus *Secretary of Administration*, 613 N.E.2d 95 (Mass. 1993) (finding unconstitutional annual, flat per-vehicle hazardous waste fee). *American Trucking Assn's Inc.* versus *Secretary of State*, 595 A.2d 1014 (Me. 1991) (finding unconstitutional flat per-vehicle hazardous materials fees).

[36] *Missouri Pac. R.R. Co.* versus *Railroad Comm'n of Texas*, 671 F. Supp. 466, 480–81 (W.D. Tex. 1987).

[37] 49 U.S.C. 5125(g)(2).

[38] *Cong. Record*, August 11, 1994, page 11324.

[39] *Ibid.*

[40] *Northwest Airlines* v. *State of Kent*, 510 U.S. 355, 374, 127 L.Ed. 2d 183, 114 S.Ct. 855 (1994).

evidence the Congress meant to sanction non-federal fees that are discriminatory or malapportioned, a ''fair'' fee within the meaning of 49 U.S.C. 5125(g)(1) surely is one that, at a minimum, complies with the requirements of the Commerce Clause.

Additionally, it must be remembered that the Code and Rule impose the challenged flat fee only on transporters engaged in the transportation of manifested shipments of hazardous waste moving to or from locations in Tennessee. However, AWHMT has reviewed the hazardous materials incident reports filed with DOT pursuant to 49 CFR 171.16 and discovered, for the five-year representative period 1992–1996, that 1819 hazardous materials incidents were reported in Tennessee of which 102 involved the transportation of hazardous waste.[41] Forty-six percent of the hazardous waste incidents involved shipments by transporters technically unpermitted by the State and not subject to the remedial action fee because the shipments were not destined to or from locations in the State. Of the 1819 incidents, 42 met DOT's definition of ''serious;'' only one of the 42 involved the transportation of hazardous waste.[42] The State clearly has unfairly burdened certain hazardous waste carriers with fees and requirements that are unsupported by the risk presented to the citizens and/or environment of the State.

For the above listed reasons, we assert that flat fees are inherently ''unfair'' and that the State's fee scheme should fall to the obstacle test pursuant to 49 U.S.C. 5125(a)(2).

The Written Notification, Recording, and Reporting of the Unintentional Release in Transportation of Hazardous Material Is Reversed to the Federal Government

Rule 1200–1–11.04(4)(a)4 requires written notification of each hazardous waste discharge during transportation that occurs in the State. These reports must be filed with the DEC within 15 days. The written notification must provide information about the incident. The DEC allows the filing of form F5800.1, the DOT incident report, to suffice if it is ''properly completed and supplemented as necessary to include all information required by the (DEC).''[43]

It is clear that the DEC's written notification requirements are not substantively the same as corresponding federal requirements.[44] The HMTA expressly preempts such requirements.[45] DOT has even moved to preempt non-federal written incident reports when the non-federal requirement has been only ''to provide copies of the incident reports filed with (DOT) * * * .''[46]

Conclusion

The State's hazardous waste remedial action fee requirements imposed on the transportation of manifested shipments of hazardous waste are preempted by federal law. The State is enforcing the above suspect requirements. We request timely consideration of the concerns we have raised.

Certification

Pursuant to 49 CFR 107.205(a), we hereby certify that a copy of this application has been forwarded with an invitation to submit comments to: Milton Hamilton, Jr., Commissioner, Department of Environment & Conservation, 401 Church St., 21st Floor, L&C Tower, Nashville, TN 37243.

Respectfully submitted,

Michael Carney,

Chairman.

Enclosures.

cc: Ed Bonekemper, Asst. Chief Counsel for, Hazardous Materials Safety, RSPA–DCC–10, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.

Attachments

(A) Tenn. Code 68–212 §§ 101–121
(B) Tenn. Code 68–212 §§ 203–206
(C) DEC Rule 1200–1–11–.04
(D) DEC Rule 1200–1–11–.08
(E) DEC Rule 1200–1–13
(F) Hazardous Waste Transporter Permit Application

[FR Doc. 98–9212 Filed 4–8–98; 8:45 am]

BILLING CODE 4910–60–M

[41] Hazardous Materials Information System, U.S. Department of Transportation—1992–1996, January 28, 1998.

[42] ''Serious'' incidents are those that result in one or more of the following: death; accident/derailment of vehicle; evacuation of six or more individuals; injury requiring hospitalization; or road closure.

[43] Rule 1200–1–11.04(4)(a)4. *Note*.

[44] 49 CFR 171.16.

[45] 49 U.S.C. 5125(b)(1)(D).

[46] IR–31, 55 FR 25582 (June 21, 1990).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–391 (Sub–No. 4X)]

Red River Valley & Western Railroad Company—Abandonment Exemption—in Benson County, ND

Red River Valley & Western Railroad Company (RRVW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 10.55-mile line of railroad from milepost 79.08, approximately 0.6 miles north of Oberon, to milepost 89.63, in Minnewaukan, in Benson County, ND. The line traverses United States Postal Service Zip Codes 58357 and 58351.

RRVW has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 9, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 20, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 29, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Jo A DeRoche, Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005–4797.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

RRVW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 14, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RRVW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RRVW's filing of a notice of consummation by April 9, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: March 31, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–8945 Filed 4–8–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Executive Office for Asset Forfeiture; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden,invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Executive Office for Asset Forfeiture within the Department of the Treasury is soliciting comments concerning the ''Request for Transfer of Property Seized/Forfeited by a Treasury Agency'', TD F 92–22.46.

DATES: Written comments should be received on or before June 8, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to the Executive Office for Asset Forfeiture, Attn: Ms Rebecca Brown, Suite 700, 740–15th Street, NW, Washington, DC 20220. Telephone: (202) 622–2807.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Executive Office for Asset Forfeiture, Attn: Ms Rebecca Brown, Suite 700, 740–15th Street, NW, Washington, DC 20220. Telephone (202) 622–2807.

Title: Request for Transfer of Property Seized/Forfeited by a Treasury Agency, TD F 92–22.46.

OMB Number: 1505–0152.

Form Number: TD F 92–22.46.

Abstract: The form was developed to capture the minimum amount of data necessary to process the application for equitable sharing benefits. Only one form is required per seizure If a law enforcement agency does not make this one time application for benefits under the equitable sharing process, the agency will not benefit from the forfeiture process.

Current Action: This is a notice for the continued use of the established form. There are no changes to the form or instructions.

Type of Review: Extension.

Affected Public: Federal, state and local law enforcement agencies participating in the Treasury asset sharing program.

Estimated Number of Respondents: 600.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,300 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval.

All comments will become a matter of public record Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Jan P. Blanton,

Director, Executive Office for Asset Forfeiture.

[FR Doc. 98–9283 Filed 4–8–98; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Commission to Study Capital Budgeting

AGENCY: Advisory Commission to the President of the United States.

ACTION: Notice of meetings.

SUMMARY: The agenda for the next meetings of the Commission to Study Capital Budgeting includes discussions and hearing of testimony on capital budgeting issues on Friday, April 24. On Saturday morning, April 25, the Commission will hear reports from its working groups studying different aspects of capital budgeting and discuss the next steps to be taken in preparation of its report. The Commission's final report on capital budgeting is due on December 13, 1998. Meetings are open to the public. Limited seating capacity is available.

Dates, Times and Places of the Next Commission Meetings

April 24, 1998, 9:00 a.m. to 4:00 p.m., White House Conference Center, Truman Room, 726 Jackson Place, NW., Washington, DC 20503

April 25, 1998, 9:00 a.m. to 12:00 noon, White House Conference Center, Truman Room, 726 Jackson Place, NW., Washington, DC 20503

The Commission is seeking all views on capital budgeting. Interested parties may submit their views to: Barry Anderson, Executive Director, President's Commission to Study Capital Budgeting, Old Executive Office Building (Room 258), Washington, DC 20503, Voice: (202) 395–4630, Fax: (202) 395–6170, E-Mail: capital__budget@oa.eop.gov, Website: http://www.whitehouse.gov/wh/eop/omb/pcscb/.

FOR FURTHER INFORMATION CONTACT: E. William Dinkelacker, Senior Economist, Room 4456 Main Treasury, Washington, DC 20220, Voice: (202) 622–1285, Fax: (202) 622–1294, E-Mail: william.dinkelacker@treas.sprint.com.

Dated: April 3, 1998.

Angel E. Ray,

Committee Management Officer.

[FR Doc. 98–9279 Filed 4–8–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0394]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement for a previous approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to certify school attendance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 8, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0394'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certification of School Attendance—REPS, VA Form 21–8926.

OMB Control Number: 2900–0394.

Type of Review: Reinstatement, with change, for a previous approved collection for which approval has expired.

Abstract: The VA administers the Restored Entitlement Program for Survivors (REPS). The program pays VA benefits to certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981. Child beneficiaries must be enrolled full-time in an approved postsecondary school. The information reported on VA Form 21–8926 is used by VA to verify that an individual who is receiving REPS benefits based on schoolchild status is in fact enrolled full-time in an approved school and is otherwise eligible for continued benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 300 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

Dated: March 16, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–9319 Filed 4–8–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0539]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to apply for Supplemental Service Disabled Insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 8, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0539'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Supplemental Service Disabled Veterans Insurance, VA Form 29–0188.

OMB Control Number: 2900–0539.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by veterans to apply for Supplemental Service Disabled Veterans Insurance. No insurance may be granted unless a completed application has been received. The information is used by the VBA to determine eligibility for insurance.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,333 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

Dated: March 16, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–9320 Filed 4–8–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0065]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed in connection with a claim for disability benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 8, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0065'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Employment Information in Connection with Claim for Disability Benefits, VA Form 21–4192.

OMB Control Number: 2900–0065.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to gather the necessary information about employment of the veteran-applicant to determine the extent of disability affecting employment.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 15,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 60,000.

Dated: March 16, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–9321 Filed 4–8–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0011]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine an applicant's eligibility for reinstatement of insurance and/or Total Disability Income Provision (TDIP) which has lapsed for more than six months.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 8, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0011'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Reinstatement, VA Form 29–352.

OMB Control Number: 2900–0011.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used to apply for reinstatement of insurance and/or TDIP that has lapsed for more than six months. The information is used to

establish eligibility of the applicant for the purpose of reinstatement.

Affected Public: Individuals or households.

Estimated Annual Burden: 500 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 1,500.

Dated: March 16, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–9323 Filed 4–8–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0080]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 11, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0080.''

SUPPLEMENTARY INFORMATION:

Title: Claim for Payment of Cost of Unauthorized Medical Service, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, and Authorization and Invoice for Medical and Hospital Services.

Form Numbers:

a. VA Form 10–583, Claim for Payment of Cost of Unauthorized Medical Service.

b. VA Form 10–2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle.

c. VA Form 10–7078, Authorization and Invoice for Medical and Hospital Services.

OMB Control Number: 2900–0080.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract:

a. VA Form 10–583 is used by administrative personnel in VA medical facilities of fee jurisdiction to collect information for determining legal and medical eligibility of applicants for payment or reimbursement of the costs of unauthorized medical services obtained by a veteran. The form is completed by the applicant as an official claim for such benefits and by VA officials to certify the authorized payment or reimbursement and to authorize such payment. If the collection of information was not carried out, VA's ability to provide reimbursement or payment for these costs would be negated.

b. Administrative personnel in VA medical facilities to authorize expenditures from the beneficiary trust account use VA Form 10–2511. It is also used to process payment for ambulance or other hired vehicular forms of transportation to eligible veterans to and from VA health care facilities for examination, treatment or care. If the collection of information were not conducted payment to vendors for services rendered would not be possible.

c. VA Form 10–7078 is used by administrative personnel in VA medical facilities to authorize expenditures from the medical care account and process payment of medical and hospital services provided by other than Federal health providers to VA beneficiaries. Without the use of this form would complicate management and record keeping of expenditures for medical care provided at VA expense by the private sector.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 14, 1998 at page 2302.

Affected Public: Business or other for-profit—Individuals or households—Not-for-profit institutions—State, Local or Tribal Government.

Estimated Total Annual Burden: 29,671 hours.

a. VA Form 10–583—17,188 hours.

b. VA Form 10–2511—4,083 hours.

c. VA Form 10–7078—8,400 hours.

Estimated Average Burden Per Respondent:

a. VA Form 10–583—15 minutes.

b. VA Form 10–2511—2 minutes.

c. VA Form 10–7078—2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 443,250.

a. VA Form 10–2421—68,750.

b. VA Form 10–2520—122,500.

c. VA Form 10–2914—252,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0080'' in any correspondence.

Dated: March 16, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–9318 Filed 4–8–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0260]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before May 11, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0260.''

SUPPLEMENTAL INFORMATION:

Title and Form Number: Request for and Consent to Release of Medical Records Protected by Section 7332, VA Form 10–5345(R).

OMB Control Number: 2900–0260.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: Section 7332, Title 38, United States Code requires the VA to obtain prior written consent from a patient before information concerning treatment for alcoholism or alcohol abuse, drug abuse, sickle cell anemia, or infection with the human immunodeficiency virus (HIV) can be disclosed from a patient medical record. This special consent must indicate the name of the facility permitted to make the disclosure, the name of the individual or organization to whom the information is being released, specify the particular records or information to be released, be under the signature of the veteran and dated. It must reflect the purpose for which the information is to be used, and include a statement that the consent is subject to revocation and the date, event or condition upon which the consent will expire if not revoked before. The Privacy Act of 1974 and VA confidentiality statute, Section 5701, Title 38, United States Code also requires a written patient consent.

The information is collected from the patient. VA personnel complete 50% of the total number of forms used and the patient must simply sign and date the form. Patients complete the remaining 50% of the total number of forms. The information is usually handwritten. If the VA did not collect this information, medical records protected Title 38, U.S.C., Section 7332, could not be released from a patient's records. This would have a negative impact on patients who need and want information released to private insurance companies, physicians and other third parties.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 11, 1997 at page 47871.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,779 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 323,378.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0260'' in any correspondence.

Dated: March 16, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–9322 Filed 4–8–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0166]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 11, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0166.''

SUPPLEMENTAL INFORMATION:

Title and Form Numbers: Application for Ordinary Life Insurance (Age 65), VA Form 29–8485, and Application for Ordinary Life Insurance (Age 70), VA Form 29–8485a.

OMB Control Number: 2900–0166.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the policyholder to apply for replacement insurance for Modified Life Reduced at Age 65 and 70. The information is used by VA to initiate the granting of coverage for which applied.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 29, 1996 at page 18776.

Affected Public: Individuals or households; required to obtain or retain benefits.

Estimated Annual Burden: 1,284 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 15,400.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0166'' in any correspondence.

Dated: March 16, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–9324 Filed 4–8–98; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 63, No. 68

Thursday, April 9, 1998

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 ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4084–001]

Denver City Energy Associates, L.P.; Notice of Filing

Correction

In notice document 98–8032 appearing on page 14912, in the issue of Friday, March 27, 1998, the docket number is corrected to read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98-50-000, et al.]

Zhengzhou Dengwei Power Company Ltd., et al.; Electric Rate and Corporate Regulation Filings

Correction

In notice document 98–7235 beginning on page 13657 in the issue of Friday, March 20, 1998, make the following correction:

On page 13659, in the second column, under paragraph 15, in the docket numbers paragraph, in the first and second lines ''OA97-271-001; and OA97-271-001'' should read ''OA97-510-001; and OA97-271-001''.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 264

[INS No. 1891-97]

RIN 1115-AF03

Fingerprinting Applicants and Petitioners for Immigration Benefits; Establishing a Fee for Fingerprinting by the Service; Requiring Completion of Criminal Background Checks Before Final Adjudication of Naturalization Applications

Correction

In rule document 98–6828 beginning on page 12979 in the issue of Tuesday, March 17, 1998 make the following correction:

§ 264.5 [Corrected]

On page 12987, in the second column, in §264.5, in amendatory instruction 21a., ''(e)(1)(v)'' should read ''(e)(1)(iv)''.

BILLING CODE 1505-01-D

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 514

RIN 3141-AA18

Annual Fees Payable by Indian Gaming Operations

Correction

In rule document 98–6282 beginning on page 12312 in the issue of Thursday, March 12, 1998, make the following corrections:

1. On page 12312, in the second column, in the third paragraph from the bottom, in the sixth line ''faming'' should read ''gaming''.
2. On the same page, in the third column, in the first full paragraph, in the fourth line ''0.00%'' should read ''0.08%''.
3. On page 12313, in the first column, in the first paragraph, in the second and third lines ''gross revenues adopted by the Commission.'' should read ''gross revenues by the rate for those revenues adopted by the Commission.''.
4. On page 12315, in first column, in the first paragraph under *Economic Impact*, in the last line ''$7 million'' should read ''$8 million''.
5. On the same page, in the second column, in the second paragraph under *Impact on Small Business Entities*, in the second line, remove ''grater''.
6. On page 12316, in the first column ''*Texas Rather Than User Fees*'' should read ''*Taxes Rather Than User Fees*''.

BILLING CODE 1505-01-D

federal register

Thursday
April 9, 1998

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 72 and 75

Diesel Particulate Matter Exposure of Underground Coal Miners; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 72 and 75

RIN 1219–AA74

Diesel Particulate Matter Exposure of Underground Coal Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish new health standards for underground coal mines that use equipment powered by diesel engines.

This proposal is designed to reduce the risks to underground coal miners of serious health hazards that are associated with exposure to high concentrations of diesel particulate matter (dpm). DPM is a very small particle in diesel exhaust. Underground miners are exposed to far higher concentrations of this fine particulate than any other group of workers. The best available evidence indicates that such high exposures put these miners at excess risk of a variety of adverse health effects, including lung cancer.

The proposed rule for underground coal mines would require that mine operators install and maintain high-efficiency filtration systems on certain types of diesel-powered equipment. Underground coal mine operators would also be required to train miners about the hazards of dpm exposure.

By separate notice, MSHA will soon propose a rule to reduce dpm exposures in underground metal and nonmetal mines.

DATES: Comments must be received on or before August 7, 1998. Submit written comments on the information collection requirements by August 7, 1998.

ADDRESSES: Comments on the proposed rule may be transmitted by electronic mail, fax, or mail, or dropped off in person at any MSHA office. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: comments@msha.gov. Comments by fax must be clearly identified as such and sent to: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551. Send mail comments to: MSHA, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, VA 22203–1984, or any MSHA district or field office. The Agency will have copies of the proposal available for review by the mining community at each district and field office location, at the National Mine Safety and Health Academy, and at each technical support center. The document will also be available for loan to interested members of the public on an as needed basis. MSHA will also accept written comments from the mining community at the field and district offices, at the National Mine Safety and Health Academy, and at technical support centers. These comments will become a part of the official rulemaking record. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any questions about format.

Written comments on the information collection requirements may be submitted directly to the Office of Information and Regulatory Affairs, New Executive Office Building, 725 17th Street, NW., Rm. 10235, Washington, D.C. 20503, Attn: Desk Officer for MSHA.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director; Office of Standards, Regulations, and Variances; MSHA; 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Questions and Answers About This Proposed Rule

(A) General Information of Interest to the Entire Mining Community

(1) What Actions Are Being Proposed?

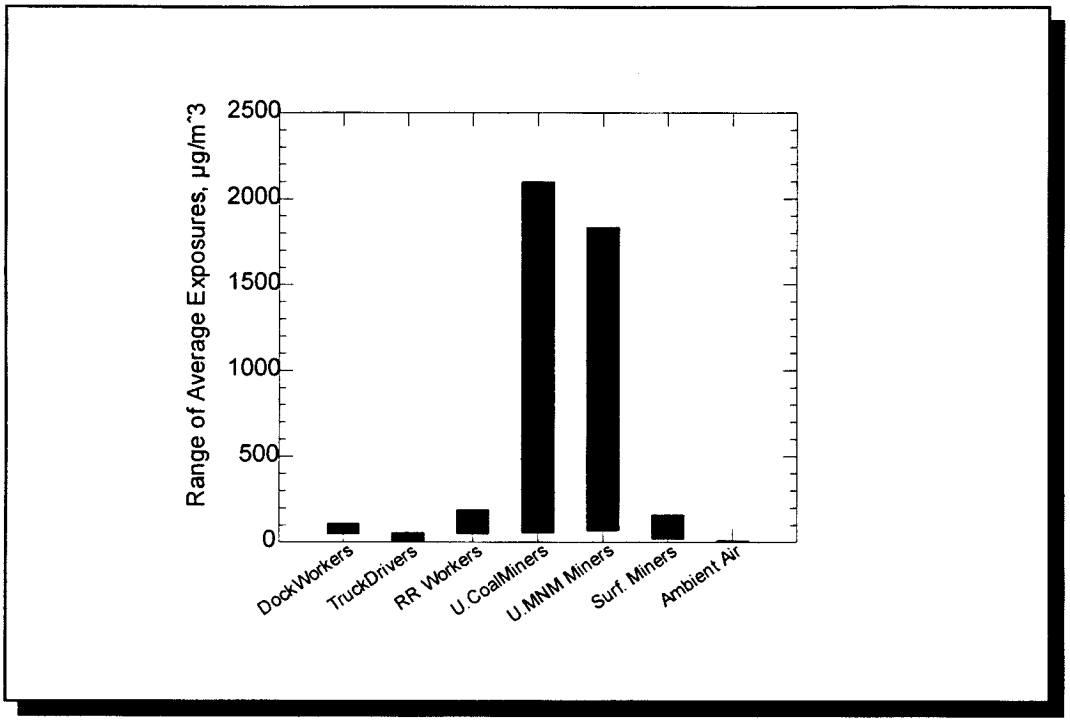
MSHA has determined that action is essential to reduce the exposure of miners to a harmful substance emitted from diesel engines—and that regulations are needed for this purpose in underground mines. This notice proposes requirements for underground coal mines; by separate notice, MSHA will soon propose a rule for underground metal and nonmetal mines.

The harmful substance is known as diesel particulate matter (dpm). As shown in Figure I–1, average concentrations of dpm observed in dieselized underground mines are up to 200 times as high as average environmental exposures in the most heavily polluted urban areas and up to 10 times as high as median exposures estimated for the most heavily exposed workers in other occupational groups. The best available evidence indicates that exposure to such high concentrations of dpm puts miners at significantly increased risk of incurring serious health problems, including lung cancer.

The goal of the proposed rule is to reduce underground miner exposures to attain the highest degree of safety and health protection that is feasible.

BILLING CODE 4510–43–P

Figure I-1:
Comparative Exposures ($\mu g/m^3$)[1]



[1] Range of average dpm exposures observed at various mines for underground and surface miners compared to range of average exposures reported for other occupations and for urban ambient air. Averages are represented by median observed within mines for mine workers, by median as estimated with geometric mean reported for other occupations, and, for ambient air in urban environments, by the monthly mean estimated for different months and locations in Southern California. The range estimated for urban ambient air is roughly 1 to 10 $\mu g/m^3$. See part III for more detailed information.

Throughout this preamble, exposure information is presented in terms of "whole diesel particulate". Moreover, the information is presented in units of micrograms (μg) per cubic meter of air. However, in many of the references cited, exposure measurements may be expressed as milligrams (mg) per cubic meter of air.

1 mg/m^3 = 1 milligram per cubic meter of air
1 $\mu g/m^3$ = 1 microgram per cubic meter of air
1 milligram = 1000 micrograms.

To convert from milligrams to micrograms, multiply by 1000 -- or move the decimal point three places to the right. For example, 0.15 mg/m^3 = 150 $\mu g/m^3$.

BILLING CODE 4510–43–C

In underground coal mines, MSHA's proposal would require the installation of high-efficiency filters on diesel-powered equipment to trap diesel particles before they enter the mine atmosphere. Following 18 months of education and technical assistance by MSHA after the rule is issued, filters would first have to be installed on permissible diesel-powered equipment. By the end of the following year (i.e., 30 months after the rule is issued), such filters would also have to be installed on any heavy-duty outby equipment. No specific concentration limit would be established in this sector; the proposed rule would require that filters be installed and properly maintained. Miner awareness training on the hazards of dpm would also be required.

MSHA is not at this time proposing a rule applicable to surface mines. As illustrated in Figure I–1, in certain situations the concentrations of dpm at surface mines may exceed those to which rail, trucking and dock workers are exposed. Problem areas identified in this sector include production areas where miners work in the open air in close proximity to loader-haulers and trucks powered by older, out-of-tune diesel engines, or other confined spaces where diesel engines are running. The Agency believes, however, that these problems are currently limited and readily controlled through education and technical assistance. Using tailpipe exhaust extenders, or directing the exhaust across the engine fan, can dilute the high concentrations of dpm that might otherwise occur in areas immediately adjacent to mining equipment. Surface mine operators using or planning to switch to environmentally conditioned cabs to reduce noise exposure to equipment operators might also be able to incorporate filtration features that would protect these miners from high dpm concentrations as well. Completing already planned purchases of new trucks containing cleaner engines may also help reduce the isolated instances of high dpm concentrations at such mines.

The Agency would like to emphasize, however, that surface miners are entitled to the same level of protection as other miners, and that the Agency's risk assessment indicates that even short-term exposures to concentrations of dpm like those observed may result in serious health problems. Accordingly, in addition to providing education and technical assistance to surface mines, the Agency will also continue to evaluate the hazards of diesel particulate exposure at surface mines and will take any necessary action, including regulatory action if warranted, to help the mining community minimize any hazards.

(2) How Is This Notice of Proposed Rulemaking Organized?

The proposed rule for underground coal mines can be found at the end of this Notice. The remainder of this preamble to the proposed rule (**SUPPLEMENTARY INFORMATION**) describes the Agency's rationale for what is being proposed.

Part I consists of twelve ''Questions and Answers.'' The Agency hopes they will provide most of the information you will need to formulate your comments. The first ten of these (Section A) cover general topics. The last two (Section B) contain additional detail about the proposed rule for the underground coal sector, and a discussion of two alternatives on which the Agency would particularly like additional comment.

Part II provides some background information on nine topics that are relevant to this rulemaking. In order, the topics covered are: (1) the role of diesel-powered equipment in mining; (2) the composition of diesel exhaust and diesel particulate; (3) measurement of diesel particulate; (4) reducing soot at the source—EPA regulation of diesel engine design; (5) limiting the public's exposure to soot—EPA ambient air quality standards; (6) controlling diesel particulate emissions in mining—a toolbox; (7) existing mining standards that limit miner exposure to occupational diesel particulate emissions; (8) how other jurisdictions are restricting occupational exposure to diesel soot; and (9) MSHA's initiative to limit miner exposure to diesel particulate—the history of this rulemaking and related actions. Appended to the end of this document is a copy of an MSHA publication, ''Practical Ways to Reduce Exposure to Diesel Exhaust in Mining—A Toolbox,'' which includes additional information on methods for controlling dpm, and a glossary of terms.

Part III is the Agency's risk assessment. The first section presents the Agency's data on current dpm exposure levels in each sector of the mining industry. The second section reviews the scientific evidence on the risks associated with exposure to dpm. The third section evaluates this evidence in light of the Mine Act's statutory criteria.

Part IV is a detailed section-by-section explanation and discussion of the elements of the proposed rule.

Part V is an analysis of whether the proposed rule meets the Agency's statutory obligation to attain the highest degree of safety or health protection for miners, with feasibility a consideration. This part begins with a review of the law and a profile of the coal industry's economic position. This next part explores the extent to which the proposed rule is expected to impact existing concentration levels, reviews significant alternatives that might provide more protection than the rule being proposed but which have not been adopted by the Agency due to feasibility concerns, and then discusses the feasibility of the rule being proposed. Part V draws upon a computer simulation of how the proposed rule in underground coal mines is expected to impact dpm concentrations; accordingly, an Appendix to this discussion provides information about the simulation methodology. The simulation method, which can be performed using a standard spreadsheet program, can be used to model conditions and control impacts in any underground mine; copies of this model are available to the mining community from MSHA.

Part VI reviews several impact analyses which the Agency is required to provide in connection with a proposed rulemaking. This information summarizes a more complete discussion that can be found in the Agency's Preliminary Regulatory Economic Analysis (PREA). Copies of this document are available from the Agency and will be posted on the MSHA Web site (http://www.msha.gov).

Part VII is a complete list of publications referenced by the Agency in the preamble.

(3) What Evidence Does MSHA Have That Current Underground Concentrations of DPM Need To Be Controlled?

The best available evidence MSHA has at this time is that miners subjected to an occupational lifetime of dpm exposure at concentrations we presently find in underground mines face a significant risk of material impairment to their health.

It has been recognized for some time that miners working in close contact with diesel emissions can suffer acute reactions—e.g., eye, nose and throat irritations—but questions have persisted as to what component of the emissions was causing these problems, whether exposure increased the risk of other adverse health effects, and the level of exposure creating health consequences.

In recent years, there has been growing evidence that it is the very small respirable particles in diesel exhaust (dpm) that trigger a variety of

adverse health outcomes. These particles are generally less than one-millionth of a meter in diameter (submicron), and so can readily penetrate into the deepest recesses of the lung. They consist of a core of the element carbon, with up to 1,800 different organic compounds adsorbed onto the core, and some sulfates as well. (A diagram of dpm can be found in part II of this preamble—see Figure II–3). The physiological mechanism by which dpm triggers particular health outcomes is not yet known. One or more of the organic substances adsorbed onto the surface of the core of the particles may be responsible for some health effects, since these include many known or suspected mutagens and carcinogens. But some or all of the health effects might also be triggered by the physical properties of these tiny particles, since some of the health effects are observed with high exposures to any ''fine particulate,'' whether the particle comes from diesel exhaust or another source.

There is clear evidence that exposure to high concentrations of dpm can result in a variety of serious health effects. These health effects include: (i) sensory irritations and respiratory symptoms serious enough to distract or disable miners; (ii) death from cardiovascular, cardiopulmonary, or respiratory causes; and (iii) lung cancer.

By way of example of the non-cancer effects, there is evidence that workers exposed to diesel exhaust during a single shift suffer material impairment of lung capacity. A control group of unexposed workers showed no such impairment, and workers exposed to filtered diesel exhaust (i.e., exhaust from which much of the dpm has been removed) experienced, on average, only about half as much impairment. Moreover, there are a number of studies quantifying significant adverse health effects—as measured by lost work days, hospitalization and increased mortality rates—suffered by the general public when exposed to concentrations of fine particulate matter like dpm far lower than concentrations to which some miners are exposed. The evidence from these fine particulate studies was the basis for recent rulemaking by the Environmental Protection Agency to further restrict the exposure of the general public to fine particulates, and the evidence was given very widespread and close scrutiny before that action was made final. Of particular interest to the mining community is that these fine particulate studies indicate that those who have pre-existing pulmonary problems are particularly at risk. Many individual miners in fact have such pulmonary problems, and the mining population as a whole is known to have such conditions at a higher rate than the general public.

Although no epidemiological study is flawless, numerous epidemiological studies have shown that long term exposure to diesel exhaust in a variety of occupational circumstances is associated with an increased risk of lung cancer. With only rare exceptions, involving relatively few workers and/or observation periods too short to reliably detect excess cancer risk, the human studies have consistently shown a greater risk of lung cancer among workers exposed to dpm than among comparable unexposed workers. When results from the human studies are combined, the risk is estimated to be 30–40 percent greater among exposed workers, if all other factors (such as smoking habits) are held constant. The consistency of the human study results, supported by experimental data establishing the plausibility of a causal connection, provides strong evidence that chronic dpm exposure at high levels significantly increases the risk of lung cancer in humans.

Moreover, all of the human occupational studies indicating an increased frequency of lung cancer among workers exposed to dpm involved average exposure levels estimated to be far below the levels observed in underground mines. As noted in Part III, MSHA views extrapolations from animal experiments as subordinate to results obtained from human studies. However, it is noteworthy that dpm exposure levels recorded in some underground mines have been within the exposure range that produced tumors in rats.

Based on the scientific data available in 1988, the National Institute for Occupational Safety and Health (NIOSH) identified dpm as a probable or potential human carcinogen and recommended that it be controlled. Other organizations have made similar recommendations.

MSHA carefully evaluated all the evidence available in light of the requirements of the Mine Act. Based on this evaluation, MSHA has reached several conclusions:

(1) The best available evidence is that the health effects associated with exposure to dpm can materially impair miner health or functional capacity.

(2) At levels of exposure currently observed in underground mining, many miners are presently at significant risk of incurring these material impairments over a working lifetime.

(3) The reduction in dpm exposures that is expected to result from implementation of the proposed rule for underground coal mines would substantially reduce the significant risks currently faced by underground coal miners exposed to dpm.

MSHA had its risk assessment independently peer reviewed. The risk assessment presented here incorporates revisions made in accordance with the reviewers recommendations. The reviewers stated that:

> * * * principles for identifying evidence and characterizing risk are thoughtfully set out. The scope of the document is carefully described, addressing potential concerns about the scope of coverage. Reference citations are adequate and up to date. The document is written in a balanced fashion, addressing uncertainties and asking for additional information and comments as appropriate. (Samet and Burke, Nov. 1997).

The proposed rule would reduce the concentration of one type of fine particulate in underground coal mines—that from diesel emissions—but would not explicitly control miner exposure to other fine airborne particulates present underground. In light of the evidence presented in the Agency's risk assessment on the risks that fine particulates in general may pose to the mining population, MSHA would welcome comments as to whether the Agency should also consider restricting the exposure of underground coal miners to all fine particulates, regardless of the source.

(4) Aren't NIOSH and the NCI Working on a Study That Will Provide Critical Information? Why Proceed Before the Evidence Is Complete?

NIOSH and the National Cancer Institute (NCI) are collaborating on a cancer mortality study that will provide additional information about the relationship between dpm exposure levels and disease outcomes, and about which components of dpm may be responsible for the observed health effects. The study is projected to take about seven years. The protocol for the study was recently finalized.

The information the study is expected to generate will be a valuable addition to the scientific evidence on this topic. But given its conclusions about currently available evidence, MSHA believes the Agency needs to take action now to protect miners' health. Moreover, as noted by the Supreme Court in an important case on risk involving the Occupational Safety and Health Administration, the need to evaluate risk does not mean an agency is placed into a ''mathematical straightjacket.'' *Industrial Union Department, AFL-CIO* v. *American Petroleum Institute*, 448 U.S. 607, 100 S.Ct. 2844 (1980). The Court noted that

when regulating on the edge of scientific knowledge, absolute scientific certainty may not be possible, and ''so long as they are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions in interpreting the data * * * risking error on the side of overprotection rather than underprotection.'' (*Id.* at 656). This advice has special significance for the mining community, because a singular historical factor behind the enactment of the current Mine Act was the slowness in coming to grips with the harmful effects of other respirable dust (coal dust).

It is worth noting that while the cohort selected for the NIOSH/NCI study consists of underground miners (specifically, underground metal and nonmetal miners), this choice is in no way linked to MSHA's regulatory framework or to miners in particular. This cohort was selected for the study because it provides the best population for scientists to study. For example, one part of the study would compare the health experiences of miners who have worked underground in mines with long histories of diesel use with the health experiences of similar miners who work in surface areas where exposure is significantly lower. Since the general health of these two groups is very similar, this will help researchers to quantify the impacts of diesel exposure. No other population is as easy to study for this purpose. But as with any such epidemiological study, the insights gained are not limited to the specific population used in the study. Rather, the study will provide information about the relationship between exposure and health effects that will be useful in assessing the risks to any group of workers in a dieselized industry.

(5) What are the Impacts of the Proposed Rule?

Costs. Tables I–1 and I–2 provide cost information. Some explanation is necessary.

Costs consist of two components: ''initial'' costs (e.g., capital costs for equipment, or the one-time costs of developing a procedure), which are then amortized over a period of years in accordance with a standardized formula to provide an ''annualized'' cost; and ''annual'' costs that occur every year (e.g., maintenance or training costs). Adding together the ''annualized'' initial costs and the ''annual'' costs provides the per year costs for the rule.

It should be noted that in amortizing the initial costs, a net present value factor was applied to certain costs: those associated with provisions where mine operators do not have to make capital expenditures until some period of time after the effective date. Detailed information on this point is contained in the Agency's Preliminary Regulatory Economic Analysis (PREA), as are the Agency's cost assumptions.

The costs per year to the underground coal industry are about $10 million. Diesel equipment manufacturers would have a yearly cost increase of about $14,000.

The Agency spent considerable time developing its cost assumptions, which are discussed in detail in the Agency's PREA, and would encourage the mining community to provide detailed comments in this regard so as to ensure these cost estimates are as accurate as possible.

TABLE I–1.—COMPLIANCE COSTS FOR UNDERGROUND COAL MINES

[Dollars + 1,000]

Detail	Large mines (≥20)			Small mines (<20)			Total mines		
	Total [Col. B+C] (A)	Annualized (B)	Annual (C)	Total [Col. E+F] (D)	Annualized (E)	Annual (F)	Total [Col. H+I] (G)	Annualized (H)	Annual (I)
75.1915	$9	$9	$0	$1	$1	$0	$10	$10	$0
72.500(a)	4,910	457	4,453	95	22	73	5,005	479	4,526
72.500(b)	4,768	1,335	3,433	22	12	10	4,790	1,347	3,443
72.510	185	0	185	1	0	1	186	0	186
75.371qq and 75.370	1	1	0	1	1	0	2	2	0
Total	9,873	1,802	8,071	120	36	84	9,993	1,838	8,155

TABLE I–2.—COMPLIANCE COSTS FOR MANUFACTURERS

[Dollars×1,000]

Detail	Manufacturers		
	Total [Col. B+C]	Annualized	Annual
	(A)	(B)	(C)
Part 36	$14	$14	$0
Total	$14	$14	$0

As required by the Regulatory Flexibility Act, MSHA has performed a review of the effects of the proposed rule on ''small entities''. The results—including information about the average cost for mines in each sector with less than 500 employees and mines in each sector with less than 20 miners—are summarized in response to Question 7.

Paperwork

Tables I–3 and I–4 show additional paperwork burden hours which the proposed rule would require. Only those existing or proposed regulatory requirements which would, as a result of this rulemaking, result in new burden hours, are noted. The costs for these paperwork burdens, a subset of the overall costs of the proposed rule, are specifically noted in part VII of the Agency's PREA. Each of these tables shows separately the burden hours on smaller mines—those with less than 20 miners. Table I–3 shows additional paperwork burden hours for underground coal operators.

TABLE I–3.—UNDERGROUND COAL MINE BURDEN HOURS

Detail	Large	Small	Total
75.370	93	9	102
75.371	158	8	166
75.1915	12	1	13
72.510	347	5	352
Total	610	23	633

Table I–4 shows the additional burden hours for diesel equipment manufacturers. All of the manufacturer burden hours will occur once and not recur annually.

TABLE I–4.—DIESEL EQUIPMENT MANUFACTURERS BURDEN HOURS

Detail	Total
Part 36	520
Total	520

Benefits

The proposed rule would reduce the exposure of underground miners to dpm, thereby reducing the risk of adverse health effects and their concomitant effects.

The risks being addressed by this rulemaking arise because some miners are exposed to high concentrations of the very small particles produced by engines that burn diesel fuel. As discussed in part II of the preamble, diesel powered engines are used increasingly in underground mining operations because they permit the use of mobile equipment and provide a full range of power for both heavy-duty and light-duty operations (i.e., for production equipment and support equipment, respectively), while avoiding the explosive hazards associated with gasoline. But underground mines are confined spaces which, despite ventilation requirements, tend to accumulate significant concentrations of particles and gases—both those produced by the mine itself (e.g., methane gas and coal dust liberated by mining operations) and those produced by equipment used in the mine.

As discussed in MSHA's risk assessment (part III of this preamble), the concentrations of diesel particulates to which some underground miners are currently exposed are significantly higher than the concentrations reported for other occupations involving the use of dieselized equipment; and at such concentrations, exposure to dpm by underground miners over a working lifetime is associated with an excess risk of a variety of adverse health effects.

The nature of the adverse health effects associated with such exposures suggests the nature of the savings to be derived from controlling exposure. Acute reactions can result in lost production time for the operator and lost pay (and perhaps medical expenses) for the worker. Hospital care for acute breathing crises or cancer treatment can be expensive, result in lost income for the worker, lost income for family members who need to provide care and lost productivity for their employers, and may well involve government payments (e.g., Social Security disability and Medicare). Serious illness and death lead to long term income losses for the families involved, with the potential for costs from both employers (e.g., workers' compensation payouts, pension payouts) and society as a whole (e.g., government assisted aid programs).

The information available to the Agency suggests that as exposure is reduced, so are the adverse health consequences. For example, data collected on the effects of environmental exposure to fine particulates suggest that reducing occupational dpm exposures by as little as 75 $\mu g/m^3$ (roughly corresponding to a reduction of 25 $\mu g/m^3$ in 24-hour ambient atmospheric concentration) could lead to significant reductions in the risk of various acute responses, including mortality. And chronic occupational exposure has been linked to an estimated 30 to 40 percent increase in the risk of lung cancer. All the quantitative risk models reviewed by NIOSH suggest excess risks of lung cancer of more than one per thousand for miners who have long-term occupational exposures to dpm concentrations in excess of 1000 $\mu g/m^3$, and the epidemiologically-based risk estimates suggest higher risks.

Despite these quantitative indications, quantification of the benefits is difficult. Although increased risk of lung cancer has been shown to be associated with dpm exposure among exposed workers, a conclusive dose-response relationship upon which to base quantification of benefits has not been demonstrated. The Agency nevertheless intends, to the extent it can, to develop an appropriate analysis quantifying benefits in connection with the final rule.

The Agency does not have much experience in quantifying benefits in the case of a proposed health standard (other than its recent proposal on controlling mining noise, where years of compliance data and hearing loss studies provide a much more complete quantitative picture than with dpm). MSHA therefore welcomes suggestions for the appropriate approach to use to quantify the benefits likely to be derived from this rulemaking. Please identify scientific studies, models, and/or assumptions suitable for estimating risk at different exposure levels, and data on numbers of miners exposed to different levels of dpm.

(6) Did MSHA Actively Consider Alternatives to What Is Being Proposed?

Yes. Once MSHA determined that the evidence of risk required a regulatory action, the Agency considered a number of alternative approaches, the most significant of which are reviewed in part V of the preamble.

The consideration of options proceeded in accordance with the requirements of section 101(a)(6)(A) of the Federal Mine Safety and Health Act of 1977 (the ''Mine Act''). In promulgating standards addressing toxic materials or harmful physical agents, the Secretary must promulgate standards which most adequately assure, on the basis of the best available evidence, that no miner will suffer material impairment of health over his/her working lifetime. In addition, the Mine Act requires that the Secretary, when promulgating mandatory standards pertaining to toxic materials or harmful physical agents, consider other factors, such as the latest scientific data in the field, the feasibility of the standard and experience gained under the Mine Act and other health and safety laws. Thus, the Mine Act requires that the Secretary, in promulgating a standard, attain the highest degree of health and safety protection for the miner, based on the ''best available evidence,'' with feasibility a consideration.

As a result, MSHA seriously considered a number of alternatives that would, if adopted as part of the proposed rule, have provided increased protection—and would also have significantly increased costs. For example, in underground coal mining, the Agency considered requiring filtration of all light-duty diesel-powered equipment as well as heavier equipment. The Agency concluded, however, that such an approach may not be feasible for the underground coal sector at this time, although it is asking for comment as to whether there are some types of light-duty equipment whose dpm emissions should, and could feasibly, be controlled.

MSHA also considered alternatives that would have led to a significantly lower-cost proposal, e.g., increasing the time for mine operators to come into compliance. However, based on the current record, MSHA has tentatively concluded that such approaches would not be as protective as those being proposed, and that the approach proposed is both economically and technologically feasible. As a result, the Agency has not proposed to adopt these alternatives.

MSHA also explored whether to permit the use of administrative controls (e.g., rotation of personnel) and personal protective equipment (e.g., respirators) to reduce the diesel particulate exposure of miners. It is generally accepted industrial hygiene practice, however, to eliminate or minimize hazards at the source before resorting to personal protective

equipment. Moreover, such a practice is generally not considered acceptable in the case of carcinogens since it merely places more workers at risk.

Other alternatives the Agency considered include: establishing a concentration limit for dpm in this sector; requiring filters on some light-duty equipment; and looking at the filter and the engine as a package that has to meet a particular emission standard, instead of requiring that all engines be equipped with a high-efficiency filter. The Agency also spent a considerable amount of time studying whether it could simply propose a concentration limit for dpm in underground coal mines. Such an approach would provide underground coal mine operators with flexibility to elect any combination of engineering controls they wish as long as the concentration of dpm in the mine remains below a set level. At this point in the rulemaking process, however, the Agency is not confident that there is a measurement method for dpm that will provide accurate, consistent and verifiable results at lower concentration levels in underground coal mines. As discussed in detail in part II of this preamble, the problem arises because coal dust contains organic compounds that might be mistaken for dpm in the methods otherwise validated for use at lower dpm concentrations. The Agency is continuing to explore questions about the measurement of dpm in underground coal mines in consultation with NIOSH, and welcomes comment on this issue. However, at this point in the rulemaking process, the Agency believes that the best approach for the underground coal sector would be one which does not require measurement of ambient dpm levels to ascertain compliance or noncompliance.

MSHA recognizes that a specification standard does not allow for the use of future alternative technologies that might provide the same or enhanced protection at the same or lower cost. MSHA welcomes comment as to whether and how the proposed rule can be modified to enhance its flexibility in this regard.

MSHA did consider two alternative specification standards which would provide somewhat more flexibility for coal mine operators. Alternative 1 would treat the filter and engine as a package that has to meet a particular emission standard. Instead of requiring that all engines be equipped with a high-efficiency filter, this approach would provide some credit for the use of lower-polluting engines. Alternative 2 would also provide credit for mine ventilation beyond that required. The Agency believes, however, that these alternatives may be less protective of miners than the alternative proposed, although it is seeking comment on them. More information on these two alternatives can be found in this part in response to Question 12.

(7) What Will the Impact Be on the Smallest Underground Coal Mines? What Consideration Did MSHA Give to Alternatives for the Smallest Mines?

The Regulatory Flexibility Act requires MSHA and other regulatory agencies to conduct a review of the effects of proposed rules on small entities. That review is summarized here; a copy of the full review is included in part VI of this preamble, and in the Agency's PREA. The Agency encourages the mining community to provide comments on this analysis.

The Small Business Administration generally considers a small mining entity to be one with less than 500 employees. MSHA has traditionally defined a small mine to be one with less than 20 miners, and has focused special attention on the problems experienced by such mines in implementing safety and health rules, e.g., the Small Mine Summit, held in 1996. Accordingly, MSHA has separately analyzed the impact of the proposed rule on mines with 500 employees or less, and those with less than 20 miners.

Table I–5 summarizes MSHA's estimates of the average costs of the proposed rule to a small underground coal entity or small underground coal mine.

TABLE I–5.—AVERAGE COST PER SMALL UNDERGROUND COAL MINE

Size	UG Coal <500	UG Coal <20
Cost per mine	$58,000	$8,000

Pursuant to the Regulatory Flexibility Act, MSHA must determine whether the costs of the proposed rule constitute a ''significant impact on a substantial number of small entities.'' Pursuant to the Regulatory Flexibility Act, if an Agency determines that a proposed rule does not have such an impact, it must publish a ''certification'' to that effect. In such a case, no additional analysis is required (5 U.S.C. 605).

In evaluating whether certification is appropriate, MSHA utilized a ''screening test,'' comparing the costs of the proposal to the revenues of the sector involved (only the revenues for underground coal mines are used in this calculation). For underground coal mines, the costs of the proposed rule appear to be significantly less than one percent of revenues—even for mines with less than 20 miners. As a result, MSHA is certifying that the proposed rule for underground coal mines does not have a ''significant impact on a substantial number of small entities,'' and has performed no further analyses.

In promulgating standards, MSHA does not reduce protection for miners employed at small mines. But MSHA does consider the impact of its standards on even the smallest mines when it evaluates the feasibility of various alternatives. For example, a major reason why MSHA concluded it needed to stagger the effective dates of some of the requirements in the proposed rule is to ensure that it would be feasible for the smallest mines to have adequate time to come into compliance.

Consistent with recent amendments to the Regulatory Flexibility Act under SBREFA (the Small Business Regulatory Enforcement Fairness Act), MSHA has already started considering actions it can take to minimize the anticipated compliance burdens of this proposed rule on smaller mines. For example, no equipment filtration would be required for 18 months, and during that time, the Agency plans to provide extensive compliance assistance to the mining community. MSHA intends to focus its efforts on smaller operators in particular to provide training to them and technical assistance on available controls. The Agency will also issue a compliance guide, and continue its current efforts to disseminate educational materials and software. Comment is invited on whether compliance workshops or other such approaches would be valuable.

(8) Why Would the Proposed Rule Require Special Training for Underground Miners Exposed to Diesel Exhaust? And Why Does the Proposed Rule Not Address Medical Surveillance and Medical Removal Protection for Affected Miners?

Training. Diesel particulate exposure has been linked to a number of serious health hazards, and the Agency's risk assessment indicates that the risks should be reduced as much as feasible. It has been the experience of the mining community that miners must be active and committed partners along with government and industry in successfully reducing these risks. Therefore, training miners as to workplace risks is a key component of mine safety and health programs. This rulemaking continues this approach.

Specifically, pursuant to proposed § 72.510, any underground coal miner ''who can reasonably be expected to be

exposed to diesel emissions'' would have to receive instruction in: (a) the health risks associated with dpm exposure; (b) in the methods used in the mine to control diesel particulate concentrations; (c) in identification of the personnel responsible for maintaining those controls; and (d) in actions miners must take to ensure the controls operate as intended. The training is to be provided annually in all mines using diesel-powered equipment, and is to be provided without charge to the miner.

MSHA does not expect this training to be a significant new burden for mine operators. The training required can be provided at minimal cost and with minimal disruption. The proposal would not require any special qualifications for instructors, nor would it specify the minimum hours of instruction. The purpose of the proposed requirement is miner awareness, and MSHA believes this can be accomplished by operators in a variety of ways. In mines that have regular safety meetings before the shift begins, devoting one of those meetings to the topic of diesel particulate would probably be a very easy way to convey the necessary information. Mines not having such a regular meeting can schedule a ''toolbox'' talk for this purpose. MSHA will be developing an outline of educational material that can be used in these settings. Simply providing miners with a copy of MSHA's toolbox, and reviewing how to use it, can cover several of the training requirements.

Operators may choose to include required dpm training under part 48 training as an additional topic. Part 48 training plans, however, must be approved. There is no existing requirement that part 48 training include a discussion of the hazards and control of diesel emissions. While mine operators are free to cover additional topics during the part 48 training sessions, the topics that must be covered during the required time frame may make it impracticable to cover other matters within the prescribed time limits. Where the time is available in mines using diesel-powered equipment, operators should be free to include the dpm instruction in their proposed part 48 training plans. The Agency does not believe special language in the proposed rule is needed to permit this action under part 48, but welcomes comment in this regard.

The proposal would not require the mine operator to separately certify the completion of the diesel particulate training, but some evidence that the training took place would have to be produced upon request. A serial log with the employee's signature is a perfectly acceptable practice in this regard.

Medical surveillance

Another important source of information that miners and operators can use to protect health can come from medical surveillance programs. Such programs provide for medical evaluations or tests of miners exposed to particularly hazardous substances, at the operator's expense, so that a miner exhibiting symptoms or adverse test results can receive timely medical attention, ensure that personal exposure is reduced as appropriate and controls are reevaluated. Sometimes, to ensure that this source of information is effective, medical removal (transfer) protection must also be required. Medical transfer may address protection of a miner's employment, a miner's pay retention, a miner's compensation, and a miner's right to opt for medical removal.

As a general rule, medical surveillance programs have been considered appropriate when the exposures are to potential carcinogens. MSHA has in fact been considering a generic requirement for medical surveillance as part of its air quality standards rulemaking. And MSHA recently proposed a medical surveillance program for hearing, as part of the Agency's proposed rule on noise exposure. (61 FR 66348).

MSHA is not proposing such a program for dpm at this time because it is still gathering information on this issue. The Agency, however, welcomes comments regarding this issue and also, on medical removal.

Specifically, the Agency would welcome comment on the following questions: (a) what kinds of examinations or tests would be appropriate to detect whether miners are suffering ill effects as a result of dpm exposure; (b) the qualifications of those who would have to perform such examinations or tests and their availability; (c) whether such examinations or tests need to be provided and how frequently once the provisions of the rule are in effect; and (d) whether medical removal protections should be a component of a medical surveillance program.

(9) What Are the Major Issues on Which MSHA Wants Comments?

MSHA wants the benefit of your experience and expertise: whether as a miner or mine operator in any mining sector; a manufacturer of diesel-powered engines, equipment, or emission control devices; or as a scientist, doctor, engineer, or safety and health professional. MSHA intends to review and consider all comments submitted to the Agency.

The following list reflects some topics on which the Agency would particularly like information; requests for information on other topics can be found throughout the preamble.

(a) Assessment of Risk/Benefits of the Rule. Part III of this preamble reviews information that the Agency has been able to obtain to date on the risks of dpm exposure to miners. The Agency welcomes your comments on the significance of the material already in the record, and any information that can supplement the record. For example, additional information on existing and projected exposures to dpm and to other fine particulates in various mining environments would be useful in getting a more complete picture of the situation in various parts of the mining industry. Additional information on the health risks associated with exposure to dpm—especially observations by trained observers or studies of acute or chronic effects of exposure to known levels of dpm or fine particles in general, information about pre-existing health conditions in individual miners or miners as a group that might affect their reactions to exposures to dpm or other fine particles, and information about how dpm affects human health—would help provide a more complete picture of the relationship between current exposures and the risk of health outcomes. Information on the costs to miners, their families and their employers of the various health problems linked to dpm exposure, and the prevalence thereof, would help provide a more complete picture of the benefits to be expected from reducing exposure. And as discussed in response to Question and Answer 5, the Agency would welcome advice about the assumptions and approach to use in quantifying the benefits to be derived from this rule.

(b) Proposed Rule. Part IV of this preamble reviews each provision of the proposed rule, part V discusses the economic and technological feasibility of the proposed rule, and part VI reviews the projected impacts of the proposed rule. The Agency would welcome comments on each of these topics.

The Agency would like your thoughts on the specific alternative approaches discussed in part V. The options discussed include: establishing a concentration limit for dpm in this sector; requiring filters on some light-duty equipment; and looking at the filter

and the engine as a package that has to meet a particular emission standard, instead of requiring that all engines be equipped with a high-efficiency filter.

The Agency would also like your thoughts on more specific changes to the proposed rule that should be considered. The Agency is also interested in obtaining as many examples as possible as to the specific situation in individual mines: the composition of the diesel fleet, what controls cannot be utilized due to special conditions, and any studies of alternative controls using the computer spreadsheet described in the Appendix to part V of this preamble. (See Adequacy of Protection and the Feasibility of the Proposed Rule). Information about the availability and costs of various control technologies that are being developed (e.g., high-efficiency ceramic filters), experience with the use of available controls, and information that will help the Agency evaluate alternative approaches for underground coal mines would be most welcome. And the Agency would appreciate information about any unusual situations that might warrant the application of special provisions.

(c) Compliance Guidance. The Agency welcomes comments on any topics on which initial guidance ought to be provided as well as any alternative practices which MSHA should accept for compliance before various provisions of the rule go into effect.

(d) Minimizing Adverse Impact of the Proposed Rule. The Agency has set forth its assumptions about impacts (e.g., costs, paperwork, and impact on smaller mines in particular) in some detail in this preamble and in the PREA, and would welcome comments on the methodology. Information on current operator equipment replacement planning cycles, tax, State requirements, or other information that might be relevant to purchasing new engines or control technology would likewise be helpful.

(10) *When Will the Rule Become Effective? Will MSHA Provide Adequate Guidance Before Implementing the Rule?*

Some requirements of the proposed rule would go into effect 60 days after the date of promulgation: specifically, the requirement to provide basic hazard training to miners who are exposed underground to dpm.

The next set of requirements would go into effect 18 months after the date the rule is promulgated. Underground coal mines would have to properly filter permissible diesel-powered equipment.

A year later (30 months after the date of promulgation), underground coal mines would have to properly filter heavy-duty nonpermissible equipment.

MSHA intends to provide considerable technical assistance and guidance to the mining community before the various requirements go into effect, and be sure MSHA personnel are fully trained in the requirements of the rule. A number of actions have already been taken toward this end. The Agency held workshops on this topic in 1995 which provided the mining community an opportunity to share advice on how to control dpm concentrations. The Agency has published a ''toolbox'' of methods available to mining operators to achieve reductions in dpm concentration (a copy is attached as an Appendix at the end of this document). The ''toolbox'' provides information on filter technology as well as on other actions mine operators can take to address dpm concentrations in their mines.

The Agency is committed to issuing a compliance guide for mine operators providing additional advice on implementing the rule. MSHA would welcome suggestions on matters that should be discussed in such a guide. MSHA would also welcome comments on other actions it could take to facilitate implementation, and in particular whether a series of additional workshops would be useful.

(B) Additional Information About the Proposed Rule for Underground Coal Mines

(11) *More Specifically, What Changes Does the Proposal Make to the Current Rules on the Use of Diesel-Powered Equipment in Underground Coal Mines?*

The proposal builds on the changes to part 75 recently adopted in MSHA's final rule ''Approval, Exhaust Gas Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines.'' (61 FR 55412). As a result of these changes, grounded in safety considerations, underground coal mines must already comply with certain rules that have the added benefit of reducing harmful dpm emissions from diesel-powered equipment. These include a requirement that only low-sulfur diesel fuel be used underground, restrictions on the idling of diesel-powered equipment, ensuring that maintenance of diesel-powered equipment is performed only by qualified personnel, weekly tailpipe tests to ensure the engines are operating in approved condition, and the requirement that the entire diesel fleet have approved engines before the year 2000.

The proposed rule would require that all permissible and heavy-duty nonpermissible diesel-powered equipment be equipped with a filtration system that is capable of removing, on average, at least 95% by mass of the particulate emissions coming out of that equipment. These filtration systems must be properly maintained in accordance with manufacturer specifications (e.g., changing paper filters at the proper interval). The permissible equipment must be so equipped within 18 months after the rule becomes final, and the heavy-duty nonpermissible equipment a year later. The mine's ventilation and dust control plan must contain a list of the diesel-powered equipment used in the mine and the filtration system installed on each. And finally, to ensure they can better contribute to dpm reduction efforts, underground coal miners who can reasonably be expected to be exposed to diesel emissions must be annually trained about the hazards associated with that exposure and in the controls being used by the operator to reduce dpm concentrations.

The proposed rule would not require the filtration of light-duty outby diesel equipment. It would not establish a concentration limit for dpm in underground coal mines. And it would not require monitoring of dpm concentrations by either operators or MSHA in this sector. Enforcement of the proposed requirements would be through observation by MSHA inspectors who are at the mine on a regular basis.

MSHA's decision to propose this approach for underground coal mines was driven by two interrelated considerations.

First, the Agency is not confident that there is a measurement method for dpm that will provide accurate, consistent and verifiable results at lower concentration levels in underground coal mines. The available measurement methods for determining dpm concentrations in underground coal mines were carefully evaluated by the Agency, including field testing, before the Agency reached this conclusion. The problems are discussed in detail in part II of this preamble. Basically, coal dust contains compounds that could be mistaken for dpm in the methods that do not exclude organic materials. A size selective impactor minimizes this problem by screening out most of the coal dust before it can reach the filter medium, but doesn't eliminate it. Measuring only the elemental carbon in a sample does provide a way to distinguish dpm from coal dust, but there remain questions about whether a

measured amount of elemental carbon can be equated to a prescribed amount of whole diesel particulate under the variable engine conditions found in actual mining environments. The Agency is continuing to explore questions about the measurement of dpm in underground coal mines in consultation with NIOSH, and welcomes comment on this issue. If at some future time it can be established that a particular measurable component of dpm is responsible for the adverse health effects observed (e.g., the elemental carbon cores), the Agency would evaluate the question of measurement in that light.

Second, filtration systems for the diesel equipment used in this sector are readily available, and if properly maintained can provide generally consistent, highly effective elimination of dpm from underground mine atmospheres.

MSHA's analysis of dpm emissions in underground coal mines indicates that it is currently the permissible equipment used for face haulage that contributes most to high dpm levels, but heavy-duty outby equipment can also generate significant dpm emissions. On the permissible equipment, paper type filtration systems can be installed directly on the tailpipes; accordingly, the rule would require these filters to be installed within 18 months. In the case of outby equipment, scrubbers and cooling system upgrades will need to be added to cool the exhaust before the paper type filters can be installed, or a dry technology system would need to be utilized. The Agency is seeking information as to whether ceramic filters might achieve the required efficiency once a market develops; but at this time, the proposal would provide an additional year for the nonpermissible equipment to be converted and fitted with high efficiency filtration systems.

The proposed rule specifies a laboratory method that equipment manufacturers can use to determine whether a particular filtration system meets the requirement that the system be at least 95% effective in removing dpm.

(12) *Why not Consider a more Flexible Approach Under Which the Filter, the Engine, and the Available Ventilation is Viewed as a Single System that has to Meet a Defined Emission Limit?*

MSHA has considered some approaches along this line. The Agency welcomes comment on such ideas so it can better evaluate whether they provide more protection to underground coal miners.

Alternative 1 would in essence provide some credit in filter selection to those operators who use less polluting engines. Under this approach, the engine and aftertreatment filter would be bench tested as a unit; and if the emissions from the unit are below a certain level per defined volume of air (e.g., 120_{DPM} μg/m^3), the package would be acceptable without regard to the efficiency of just the filter component. Alternative 2 would also provide credit in filter selection for extra ventilation used in an underground coal mine. If the bench test of the combined engine and filter package was conducted at the name plate ventilation, a mine's use of more than that level of ventilation would be factored into the calculation of what package would be acceptable.

One practical effect of these alternatives would be to permit some operators to save the costs of installing heat exchangers or other exhaust-cooling devices on nonpermissible heavy-duty equipment. Such devices are necessary in order for this equipment to be fitted with paper filters—and as noted in response to the previous question, at the moment these are the only filters on the market capable of providing 95% and more filtration capability.

The appropriateness of Alternative 1 is not clear. With the proper equipment to cool the exhaust, a 95% paper filter can be installed on any piece of heavy-duty equipment in coal mines—and of course directly on any permissible piece of equipment. And, as indicated herein, the Agency is tentatively concluding that such an approach is economically feasible as well. Installing a 95% efficient filter on an engine lowers the dpm concentration in the mine more than would installing a less efficient filter. Hence for engines whose emissions can, with a 95% filter, be reduced below 120_{DPM} μg/m^3 or whatever other dpm limit is set under such an approach, the alternative approach may result in less miner protection.

Moreover, it is not clear to MSHA that 95% filtration of the engines used on the majority of permissible machines in underground coal mines can meet an emissions limit of 120_{DPM} μg/m^3 using MSHA's name plate ventilation. These engines are of older design and produce higher concentrations of diesel particulate. Thus adopting a rule with such an emissions limit would in effect require these engines to be replaced with cleaner engines. Of course, it follows that such a rule would be more costly than the one proposed, because it would require the 95% filters plus the replacement of these engines.

The second alternative appears to be less protective in all cases. To provide mines who need extra ventilation for other reasons (e.g., to keep methane in check) with a credit for this fact in determining the required filter efficiency would not reduce dpm concentrations as much as simply requiring a 95% filter.

The Agency welcomes comments on these approaches and information that will help it assess them in light of the requirements of the Mine Act.

II. Background Information

This part provides the context for this rulemaking. The nine topics covered are:

(1) The role of diesel-powered equipment in mining;

(2) Diesel exhaust and diesel particulate;

(3) Methods available to measure DPM;

(4) Reducing soot at the source—engine standards;

(5) Limiting the public's exposure to soot — ambient air quality standards;

(6) Controlling diesel particulate emissions in mining—a toolbox;

(7) Existing mining standards that limit miner exposure to occupational diesel particulate emissions;

(8) How other jurisdictions are restricting occupational exposure to diesel soot; and

(9) MSHA's initiative to limit miner exposure to diesel particulates—the history of this rulemaking and related actions.

In addition, an Appendix at the end of this document reprints a recent MSHA publication, ''Practical Ways to Reduce Exposure to Diesel Exhaust in Mining—A Toolbox'', which contains considerable information of interest in this rulemaking.

These topics will be of interest to the entire mining community, even though this rulemaking is specifically confined to the underground coal sector.

(1) *The Role of Diesel-Powered Equipment in Mining.* Diesel engines now power a full range of mining equipment on the surface and underground, in both coal and in metal/nonmetal mining. Many in the mining industry believe that diesel-powered equipment has a number of productivity and safety advantages over electrically-powered equipment. Nevertheless, concern about miner safety and health has slowed the spread of this technology, and in certain states resulted in a complete ban on its use in underground coal mines. As the industry has moved to realize the advantages this equipment may provide, the Agency has endeavored to address

the miner safety and health issues presented.

Historical Patterns of Use

The diesel engine was developed in 1892 by the German engineer Rudolph Diesel. It was originally intended to burn coal dust with high thermodynamic efficiency. Later, the diesel engine was modified to burn middle distillate petroleum (diesel fuel). In diesel engines, liquid fuel droplets are injected into a prechamber or directly into the cylinder of the engine. Due to compression of air in the cylinder the temperature rises high enough in the cylinder to ignite the fuel.

The first diesel engines were not suited for many tasks because they were too large and heavy (weighing 450 lbs. per horsepower). It was not until the 1920's that the diesel engine became an efficient lightweight power unit. Since diesel engines were built ruggedly and had few operational failures, they were used in the military, railway, farm, construction, trucking, and busing industries. The U.S. mining industry was slow, however, to begin using these engines. Thus, when in 1935 the former U.S. Bureau of Mines published a comprehensive overview on metal mine ventilation (McElroy, 1935), it did not even mention ventilation requirements for diesel-powered equipment. By contrast, the European mining community began using these engines in significant numbers, and various reports on the subject were published during the 1930's. According to a 1936 summary of these reports (Rice, 1936), the diesel engine had been introduced into German mines by 1927. By 1936, diesel engines were used extensively in coal mines in Germany, France, Belgium and Great Britain. Diesel engines were also used in potash, iron and other mines in Europe. Their primary use was in locomotives for hauling material.

It was not until 1939 that the first diesel engine was used in the United States mining industry, when a diesel haulage truck was used in a limestone mine in Pennsylvania, and not until 1946 was a diesel engine used in coal mines. Today, however, diesel engines are used to power a wide variety of equipment in all sectors of U.S. mining, such as: air compressor; ambulance; crane truck; ditch digger; foam machine; forklift; generator; grader; haul truck; load-haul-dump machine; longwall retriever; locomotive; lube unit; mine sealant machine; personnel car; hydraulic pump machine; rock dusting machine; roof/floor drill; shuttle car; tractor; utility truck; water spray unit and welder.

Estimates of Current Use

Estimates of the current inventory of diesel engines in the mining industry are displayed in Table II–1. Not all of these engines are in actual use. Some may be retained rather than junked, and others are spares. MSHA has been careful to take this into account in developing cost estimates for this proposed rule; its assumptions in this regard are detailed in the Agency's PREA.

TABLE II–1.—DIESEL EQUIPMENT IN THREE MINING SECTORS

Mine type	No. Mines [2]	No. Mines w/Diesel	No. Engines
Underground Coal	971	[3] 173	[4] 2,950
[1] Small	426	15	50
Large	545	158	2,900
Underground M/NM	261	[5] 203	[6] 4,100
[1] Small	130	82	625
Large	131	121	3,475
Surface Coal	1,673	[7] 1,673	[8] 22,000
[1] Small	1,175	1,175	7,000
Large	498	498	15,000
Surface M/NM	10,474	[9] 10,474	[10] 97,000

Notes on Table II–1:

[1] A mine with less than 20 miners. MSHA traditionally regards mines with less than 20 miners as ''small'' mines, and those with 20 or more miners as ''large'' mines based on differences in operation. However, in examining the impact of the proposed regulations on the mining community, MSHA, consistent with the Small Business Administration definition for small mines, which refers to employers with 500 employees or less, has analyzed impact for this size. This is discussed in the Agency's preliminary regulatory economic analysis for this proposed rule.

[2] Preliminary 1996 MSHA data.

[3] Data from MSHA approval and certification center, Oct.95.

[4] Actual inventory, rounded to nearest 50.

[5] Estimates are based on a January 1998 count, by MSHA inspectors, of underground mines that use diesel powered equipment.

[6] The estimates are based on a January 1998 count, by MSHA inspectors, of diesel powered equipment normally in use.

[7] Based on assumption that all surface coal mines had some diesel powered equipment.

[8] Based on MSHA survey of 25% of surface coal mines.

[9] MSHA assumes all surface M/NM mines use some diesel engines.

[10] Derived by applying ratios (engines per mine) from MSHA survey of surface coal mines to M/NM mines.

As noted in Table II–1, nearly all underground metal and nonmetal mines, and all surface mines, use diesel-powered equipment. This is not true in underground coal mines—in no small measure because, as discussed later in this part, several key underground coal states have for many years banned the use of diesel-powered equipment in such mines.

Neither the diesel engines nor the diesel-powered equipment are identical from sector to sector. This relates to the equipment needs in each sector. This is important information because the type of engine, and the type of equipment in which it is installed, can have important consequences for particulate production and control.

As the horsepower size of the engine increases, the mass of dpm emissions produced per hour increases. (A smaller engine may produce the same or higher levels of particulate emissions per volume of exhaust as a large engine, due to the airflow, but the mass of particulate matter increases with the engine size.) Accordingly, as engine size increases, control of emissions may require additional efforts.

Diesel engines in underground metal and nonmetal mines, and in surface coal mines, range up to 750 HP or greater; by contrast, in underground coal mines, the average engine size is less than 150 HP. The reason for this disparity is the nature of the equipment powered by diesel engines. In underground metal and nonmetal mines, and surface mines, diesel engines are widely used in all types of equipment—both the equipment used under the heavy stresses of production and the equipment used for support. By contrast, the great majority of the diesel usage in underground coal mines is in support equipment. For example, in underground metal and nonmetal mines, of the approximate 4,100 pieces of diesel equipment normally in use, about 1,800 units are for loading and hauling. By contrast, of the approximate 3,000 pieces of diesel equipment in underground coal, MSHA estimates that less than 50 pieces are for coal haulage. The largest diesel engines are used in surface operations; in underground metal and nonmetal mines, the size of the engine can be limited by the size of the shaft opening.

The type of equipment in the sectors also varies in another way that can affect particulate control directly, as well as constrain engine size. In underground coal, equipment that is used in face (production) areas of the coal mine must be MSHA-approved part 36 permissible equipment. These locations are the areas where methane gas is likely to accumulate in higher concentrations. This includes the in-by section starting at the tailpiece (coal dump point) and all returns. Part 36 permissible equipment for coal requires the use of flame arresters on the intake and exhaust systems and surface temperature control to below 302°F. As

discussed in more detail elsewhere in this notice, the cooler exhaust from these permissible pieces of equipment permits the direct installation of particulate filtration devices such as paper type filters that cannot be used directly on engines with hot exhaust. In addition, the permissibility requirements have had the effect of limiting engine size. This is because prior to MSHA's issuance of a diesel equipment rule in 1996, surface temperature control was done by water jacketing. This limited the horsepower range of the permissible engines because manufacturers have not expended resources to develop systems that could meet the 302°F surface temperature limitation using a water jacketed turbocharger.

In the future, larger engines may be used on permissible equipment, because the new diesel rule allows the use of new technologies in lieu of water jacketing. This new technology, plus the introduction of air-charged aftercoolers on diesel engines, may lead to the application of larger size diesel engines for underground coal production units. Moreover, if manufacturers choose to develop this type of technology for underground coal production units, the number of diesel production machines may increase.

There are also a few underground metal and nonmetal mines that are gassy, and these require the use of part 36 permissible equipment. Permissible equipment in metal and nonmetal mines must be able to control surface temperatures to 400° F. MSHA estimates that there are currently less than 15 metal and nonmetal mines classified as gassy and which, therefore, must use part 36 permissible equipment if diesels are utilized in areas where permissible equipment is required. These gassy metal and nonmetal mines have been using the same permissible engines and power packages as those approved for underground coal mines. (MSHA has not certified a diesel engine exclusively for a part 36 permissible machine for the metal and nonmetal sector since 1985 and has certified only one permissible power package; however, that engine model has been retired and is no longer available as a new purchase to the industry). As a result, these mines are in a similar situation as underground coal mines: engine size (and thus dpm production of each engine) is more limited, and the exhaust is cool enough to add the paper type of filtration device directly to the equipment.

In nongassy underground metal and nonmetal mines, and in all surface mines, mine operators can use conventional construction equipment in their production sections without the need for modifications to the machines. Two examples are haulage vehicles and dump trucks. Some construction vehicles may be redesigned and articulated for sharper turns in underground mines; however, the engines are still the industrial type construction engines. As a result, these mines can and do use engines with larger horsepower. At the same time, since the exhaust is not cooled, paper-type filters cannot be added directly to this equipment without first adding a water scrubber, heat exchanger or other cooling device. The same is true for the equipment used in outby areas of coal mines, where the methane levels do not require the use of permissible equipment.

Future Demand and Emissions

MSHA expects there will be more diesel-powered equipment added to the Nation's mines. While other types of power sources for mining equipment are available, many in the mining industry believe that diesel power provides both safety and economic advantages over alternative power sources available today. Not many studies have been done recently on these contentions, and the studies which have been reviewed by MSHA do not clearly support this hypothesis; but as long as this view remains prevalent, continued growth is likely.

There are additional factors that could increase growth. As noted above, permissible equipment can now be designed in such a way to permit the use of larger engines, and in turn more use of diesel-powered production equipment in underground coal and other gassy mines. Moreover, state laws banning the use of diesel engines in the underground coal sector are under attack. As noted in section 8 of this part, until recently, three major underground coal states, Pennsylvania, West Virginia, and Ohio, have prohibited the use of diesel engines in underground coal mines. In late 1996, Pennsylvania passed legislation (PA Senate Bill No. 1643) permitting such use under conditions defined in the statute. West Virginia passed legislation lifting its ban as of May, 1997 (WV House Bill 2890), subject to regulations to be developed by a joint labor-industry commission. This makes the need to address safety and health concerns about the use of such engines very pressing.

In the long term, the mining industry's diesel fleet will become cleaner, even if the size of the fleet expands. This is because the old engines will eventually be replaced by new engines that will emit fewer particulates than they do at present. As discussed in section 4 of this part, EPA regulations limiting the emissions of particulates and various gasses from new diesel engines are already being implemented for some of the smaller engines used in mining. Under a defined schedule, these new standards will soon apply to other new engines, including the larger engines used in mining. Moreover, over time, the emission standards which new engines will have to pass will become more and more stringent. Under international accords, imported engines are also likely to be cleaner: European countries have already established more stringent emission requirements (Needham, 1993; Sauerteig, 1995).

But MSHA believes that turnover of the mining fleet to these new, cleaner engines will take a very long time because the mining industry tends to purchase for mining use older equipment that is being discarded by other industries. In the meantime, the particulate burden on miners as a group is expected to remain at current levels or even grow.

(2) *Diesel Exhaust and Diesel Particulate.* The emissions from diesel engines are actually a complex mixture of compounds, containing gaseous and particulate fractions. The specific composition of the diesel exhaust in a mine will vary with the type of engines being used and how they are used. Factors such as type of fuel, load cycle, engine maintenance, tuning, and exhaust treatment will affect the composition of both the gaseous and particulate fractions of the exhaust. This complexity is compounded by the multitude of environmental settings in which diesel-powered equipment is operated. Elevation, for example, is a factor. Nevertheless, there are a few basic facts about diesel emissions that are of general applicability.

The gaseous constituents of diesel exhaust include oxides of carbon, nitrogen and sulfur, alkanes and alkenes (e.g., butadiene), aldehydes (e.g., formaldehyde), monocyclic aromatics (e.g., benzene, toluene), and polycyclic aromatic hydrocarbons (e.g., phenanthrene, fluoranthene). The oxides of nitrogen (NO_X) are worth particular mention because in the atmosphere they can precipitate into particulate matter. Thus, controlling the emissions of NO_X is one way that engine manufacturers can control particulate production indirectly. (See section 4 of this part).

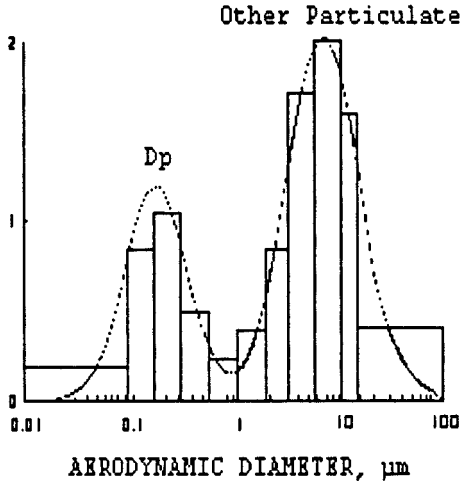
The particulate fraction of diesel exhaust—what is known as soot—is made up of very small individual particles. Each particle consists of an insoluble, elemental carbon core and an

adsorbed, surface coating of relatively soluble organic carbon (hydrocarbon) compounds. There can be up to 1,800 different organic compounds adsorbed onto the elemental carbon core. A portion of this hydrocarbon material is the result of incomplete combustion of fuel; however, the majority is derived from the engine lube oil. In addition, the diesel particles contain a fraction of non-organic adsorbed materials.

Diesel particles released to the atmosphere can be in the form of individual particles or chain aggregates (Vuk, Jones, and Johnson, 1976). In underground coal mines, more than 90% of these particles and chain aggregates are submicrometer in size—i.e., less than 1 micrometer (1 micron) in diameter. In underground metal and nonmetal mines, a greater portion of the aggregates may be larger than 1 micron in size because of the equipment used. Dust generated by mining and crushing of material—e.g., silica dust, coal dust, rock dust—is generally not submicrometer in size.

Figure II–1 shows a typical size distribution of the particles found in the environment of a mine that uses equipment powered by diesel engines (Cantrell and Rubow, 1992). The vertical axis represents relative concentration, and the horizontal axis the particle diameter. As can be seen, the distribution is bimodal, with dpm generally being well less than 1 m in size and dust generated by the mining process being well greater than 1 m. Because of their small size, even when diesel particles are present in large quantities, the environment might not be perceived as ''dusty''. Rather, the perception might be primarily of a vaporous, dirty and smelly ''soot'' or ''smoke''.

Figure II-1 -Typical distribution of dpm relative to distribution of other mining particulates.



The particulate nature of diesel soot has special significance for the mining community, which has a history of significant health and safety problems associated with dusts in the mining atmosphere. As a result of this long experience, the mining community is familiar with the standard techniques to control particulate concentrations. It knows how to use ventilation systems, for example, to reduce dust levels in underground mines. It knows how to water down particulates capable of being impacted by that approach, and to divert particulates away from where miners are actively working. Moreover, the mining community has long experience in the sampling and measurement of particulates—and in all the problems associated therewith. Miners and mine operators are very familiar with sampling devices that are worn by miners during normal work activities or placed in specific locations to collect dust. They understand the significance of sample integrity, the validity of laboratory analysis, and the concept of statistical error in individual samples. They know that weather and mine conditions can affect particulate production, as can changes in mine operations in an area of the mine. MSHA and the former Bureau of Mines have conducted considerable research into these topics. While the mining community has often argued over these points, and continues to do so, the sophistication of the arguments reflects the thorough familiarity of the mining community with particulate sampling and analysis techniques.

(3) *Methods Available to Measure DPM.* There are a number of methods which can measure dpm concentrations with reasonable accuracy when it is at high concentrations and when the purpose is exposure assessment. Measurements for the purpose of compliance determinations must be more accurate, especially if they are to measure compliance with a dpm concentration as low as 200 µg/m^3 or lower. It is with these considerations in mind that MSHA has carefully analyzed

the available methods for measuring dpm.

Comments. In its advanced notice of proposed rulemaking (ANPRM) in 1992, MSHA sought information on whether there are methodologies available for assessing occupational exposures to diesel particulate.

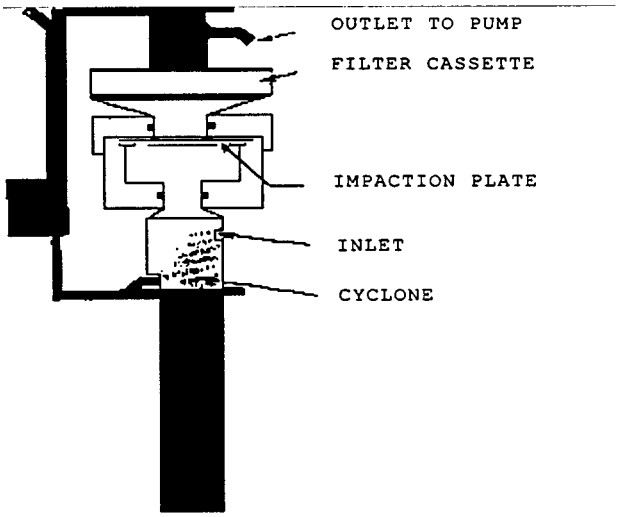
Some commenters argued that at that time there was no validated sampling method for diesel exhaust and there had been no valid analytical method developed to determine the concentration of diesel exhaust. According to the American Mining Congress, (AMC 1992), sampling methods commonly in use were prototypic in nature, were primarily being utilized by government agencies and were subject to interference. Commenters also stated that sampling instrumentation was not commercially available and that the analytical procedures could only be conducted in a limited number of laboratories. Several industry commenters submitted results of studies to support their position on problems with measuring diesel particulate in underground mines. A problem with sampler performance was noted in a study using prototype dichotomous sampling devices. Another commenter indicated that the prototype sampler developed by the former Bureau of Mines (discussed later in this section) for collecting the submicrometer respirable dust was difficult to assemble but easy to use, and that no problems were encountered. Problems associated with gravimetric analysis were also noted in assessing a short term exposure limit (STEL). Another commenter (Morton, 1992) indicated the cost of the sampling was prohibitive.

Another issue addressed by commenters to the 1992 ANPRM was ''Are existing sampling and exposure monitoring methods sufficiently sensitive, accurate and reliable?'' If not, what methods would be more suitable? Some commenters indicated their views that sampling methods had not been validated at that time for compliance sampling. They asserted that, depending on the level of measurement, both the size selective and elemental carbon techniques have some utility. The measurement devices give a precise measurement; however, because of interferants, corrections may need to be made to obtain an accurate measurement. Commenters also expressed the view that all of the sampling devices are sophisticated and require some expertise to assemble and analyze the results, and that MSHA should rely on outside agencies to evaluate and validate the sampling methods. An on-board sampler being developed by Michigan Technological University was the only other emission measurement technology discussed in the comments. However, this device is still in the development stage. Another commenter indicated that the standard should be based on the hazard and that the standard would force the development of measurement technology.

Submicrometer Sampling

The former Bureau of Mines (BOM) submitted information on the development of a prototype dichotomous impactor sampling device that separates and collects the submicrometer respirable particulate from the respirable dust sampled (See Figure II–2).

Figure II- 2
Personal Sampler For Submicrometer Particulate Sampling



The sampling device was designed to help measure dpm in coal mine environments, where, as noted in the last section of this part, nearly all the dpm is submicrometer (less than 1 micron) in size. In its submission to MSHA, the former BOM noted it had redesigned a prototype and had verified the sampler's performance through laboratory and field tests.

As used by the former BOM in its research, the submicrometer respirable particulate was collected on a pre-weighed filter. Post-weighing of the filter provides a measure of the submicrometer respirable particulate. The relative insensitivity of the gravimetric method only allows for a lower limit of detection of approximately 200 $\mu g/m^3$. Because submicrometer respirable particulate can contain particulate material other than diesel particulate, measurements can be subject to interference from other submicrometer particulate material.

NIOSH Method 5040

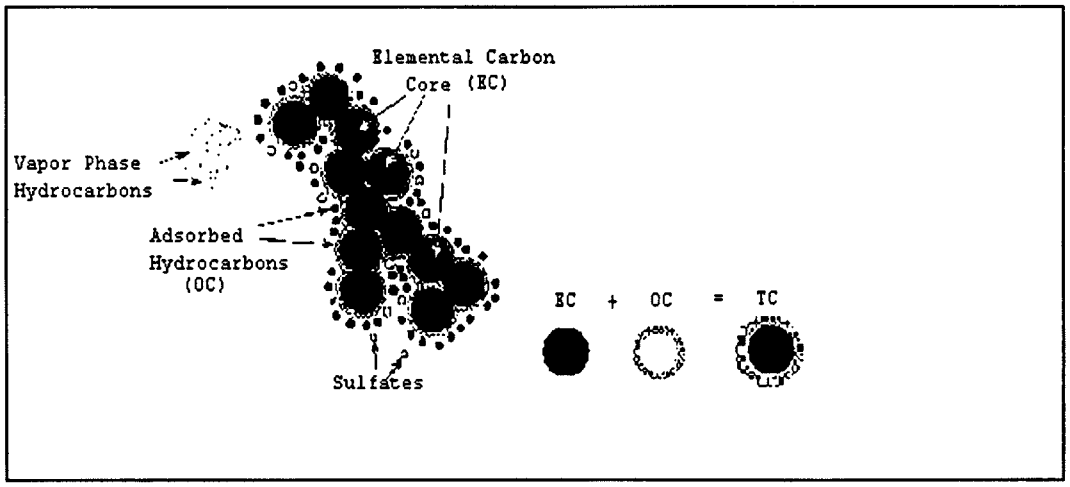
In response to the ANPRM, NIOSH submitted information relative to the development of a sampling and analytical method to assess the diesel particulate concentration in an environment by measuring the amount of total carbon.

As discussed earlier in this part, diesel particulate consists of a core of elemental carbon (EC), adsorbed organic carbon (OC) compounds, sulfates, vapor phase hydrocarbons and traces of other compounds. The method developed by NIOSH provides for the collection of a sample on a quartz fiber filter. The filter is mounted in an open face filter holder that allows for the sample to be uniformly deposited on the filter surface. After sampling, a section of the filter is analyzed using a thermal-optical technique (Birch and Cary, 1996). This technique allows the EC and OC species to be separately identified and quantified. Adding the EC and OC species together provides a measure of the total carbon concentration in the environment. This is indicated diagrammatically in Figure II–3.

Studies have shown that the sum of the carbon (C) components (EC + OC) associated with dpm accounts for 80–85% of the total dpm concentration when low sulfur fuel is used (Birch and Cary, 1996). Since the TC:DPM relationship is consistent, it provides a method for determining the amount of dpm.

The method can detect as little as 1 $\mu g/m^3$ of TC.

Figure II-3
DPM components



Moreover, NIOSH has investigated the method and found it to meet NIOSH's accuracy criterion (NIOSH, 1995); i.e., that measurements come within 25 percent of the true TC concentration at least 95 percent of the time.

NIOSH Method 5040 is directly applicable for the determination of diesel particulate levels in underground metal and nonmetal mines. The only potential sources of carbon in such mines would be organic carbon from oil mist and cigarette smoke. Oil mist may occur when diesel equipment malfunctions or is in need of maintenance. MSHA, currently, has no data as to the frequency of occurrence or the magnitude of the potential interference from oil mist. However, during studies conducted by MSHA to evaluate different methods used to measure diesel particulate concentrations in underground mines, MSHA has not encountered situations where oil mist was found to be an interferant. Moreover, the Agency assumes that full operator implementation of maintenance standards to minimize dpm emissions (which are part of MSHA's proposed rule) will minimize any remaining potential for such interference. MSHA welcomes comments or data relative to oil mist interference. Cigarette smoke is under the control of operators, during sampling times in particular, and hence should not be a consideration.

While samples in underground metal and nonmetal mines could be taken with a submicrometer impactor, this could lead to underestimating the total amount of dpm present. This is because the fraction of dpm particles greater than 1 micron in size in the environment of noncoal mines can be as great as 20% (Vuk, Jones, and Johnson, 1976).

When sampling diesel particulate in coal mines, the NIOSH method recommends that a specialized impactor with a submicrometer cut point, such as the one developed by the former BOM, be used. Use of the submicron impactor minimizes the collection of coal particles, which have an organic carbon content. However, if 10% of coal particles are submicron, this means that up to 200 micrograms of submicrometer coal dust could be collected in face areas under current coal dust standards. Accordingly, for samples collected in underground coal mines, an adjustment may have to be made for interference from submicrometer coal dust; however, outby areas where little coal mine dust is present may not need such an adjustment.

NIOSH further recommends that in using its method in coal mines, the sample only be analyzed for the EC component. Measuring only the EC component ensures that only diesel particulate material is being measured in such cases. However, there are no established relationships between the concentration of EC and total dpm under various operating conditions. (The organic carbon component of dpm can vary with engine type and duty cycle; hence, the amount of whole dpm present for a measured amount of EC may vary). The Agency welcomes data and suggestions that would help it ascertain if and how measurements of

submicrometer elemental carbon could realistically be used to measure dpm concentrations in underground coal mines.

Although NIOSH Method 5040 requires no specialized equipment for collecting a dpm sample, the sample would most probably require analysis by a commercial laboratory. MSHA recognizes that the number of laboratories currently capable of analyzing samples using the thermal-optical method is limited. However, there are numerous laboratories available that have the ability to perform a TC analysis without identifying the different species of carbon in the sample. Total carbon determinations using these laboratories would provide the mine with good information relative to the levels of dpm to which miners are potentially exposed. MSHA believes that once there is a need (e.g., as a result of the requirements of the proposed rule), more commercial laboratories will develop the capability to analyze dpm samples using the thermo-optical analytical method. Currently, the cost to analyze a submicrometer particulate sample for its TC content ranges from $30 to $50. This cost is consistent with costs associated with similar analysis of minerals such as quartz.

RCD Method

Another method, referred to as the Respirable Combustible Dust Method (RCD), has been developed in Canada for measuring dpm concentrations in noncoal mines. Respirable dust is collected with a respirable dust sampler consisting of a 10 millimeter nylon cyclone and a filter capsule containing a preweighed, preconditioned silver membrane filter. Samples are collected at a flow rate of 1.7 liter per minute. The respirable sample collected includes both combustible and noncombustible particulate matter.

Samples collected in accordance with the RCD method require analysis by a commercial laboratory. Total respirable dust is determined gravimetrically by weighing the filter after the sample is collected. After the sample has been subjected to a controlled combustion process at 400°C for two hours, the remainder of the sample is weighed, and the amount of the particulate burned off determined by subtraction. This is the RCD. The combustible particulate matter consists of the soluble organic fraction, the EC core of the dpm, and any other combustible material collected. Thus, only a portion of the RCD is attributable to dpm. Oil mist and other combustible matter collected on the filter are interferants that can affect the accuracy of dpm concentration determination using this method. Because the mass of RCD is determined by weighing, the relative insensitivity of this method is similar to that obtained with the size selective gravimetric method (approximately 200 $\mu g/m^3$).

One commenter (Inco Limited) indicated experience with this method for identifying diesel particulate in their mining operations and suggested that this technique may be appropriate for determining eight hour exposures. Although this method was commonly used by the commenter for assessing dpm levels, concerns for the efficiency of the cyclones used to sample the respirable fraction of the particulate along with interference from oil mist were expressed.

Canada is now experimenting with the use of a submicron impactor with the RCD method.

Sampler Availability

The components for conducting sampling according to the submicrometer and the RCD methods are commercially available, as are those for NIOSH Method 5040, without a submicrometer particulate separator (impactor).

A reusable impactor can be manufactured by machine shops following the design specifications developed by the former U.S. Bureau of Mines (BOM IC 9324, 1992). The use of the size-selective samplers requires some training and laboratory time to prepare the impaction plate and assemble the unit. The cost to manufacture the size-selective units is approximately $35.

In addition, MSHA has requested NIOSH to develop and provide a commercially available disposable submicrometer particulate separator that would be used with existing personal respirable dust sampling equipment. The commercially available separator will be manufactured according to design criteria specified by NIOSH. It is anticipated that other sampling instrument manufacturers will develop commercial units once there is an established need for such a sampling device.

Use of Alternative Surrogates to Assess DPM Concentrations

A number of commenters on the ANPRM indicated that a number of surrogates were available to monitor diesel particulate. Of the surrogates suggested, the most desirable to use would be carbon dioxide because of its ease of measurement. In 1992 the former Bureau of Mines (BOM IC 9324, 1992) reported on research being conducted to investigate the use of CO_2 as a surrogate to assess mine air quality where diesel equipment is utilized. However, because the relationship between CO_2 and other exhaust components depends on the number, type and duty cycle of the engines in operation, no acceptable measurement method based on the use of CO_2 has been developed.

(4) *Reducing Soot at the Source—Engine Standards.* One way to limit diesel particulate emissions is to redesign diesel engines so they produce fewer pollutants. Engine manufacturers around the world are being pressed to do this pursuant to environmental regulations. These cleaner engine requirements are sometimes referred to as tailpipe standards because compliance is measured by checking for pollutants as the exhaust emerges from the engine's tailpipe—before any aftertreatment devices. This section reviews developments in this area, and explains the relationship between the environmental standards on new engines and MSHA engine ''approval'' requirements.

The Clean Air Act and Mobile Sources

The Clean Air Act authorized the Federal Environmental Protection Agency (EPA) to establish nationwide standards for new mobile vehicles, including those powered by diesel engines. These standards are designed, over time, to reduce the volume of certain harmful atmospheric pollutants emanating from mobile sources: particulate matter, nitrogen oxides (which as previously noted, can result in the generation of particulates in the atmosphere), hydrocarbons and carbon monoxide.

California has its own standards. New engines destined for use in California must meet standards under the law of that State. The standards are issued and administered by the California Air Resources Board (CARB). In recent years, EPA and CARB have worked together with industry in establishing their respective standards, so most of them are identical.

Regulatory responsibility for implementation of the Clean Air Act is vested in the Office of Mobile Sources (OMS), part of the Office of Air and Radiation of the EPA. Some of the discussion which follows was derived from materials which can be accessed from the OMS home page on the World Wide Web at (http://www.epa.gov/docs/omswww/omshome.htm). Information about the CARB standards may be found at the home page of that agency at (http://www.arbis.arb.ca.gov/homepage.htm).

Engines are generally divided into three broad categories for purposes of

environmental emissions standards, in accordance with the primary use for which the type of engine is designed: (1) cars and light duty trucks (i.e., to power passenger transport); (2) heavy duty trucks (i.e., to power over-the-road hauling); and (3) nonroad vehicles (i.e., to power small equipment, construction equipment, locomotives and other non-highway uses). Engines used in mining equipment are not regulated as a separate category in this regard, but engines in all three categories are engaged in mining work, from generator sets to pickup trucks to huge earth movers and haulers.

New vs. Used

The environmental tailpipe requirements are applicable only to new engines. In the mining industry, used engines are often purchased; and, of course, the existing fleet consists of engines that are not new. Thus, although these tailpipe requirements will bring about gradual reduction in the overall contribution of diesel pollution to the atmosphere, the beneficial effects on mining atmospheres may require a longer timeframe, absent actions to accelerate the turnover of mining fleets to the cleaner engines.

In underground coal mining, MSHA has already taken actions which will have such an effect on the fleet. The diesel equipment rule issued in late 1996 requires that by November 25, 1999, all diesel equipment used in underground coal mines use an approved engine and maintain that engine in approved condition. (30 CFR 75.1907.) MSHA expects this will result in the replacement of about 47 percent of the diesel engines now in the underground coal mine inventory with engines that emit fewer pollutants. The timeframe permitted for the turnover was based upon MSHA's estimates of the useful life in an underground mining environment of the ''outby'' equipment involved.

Technology-Forcing Schedule

As noted above, the exact environmental tailpipe requirements which a new diesel engine must meet varies with the date of manufacture. The Clean Air Act, which was most recently amended in 1990, establishes a schedule for the reduction of particular pollutants from mobile sources. EPA and CARB, working closely with the diesel engine industry, have endeavored to turn this into a regulatory schedule that forces technology while taking into account certain technological realities (e.g., actions taken to reduce particulate emissions may increase NOx emissions, and vice versa). Existing EPA regulations for on-highway engines (both for light duty vehicles and heavy duty trucks) and non-road engines schedule the tailpipe standards that must be met for the rest of this century. Agreements between EPA, CARB and the engine industry are now leading to proposed rules for engine standards to be met during the early part of the next century. These standards will be stricter and will lower the levels of diesel emissions.

Light-Duty Engines

The current regulations on light duty vehicle engines (cars and passenger trucks) were set in 1991. (56 FR 25724). EPA is currently considering proposing new standards for this category. Pursuant to a specific requirement in the Clean Air Act Amendments of 1990, EPA is to study and report to Congress on whether further reductions in this category should be pursued. A public workshop was held in the Spring of 1997. EPA plans provide for a draft report to be available for public comment by Spring of 1998, and a final report completed by July 1998, although a notice of citizen suit has been filed to speed the process. Up-to-date information about the progress of this initiative can be found at the home page for the study (http://www.epa.gov/omswww/tr2home.htm).

On-Highway Heavy Duty Truck Engines

The first phase of the on-highway standards for heavy duty diesel engines was applicable to engines manufactured in 1985. (40 CFR 86.085–11.) For the first time, separate standards for NO_X and hydrocarbons were established. The nitrogen oxides and hydrocarbons are precursors of ground level ozone, a major component of smog. A number of hydrocarbons are also toxic, while nitrogen oxides contribute to the formation of acid rain and can, as previously noted, precipitate into particulate matter. In 1988, a specific standard limiting particulate matter emitted from the heavy duty on-highway diesel engines went into effect. (40 CFR 86.088–11). The Clean Air Act Amendments and the regulations provided for phasing in even tighter controls on NO_X and particulate matter through 1998. Reductions in NO_X took place in 1990 and 1991 and are to occur again in 1998, and reductions in PM took place in 1991 and 1994. Certain types of trucks in particularly polluted urban areas must reach even tighter requirements.

On October 21, 1997, EPA issued a new rule for on-highway engines that will take effect for engine model years starting in 2004. (62 FR 54693.) The rule establishes a combined requirement for NO_X and HC. The combined standard is set at 2.5gm/bhp-hr, which includes a cap of 0.5gm/bhp-hr for HC. Prior to the rule, the EPA, CARB, and the engine manufacturers signed a Statement of Principles (SOP) that agreed on harmonization of the emission standards and the feasible levels that could be achieved. The rule allows manufacturers a choice of two combinations of NO_X and HC, with a net expected reduction in NO_X emissions of 50%. The rule does not require further reductions in tailpipe emissions of PM.

Non-road Engines

Of particular interest to the mining community is the EPA's regulatory work on the standards that will be applicable to non-road engines, for these include the engines used in the heaviest mining equipment.

The 1990 Clean Air Act Amendments specifically directed EPA to study the contribution of nonroad engines to air pollution, and regulate them if warranted. In 1991, EPA released a study that documented higher than expected emission levels across a broad spectrum of nonroad engines and equipment (EPA Fact Sheet, EPA420–F–96–009, 1996). In response, EPA initiated several regulatory programs. One of these set emission standards for land-based nonroad engines greater than 50 horsepower (other than for rail use). Limits are established for tailpipe emissions of hydrocarbons, carbon monoxide, NO_X, and dpm. The limits are phased in from 1996 to 2000: starting in 1996 with nonroad engines from 175 to 750 hp, then smaller engines, and by 2000 the larger nonroad engines. Moreover, in February 1997, restrictions on nonroad engines for locomotives were proposed. (62 FR 6366.)

In September 1996, EPA announced another Statement of Principles (SOP) with the engine industry and CARB on new rounds of restrictions for non-road engines to begin to take place in this century. This led in September 1997 to a proposed rule setting standards for almost all types of engines in this category manufactured after 1999–2006 (the actual year depends on the category). (62 FR 50151.) The applicable standards for an engine category would be gradually tightened through three tiers. They would set a cap on the combined NO_X and HC (similar to the on-highway), set CO standards, and lower standards on PM. The implementation of the final tier of the proposed reductions is subject to a technology review in 2001 to ensure

that the appropriateness of the levels to be set is feasible.

Will the Diesel Engine Industry Meet Mining Industry Requirements?

Concern has been expressed from time to time that the diesel industry might not be able to meet the ever tightening standards on tailpipe emissions, and might, therefore, stop producing certain engines needed by the mining community or other industries (Gushee, 1995). To date, however, such concerns have not been realized. The fact that the most recent regulations have been developed through a consensus process with the engine industry, and that the non-road plan includes a scheduled technology review to ensure the proposed emission standards can really be achieved, suggests that although the EPA standards are technology forcing, diesel engines will continue to be available to meet the needs of the mining community for the foreseeable future. In addition, the nonroad engine agreement with the industry calls for development of a separate research agreement involving stakeholders in the exploration of technologies that can achieve very low emission levels of NO_X and PM ''while preserving performance, reliability, durability, safety, efficiency, and compatibility with nonroad equipment'' (EPA420–F–96–015, September 1996). Also, Vice President Gore has recently noted that the Administration is committed to emissions research that would clean up both the diesels currently on the road, as well as enabling these engines an opportunity to compete as a new generation of vehicles is developed that are far more efficient than today's vehicles (White House Press Release, July 23, 1997). It is always possible, of course, that some new technological problems could emerge that could impact diesel engine availability—e.g., confirmation that some of the newer engines produce high levels of ''nanoparticles'' particulates and that such emissions pose some sort of a health problem. Research of nanoparticles and their health effects is currently a topic of investigation (Bagley et al., 1996).

A related question has been whether the costs of the ''high-tech'' diesel engines will make them unaffordable in practice to the mining community. MSHA believes the new engines will be affordable. The fact that the engine industry has agreed to the new standards, and has some assurance of what the applicable standards will be for the foreseeable future, should help keep costs in check.

In theory, underground mines can control costs by purchasing certain types of new engines that do not have to meet the new EPA standards. The rules on heavy duty on-highway truck engines were not applied to engines intended to be used in underground coal mines (59 FR 31336), and the new proposed rules on nonroad vehicles would likewise not be mandatory for engines intended for any underground mining use. In practice, however, it is not likely that engine manufacturers will produce special engines once they switch over their production lines to meet the new EPA standards, because there are few types and sizes of engines in production for which the mining community is the major market. Moreover, the larger engines (above 750 hp) are specifically covered by the EPA nonroad rules (*Engine Manufacturers Assn.* vs. *EPA*, 88 F.3d 1075, 319 U.S. App.D.C. 12 (1996)).

MSHA Approved Engines

Acting under its own authority to protect miner safety and health, MSHA requires that diesel engines used in certain types of mining operations be ''approved'' as meeting certain tailpipe standards.

In some ways, the standards are akin to those of EPA and CARB. For example, MSHA, CARB and EPA generally use the same tests to check emissions. MSHA uses a steady state, 8-mode test cycle, the same as EPA and CARB use to test engines designed for use in off-road equipment; however, EPA uses a different, transient test for on-highway engines.

But to be approved by MSHA, an engine does not have to be as clean as the newer diesel engines, every generation of which must meet ever tighter EPA and CARB tailpipe standards. Approval of an engine by MSHA merely ensures that the tailpipe emissions from that engine meet certain basic standards of cleanliness—cleaner than the engines which many mines continue to use.

The MSHA approval rules were revised in 1996 (as part of the 1996 rule on the use of diesel equipment in underground coal mines) to provide the mining community with additional information about the cleanliness of the emissions emerging from the tailpipe of various engines. Specifically, the agency now requires that a particulate index (PI) be reported as part of MSHA's engine approval. This index permits operators to evaluate the contribution of a proposed new addition to the fleet to the mine's particulate concentrations.

There is no requirement that approved engines meet a particular PI; rather, the requirement is for information purposes only. In its 1996 rulemaking, MSHA explicitly deferred until this rulemaking the question of whether to require engines used in mining environments to meet a particular PI. (61 FR 55420–21, 55437). The Agency has decided not to take that approach, for the reasons discussed in part V of this preamble.

(5) *Limiting the Public's Exposure to Soot—Ambient Air Quality Standards.* Pursuant to the Clean Air Act, EPA is responsible for setting air pollution standards to protect the public from toxic air contaminants. These include standards to limit exposure to particulate matter. The pressures to comply with these limits have an impact upon the mining industry, which contributes various types of particulate matter into the environment during mining operations, and a special impact on the coal mining industry whose product is used extensively in emission-generating power facilities. But those standards hold interest for the mining community in other ways as well, for underlying some of them is a large body of evidence on the harmful effects of airborne particulate matter on human health. Increasingly, that evidence has pointed toward the risks of the smallest particulates—including the particles generated by diesel engines.

This section provides an overview of EPA rulemaking on particulate matter. For more detailed information, commenters are referred to ''The Plain English Guide to the Clean Air Act,'' EPA 400–K–93–001, 1993, to the ''Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information'', EPA–452/R–96–013, 1996; and, on the latest rule, to EPA Fact Sheets, July 17, 1997. These and other documents are available from EPA's Web site.

Background

Air quality standards involve a two-step process: standard setting by EPA, and implementation by each State.

Under the law, EPA is specifically responsible for reviewing the scientific literature concerning air pollutants, and establishing and revising National Ambient Air Quality Standards (NAAQS) to minimize the risks to health and the environment associated with such pollutants. It is supposed to do a review every five years. Feasibility of compliance by pollution sources is not supposed to be a factor in establishing NAAQS. Rather, EPA is required to set the level that provides ''an adequate margin of safety'' in protecting the health of the public.

Implementation of each national standard is the responsibility of the states. Each must develop a state implementation plan that ensures air quality in the state consistent with the ambient air quality standard. Thus, each state has a great deal of flexibility in targeting particular modes of emission (e.g., mobile or stationary, specific industry or all, public sources of emissions vs. private-sector sources), and in what requirements to impose on polluters. However, EPA must approve the state plans pursuant to criteria it establishes, and then take pollution measurements to determine whether all counties within the state are meeting each ambient air quality standard. An area not meeting an NAAQS is known as a ''nonattainment area''.

TSP

Particulate matter originates from all types of stationary, mobile and natural sources, and can also be created from the transformation of a variety of gaseous emissions from such sources. In the context of a global atmosphere, all these particles are mixed together, and both people and the environment are exposed to a ''particulate soup'' the chemical and physical properties of which vary greatly with time, region, meteorology, and source category.

The first ambient air quality standards dealing with particulate matter did not distinguish among these particles. Rather, the EPA established a single NAAQS for ''total suspended particulates'', known as ''TSP.'' Under this approach, the states could come into compliance with the ambient air requirement by controlling any type or size of TSP. As long as the total TSP was under the NAAQS which was established based on the science available in the 1970s—the state met the requirement.

PM_{10}

When the EPA completed a new review of the scientific evidence in the mid-eighties, its conclusions led it to revise the particulate NAAQS to focus more narrowly on those particulates less than 10 microns in diameter, or PM_{10}. The standard issued in 1987 contained two components: an annual average limit of 150 μg/m^3, and a 24-hour limit of 50 μg/m^3. This new standard required the states to reevaluate their situations and, if they had areas that exceeded the new PM_{10} limit, to refocus their compliance plans on reducing those particulates smaller than 10 microns in size. Sources of PM_{10} include power plants, iron and steel production, chemical and wood products manufacturing, wind-blown and roadway fugitive dust, secondary aerosols and many natural sources.

Some state implementation plans required surface mines to take actions to help the state meet the PM_{10} standard. In particular, some surface mines in Western states were required to control the coarser particles—e.g., by spraying water on roadways to limit dust. The mining industry has objected to such controls, arguing that the coarser particles do not adversely impact health, and has sought to have them excluded from the EPA ambient air standards (Shea, 1995; comments of Newmont Gold Company, March 11, 1997, EPA docket number A–95–54, IV–D–2346).

$PM_{2.5}$

The next scientific review was completed in 1996, following suit by the American Lung Association and others. A proposed rule was published in November of 1996, and, after public hearings and review by the Office of the President, a final rule was promulgated on July 18, 1997. (62 FR 38651).

The new rule further modifies the standard for particulate matter. Under the new rule, the existing national ambient air quality standard for PM_{10} remains basically the same—an annual average limit of 150 μg/m^3 (with some adjustment as to how this is measured for compliance purposes), and a 24-hour ceiling of 50 μg/m^3. In addition, however, a new NAAQS has now been established for ''fine particulate matter'' that is less than 2.5 microns in size. The $PM_{2.5}$ annual limit is set at 15 μg/m^3, with a 24-hour ceiling of 65 μg/m^3.

The basis for the $PM_{2.5}$ NAAQS is a new body of scientific data suggesting that particles in this size range are the ones responsible for the most serious health effects associated with particulate matter. The evidence was thoroughly reviewed by a number of scientific panels through an extended process. (A chart of the scientific review process is available on EPA's web site — http://ttnwww.rtpnc.epa.gov/naaqspro/pmnaaqs.gif). The proposed rule resulted in considerable press attention, and hearings by Congress, in which this scientific evidence was further discussed. Following a careful review, President Clinton announced his concurrence with the rulemaking in light of the scientific evidence of risk. However, the implementation schedule for the rule is long enough so that the next review of the science is scheduled to be completed before the states are required to meet the new NAAQS for $PM_{2.5}$—hence, adjustment of the standard is still possible before implementation.

Implications for the Mining Community

As noted earlier in this part, diesel particulate matter is mostly less than 1.0 micron in size. It is, therefore, a fine particulate. The body of evidence of human health risk from environmental exposure to fine particulates must, therefore, be considered in assessing the risk of harm to miners of occupational exposure to one type of fine particulate—diesel particulate. MSHA has accordingly done so in its risk assessment (see part III of this preamble).

(6) *Controlling Diesel Particulate Emissions in Mining—a Toolbox.* Efforts to control diesel particulate emissions have been under review for some time within the mining community, and accordingly, there is considerable practical information available about controls—both in general terms, and with respect to specific mining situations.

Workshops

In 1995, MSHA sponsored three workshops ''to bring together in a forum format the U.S. organizations who have a stake in limiting the exposure of miners to diesel particulate (including) mine operators, labor unions, trade organizations, engine manufacturers, fuel producers, exhaust aftertreatment manufacturers, and academia.'' (McAteer, 1995). The sessions provided an overview of the literature and of diesel particulate exposures in the mining industry, state-of-the-art technologies available for reducing diesel particulate levels, presentations on engineering technologies toward that end, and identification of possible strategies whereby miners' exposure to diesel particulate matter can be limited both practically and effectively. One workshop was held in Beckley, West Virginia on September 12 and 13, and the other two were held on October 6, and October 12 and 13, 1995, in Mt Vernon, Illinois and Salt Lake City, Utah, respectively. A transcript was made. During a speech early the next year, the Deputy Assistant Secretary for MSHA characterized what took place at these workshops:

> The biggest debate at the workshops was whether or not diesel exhaust causes lung cancer and whether MSHA should move to regulate exposures. Despite this debate, what emerged at the workshops was a general recognition and agreement that a health problem seems to exist with the current high levels of diesel exhaust exposure in the mines. One could observe that while all the debate about the studies and the level of risk was going on, something else interesting was happening at the workshops: One by one miners, mining companies, and

manufacturers began describing efforts already underway to reduce exposures. Many are actively trying to solve what they clearly recognize is a problem. Some mine operators had switched to low sulfur fuel that reduces particulate levels. Some had increased mine ventilation. One company had tried a soy-based fuel and found it lowered particulate levels. Several were instituting better maintenance techniques for equipment. Another had hired extra diesel mechanics. Several companies had purchased electronically controlled, cleaner, engines. Another was testing a prototype of a new filter system. Yet another was using disposable diesel exhaust filters. These were not all flawless attempts, nor were they all inexpensive. But one presenter after another described examples of serious efforts currently underway to reduce diesel emissions. (Hricko, 1996).

Toolbox

In March of 1997, MSHA issued, in draft form, a publication entitled ''Practical Ways to Control Exposure to Diesel Exhaust in Mining—a Toolbox''. The draft publication was disseminated by MSHA to all underground mines known to use diesel equipment and posted on MSHA's Web site. Following comment, the toolbox was finalized in the Fall of 1997 and disseminated. For the convenience of the mining community, a copy is reprinted as an Appendix at the end of this document.

The material on controls is organized as a ''toolbox'' so that mine operators have the option of choosing the control technology that is most applicable to their mining operation for reducing exposures to dpm. The Toolbox provides information about nine types of controls that can reduce dpm emissions or exposures: Low emission engines; fuels; aftertreatment devices; ventilation; enclosed cabs; engine maintenance; work practices and training; fleet management; and respiratory protective equipment.

The Estimator

MSHA has developed a model that can help mine operators evaluate the effect of alternative controls on dpm concentrations. The model is in the form of a template that can be used on standard computer spreadsheet programs; as information about a new combination of controls is entered, the results are promptly displayed. A complete description of this model, referred to as ''the Estimator,'' and several examples, are presented in part V of this preamble. MSHA intends to make this model widely available to the mining community, and hopes to receive comments in connection with this rulemaking based on the results of estimates conducted with this model.

History of Diesel Aftertreatment Devices in Mining

For many years, the majority of the experience has been with the use of oxidation catalytic converters (OCCs), but in more recent years both ceramic and paper filtration systems have also been used more widely.

OCCs began to be used in underground mines in the 1960's to control carbon monoxide, hydrocarbons and odor (Haney, Saseen, Waytulonis, 1997). That use has been widespread. It has been estimated that more than 10,000 OCCs have been put into the mining industry over the years (McKinnon, dpm Workshop, Beckley, WV, 1995).

When such catalysts are used in conjunction with low sulfur fuel, there is a reduction of up to 90 percent of carbon monoxide, hydrocarbons and aldehyde emissions, and nitric oxide can be transformed to nitrogen dioxide. Moreover, there is also an approximately 20 percent reduction in diesel particulate mass. The diesel particulate reduction comes from the elimination of the soluble organic compounds that, when condensed through the cooling phase in the exhaust, will attach to the elemental carbon cores of diesel particulate. Unfortunately, this effect is lost if the fuel contains more than 0.05 percent sulfur. In such cases, sulfates can be produced which ''poison'' the catalyst, severely reducing its life. With the use of low sulfur fuel, some engine manufacturers have certified diesel engines with catalytic converter systems to meet EPA requirements for lower particulate levels (see section 4 of this part).

The particulate trapping capabilities of some OCCs are even higher. In 1995, the EPA implemented standards requiring older buses in urban areas to reduce the dpm emissions from rebuilt bus engines. (40 CFR 85.1403). Aftertreatment manufacturers developed catalytic converter systems capable of reducing dpm by 25%. Such systems are available for larger diesel engines common in the underground metal and nonmetal sector.

Other types of aftertreatment devices capable of more significant reductions in particulate levels began to be developed for commercial applications following EPA rules in 1985 limiting diesel particulate emissions from heavy duty diesel engines. The wall flow type ceramic honeycomb diesel particulate filter system was initially the most promising approach (SAE, SP–735, 1988). However, due to the extensive work performed by the engine manufacturers on new technological designs of the diesel engine's combustion system, and the use of low sulfur fuel, particulate traps turned out to be unnecessary to comply with the EPA standards of the time.

While this work was underway, efforts were also being made to transfer this aftertreatment technology to the mining industry. The former Bureau of Mines investigated the use of catalyzed diesel particulate filters in underground mines in the United States (BOM, RI–9478, 1993). The investigation demonstrated that filters could work, but that there were problems associated with their use on individual unit installations, and the Bureau made recommendations for installation of ceramic filters on mining vehicles. But as noted by one commenter at one of the MSHA workshops in 1995, ''while ceramic filters give good results early in their life cycle, they have a relatively short life, are very expensive and unreliable.'' (Ellington, dpm Workshop, Salt Lake City, UT, 1995).

Canadian mines also began to experiment with ceramic traps in the 1980's with similar results (BOM, IC 9324, 1992). Work in Canada today continues under the auspices of the Diesel Emission Evaluation Program (DEEP), established by the Canadian Centre for Mineral and Energy Technology in 1996 (DEEP Plenary Proceedings, November 1996). The goals of DEEP are to: (1) Evaluate aerosol sampling and analytical methods for dpm; and (2) evaluate the in-mine performance and costs of various diesel exhaust control strategies.

Work with ceramic filters in the last few years has led to the development of the ceramic fiber wound filter cartridge (SAE, SP–1073, 1995). The ceramic fiber has been reported by the manufacturer to have dpm reduction efficiencies up to 80 percent. This system has been used on vehicles to comply with German requirements that all diesel engines used in confined areas be filtered. Other manufacturers have made the wall flow type ceramic honeycomb dpm filter system commercially available to meet the German standard. In the case of some engines, a choice of the two types is available; but depending upon horsepower, this may not always be the case.

In the early 1990's, MSHA worked with the former Bureau of Mines and a filter manufacturer to successfully develop and test a pleated paper filter for wet water scrubber systems of permissible diesel powered equipment. The dpm reduction from these filters has been determined in the field by the former BOM to be up to 95% (BOM, IC

9324). The same type of filter has been used in recently developed dry systems for permissible machines, with reported laboratory reductions in dpm of 98% (Paas, dpm Workshop, Beckley WV, 1995).

ANPRM Comments

The ANPRM requested information about several kinds of work practices that might be useful in reducing dpm concentrations. These comments were provided well before the workshops mentioned above, and before MSHA issued its diesel equipment standard for underground coal mines, and are thus somewhat dated. But, solely to illustrate the range of comments received, the following sections review the comments concerning certain work practices—fuel type, fuel additives, and maintenance practices.

Type of Diesel Fuel Required

It has been well established that the quality of diesel fuel influences emissions. Sulfur content, cetane number, aromatic content, density, viscosity, and volatility are interrelated fuel properties which can influence emissions. Sulfur content can have a significant effect on diesel emissions.

Use of low sulfur diesel fuel reduces the sulfate fraction of dpm matter emissions, reduces objectionable odors associated with diesel exhaust and allows oxidation catalysts to perform properly. The use of low sulfur fuel also reduces engine wear and maintenance costs. Fuel sulfur content is a particularly important parameter when the fuel is used in low emission diesel engines. Low sulfur diesel fuel is available nationwide due to EPA regulations. (40 CFR parts 80 and 86.) In MSHA's ANPRM, information was requested on what reduction in concentration of diesel particulate can be achieved through the use of low sulfur fuel. Information was also solicited as to whether the use of low sulfur fuel reduces the hazard associated with diesel emissions.

Responses from commenters stated that there would be a positive reduction in particulate with the use of low sulfur fuel. One commenter stated that the brake specific exhaust emissions (grams/brake horsepower-hour) of particulate would decrease by about 0.06 g/bhp-hr for a fuel sulfur reduction of 0.25 weight percent sulfur. The particulate reduction effect is proportional to the change in sulfur content. Another commenter stated that a typical No. 2 diesel fuel containing 0.25 percent weight sulfur will include 1 to 1.6 grams of sulfate particulate per gallon of fuel consumed. A fuel containing 0.05 percent weight sulfur will reduce sulfate particulate to 0.2–0.3 grams per gallon of fuel consumed, an 80 percent reduction.

In responding to the question on whether reducing the sulfur content of the fuel will reduce the health hazard associated with diesel emissions, several commenters stated that they knew of no evidence that sulfur reduction reduces the hazard of the particulate. MSHA also is not aware of any data supporting the proposition that reducing the sulfur content of the fuel will reduce the health hazard associated with diesel emissions. However, in the preamble to the final rule for the EPA requirement for the use of low sulfur fuel, EPA stated that there were a number of benefits which could be attributed to lowering the sulfur content of diesel fuel. The first area was in exhaust aftertreatment technology. Reductions in fuel sulfur content will result in small reductions in sulfur compounds being emitted. This will cause the whole particulate concentration from the engine to be reduced. However, the number of carbon particles is not reduced, therefore, the total carbon concentration would be the same.

The major benefit of using low sulfur fuel is that the reduction of sulfur allows for the use of some aftertreatment devices such as catalytic converters, and catalyzed particulate traps which were prohibited with fuels of high sulfur content (greater than 0.05 percent sulfur). The high sulfur content led to sulfate particulate that when passed through the catalytic converter or catalyzed traps was changed to sulfuric acid when the sulfates came in contact with water vapor. Using low sulfur fuel permits these devices to be used.

The second area of benefits that the EPA noted was that of reduced engine wear with the use of low sulfur fuel. Reducing engine wear will help maintain engines in their near manufactured condition that would help limit increases in particulate matter due to lack of maintenance or age of the engine.

Other questions posed in the ANPRM requested information concerning the differences in No. 1 and No. 2 diesel fuel regarding particulate formation; the current sulfur content of diesel fuel used in mines; and when would 0.05 percent sulfur fuel be available to the mining industry.

In response to those questions, commenters stated that a difference in No. 1 and No. 2 fuel regarding particulate formation would be that No. 1 fuel typically has less sulfur than No. 2 fuel and would therefore be expected to produce less particulate. Also, the No. 1 fuel has a lower density, boiling range and aromatic content and a higher cetane number. All of these fuel property differences tend to cause lower particulate emissions.

Commenters also stated that the sulfur content of fuels commercially available for diesel-powered equipment can vary from nearly zero to 1 percent. The national average sulfur content for commercial No. 2 diesel fuel is approximately 0.25 percent. One commenter stated that sulfur content varied from region to region and the National Institute of Petroleum and Energy Research survey could be used to get the answers for specific regions.

Commenters noted that low sulfur fuel, less than 0.05 percent sulfur, would be available for on-highway use as mandated by the EPA by October 1993. Also, California requires the statewide availability of 0.05 percent sulfur fuel for all diesel engine applications by the same date. Although the EPA mandate ensures that low sulfur fuel will be available throughout the nation, commenters indicated the availability for off-road and mining application was uncertain at that time.

The ANPRM also requested information on the differences in the per gallon costs among No. 1, No. 2 and 0.05 percent sulfur fuel; how much fuel is used annually in the mining industry; and what would be the economic impact on mining of using 0.05 percent sulfur fuel. In response, commenters stated that No. 1 fuel typically costs the user 10 to 20 percent more than does No. 2 fuel. They also stated that the price of 0.05 percent sulfur fuel will eventually be set by the competitive market conditions. No information was submitted for accurately estimating fuel usage costs to the industry. The economic impact on the mining industry of using 0.05 percent fuel will vary greatly from mine to mine. Factors influencing that cost are a mine's dependence on diesel powered equipment, the location of the mine and existing regulation. Mines relying heavily on diesel equipment will be most impacted.

Another commenter stated that the price for 0.05 percent fuel is forecast to average about 2 cents per gallon higher than the price for typical current No. 2 fuel. Kerosene and No. 1 distillate are forecast as 2 to 4 cents per gallon above 0.05 percent fuel and 4 to 6 cents above current No. 2 fuel. A recent census of mining and manufacturing dated 1987 showed mining industry energy consumption from all sources to total 1968.4 trillion BTU per year. Coal mining alone used 9.96 million barrels

annually of distillate, at a cost of 258.1 million dollars. Included in these quantities was diesel fuel for surface equipment and vehicles at or around the mine site. The commenter also stated that applying a cost increase of 2 cents per gallon to the total industry distillate consumption would increase annual fuel costs by $24.3 million. For coal mining only, the cost increase would be $8.4 million annually.

While MSHA does not have an opinion on the accuracy of the information received in this regard, it is in any event dated. Since the time that the ANPRM was open, the availability of low sulfur fuel has become more common. Comments received at MSHA's Diesel Workshops indicate that low sulfur fuel is readily available and that all that is needed to obtain it is to specify the desired fuel quality on the purchase order. The differences in the fuel properties of No. 1 and No. 2 fuel are consistent with specifications provided by ASTM and other literature information concerning fuel properties.

Fuel Additives

Information relative to fuel additives was requested in MSHA's ANPRM. The ANPRM requested information on the availability of fuel additives that can reduce dpm or additives being developed; what diesel emissions reduction can be expected through the use of these fuel additives; the cost of additives and advantages to their use; and will these fuel additives introduce other health hazards. One commenter stated that cetane improvers and detergent additives can reduce dpm from 0 to 10 percent. The data, however, does not indicate consistent benefits as in the case with sulfur reduction. Oxygenate additives can give larger benefits, as with methanol, but then the oxygenate is not so much an additive as a fuel blend. Another commenter stated the cost depended on the price and concentration of the additive. This commenter estimated the cost to be between three and seven cents per gallon of fuel.

Another commenter stated that some additives are used for reducing injector tip fouling, other alternative additives also are offered specifically for the purpose of reducing smoke or dpm such as organometallic compounds, i.e., copper, barium, calcium, iron or platinum; oxygenate supplements containing alcohols or peroxides; and other proprietary hydrocarbons. The commenter did not quantify the expected reductions in dpm.

The former Bureau of Mines commented on an investigation of barium-based, manganese based, and ferrocene fuel additives. Details of the investigation are found in the literature (BOM, IC 9238, 1990). In general, fuel additives are not widely used by the mining industry to reduce dpm or to reduce regeneration temperatures in ceramic particulate filters. Research has shown aerosol reductions of about 30 percent without significant adverse impacts although new pollutants derived from the fuel additive remain a question.

One commenter stated that a cetane improver and detergent additives should not exceed 1 cent per gallon at the treat rates likely to be used. The use of oxygenates depends on which one and how much but would be perhaps an order of magnitude higher than the use of a cetane improver. One commenter also added that any fuel economy advantages would be very small.

In response to the creation of a health hazard when using additives, one commenter stated that excessive exposure to cetane improver (alkyl nitrates), which is hazardous to humans, requires special handling because of poor thermal stability. Detergent additives are similar to those used in gasoline and probably have similar safety and health issues. Except at low load operation, additives are not likely to result in any significant quantity in the exhaust. Another commenter stated that the effect on human health of new chemical exhaust species that may result from the use of some of these additives has not been determined. Engine manufacturers also are concerned about the use of such products because their effectiveness has not always been adequately demonstrated and, in many cases, the effect on engine durability has not been well-documented for different designs and operating conditions.

MSHA agrees with the commenters that fuel additives can affect engine performance and exhaust emissions. MSHA's experience with additives has shown that they can enhance fuel quality by increasing the cetane number, depressing the cloud point, or in the case of a barium based additive, affect the combustion process resulting in a reduction of particulate output. MSHA's experience also has shown that in most cases the effects of an additive on engine performance or emissions cannot be adequately determined without extensive research. The additives listed on EPA's list of ''registered additives'' meet the requirements of EPA's standards in 40 CFR part 79.

MSHA is concerned about the use of untested fuel additives. A large number of additives are currently being marketed to reduce emissions. These additives include cetane improvers that increase the cetane number of the fuel, which may reduce emissions and improve starting; detergents that are used primarily to keep the fuel injectors clean; dispersants or surfactants that prevent the formation of thicker compounds that can form deposits on the fuel injectors or plug filters. While the use of many of these additives will result in reduced particulate emission, some have been found to introduce harmful agents into the environment. For this reason, it is a good idea to limit the use of additives to those that have been registered by the EPA.

Maintenance Practices

The ANPRM requested information concerning what maintenance procedures are effective in reducing diesel particulate emissions from existing diesel-powered equipment, and what additional maintenance procedures would be required in conjunction with anticipated developments of new diesel particulate reduction technology. Information was also requested about the amount of time to perform the maintenance procedures and if any, loss of production time.

Commenters stated that some maintenance procedures have a very dramatic impact on particulate emissions, while other procedures that are equally important for other reasons have little or no impact at all on particulates. Another commenter stated that maintenance procedures are intended to ensure that the engine operates and will continue to operate as intended. Such procedures will not reduce diesel particulate below that of the new, original equipment. A commenter stated that the diesel engine industry experience has demonstrated that emissions deterioration over the useful life of an engine is minimal.

Commenters stated that depending on the implied technology, the need for additional maintenance will be based on complexity of the control devices. Also, time for maintenance will be dependent on complexity of the control device. Some production loss will occur due to increased maintenance procedures.

MSHA agrees with the commenters' view that maintenance does affect engine emissions, some more dramatically than others. Research has clearly shown that without engine maintenance, all engine emissions will increase greatly. For example, the former Bureau of Mines, in conjunction with Southwest Research, conducted extensive research on the effects of maintenance on diesel engines which indicated this result (BOM contract H–0292009, 1979). MSHA agrees that

emissions increase is minimal over the useful life of the engine only when proper maintenance is performed daily. However, MSHA believes that with the awareness of the increased maintenance, production may not be lost due to the increased time that the machines are able to operate without unwanted down time due to poor maintenance practices.

MSHA's diesel ''toolbox'' includes an extensive discussion on the importance of maintenance. It reminds operators and diesel maintenance personnel of the basic systems on diesel engines that need to be maintained, and how to avoid various problems. It includes suggestions from others in the mining community, and information on their success or difficulties in this regard.

(7) *Existing Mining Standards that Limit Miner Exposure to Occupational Diesel Particulate Emissions.* MSHA already has in place various requirements that help to control miner exposure to diesel emissions in underground mines—including exposure to diesel particulate. These include ventilation requirements, engine approval requirements, and explicit restrictions on the concentration of various gases in the mine environment.

In addition, in 1996, MSHA promulgated a rule governing the use of diesel-powered equipment in underground coal mines. (61 FR 55412). While the primary focus of the rulemaking was to promote the safe use of diesel engines in the hazardous environment of underground coal mines, various parts of the rule will help to control exposure to harmful diesel emissions in those mines. The new rule revised and updated MSHA's diesel engine approval requirements and the ventilation requirements for underground coal mines using diesel equipment, and established requirements concerning diesel fuel sulfur content and the idling, maintenance and emissions testing of diesel engines in underground coal mines.

Background

Beginning in the 1940s, mining regulations were promulgated to promote the safe and healthful use of diesel engines in underground mines. In 1944, part 31 established procedures for limiting the gaseous emissions and establishing the recommended dilution air quantity for mine locomotives that use diesel fuel. In 1949, part 32 established procedures for testing of mobile diesel-powered equipment for non-coal mines. In 1961, part 36 was added to provide requirements for the use of diesel equipment in gassy noncoal mines, in which engines must be temperature controlled to prevent explosive hazards. These rules responded to research conducted by the former Bureau of Mines.

Continued research by the former Bureau of Mines in the 1950s and 1960s led to refinements of its ventilation recommendations, particularly when multiple engines are in use. An airflow of 100 to 250 cfm/bhp was recommended for engines that have a properly adjusted fuel to air ratio (Holtz, 1960). An additive ventilation requirement was recommended for operation of multiple diesel units, which could be relaxed based on the mine operating procedures. This approach was subsequently refined to become a 100–75–50 percent guideline (MSHA Policy Memorandum 81–19MM, 1981). Under this guideline, when multiple pieces of diesel equipment are operated, the required airflow on a split of air would be the sum of: (a) 100 percent of the nameplate quantity for the vehicle with the highest nameplate air quantity requirement; (b) 75 percent of the nameplate air quantity requirement of the vehicle with the next highest nameplate air quantity requirement; and (c) 50 percent of the nameplate airflow for each additional piece of diesel equipment.

Diesel Equipment Rule

On October 6, 1987, MSHA published in the **Federal Register** (52 FR 37381) a notice establishing a committee to advise the Secretary of Labor on health and safety standards related to the use of diesel-powered equipment in underground coal mines. The ''Mine Safety and Health Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines'' (the Advisory Committee) addressed three areas of concern: the approval of diesel-powered equipment, the safe use of diesel equipment in underground coal mines, and the protection of miners' health. The Advisory Committee submitted its recommendations in July 1988.

With respect to the approval of diesel-powered equipment, the Advisory Committee recommended that all diesel equipment except for a limited class, be approved for use in underground coal mines. This approval would involve both safety (e.g., fire suppression systems) and health factors (e.g., maximum exhaust emissions).

With respect to the safe use of diesel equipment in underground coal mines, the Advisory Committee recommended that standards be developed to address the safety aspects of the use of diesel equipment, including such concerns as equipment maintenance, training of mechanics, and the storage and transport of diesel fuel.

The Advisory Committee also made recommendations concerning miner health, discussed later in this section.

As a result of the Advisory Committee's recommendations on approval and safe use, MSHA developed and, on October 25, 1996, promulgated as a final rule, standards for the ''Approval, Exhaust Gas Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines.'' (61 FR 55412).

The October 25, 1996 final rule on diesels focuses on the safe use of diesels in underground coal mines. Integrated requirements are established for the safe storage, handling, and transport of diesel fuel underground, training of mine personnel, minimum ventilating air quantities for diesel powered equipment, maintenance requirements, fire suppression, and design features for nonpermissible machines. While the focus was on safety, certain rules related to emissions are included in the final rule. For example, the final rule requires maintenance on diesel powered equipment. Regular maintenance on diesel powered equipment should keep the diesel engine and vehicle operation at its original or baseline condition. However, as a check that the maintenance is being performed, MSHA wrote a standard for checking the gaseous CO emission levels on permissible and heavy duty outby machines to determine the need for maintenance. The CO check requires that a regular repeatable loaded engine condition be run on a weekly basis and the CO measured. Carbon monoxide is a good indicator of engine condition. If the CO measurement increases to a higher concentration than what was normally measured during the past weekly checks, then a maintenance person would know that either the regular maintenance was missed or a problem has developed that is more significant than could be identified by a general daily maintenance program.

Consistent with the Advisory Committee's recommendation, the final rule, among other things, requires that virtually all diesel-powered engines used in underground coal mines be approved by MSHA. (30 CFR part 7 (approval requirements), part 36 (permissible machines defined), and part 75 (use of such equipment in underground coal mines). The approval requirements, among other things, are designed to require clean-burning

engines in diesel-powered equipment. (61 FR 55417). In promulgating the final rule, MSHA recognized that clean-burning engines are ''critically important'' to reducing toxic gasses to levels that can be controlled through ventilation. (*Id.*). To achieve the objective of clean-burning engines, the rule sets performance standards which must be met for virtually all diesel-powered equipment in underground coal mines (30 CFR part 7).

Consistent with the recommendation of the Advisory Committee, the technical requirements for approved diesel engines include undiluted exhaust limits for carbon monoxide and oxides of nitrogen. (61 FR 55419). As recommended by the Advisory Committee, the limits for these gasses are derived from existing 30 CFR part 36. (61 FR 55419). Also consistent with the recommendation of the Advisory Committee, the final rule requires that as part of the approval process, ventilating air quantities necessary to maintain the gaseous emissions of diesel engines within existing required ambient limits be set. (61 FR 55420). As recommended by the Advisory Committee, the ventilating air quantities are required to appear on the engine's approval plate. (61 FR 55421).

The final rule also implements the Advisory Committee's recommendation that a particulate index be set for diesel engines. (61 FR 55421). Although, as discussed below, there is not yet a specific standard limiting miners' exposure to diesel particulate, the particulate index is nonetheless useful in providing information to the mining community so that operators can compare the particulate levels generated by different engines. (61 FR 55421).

Also consistent with the recommendation of the Advisory Committee, the final rule addresses the monitoring and control of gaseous diesel exhaust emissions. (30 CFR part 70; 61 FR 55413). In this regard, the final rule requires that mine operators take samples of carbon monoxide and nitrogen dioxide. (61 FR 55413, 55430–55431). Samples exceeding an action level of 50 percent of the threshold limits set forth in 30 CFR 75.322, trigger corrective action by the mine operator. (30 CFR part 70, 61 FR 55413). Also consistent with the Advisory Committee's recommendation, the final rule requires that diesel-powered equipment be adequately maintained. (30 CFR 75.1914; 61 FR 55414). Among other things, as recommended by the Advisory Committee, the rule requires the weekly examination of diesel-powered equipment, including testing of undiluted exhaust emissions for certain types of equipment. (30 CFR 75.1914(g)). In addition, consistent with the Advisory Committee's recommendation, operators are required to establish programs to ensure that those performing maintenance on diesel equipment are qualified. (61 FR 55414). As explained in the preamble, maintenance requirements were included because of MSHA's recognition that inadequate equipment maintenance can, among other things, result in increased levels of harmful gaseous and particulate components from diesel exhaust. (61 FR 55413–55414).

Consistent with the Advisory Committee's recommendation, the final rule also requires that underground coal mine operators use low sulfur diesel fuel. (30 CFR 75.1901; 61 FR 55413). The use of low sulfur fuel lowers not only the amount of gaseous emissions, but also the amount of diesel particulate emissions. (*Id.*). To further reduce miners' exposure to diesel exhaust, the final rule prohibits operators from unnecessarily idling diesel-powered equipment. (30 CFR 75.1916(d)).

Also consistent with the recommendation of the Advisory Committee, the final rule establishes minimum air quantity requirements in areas of underground coal mines where diesel-powered equipment is operated. (30 CFR 75.325). As set forth in the preamble, MSHA believes that effective mine ventilation is a key component in the control of miners' exposure to gasses and particulate emissions generated by diesel equipment. (61 FR 55433). The final rule also requires generally that mine operators maintain the approval plate quantity minimum airflow in areas of underground coal mines where diesel-powered equipment is operated. (30 CFR 75.325 [2]).

The diesel equipment rule will help the mining community use diesel-powered equipment more safely in underground coal mines. As discussed throughout this preamble, the diesel equipment rule has many features which, though it was not their primary purpose, will incidently reduce harmful diesel emissions in underground coal mines—including the particulate component of these emissions. (The requirements of the diesel equipment rule are highlighted with a special typeface in MSHA's publication, ''Practical Ways to Control Exposure to Diesel Exhaust in Mining—a Toolbox'', reprinted as an Appendix at the end of this document. An example is the requirement in the diesel equipment rule that all engines used in underground coal mines be approved engines, and be maintained in approved condition —thus reducing emissions at the source.

In developing this safety rule, however, MSHA did not explicitly consider the risks to miners of a working lifetime of dpm exposure at very high levels, nor the actions that could be taken to specifically reduce those exposure levels in underground coal mines. Moreover, the rule does not apply to the remainder of the mining industry, where the use of diesel machinery is much more intense than in underground coal.

Gas Limits

Various organizations have established or recommended limits for many of the gasses occurring in diesel exhaust. Some of these are listed in Table II–2, together with information about the limits currently enforced by MSHA. MSHA requires mine operators to comply with gas specific threshold limit values (TLV's) recommended by the American Conference of Governmental Industrial Hygienists (ACGIH) in 1972 (for coal mines) and in 1973 (for metal and nonmetal mines).

TABLE II–2.—GASEOUS EXPOSURE LIMITS (PPM)

Pollutant	Range of limits recommended		MSHA limits	
			Coal [a]	M/NM [b]
HCHO	[c] 0.016	[d] 0.3	2	2

[2] On December 23, 1997, the National Mining Association and Energy West Mining Company filed petitions for review of the final rule. *National Mining Association* versus *Secretary of Labor*, Nos. 96–1489 and 96–1490. These cases were consolidated and held in abeyance pending discussions between the mining industry and the Secretary. On March 19, 1998, petitioners filed an Unopposed Joint Motion for Voluntary Dismissal. This motion is still pending before the Court.

TABLE II–2.—GASEOUS EXPOSURE LIMITS (PPM)—Continued

CO	[d] 25	50	50	50
CO_2	[c] 5,000	5,000	5,000	5,000
NO_2	[c d e] 25	25	25	25
NO_2	[f] 1	[d] 3	5	5
SO_2	[c d] 2	[e] 5	2	5

Table Notes:
[a] ACGIH, 1972.
[b] ACGIH, 1973.
[c] NIOSH recommended exposure limit (REL), based on a 10-hour, time-weighted average.
[d] ACGIH, 1996.
[e] OSHA permissible exposure limit (PEL).
[f] NIOSH recommends only a 1-ppm, 15-minutes, short-term exposure limit (STEL).

In 1989, MSHA proposed changing some of these limits in the context of a proposed rule on air quality standards. (54 FR 35760). Following opportunity for comment and hearings, a portion of that proposed rule, concerning control of drill dust, has been promulgated, but the other components are still under review. To change a limit at this point in time requires a regulatory action; the rule does not provide for their automatic updating.

(8) *How Other Jurisdictions are Restricting Occupational Exposure to Diesel Soot.* MSHA's proposed rule is the first effort by the Federal government to deal with the special risks faced by workers exposed to diesel exhaust on the job—because, as described in detail in the part III of this preamble, miner exposures are an order of magnitude above those of any other group of workers. But others have been looking at the problem of exposure to diesel soot.

States

As noted in the first section of this part, few underground coal mines now use diesel engines. Several states have had bans on the use of such equipment: Pennsylvania, West Virginia, and Ohio.

Recently, Pennsylvania has replaced its ban with a special law that permits the use of diesel-powered equipment in deep coal mines under certain circumstances. The Pennsylvania statute goes beyond MSHA's new regulation on the use of diesel-powered equipment in underground coal mines. Of particular interest is that it specifically addresses diesel particulate. The State did not set a limit on the exposure of miners to dpm, nor did it establish a limit on the concentration of dpm in deep coal mines. Rather, it approached the issue by imposing controls that will limit dpm emissions at the source.

First, all diesel engines used in underground deep coal mines in Pennsylvania must be MSHA-approved engines with an ''exhaust emissions control and conditioning system'' that meets certain tests. (Article II–A, Section 203–A, Exhaust Emission Controls). Among these are dpm emissions from each engine no greater than ''an average concentration of 0.12 mg/m^3 diluted by fifty percent of the MSHA approval plate ventilation for that diesel engine.'' In addition, any exhaust emissions control and conditioning system must include a ''Diesel Particulate Matter (DPM) filter capable of an average of ninety-five percent or greater reduction of dpm emissions.'' It also requires the use of an oxidation catalytic converter. Thus, the Pennsylvania statute requires the use of low-emitting engines, and then the use of aftertreatment devices that significantly reduce what particulates are emitted from these engines.

The Pennsylvania law also has a number of other requirements for the safe use of diesel-powered equipment in the particularly hazardous environments of underground coal mines. Many of these parallel the requirements in MSHA's rule. Like MSHA's requirements, they too can result in reducing miner exposure to diesel particulate—e.g., regular maintenance of diesel engines by qualified personnel and equipment operator examinations. The requirements in the Pennsylvania law take into account the need to maintain the aftertreatment devices required to control diesel particulate (see, e.g., section 217–A(b)(6)).

West Virginia has also lifted its ban, subject to rules to be developed by a joint labor-management commission. MSHA understands that pursuant to the West Virginia law lifting the ban, the Commission has only a limited time to determine the applicable rules, or the matter is to be referred to an arbitrator for resolution.

Other Countries

Concerns about air pollution have been a major impetus for most countries' standards on vehicle emissions, including diesel particulate. Most industrialized nations recognize the fundamental principle that their citizens should be protected against recognized health risks from air pollution and that this requires the control of particulate such as diesel exhaust. In November of 1995, for example, the government of the United Kingdom recommended a limit on PM_{10}, and noted it would be taking further actions to limit airborne particulate matter (including a special study of dust from surface minerals workings).

Concerns about international trade have been another impetus. Diesel engines are sold to an international market to power many types of industrial and nonindustrial machinery and equipment. The European Union manufacturers exported more than 50 percent of their products, mainly to South Korea, Taiwan, China, Australia, New Zealand and the United States. Germany and the United Kingdom, two major producers, have pushed for harmonized world standards to level the playing field among the various countries' engine producers and to simplify the acceptance of their products by other countries (Financial Times, 1996). This includes products that must be designed to meet pollution standards. The European Union (EU) is now considering a proposal to set an EU-wide standard for the control of the emission of pollutants from non-road mobile machinery (Official Journal of European Communities, 1995). The proposal would largely track that of the U.S. Environmental Protection Agency's final rule on the Control of Air Pollution Determination of Significance for Nonroad Sources and Emission Standards for New Nonroad Compression-Ignition Engines at or above 37 kilowatts (50 HP)p (discussed in section 3 of this part of the preamble).

A third impetus to action has been the studies of the health effects of worker exposure to diesel exhaust—many of which have been epidemiological studies concerning workers in other countries. As noted in Part III of this preamble, the studies include cohorts of Swedish dock workers and bus garage workers, Canadian railway workers and

miners, French workers, London transport workers, and Danish chimney sweeps.

Below, the agency summarizes some information obtained on exposure limits of other countries. Due to differences in regulatory schemes among nations considering the effects of diesel exhaust, countries which have addressed the issue are more likely to have issued recommendations rather than a mandatory maximum exposure limit. Some of these may have issued mandatory design features for diesel equipment to assist in achieving the recommended exposure level. Measurement systems also vary.

Germany

German legislation on dangerous substances classifies diesel engine emissions as carcinogenic. Therefore, diesel engines must be designed and operated using the latest technology to cut emissions. This always requires an examination to determine whether the respective operations and activities may be carried out using other types of less polluting equipment. If, as a result of the examination, it is decided that the use of diesel engines is necessary measures must be instituted to reduce emissions. Such measures can include low-polluting diesel engines, low sulphur fuels, regular maintenance, and, where technology permits, the use of particulate traps. To reduce exposure levels further, diesel engine emissions may be regulated directly at the source; ventilation systems may be required to be installed.

The use of diesel vehicles in a fully or partly enclosed working space—such as in an underground mine—may be restricted by the government, depending on the necessary engine power or load capacity and on whether the relevant operation could be accomplished using a non-polluting vehicle, e.g., an electrically powered vehicle. When determining whether alternate equipment is to be used, the burden to the operator to use such equipment is also considered.

In April of 1997, the following permissible exposure limits (TRK [3]) for diesel engine emissions were instituted for workplaces in mining.

(1) Non-coal underground mining and construction work: TRK = 0.3 mg/m^3 of colloid dust.[4]

(2) other: TRK = 0.1 mg/m^3 of colloid dust.

(3) The average concentration of diesel engine emissions within a period of 15 minutes should never be higher than four times the TRK value.

The TRK is ascertained by determining the fraction of elemental carbon in the colloid (fine) dust by coulometric analysis. Determining the fraction of elemental carbon always involves the determination of total organic carbon in the course of analysis. If the workplace analysis shows that the fraction of elemental carbon in total carbon (elemental carbon plus organic carbon) is lower than 50%, or is subject to major fluctuations, then the TRK limits total carbon in such workplaces to 0.15 mg/m^3.

Irrespective of the TRK levels, the following additional measures are considered necessary once the concentration reaches 0.1 mg/m^3 colloid dust:

(1) Informing employees concerned;

(2) Limited working hours for certain staff categories;

(3) Special working hours; and

(4) Medical checkups.

If concentrations continue to fail to meet the TRK level, the employer must:

(1) Provide appropriate, effective, hygienic breathing apparatus, and

(2) Ensure that workers are not kept at the workplace for longer than absolutely necessary and that health regulations are observed.

Workers must use the breathing apparatus if the TRK levels for diesel engine emissions at the work place are exceeded. Due to the interference of recognized analysis techniques in coal mining, it is currently impossible to ascertain exposure levels in the air in coal mines. As a consequence, the coal mining authorities require the use of special low-polluting engines in underground mining and impose special requirements on the supply of fresh air to the workplace.

European Standards

On April 21, 1997, the draft of a European directive that applied to emissions from non-road mobile machinery was prepared. The directive proposed technical measures that would result in a reduction in emissions from internal-combustion engines (gasoline and diesel) installed in non-road mobile machinery, and type-approval procedures that would provide uniformity among the member nations for the approval of these engines.

The directive proposed a two-stage process. Stage 1, proposed to begin December 31, 1997, was for three different engine categories:

—A: 130 kW <= P <= 560 kW,

—B: 75 kW <= P < 130. kW,

—C: 37 kW <= P < 75 kW.

Stage 2, proposed to begin December 31, 1999, consisted of four engine categories being phased-in over a four-year period:

— D: after December 31,1999 for engines of a power output of 18 kW <= P < 37 kW,

— E: after December 31, 2000 for engines of a power output of 130 kW<= P <= 560 kW,

—F: after December 31, 2001 for engines of a power output of 75 kW<= P < 130 kW,

—G: after December 31, 2002 for engines of a power output of 37 kW<= P <=75 kW.

The emissions shown in the following table for carbon monoxide, hydrocarbons, oxides of nitrogen and particulates are to be met for the respective engine categories described for stage I.

Net power (P) (kW)	Carbon monoxide (P) (g/kWH)	Hydro-carbon s (HC) (g/kWh)	Oxides of nitrogen (NO_X) (g/kWh)	Particulates (PT) (g/kWh)
130≤P<560	5.0	1.3	9.2	0.54
75≤P<130	5.0	1.3	9.2	0.70
37≤P<75	6.5	1.3	9.2	0.85

The engine emission limits that have to be achieved for stage II are shown in the following table. The emissions limits shown are engine-out limits and are to be achieved before any aftertreatment device is used.

[3] TPK is the technical exposure limit of a hazardous material that defines the concentration of gas, vapour or airborne particulates which is the minimum possible with current technology and which serves as a guide for necessary protective measures and monitoring in the workplace.

[4] Colloid dust is defined as that part of total respirable dust in a workplace that passes the alveolar ducts of the worker.

Net power (P) (kW)	Carbon monoxide (P) (g/kWH)	Hydro-carbons (HC) (g/kWh)	Oxides of nitrogen (NO_X) (g/kWh)	Particulates (PT) (g/kWh)
130≤P<560	3.5	1.0	6.0	0.2
75≤P<130	5.0	1.0	6.0	0.3
37≤P<75	5.0	1.3	7.0	0.4
18≤P<37	5.5	1.5	8.0	0.8

Canada (Related Developments in Canada)

The Mining and Minerals Research Laboratories (MMRL) of the Canada Centre for Mineral and Energy Technology (CANMET), an arm of the Federal Department of Natural Resources Canada (NRCAN), began work in the early 1970s to develop measurement tools and control technologies for diesel particulate matter (dpm). In 1978, I.W. French and Dr. Anne Mildon produced a CANMET-sponsored contract study entitled: ''Health Implications of Exposure of Underground Mine Workers to Diesel Exhaust Emissions.'' In this document, an Air Quality Index (AQI) was developed involving several major diesel contaminants (CO, NO, NO_2, SO_2 and RCD—respirable combustible dust which is mostly dpm). These concentrations were divided by their then current permissible exposure limits, and the sum of the several ratios indicates the level of pollution in the mine atmosphere. The maximum value for this Index was fixed at 3.0. This criterion was determined by the known health hazard associated with small particle inhalation, and the known chemical composition of dpm, among other matters.

Subsequently, in 1986, the Canadian Ad hoc Diesel Committee was formed from all segments of the mining industry, including: mine operators, the labor force, equipment manufacturers, research agencies including CANMET, and Canadian regulatory bodies. The objective was the identification of major problems for research and development attention, the undertaking of the indicated studies, and the application of the results to reduce the impact of diesel machines on the health of underground miners.

In 1990–91, CANMET developed an RCD mine sampling protocol on behalf of the Ad hoc Committee. Then current underground sampling studies indicated an average ratio of RCD to dpm of 1.5. This factor accounted for the presence of other airborne combustible liquids including fuel, lubrication and particularly drilling oils, in addition to the dpm.

The original 1978 French-Mildon study was updated under a CANMET contract in 1990. It recommended that the dpm levels be reduced to 0.5 mg/m^3 (suggesting a corresponding RCD level of 0.75 mg/m^3).

However, in 1991, the Ad hoc Committee decided to set an interim recommended RCD level of 1.5 mg/m^3 (the equivalent 1.0 mg/m^3). This value matched the then recommended, but not promulgated, MSHA ''Ventilation Index'' value for dpm of 1.0 mg/m^3. Consequently, all of the North American mining industry then seemed to be accepting the same maximum levels of dpm.

It should be noted that for coal mine environments or other environments where a non-diesel carbonaceous aerosol is present, RCD analysis is not an appropriate measure of dpm levels.

Neither CANMET nor the Ad hoc Committee is a regulatory body. In Canada, mining is regulated by the individual provinces and territories. However, the federal laboratories provide: research and development facilities, advice based on research and development, and engine/machine certification services, in order to assist the provinces in their diesel-related mining regulatory functions.

Prior to the 1991 recommendation of the Ad hoc Committee, Quebec enacted regulations requiring: ventilation, a maximum of 0.25% sulfur content in diesel fuel; a prohibition on black smoke; exhaust cooling to a maximum temperature of 85°C; and the setting of maximum contaminant levels. Since 1997, new regulations add the CSA Standard for engine certification, a maximum RCD level of 1.5 mg/m^3, and the application of an exhaust treatment system.

Further, after the Ad hoc Committee recommendation was published in 1991 (RCDmax = 1.5 mg/m^3), various provinces took the following actions:

(1) Five provinces—British Columbia, Ontario, Quebec, New Brunswick, and Nova Scotia, and the Northwest Territories, adopted an RCD limit of 1.5 mg/m^3.

(2) Two others, Manitoba and Newfoundland/Labrador, have been adopting the ACGIH TLVs.

(3) Two provinces, Alberta and Saskatchewan, and the Yukon Territory, continue to have no dpm limit.

Most Canadian Inspectorates accept the CSA Standard for diesel machine/engine certification. This Standard specifies the undiluted Exhaust Quality Index (EQI) criterion for calculation of the ventilation in cfm, required for each diesel engine/machine. Fuel sulfur content, type of aftertreatment device and rated engine load factor are on-site, variable factors which may alter the ventilation ultimately required. Diesel fuel may not exceed 0.50% sulfur, and must have a minimum flash point of 52°C. However, most mines in Canada now use fuel containing less than 0.05% sulfur by weight.

In addition to limiting the RCD concentration, Qntario, established rules in 1994 that required diesel equipment to meet the Canadian Standards Association ''Non-Rail-Bound Diesel-Powered Machines for use in Non-Gassy Underground Mines'' (CSA M424.2–M90) Standard, excepting the ventilation assessment clauses. As far as fuel sulfur and flashpoint are concerned, Ontario is intending to change to: Smax = 0.05% from 0.25%, and maximum fuel flash point = 38°C from 52°C.

New Brunswick, in addition to limiting the RCD concentration, requires mine operators to submit an ambient air quality monitoring plan. Diesel engines above 100 horsepower must be certified, and there is a minimum ventilation requirement of 105 cfm/bhp.

Since 1996, the Ad hoc organization and the industry consortium called the Diesel Emissions Evaluation Program (DEEP) have been cooperating in a research and development program designed to reduce dpm levels in mines.

World Health Organization (WHO)

Environmental Health Criteria 171 on ''Diesel Fuel and Exhaust Emissions'' is a 1996 monograph published under joint sponsorship of the United Nations Environment Programme, the International Labour Organisation, and the World Health Organization. The monograph provides a comprehensive review of the literature and evaluates the risks for human health and the

environment from exposure to diesel fuel and exhaust emissions.

The following tables compiled in the monograph show diesel engine exhaust limits for various exhaust components and illustrate that there is international concern about the amount of diesel exhaust being released into the environment.

TABLE II–3.—INTERNATIONAL LIMIT VALUES FOR COMPONENTS OF DIESEL EXHAUST LIGHT-DUTY VEHICLES (G/KM)

Region	Carbon monoxide	Nitrogen oxides	Hydrocarbons	Particulates	Comments
Austria	2.1	0.62	0.25	0.124	≤3.5t; since 1991; from 1995, adoption of European Union standards planned.
Canada	2.1	0.62	0.25	0.12	Since 1987.
European Union	2.72	0.97 (with hydrocarbons).		0.14	Since 1992.
	1.0	0.7		0.08	From 1996.
Finland				Since 1993..	
Japan	2.1	0.7	0.62	None	Since 1986.
	2.1	0.5	0.4	0.2	Since 1994.
Sweden, Norway	2.1	0.62 (city) 0.76 (highway)	0.25	0.124	≤3.5t; from motor year 1992.
Switzerland	2.1	0.62 (city) 0.76 (highway)	0.25	0.124	≤3.5t; since 1988; from 1995, adoption of European Union standard planned.
USA (California)	2.1–5.2	0.2–0.6	0.2–0.3 (except methane).	0.05 (up to 31000 km).	Depending on mileage.
US Environmental Protection Agency.	2.1–2.6	0.6–0.8	0.2	0.05–0.12	Depending on mileage.

TABLE II–4.—INTERNATIONAL LIMIT VALUES FOR COMPONENTS OF DIESEL EXHAUST HEAVY-DUTY VEHICLES (G/KWH)

Region	Carbon monoxide	Nitrogen oxides	Hydro carbons	Particulates	Comments
Austria	4.9	9.0	1.23	0.4	
Canada	15.5	5.0	1.3	0.25	g/bhp-h.
	15.5	5.0	1.3	0.1	g/bhp-h; from 1995–97.
European Union	4.5	8.0	1.1	0.36	Since 1992.
	4.0	7.0	1.1	0.15	From 1995–96.
Japan	7.4	5.0	2.9	0.7	Indirect injection engines.
	7.4	6.0	2.9	0.7	Direct injection engines.
Sweden	4.9	9.0	1.23	0.4	
USA	15.5	5.0	1.3	0.07	g/bhp-h; bus.
	15.5	4.0	1.3	0.1	g/bhp-h; truck.
	15.5	5.0	1.3	0.05	g/bhp-h; bus; from 1998.
	15.5	4.0	1.3	0.1	g/bhp-h; truck; from 1998.

Adapted from Mercedes-Benz AG (1994b).

With respect to the protection of human health, the monograph states that the data reviewed supports the conclusion that inhalation of diesel exhaust is of concern with respect to both neoplastic and non-neoplastic diseases. The monograph found that diesel exhaust ''is probably carcinogenic to humans.'' It also states that the particulate phase appears to have the greatest effect on health, and both the particle core and the associated organic materials have biological activity, although the gas-phase components cannot be disregarded. The monograph recommends the following actions for the protection of human health:

(1) Diesel exhaust emissions should be controlled as part of the overall control of atmospheric pollution, particularly in urban environments.

(2) Emissions should be controlled strictly by regulatory inspections and prompt remedial actions.

(3) Urgent efforts should be made to reduce emissions, specifically of particulates, by changing exhaust train techniques, engine design, and fuel consumption.

(4) In the occupational environment, good work practices should be encouraged, and adequate ventilation must be provided to prevent excessive exposure.

The monograph made no recommendations as to what constitutes excessive exposure.

International Agency for Research on Cancer (IARC)

The carcinogenic risks for human beings were evaluated by a working group convened by the International Agency for Research on Cancer in 1988 (International Agency for Research on Cancer, 1989b). The conclusions were:

(1) There is sufficient evidence for the carcinogenicity in experimental animals of the whole diesel engine exhaust.

(2) There is inadequate evidence for the carcinogenicity in animals of gas-phase diesel engine exhaust (with particles removed).

(3) There is sufficient evidence for the carcinogenicity in experimental animals of extracts of diesel engine exhaust particles.

(4) There is limited evidence for the carcinogenicity in humans of engine exhausts (unspecified as from diesel or gasoline engines).

Overall IARC Evaluation

Diesel engine exhaust is probably carcinogenic to humans (Group 2A).

(9) *MSHA's Initiative to Limit Miner Exposure to Diesel Particulate—a Brief History of this Rulemaking and Related Actions.* As discussed in part III of this preamble, by the early 1980's, the evidence indicating that exposure to diesel exhaust might be harmful to miners, particularly in underground mines, had started to grow. As a result, formal agency actions were initiated to investigate this possibility and to determine what, if any, actions might be appropriate. These actions are summarized here in chronological sequence, without comment as to the basis of any action or conclusion.

In 1984, in accordance with the § 102(b) of the Mine Act, NIOSH established a standing Mine Health Research Advisory Committee to advise it on matters involving or related to mine health research. In turn, that group established a subgroup to determine if:

> * * * there is a scientific basis for developing a recommendation on the use of diesel equipment in underground mining operations and defining the limits of current knowledge, and recommending areas of research for NIOSH, if any, taking into account other investigators' ongoing and planned research. (49 FR 37174).

In 1985, MSHA established an Interagency Task Group with the National Institute for Occupational Safety and Health (NIOSH) and the former Bureau of Mines (BOM) to assess the health and safety implications of the use of diesel-powered equipment in underground coal mines. In part, as a result of the recommendation of the Task Group, MSHA, in April 1986, began drafting proposed regulations on the approval and use of diesel-powered equipment in underground coal mines. Also in 1986, the subgroup of the NIOSH advisory committee studying this issue summarized the evidence available at that time as follows:

> It is our opinion that although there are some data suggesting a small excess risk of adverse health effects associated with exposure to diesel exhaust, these data are not compelling enough to exclude diesels from underground mines. In cases where diesel equipment is used in mines, controls should be employed to minimize exposure to diesel exhaust. (Interagency Task Group Report, 1986).

As noted previously in section 7 of this part, in discussing MSHA's diesel equipment rule, on October 6, 1987, pursuant to Section 102(c) of the Mine Act, 30 U.S.C. § 812(c), MSHA appointed an advisory committee ''to provide advice on the complex issues concerning the use of diesel-powered equipment in underground coal mines.'' (52 FR 37381). MSHA appointed nine members to the Advisory Committee. As required by Section 101(a)(1), MSHA provided the Advisory Committee with draft regulations on the approval and use of diesel-powered equipment in underground coal mines. The draft regulations did not include standards setting specific limitations on diesel particulate, nor had MSHA at that time determined that such standards should be promulgated.

In July 1988, the Advisory Committee completed its work with the issuance of a report entitled ''Report of the Mine Safety and Health Administration Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines.'' The Advisory Committee recommended that MSHA promulgate standards governing the approval and use of diesel-powered equipment in underground coal mines. The Advisory Committee recommended that MSHA promulgate standards limiting underground coal miners' exposure to diesel exhaust.

With respect to diesel particulate, the Advisory Committee recommended that MSHA ''set in motion a mechanism whereby a diesel particulate standard can be set.'' (MSHA, 1988). In this regard, the Advisory Committee determined that because of inadequacies in the data on the health effects of diesel particulate matter and inadequacies in the technology for monitoring the amount of diesel particulate matter at that time, it could not recommend that MSHA promulgate a standard specifically limiting the level of diesel particulate matter. (*Id.* 64–65). Instead, the Advisory Committee recommended that MSHA request NIOSH and the former BOM to prioritize research in the development of sampling methods and devices for diesel particulate. The Advisory Committee also recommended that MSHA request a study on the chronic and acute effects of diesel emissions (*Id.*). In addition, the Advisory Committee recommended that the control of diesel particulate ''be accomplished through a combination of measures including fuel requirements, equipment design, and in-mine controls such as the ventilation system and equipment maintenance in conjunction with undiluted exhaust measurements.'' The Advisory Committee further recommended that particulate emissions ''be evaluated in the equipment approval process and a particulate emission index reported.'' (*Id.* at 9).

In addition, the Advisory Committee recommended that ''the total respirable particulate, including diesel particulate, should not exceed the existing two milligrams per cubic meter respirable dust standard.'' (*Id.* at 9). Section 202(b)(2) of the Mine Act requires that coal mine operators maintain the average concentration of respirable dust at their mines at or below two milligrams per cubic meter which effectively prohibits diesel particulate matter in excess of two milligrams per cubic meter, 30 U.S.C. 842(b)(2).

Also in 1988, NIOSH issued a Current Intelligence Bulletin recommending that whole diesel exhaust be regarded as a potential carcinogen and controlled to the lowest feasible exposure level (NIOSH, 1988). In its bulletin, NIOSH concluded that although the excess risk of cancer in diesel exhaust exposed workers has not been quantitatively estimated, it is logical to assume that reductions in exposure to diesel exhaust in the workplace would reduce the excess risk. NIOSH stated that ''[g]iven what we currently know there is an urgent need for efforts to be made to reduce occupational exposures to DEP [dpm] in mines.''

Consistent with the Advisory Committee's research recommendations, MSHA, in September 1988, formally requested NIOSH to perform a risk assessment for exposure to diesel particulate. (57 FR 500). MSHA also requested assistance from NIOSH and the former BOM in developing sampling and analytical methodologies for assessing exposure to diesel particulate in mining operations. (*Id.*). In part, as a result of the Advisory Committee's recommendation, MSHA also participated in studies on diesel particulate sampling methodologies and determination of underground occupational exposure to diesel particulate. A list of the studies requested and reports thereof is set forth in 57 FR 500–501.

On October 4, 1989, MSHA published a Notice of Proposed Rulemaking on approval requirements, exposure monitoring, and safety requirements for the use of diesel-powered equipment in underground coal mines. (54 FR 40950). The proposed rule, among other things, addressed, and in fact followed, the Advisory Committee's recommendation that MSHA promulgate regulations requiring the approval of diesel engines (54 FR 40951), limiting gaseous pollutants from diesel equipment, (*Id.*), establishing ventilation requirements based on approval plate dilution air quantities (54 FR 40990), requiring equipment maintenance (54 FR 40958), requiring that trained personnel work on diesel-powered equipment, (54 FR 40995), establishing fuel requirements,

(*Id.*), establishing gaseous contaminant monitoring (54 FR 40989), and requiring that a particulate index indicating the quantity of air needed to dilute particulate emissions from diesel engines be established. (54 FR 40953).

On January 6, 1992, MSHA published an Advance Notice of Proposed Rulemaking (ANPRM) indicating that it was in the early stages of developing a rule specifically addressing miners' exposure to diesel particulate. (57 FR 500). In the ANPRM, MSHA, among other things, sought comment on specific reports on diesel particulate prepared by NIOSH and the former BOM. (*Id.*). MSHA also sought comment on reports on diesel particulate which were prepared by or in conjunction with MSHA. (57 FR 501). The ANPRM also sought comments on the health effects, technological and economic feasibility, and provisions which should be considered for inclusion in a diesel particulate rule. (57 FR 501). The notice also identified five specific areas where the agency was particularly interested in comments, and about which it asked a number of detailed questions: (1) exposure limits, including the basis therefore; (2) the validity of the NIOSH risk assessment model and the validity of various types of studies; (3) information about non-cancer risks, non-lung routes of entry, and the confounding effects of tobacco smoking; (4) the availability, accuracy and proper use of sampling and monitoring methods for diesel particulate; and (5) the technological and economic feasibility of various types of controls, including ventilation, diesel fuel, engine design, aftertreatment devices, and maintenance by mechanics with specialized training. The notice also solicited specific information from the mining community on ''the need for a medical surveillance or screening program and on the use of respiratory equipment.'' (57 FR 500). The comment period on the ANPRM closed on July 10, 1992.

While MSHA was completing a ''comprehensive analysis of the comments and any other information received'' in response to the ANPRM (57 FR 501), it took several actions to encourage the mining community to begin to deal with this problem, and to provide the knowledge and equipment needed for this task. As described earlier in this part, the Agency held several workshops in 1995, published a ''toolbox'' of controls, and developed a spreadsheet template that allows mine operators to compare the impacts of various controls on dpm concentrations in individual mines.

On October 25, 1996, MSHA published a final rule addressing approval, exhaust monitoring, and safety requirements for the use of diesel-powered equipment in underground coal mines. (61 FR 55412). The final rule addresses and in large part is consistent with the specific recommendations made by the Advisory Committee for limiting underground coal miners' exposure to diesel exhaust. (A further summary of this rule is contained in section 7 of this part).

On February 26, 1997, the United Mine Workers of America petitioned the U.S. Court of Appeals for the D.C. Circuit to issue a writ of mandamus ordering the Secretary of Labor to promulgate a rule on diesel particulate. In Re: International Union, United Mine Workers of America, D.C. Cir. Ct. Appeals, No. 97–1109. The matter was scheduled for oral argument on September 12, 1997. On September 11, 1997, the Court granted the parties' joint motion to continue oral argument and hold the proceedings in abeyance. The Court directed the parties to file status reports or motions to govern future proceedings at 90-day intervals. Pursuant to that order, on March 10, 1998, the Secretary filed a status report.

III. Risk Assessment

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Introduction

MSHA has reviewed the scientific literature to evaluate the potential health effects of diesel particulate at occupational exposures encountered in the mining industry. Based on its review of the currently available information, this part of the preamble assesses the risks associated with those exposures. Additional material submitted for the record will be considered by MSHA before final determinations are made.

Agencies sometimes place risk assessments in the rulemaking record and provide only a summary in the preamble for a proposed rule. MSHA has decided that, in this case, it is important to disseminate a discussion of risk widely throughout the mining community. Therefore, the full assessment is being included as part of the preamble.

The risk assessment begins with a discussion of dpm exposure levels observed in the mining industry. This is followed by a review of information available to MSHA on health effects that have been associated with diesel particulate exposure. Finally, in the section entitled ''Characterization of Risk,'' the Agency considers three questions that must be addressed for rulemaking under the Mine Act, and relates the available information about risks of dpm exposure at current levels to the regulatory requirements.

A risk assessment must be technical enough to present the evidence and describe the main controversies surrounding it. At the same time, an overly technical presentation could cause stakeholders to lose sight of the main points. MSHA is guided by the first principle the National Research Council established for risk characterization: that the approach be—

> [a] decision driven activity, directed toward informing choices and solving problems * * * Oversimplifying the science or skewing the results through selectivity can lead to the inappropriate use of scientific information in risk management decisions,

but providing full information, if it does not address key concerns of the intended audience, can undermine that audience's trust in the risk analysis.

MSHA intends this risk assessment to further the rulemaking process. The purpose of a proposed rulemaking is to advise the regulated community of what information the agency is evaluating, how the agency believes it should evaluate that information, and what tentative conclusions the agency has drawn. Comments and guidance from all interested members of the public are encouraged. The risk assessment presented here is meant to facilitate public comment, thus, helping to ensure that final rulemaking is based on as complete a record as possible—on both the evidence itself and the manner in which it is to be evaluated by the Agency. Those who want additional detail are welcome to examine the materials cited in this part, copies of which are included in MSHA's rulemaking record.

While this rulemaking only covers the underground coal sector, this risk assessment was prepared so as to enable MSHA and to assess the risks throughout the mining industry. Accordingly, this information will be of interest to the entire mining community.

MSHA had this risk assessment independently peer reviewed. The risk assessment presented here incorporates revisions made in accordance with the reviewers recommendations. The reviewers stated that:

* * * principles for identifying evidence and characterizing risk are thoughtfully set out. The scope of the document is carefully described, addressing potential concerns about the scope of coverage. Reference citations are adequate and up to date. The document is written in a balanced fashion, addressing uncertainties and asking for additional information and comments as appropriate. (Samet and Burke, Nov. 1997).

III.1. Exposures of U.S. Miners

Information about U.S. miner exposures comes from published studies and from additional mine surveys conducted by MSHA since 1993.[5] Previously published studies of U.S. miner exposure to dpm are: Watts (1989, 1992), Cantrell (1992, 1993), Haney (1992), and Tomb and Haney (1995). MSHA has also conducted surveys subsequent to the period covered in Tomb and Haney (1995), and the previously unpublished data from those surveys are included here. Overall, the period covered in MSHA's surveys, on which this section is based, is late 1988 through mid 1997.

MSHA's field studies involved measuring dpm concentrations at a total of 48 mines: 25 underground metal and nonmetal (M/NM) mines, 12 underground coal mines, and 11 surface mining operations (both coal and M/NM). At all surface mines and all underground coal mines, dpm measurements were made using the size-selective method, based on gravimetric determination of the amount of submicrometer dust collected with an impactor. With two exceptions, dpm measurements at underground M/NM mines were made using the RCD method (with no submicrometer impactor). Measurements at the two remaining underground M/NM mines were made using the size-selective method, as in coal and surface mines. The various methods of measuring dpm are explained in Part II of this preamble. Weighing errors inherent in the gravimetric analysis required for both size-selective and RCD methods become statistically insignificant at the relatively high dpm concentrations observed.

Each underground study typically included personal dpm exposure measurements for approximately five production workers. Also, area samples were collected in return airways of underground mines to determine diesel particulate emission rates. Operational information such as the amount and type of equipment, airflow rates, fuel, and maintenance was also recorded. In general, MSHA's studies focused on face production areas of mines, where the highest concentrations of dpm could be expected; but, since some miners do not spend their time in face areas, studies were performed in other areas as well, to get a more complete picture of miner exposure. Because of potential interferences from tobacco smoke in underground M/NM mines, samples were not collected on or near smokers.

Table III–1 summarizes key results from MSHA's studies.

The higher concentrations in underground mines were typically found in the haulageways and face areas where numerous pieces of equipment were operating, or where insufficient air was available to ventilate the operation. In production areas and haulageways of underground mines where diesel powered equipment is used, the mean dpm concentration observed was 755 μg/m^3. By contrast, in travelways of underground mines where diesel powered equipment is used, the mean dpm concentration (based on 107 samples not included in Table III–1) was 307 μg/m^3. In surface mines, the higher concentrations were generally associated with truck drivers and front-end loader operators. The mean dpm concentration observed was less than 200 μg/m^3 at all 11 of the surface mines in which measurements were made. More information about the dpm concentrations observed in each sector is presented in the material that follows.

TABLE III–1.—FULL-DIESEL PARTICULATE MATTER CONCENTRATIONS OBSERVED IN PRODUCTION AREAS AND HAULAGEWAYS OF 48 DIESELIZED U.S. MINES. INTAKE AND RETURN AREA SAMPLES ARE EXCLUDED.

Mine type	Number of samples	Mean exposure μg/m^3	Exposure range μg/m^3
Surface	45	88	9–380
Underground Coal	226	644	0–3,650
Underground Metal and Nonmetal	331	830	10–5,570

III.1.a. Underground Coal Mines

Approximately 170 out of the 971 existing underground coal mines currently utilize diesel powered equipment. Of these 170 mines, fewer than 20 currently use diesel equipment for face coal haulage. The remaining mines use diesel equipment for transportation, materials handling and other support operations. MSHA focused its efforts in measuring dpm concentrations in coal mines on mines that use diesel powered equipment for face coal haulage. Twelve mines using diesel-powered face haulage were

[5] MSHA has only limited information about miner exposures in other countries. Based on 223 personal and area samples, average exposures at 21 Canadian noncoal mines were reported to range from 170 to 1300 μg/m^3 (respirable combustible dust), with maximum measurements ranging from 1020 to 3100 μg/m^3 (Gangel and Dainty, 1993). Among 622 full shift measurements collected since 1989 in German underground noncoal mines, 91 (15%) exceeded 400 μg/m^3 (total carbon) (Dahmann et al., 1996). As explained in Part II of this preamble, 400 μg/m^3 (total carbon) corresponds to approximately 500 μg/m^3 dpm.

sampled. Mines with diesel powered face haulage were selected because the face is an area with a high concentration of vehicles operating at a heavy duty cycle at the furthest end of the mine's ventilation system.

Diesel particulate levels in underground mines depend on: (1) the amount, size, and workload of diesel equipment; (2) the rate of ventilation; and, (3) the effectiveness of whatever diesel particulate control technology may be in place. In the dieselized mines studied by MSHA, the sections used either two or three diesel coal haulage vehicles. In eastern mines the haulage vehicles were equipped with a nominal 100 horsepower engine. In western mines the haulage vehicles were equipped with a nominal 150 horsepower engine. Ventilation rates ranged from the nameplate requirement, based on the 100–75–50 percent rule (Holtz, 1960), to ten times the nameplate requirement. In most cases, the section airflow was approximately twice the name plate requirement. Control technology involved aftertreatment filters and fuel. Two types of aftertreatment filters were used. These filters included a disposable diesel emission filter (DDEF) and a Wire Mesh Filter (WMF). The DDEF is a commercially available product; the WMF was developed by and only used at one mine. Both low sulfur and high sulfur fuels were used.

Figure III–1 displays the range of exposure measurements obtained by MSHA in the field studies it conducted in underground coal mines. A study normally consisted of collecting samples on the continuous miner operator and ramcar operators for two to three shifts, along with area samples in the haulageways. A total of 142 personal samples and 84 area samples were collected. No statistically significant difference was observed in mean dpm concentration between the personal and area samples.

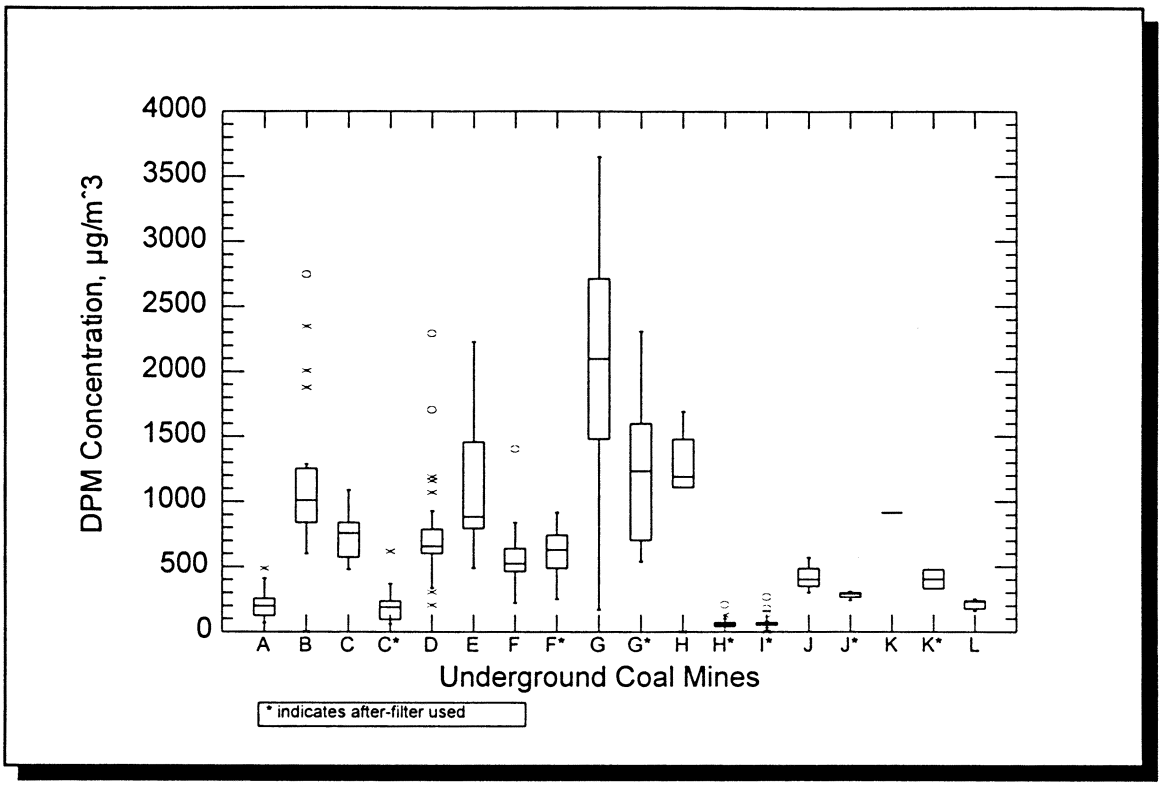

Figure III-1.-- Box plots for dpm concentrations observed at 12 underground coal mines. Top and bottom of each box represent upper and lower quartiles, respectively. "Belt" inside box represents median. Vertical lines span nearly all measurements. Isolated points are outliers, representing unusually high or low measurements compared to other observations at the same mine. All DPM measurements were made using the size-selective method, based on gravimetric determination of the amount of submicrometer dust collected with an impactor.

In six mines, measurements were taken both with and without employment of disposable after treatment filters, so that a total of eighteen studies, carried out in twelve mines, are displayed. Without employment of after treatment filters, average observed dpm concentrations exceeded 500 µg/m^3 in eight of the twelve mines and exceeded 1000 µg/m^3 in four.[6]

[6] In coal mine E, the average as expressed by the mean exceeded 1000 µg/m^3, but the median did not.

The highest dpm concentrations observed at coal mines were collected at Mine "G." Eight of these samples were collected during employment of DDEF's, and eight were collected while filters were not being employed. Without filters, the mean dpm concentration observed at Mine "G" was 2052 µg/m^3

(median = 2100 μg/m³). With disposable filters, the mean dropped to 1241 μg/m³ (median = 1235 μg/m³).

Filters were employed in three of the four studies showing median dpm concentration at or below 200 μg/m³. After adjusting for outby sources of dpm, exposures were found to be reduced by up to 95 percent in mines using the DDEF and by up to 50 percent in the mine using the WMF. The higher dpm concentrations observed at the mine using the WMF are attributable partly to the lower section airflow. The only study without filters showing a median concentration at or below 200 μg/m³ was conducted in a mine (Mine "A") which had section airflow approximately ten times the nameplate requirement. The section airflow at the mine using the WMF was approximately the nameplate requirement.

III.1.b. Underground Metal and Nonmetal Mines. Currently there are approximately 260 underground M/NM mines in the United States. Nearly all of these mines utilize diesel powered equipment, and twenty-five of those doing so were sampled by MSHA for dpm. The M/NM studies typically included measurements of dpm exposure for dieselized production equipment operators (such as truck drivers, roof bolters, haulage vehicles) on two to three shifts. A number of area samples were also collected. None of the M/NM mines studied were using diesel particulate afterfilters.

Figure III–2 displays the range of dpm concentrations measured by MSHA in the twenty-five underground M/NM mines studied. A total of 254 personal samples and 77 area samples were collected. No statistically significant difference was observed in mean dpm concentration between the personal and area samples. Personal exposures observed ranged from less than 100 μg/m³ to more than 3500 μg/m³. With the exception of Mine "V", personal exposures were for face workers. Mine "V" did not use dieselized face equipment.

Average observed dpm concentrations exceeded 500 μg/m³ in 17 of the 25 M/NM mines and exceeded 1000 μg/m³ in 12.[7] The highest dpm concentrations observed at M/NM mines were collected at Mine "E". Based on 16 samples, the mean dpm concentration observed at Mine "E" was 2008 μg/m³ (median = 1835 μg/m³). Twenty-five percent of the dpm measurements at this mine exceeded 2400 μg/m³. All four of these were based on personal samples.

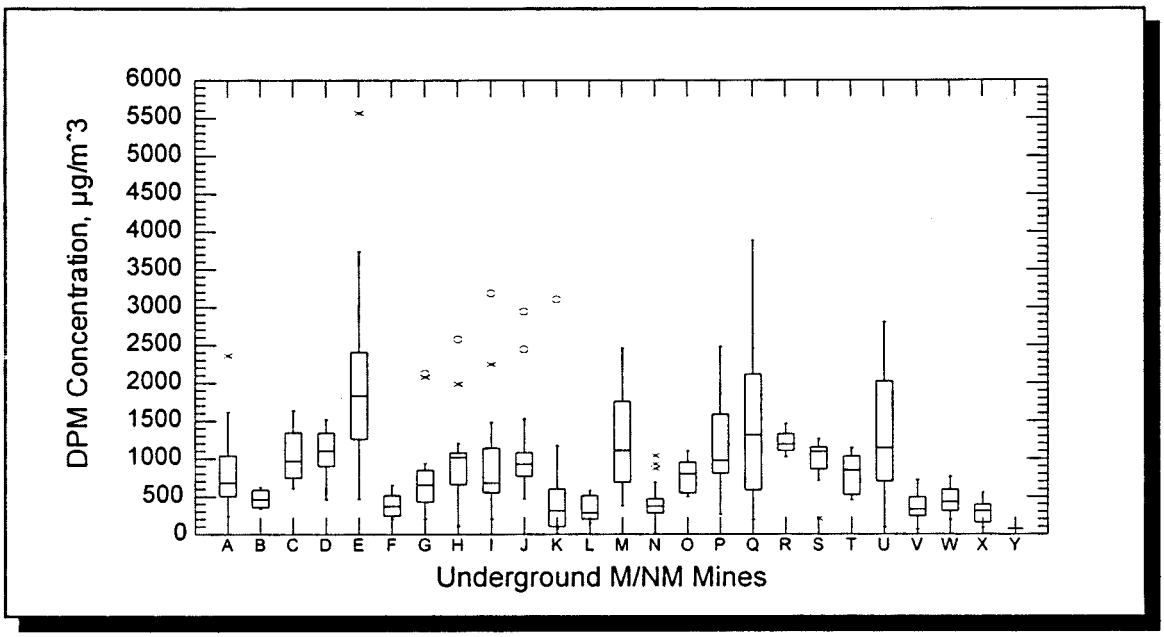

Figure III-2.-- Box plots for dpm concentrations observed at 25 underground metal and nonmetal mines. Top and bottom of each box represent upper and lower quartiles, respectively. "Belt" inside box represents median. Vertical lines span nearly all measurements. Isolated points are outliers, representing unusually high or low measurements compared to other observations at the same mine. Measurements at mines other than "D" and "T" were made using RCD method. Measurements at mines "D" and "T" were made using the size-selective method, based on gravimetric determination of the amount of submicrometer dust collected with an impactor. Because of potential interferences from cigarette smoke, samples were not collected on or near smokers.

As with underground coal mines, dpm levels in underground M/NM mines are related to the amount and size of equipment, to the ventilation rate, and to the effectiveness of the diesel particulate control technology employed. In the dieselized M/NM mines studied by MSHA, front-end-loaders were used either to load ore

[7] At M/NM mines C, I, J, and P, the average as expressed by the mean exceeded 100 μg/m³ but the median did not. At N/NM mines H and S, the median exceeded 1000 μg/m³ but the mean did not. At M/NM mine K, the mean exceeded 500 μg/m³, but the median did not.

onto trucks or to haul and load ore onto belts. Additional pieces of diesel powered support equipment, such as bolters and mantrips, were also used at the mines. The typical piece of production equipment was rated at 150 to 350 horsepower. Ventilation rates in the M/NM mines studied mostly ranged from 100 to 200 cfm per horsepower of equipment. In only a few of the mines surveyed did ventilation exceed 200 cfm/hp. For single-level mines, working areas were ventilated in series, i.e., the exhaust air from one area became the intake for the next working area. For multi-level mines, each level typically had a separate fresh air supply. One or two working areas could be on a level. Control technology used to reduce diesel particulate emissions in mines surveyed included oxidation catalytic converters and engine maintenance programs. Both low sulfur and high sulfur fuel were used; some mines used aviation grade low sulfur fuel.

III.1.c. Surface Mines. Currently, there are approximately 12,200 surface mining operations in the United States. The total consists of approximately 1,700 coal mines and 10,500 M/NM mines. Virtually all of these mines utilize diesel powered equipment.

MSHA conducted diesel particulate studies at eleven surface mining operations: eight coal mines and three M/NM mines. To help select those surface facilities likely to have significant dpm concentrations, MSHA first made a visual examination (based on blackness of the filter) of surface mine respirable dust samples collected during a November 1994 study of surface coal mines. This preliminary screening of samples indicated that higher exposures to diesel particulate are typically associated with front-end-loader operators and haulage-truck operators; accordingly, sampling focused on these operations. A total of 45 samples were collected.

Figure III–3 displays the range of dpm concentrations measured at the eleven surface mines. The average dpm concentration observed was less than 200 μg/m^3 at all mines sampled. The maximum dpm concentration observed was less than or equal to 200 μg/m^3 in 8 of the 11 mines (73%). The surface mine studies indicate that even when sampling is performed at the areas of surface mines believed most likely to have high exposures, dpm concentrations are generally less than 200 μg/m^3.

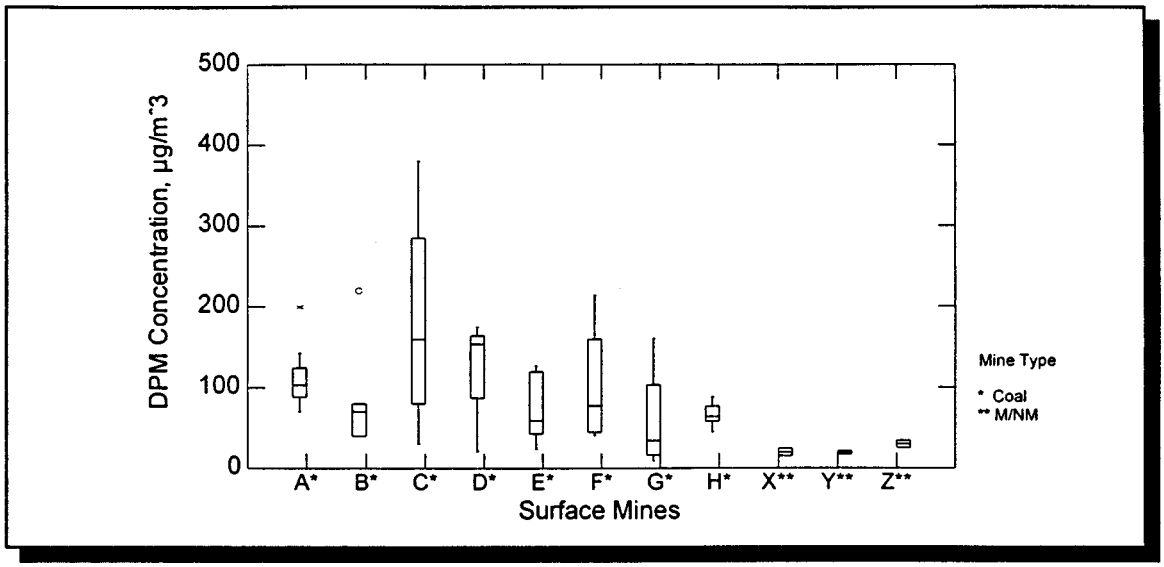

Figure III-3.--Box plots for dpm concentrations observed at 11 surface mines. Top and bottom of each box represent upper and lower quartiles, respectively. "Belt" inside box represents median. Vertical lines span nearly all measurements. Isolated points are outliers, representing unusually high or low measurements compared to other observations at the same mine. All DPM measurements were made using the size-selective method, based on gravimetric determination of the amount of submicrometer dust collected with an impactor. Because of potential interferences from cigarette smoke, samples were not collected on smokers who worked inside enclosures.

III.1.d. Comparison of Miner Exposures to Exposures of Other Groups. Occupational exposure to diesel particulate primarily originates from industrial operations employing equipment powered with diesel engines. Diesel engines are used to power ships, locomotives, heavy duty trucks, heavy machinery, as well as a small number of light-duty passenger cars and trucks. NIOSH estimates that approximately 1.35 million workers are occupationally exposed to the combustion products of diesel fuel in approximately 80,000 workplaces in the United States. Workers who are likely to be exposed to diesel emissions include: mine workers; bridge and tunnel workers; railroad workers; loading dock workers; truck drivers; fork-lift drivers; farm workers; and, auto, truck, and bus maintenance garage workers (NIOSH, 1988). Besides miners, groups for which occupational exposures have been reported and health effects have been studied include dock workers, truck drivers, and railroad workers.

As estimated by geometric mean, median occupational exposures reported for dock workers either operating or otherwise exposed to diesel fork lift trucks have ranged from 23 to 55 μg/m³, as measured by submicrometer elemental carbon (NIOSH, 1990; Zaebst et al., 1991). Watts (1995) states that "elemental carbon generally accounts for about 40% to 60% of diesel particulate mass." Assuming that, on average, the submicrometer elemental carbon constituted approximately 50% by mass of the whole diesel particulate, this would correspond to a range of 46 to 110 μg/m³ in median dpm concentrations at various docks.

In a study of dpm exposures in the trucking industry, Zaebst et al. (1991) reported geometric mean concentrations of submicrometer carbon ranging from 2 to 7 μg/m³ for drivers to 5 to 28 μg/m³ for mechanics, depending on weather conditions. Again assuming that, on average, the mass concentration of whole diesel particulate is about twice that of submicrometer elemental carbon, the corresponding range of median dpm concentrations would be 4 to 56 μg/m³.

Exposures of railroad workers to dpm were estimated by Woskie et al. (1988) and Schenker et al. (1990). As measured by total respirable particulate matter other than cigarette smoke, Woskie et al. reported geometric mean concentrations for various occupational categories of exposed railroad workers ranging from 49 to 191 μg/m³.

Figure III–4 shows the range of median dpm concentrations observed for mine workers at different mines compared to the range of median concentrations estimated for dock workers (including forklift drivers at loading docks), truck drivers and mechanics, railroad workers, and urban ambient air. The range for ambient air, 1 to 10 μg/m³, was obtained from Cass and Gray (1995). For dock workers, truck drivers, and railroad workers, the estimated range of median exposures is respectively 46 to 110 μg/m³, 4 to 56 μg/m³, and 49 to 191 μg/m³. The range of medians observed at different underground coal mines is 55 to 2100 μg/m³, with filters employed at mines showing the lower concentrations. For underground M/NM mines, the corresponding range is 68 to 1835 μg/m³, and for surface mines it is 19 to 160 μg/m³.

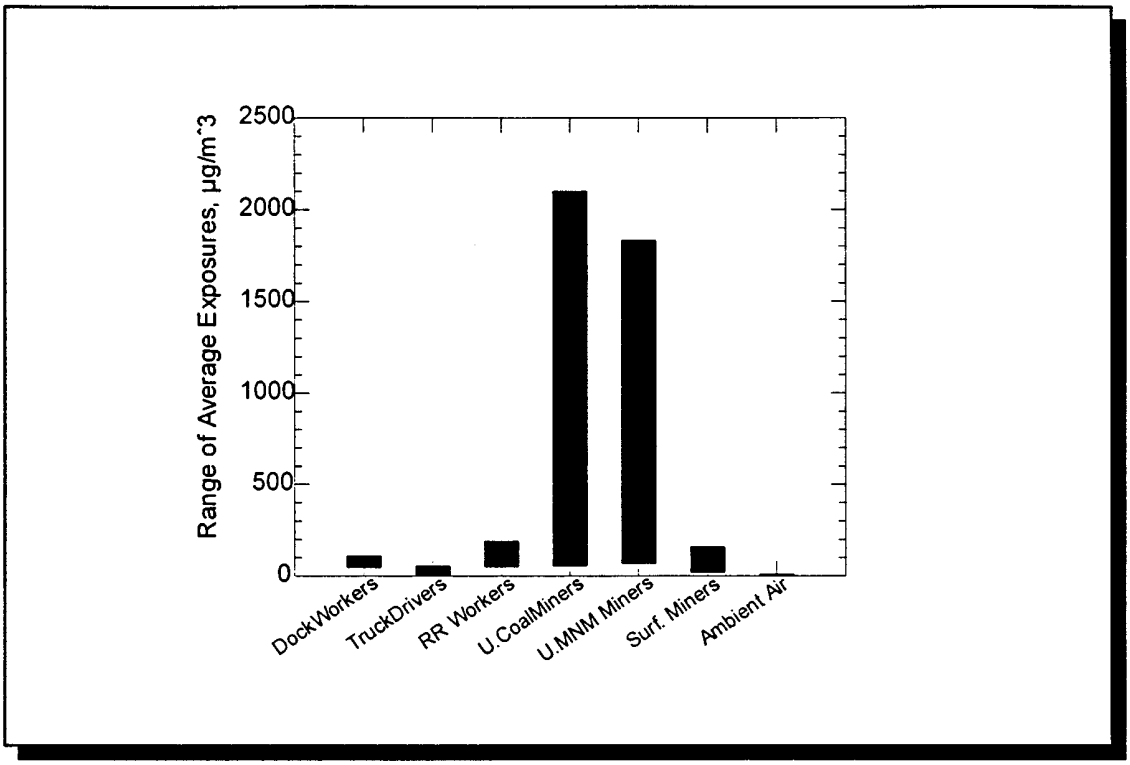

Figure III-4.--Range of average dpm exposures observed at various mines for underground and surface miners compared to range of average exposures reported for other occupations and for urban ambient air. Averages are represented by median observed within mines for mine workers, by median as estimated with geometric mean reported for other occupations, and, for ambient air in urban environments, by the monthly mean estimated for different months and locations in Southern California. The range estimated for urban ambient air is roughly 1 to 10 μg/m³.

As shown in Figure III–4, some miners are exposed to far higher concentrations of dpm than are any other populations for which data have been collected. Indeed, median dpm concentrations observed in some underground mines are up to 200 times as high as average environmental exposures in the most heavily polluted urban areas, and up to 10 times as high as median exposures estimated for the most heavily exposed workers in other occupational groups.

III.2. Health Effects Associated with DPM Exposures.

This section reviews all the various health effects (of which MSHA is aware) that may be associated with exposure to diesel particulate. The review is divided into three main sections: acute effects, such as diminished pulmonary function and eye irritation; chronic effects, such as lung cancer; and mechanisms of toxicity. Prior to that review, however, the relevance of certain types of information will be considered. This discussion will address the relevance of health effects observed in animals, health effects that are reversible, and health effects associated with fine particulate matter in the ambient air.

III.2.a. Relevancy Considerations.

III.2.a.i. Relevance of Health Effects Observed in Animals. Since the lungs of different species may react differently to particle inhalation, it is necessary to treat the results of animal studies with some caution. Evidence from animal studies can nevertheless be valuable, and those respondents to MSHA's ANPRM who addressed this question urged consideration of all animal studies related to the health effects of diesel exhaust.

Unlike humans, laboratory animals are bred to be homogeneous and can be randomly selected for either non-exposure or exposure to varying levels of a potentially toxic agent. This permits setting up experimental and control groups of animals that do not differ biologically prior to exposure. The consequences of exposure can then be determined by comparing responses in the experimental and control groups. After a prescribed duration of deliberate exposure, laboratory animals can also be sacrificed, dissected, and examined. This can contribute to an understanding of mechanisms by which inhaled particles may exert their effects on health. For this reason, discussion of the animal evidence is placed in the section entitled ''Mechanisms of Toxicity'' below.

Animal evidence also can help isolate the cause of adverse health effects observed among humans exposed to a variety of potentially hazardous substances. If, for example, the epidemiological data is unable to distinguish between several possible causes of increased risk of disease in a certain population, then controlled animal studies may provide evidence useful in suggesting the most likely explanation—and provide that information years in advance of definitive evidence from human observations.

Furthermore, results from animal studies may also serve as a check on the credibility of observations from epidemiological studies of human populations. If a particular health effect is observed in animals under controlled laboratory conditions, this tends to corroborate observations of similar effects in humans.

Accordingly, MSHA believes that judicious use of evidence from animal studies is appropriate. The extent to which MSHA relies upon such evidence to draw specific conclusions will be

discussed below in connection with those conclusions.

III.2.a.ii. Relevance of Health Effects That Are Reversible. Some reported health effects associated with dpm are apparently reversible—i.e., if the worker is moved away from the source for a few days, the health problem goes away. A good example is eye irritation.

In response to the ANPRM, questions were raised as to whether so-called ''reversible'' effects can constitute a ''material'' impairment. For example, one commenter argued that ''it is totally inappropriate for the agency to set permissible exposure limits based on temporary, reversible sensory irritation'' because such effects cannot be a ''material'' impairment of health or functional capacity within the definition of the Mine Act (American Mining Congress, 87–0–21, Executive Summary, p. 1, and Appendix A).

MSHA does not agree with this categorical view. Although the legislative history of the Mine Act is silent concerning the meaning of the term ''material impairment of health or functional capacity,'' and the issue has not been litigated within the context of the Mine Act, the statutory language about risk in the Mine Act is similar to that under the OSH Act. A similar argument was dispositively resolved in favor of the Occupational Safety and Health Administration (OSHA) by the 11th Circuit Court of Appeals in *AFLCIO* v. *OSHA*, 965 F.2d 962, 974 (1992) (popularly known as the ''PEL's'' decision).

In that case, OSHA proposed new limits on 428 diverse substances. It grouped these into 18 categories based upon the primary health effects of those substances: e.g., neuropathic effects, sensory irritation, and cancer. (54 FR 2402). Challenges to this rule included the assertion that a ''sensory irritation'' was not a ''material impairment of health or functional capacity'' which could be regulated under the OSH Act. Industry petitioners argued that since irritant effects are transient in nature, they did not constitute a ''material impairment.'' The Court of Appeals decisively rejected this argument.

The court noted OSHA's position that effects such as stinging, itching and burning of the eyes, tearing, wheezing, and other types of sensory irritation can cause severe discomfort and be seriously disabling in some cases. Moreover, there was evidence that workers exposed to these sensory irritants could be distracted as a result of their symptoms, thereby endangering other workers and increasing the risk of accidents. (*Id*. at 974). This evidence included information from NIOSH about the general consequences of sensory irritants on job performance, as well as testimony by commenters on the proposed rule supporting the view that such health effects should be regarded as material health impairments. While acknowledging that ''irritation'' covers a spectrum of effects, some of which can be trivial, OSHA had concluded that the health effects associated with exposure to these substances warranted action—to ensure timely medical treatment, reduce the risks from increased absorption, and avoid a decreased resistance to infection (*Id*. at 975). Finding OSHA's evaluation adequate, the Court of Appeals rejected petitioners' argument and stated the following:

> We interpret this explanation as indicating that OSHA finds that although minor irritation may not be a material impairment, there is a level at which such irritation becomes so severe that employee health and job performance are seriously threatened, even though those effects may be transitory. We find this explanation adequate. OSHA is not required to state with scientific certainty or precision the exact point at which each type of sensory or physical irritation becomes a material impairment. Moreover, section 6(b)(5) of the Act charges OSHA with addressing all forms of ''material impairment of health or functional capacity,'' and not exclusively ''death or serious physical harm'' or ''grave danger'' from exposure to toxic substances. See 29 U.S.C. 654(a)(1), 655(c). [*Id*. at 974.]

III.2.a.iii. Relevance of Health Effects Associated with Fine Particulate Matter in Ambient Air. There have been many studies in recent years designed to determine whether the mix of particulate matter in ambient air is harmful to health. The evidence linking particulates in air pollution to health problems has long been compelling enough to warrant direction from the Congress to limit the concentration of such particulates (see part II, section 5 of this preamble). In recent years, the evidence of harmful effects due to airborne particulates has increased, and, moreover, has suggested that ''fine'' particulates (i.e., particles less than 2.5 µm in diameter) are more strongly associated than ''coarse'' particulates (i.e., respirable particles greater than 2.5 µm in diameter) with the adverse health effects observed (EPA, 1996).

MSHA recognizes that there are two difficulties involved in utilizing the evidence from such studies in assessing risks to miners from occupational dpm exposures. First, although dpm is a fine particulate, ambient air also contains fine particulates other than dpm. Therefore, health effects associated with exposures to fine particulate matter in air pollution studies are not associated specifically with exposures to dpm or any other one kind of fine particulate matter. Second, observations of adverse health effects in segments of the general population do not necessarily apply to the population of miners. Since, due to age and selection factors, the health of miners differs from that of the public as a whole, it is possible that fine particles might not affect miners, as a group, to the same extent as the general population.

Nevertheless, there are compelling reasons to consider this body of evidence. Since dpm is a type of respirable particle, information about health effects associated with exposures to respirable particles in general, and especially to fine particulate matter, is certainly relevant, even if difficult to apply directly to dpm exposures. Adverse health effects in the general population have been observed at ambient atmospheric particulate concentrations well below those studied in occupational settings. Furthermore, there is extensive literature showing that occupational dust exposures contribute to Chronic Obstructive Pulmonary Diseases (COPD), thereby compromising the pulmonary reserve of some miners, and that miners experience COPD at a significantly higher rate than the general population (Becklake 1989, 1992; Oxman 1993; NIOSH 1995). This would appear to place affected miners in a subpopulation specifically identified as susceptible to the adverse health effects of respirable particle pollution (EPA, 1996). The Mine Act requires standards that ''* * * most adequately assure on the basis of the best available evidence that *no miner* suffer material impairment of health or functional capacity * * *'' (Section 101(a)(6), emphasis added).

In sum, MSHA believes it would be a serious omission to ignore the body of evidence from air pollution studies and the Agency is, therefore, taking that evidence into account. The Agency would, however, welcome additional scientific information and analysis on ways of applying this body of evidence to miners experiencing acute and/or chronic dpm exposures. MSHA is especially interested in receiving information on whether the elevated prevalence of COPD among miners makes them, as a group, highly susceptible to the harmful effects of fine particulate air pollution, including dpm.

III.2.b. *Acute Health Effects*

Information relating to the acute health effects of dpm includes anecdotal reports of symptoms experienced by exposed miners, studies based on

exposures to diesel emissions, and studies based on exposures to particulate matter in the ambient air. These will be discussed in turn.

III.2.b.i. Symptoms Reported by Exposed Miners. Miners working in mines with diesel equipment have long reported adverse effects after exposure to diesel exhaust. For example, at the workshops on dpm conducted in 1995, a miner reported headaches and nausea among several operators after short periods of exposure (dpm Workshop; Mt. Vernon, IL, 1995). Another miner reported that the smoke from equipment using improper fuel or not well maintained is an irritant to nose and throat and impairs vision. ''We've had people sick time and time again * * * at times we've had to use oxygen for people to get them to come back around to where they can feel normal again.'' (dpm Workshop; Beckley, WV, 1995). Other miners (dpm Workshops; Beckley, WV, 1995; Salt Lake City, UT, 1995), reported similar symptoms in the various mines where they worked.

Kahn et al. (1988) conducted a study of the prevalence and seriousness of such complaints, based on United Mine Workers of America records and subsequent interviews with the miners involved. The review involved reports at five underground coal mines in Utah and Colorado between 1974 and 1985. Of the 13 miners reporting symptoms: 12 reported mucous membrane irritation, headache and light-headiness; eight reported nausea; four reported heartburn; three reported vomiting and weakness, numbness, and tingling in extremities; two reported chest tightness; and two reported wheezing (although one of these complained of recurrent wheezing without exposure). All of these incidents were severe enough to result in lost work time due to the symptoms (which subsided within 24 to 48 hours).

MSHA welcomes additional information about such effects including information from medical personnel who have treated miners and information on work time lost, together with information about the exposures of miners for whom such effects have been observed. The Agency would be especially interested in comparisons of effects observed in workers subjected to filtered exhaust as compared to those subjected to unfiltered exhaust.

III.2.b.ii. Studies Based on Exposures to Diesel Emissions. Several scientific studies have been conducted to investigate acute effects of exposure to diesel emissions.

In a clinical study (Battigelli, 1965), volunteers were exposed to different levels of diesel exhaust and then the degree of eye irritation was measured. Exposure for ten minutes to diesel exhaust produced ''intolerable'' irritation in some subjects while the average irritation score was midway between ''some'' irritation and a ''conspicuous but tolerable'' irritation level. Cutting the exposure by 50% significantly reduced the irritation.

In a study of underground iron ore miners exposed to diesel emissions, Jrgensen and Svensson (1970), found no difference in spirometry measurements taken before and after a work shift. Similarly, Ames et al. (1982), in a study of coal miners exposed to diesel emissions, detected no statistically significant relationship between exposure and pulmonary function. However, the authors noted that the lack of a positive result might be due to the low concentrations of diesel emissions involved.

Gamble et al. (1978) did observe decreases in pulmonary function over a single shift in salt miners exposed to diesel emissions. Pulmonary function appeared to deteriorate in relation to the concentration of diesel exhaust, as indicated by NO_2; but this effect was confounded by the presence of NO_2 due to the use of explosives.

Gamble et al. (1987a) assessed response to diesel exposure among 232 bus garage workers by means of a questionnaire and before- and after-shift spirometry. No significant relationship was detected between diesel exposure and change in pulmonary function. However, after adjusting for age and smoking status, a significantly elevated prevalence of reported symptoms was found in the high-exposure group. The strongest associations with exposure were found for eye irritation, labored breathing, chest tightness, and wheeze. The questionnaire was also used to compare various acute symptoms reported by the garage workers and a similar population of workers at a lead acid battery plant who were not exposed to diesel fumes. The prevalence of work-related eye irritations, headaches, difficult or labored breathing, nausea, and wheeze was significantly higher in the diesel bus garage workers, but the prevalence of work-related sneezing was significantly lower.

Ulfvarson et al. (1987) studied effects over a single shift on 47 stevedores exposed to dpm at particle concentrations ranging from 130 $\mu g/m^3$3 to 1000 $\mu g/m^3$. A statistically significant loss of pulmonary function was observed, with recovery after 3 days of no occupational exposure.

To investigate whether removal of the particles from diesel exhaust might reduce the ''acute irritative effect on the lungs'' observed in their earlier study, Ulfvarson and Alexandersson (1990) compared pulmonary effects in a group of 24 stevedores exposed to unfiltered diesel exhaust to a group of 18 stevedores exposed to filtered exhaust, and to a control group of 17 occupationally unexposed workers. Workers in all three groups were nonsmokers and had normal spirometry values, adjusted for sex, age, and height, prior to the experimental workshift.

In addition to confirming the earlier observation of significantly reduced pulmonary function after a single shift of occupational exposure, the study found that the stevedores in the group exposed only to filtered exhaust had 50–60% less of a decline in forced vital capacity (FVC) than did those stevedores who worked with unfiltered equipment. Similar results were observed for a subgroup of six stevedores who were exposed to filtered exhaust on one shift and unfiltered exhaust on another. No loss of pulmonary function was observed for the unexposed control group. The authors suggested that these results ''support the idea that the irritative effects of diesel exhausts to the lungs [sic] is the result of an interaction between particles and gaseous components and not of the gaseous components alone.'' They concluded that ''* * * it should be a useful practice to filter off particles from diesel exhausts in work places even if potentially irritant gases remain in the emissions.''

Rudell et al., (1996) carried out a series of double-blind experiments on 12 healthy, non-smoking subjects to investigate whether a particle trap on the tailpipe of an idling diesel engine would reduce acute effects of diesel exhaust, compared with exposure to unfiltered exhaust. Symptoms associated with exposure included headache, dizziness, nausea, tiredness, tightness of chest, coughing, and difficulty in breathing, but the most prominent were found to be irritation of the eyes and nose, and a sensation of unpleasant smell. Among the various pulmonary function tests performed, exposure was found to result in significant changes only as measured by increased airway resistance and specific airway resistance. The ceramic wall flow particle trap reduced the number of particles by 46 percent, but resulted in no significant attenuation of symptoms or lung function effects. The authors concluded that diluted diesel exhaust caused increased symptoms of the eyes and nose, unpleasant smell, and bronchoconstriction, but that the 46 percent reduction in median particle

number concentration observed was not sufficient to protect against these effects in the populations studied.

Wade and Newman (1993) documented three cases in which railroad workers developed persistent asthma following exposure to diesel emissions while riding immediately behind the lead engines of trains having no caboose. None of these workers were smokers or had any prior history of asthma or other respiratory disease. Although this is the only published report MSHA knows of directly relating exposure to diesel emissions with the development of asthma, there have been a number of recent studies indicating that dpm exposure can induce bronchial inflammation and respiratory immunological allergic responses in humans. These are reviewed in Peterson and Saxon (1996) and Diaz-Sanchez (1997).

III.2.b.iii. Studies Based on Exposures to Particulate Matter in Ambient Air. As early as the 1930's, as a result of an incident in Belgium's industrial Meuse Valley, it was known that large increases in particulate air pollution, created by winter weather inversions, could be associated with large simultaneous increases in mortality and morbidity. More than 60 persons died from this incident, and several hundred suffered respiratory problems. The mortality rate during the episode was more than ten times higher than normal, and it was estimated that 3,179 sudden deaths would occur if a similar incident occurred in London. Although no measurements of pollutants in the ambient air during the episode are available, high PM levels were obviously present (EPA, 1996).

A significant elevation in particulate matter (along with SO_2 and its oxidation products) was measured during a 1948 incident in Donora, PA. Of the Donora population, 42.7 percent experienced some adverse health effect, mainly due to irritation of the respiratory tract. Twelve percent of the population reported difficulty in breathing, with a steep rise in frequency as age progressed to 55 years (Schrenk, 1949).

Approximately as projected by Firket (1931), an estimated 4,000 deaths occurred in response to a 1952 episode of extreme air pollution in London. The nature of these deaths is unknown, but there is clear evidence that bronchial irritation, dyspnea, bronchospasm, and, in some cases, cyanosis occurred with unusual prevalence (Martin, 1964).

These three episodes ''left little doubt about causality regarding the induction of serious health effects by very high concentrations of particle-laden air pollutant mixtures'' and stimulated additional research to characterize exposure-response relationships (EPA, 1996). Based on several analyses of the 1952 London data, along with several additional acute exposure mortality analyses of London data covering later time periods, the U.S. Environmental Protection Agency (EPA) concluded that increased risk of mortality is associated with exposure to particulate and SO_2 levels in the range of 500–1000 $\mu g/m^3$. The EPA also concluded that relatively small, but statistically significant increases in mortality risk exist at particulate levels below 500 $\mu g/m^3$, with no indications of any specific threshold level yet indicated at lower concentrations (EPA, 1986).

Subsequently, between 1986 and 1996, increasingly sophisticated particulate measurements and statistical techniques have enabled investigators to address these questions more quantitatively. The studies on acute effects carried out since 1986 are reviewed in the 1996 EPA Air Quality Criteria for Particulate Matter, which forms the basis for the discussion below (EPA, 1996).

At least 21 studies have been conducted that evaluate associations between acute mortality and morbidity effects and various measures of fine particulate levels in the ambient air. These studies are identified in Tables III–2 and III–3. Table III–2 lists 11 studies that measured primarily fine particulate matter using filter-based optical techniques and, therefore, provide mainly qualitative support for associating observed effects with fine particles. Table III–3 lists quantitative results from 10 studies that reported gravimetric measurements of either the fine particulate fraction or of components, such as sulfates, that serve as indicators.

A total of 38 studies examining relationships between short-term particulate levels and increased mortality, including nine with fine particulate measurements, were published between 1988 and 1996 (EPA, 1996). Most of these found statistically significant positive associations. Daily or several-day elevations of particulate concentrations, at average levels as low as 18–58 $\mu g/m^3$, were associated with increased mortality, with stronger relationships observed in those with preexisting respiratory and cardiovascular disease. Overall, these studies suggest that an increase of 50 $\mu g/m^3$ in the 24-hour average of PM_{10} is associated with a 2.5 to 5-percent increase in the risk of mortality in the general population. Based on Schwartz et al. (1996), the relative risk of mortality in the general population increased by 2.6 to 5.5 percent per 25 $\mu g/m^3$ of fine particulate ($PM_{2.5}$) (EPA, 1996).

A total of 22 studies were published on associations between short-term particulate levels and hospital admissions, outpatient visits, and emergency room visits for respiratory disease, Chronic Obstructive Pulmonary Disease (COPD), pneumonia, and heart disease (EPA, 1996). Fifteen of these studies were focussed on the elderly. Of the seven that dealt with all ages (or in one case, persons less than 65 years old), all showed positive results. All of the five studies relating fine particulate measurements to increased hospitalization, listed in Tables III–2 and III–3, dealt with general age populations and showed statistically significant associations. The estimated increase in risk ranges from 3 to 16 percent per 25 $\mu g/m^3$ of fine particulate. Overall, these studies are indicative of acute morbidity effects being related to fine particulate matter and support the mortality findings.

Most of the 14 published quantitative studies on ambient particulate exposures and acute respiratory symptoms were restricted to children (EPA, 1996). Although they generally showed positive associations, and may be of considerable biological relevance, evidence of toxicity in children is not necessarily applicable to adults. The few studies on adults have not produced statistically significant evidence of a relationship.

Fourteen studies since 1982 have investigated associations between ambient particulate levels and loss of pulmonary function (EPA, 1996). In general, these studies suggest a short term effect, especially in symptomatic groups such as asthmatics, but most were carried out on children only. In a study of adults with mild COPD, Pope and Kanner (1993) found a 29±10 ml decrease in 1-second Forced Expiratory Volume (FEV_1) per 50 $\mu g/m^3$ increase in PM_{10}, which is similar in magnitude to the change generally observed in the studies on children. In another study of adults, with PM_{10} ranging from 4 to 137 $\mu g/m^3$, Dusseldorp et al. (1995) found 45 and 77 ml/sec decreases, respectively, for evening and morning Peak Expiratory Flow Rate (PEFR) per 50 $\mu g/m^3$ increase in PM_{10} (EPA, 1996). In the only study carried out on adults that specifically measured fine particulate ($PM_{2.5}$), Perry et al. (1983) did not detect any association of exposure with loss of pulmonary function. This study, however, was conducted on only 24 adults (all asthmatics) exposed at relatively low concentrations of $PM_{2.5}$

and, therefore, had very little power to detect any such association.

III.2.c. Chronic Health Effects

During the 1995 dpm workshops, miners reported observable adverse health effects among those who have worked a long time in dieselized mines. For example, a miner (dpm Workshop; Salt Lake City, UT, 1995), stated that miners who work with diesel ''have spit up black stuff every night, big black—what they call black (expletive) ***[they] have the congestion every night*** the 60-year-old man working there 40 years.'' Scientific investigation of the chronic health effects of dpm exposure includes studies based specifically on exposures to diesel emissions and studies based more generally on exposures to fine particulate matter in the ambient air. Only the evidence from human studies will be addressed in this section. Data from genotoxicology studies and studies on laboratory animals will be discussed later, in the section on potential mechanisms of toxicity.

III.2.c.i. Studies Based on Exposures to Diesel Emissions. The discussion will summarize the epidemiological literature on chronic effects other than cancer, and then concentrate on the epidemiology of cancer in workers exposed to dpm.

III.2.c.i.A. Chronic Effects Other than Cancer. There have been a number of epidemiological studies that investigated relationships between diesel exposure and the risk of developing persistent respiratory symptoms, (i.e., chronic cough, chronic phlegm, and breathlessness), or measurable loss in lung function. Three studies involved coal miners (Reger et al., 1982; Ames et al., 1984; Jacobson et al., 1988); four studies involved metal and nonmetal miners (Jörgenson & Svensson, 1970; Attfield, 1979; Attfield et al., 1982; Gamble et al., 1983). Three studies involved other groups of workers—railroad workers (Battigelli et al., 1964), bus garage workers (Gamble et al., 1987), and stevedores (Purdham et al., 1987).

Reger et al. (1982) examined the prevalence of respiratory symptoms and the level of pulmonary function among more than 1,600 underground and surface coal miners, comparing results for workers (matched for smoking status, age, height, and years worked underground) at diesel and non-diesel mines. Those working at underground dieselized mines showed some increased respiratory symptoms and reduced lung function, but a similar pattern was found in surface miners who presumably would have experienced less diesel exposure. Miners in the dieselized mines, however, had worked underground for less than 5 years on average.

In a study of 1,118 coal miners, Ames et al. (1984) did not detect any pattern of chronic respiratory effects associated with exposure to diesel emissions. The analysis, however, took no account of baseline differences in lung function or symptom prevalence, and the authors noted a low level of exposure to diesel-exhaust contaminants in the exposed population.

In a cohort of 19,901 coal miners investigated over a 5-year period, Jacobsen et al. (1988) found increased work absence due to self-reported chest illness in underground workers exposed to diesel exhaust, as compared to surface workers, but found no correlation with their estimated level of exposure.

Jörgenson & Svensson (1970) found higher rates of chronic productive bronchitis, for both smokers and nonsmokers, among underground iron ore miners exposed to diesel exhaust as compared to surface workers at the same mine. No significant difference was found in spirometry results.

Using questionnaires collected from 4,924 miners at 21 metal and nonmetal mines, Attfield (1979) evaluated the effects of exposure to silica dust and diesel exhaust and obtained inconclusive results with respect to diesel exposure. For both smokers and non-smokers, miners occupationally exposed to diesel for five or more years showed an elevated prevalence of persistent cough, persistent phlegm, and shortness of breath, as compared to miners exposed for less than five years, but the differences were not statistically significant. Four quantitative indicators of diesel use failed to show consistent trends with symptoms and lung function.

Attfield et al. (1982) reported on a medical surveillance study of 630 white male miners at 6 potash mines. No relationships were found between measures of diesel use or exposure and various health indices, based on self-reported respiratory symptoms, chest radiographs, and spirometry.

In a study of salt miners, Gamble et al. (1983) observed some elevation in cough, phlegm, and dyspnea associated with mines ranked according to level of diesel exhaust exposure. No association between respiratory symptoms and estimated cumulative diesel exposure was found after adjusting for differences among mines. However, since the mines varied widely with respect to diesel exposure levels, this adjustment may have masked a relationship.

Battigelli et al. (1964) compared pulmonary function and complaints of respiratory symptoms in 210 railroad repair shop employees, exposed to diesel for an average of 10 years, to a control group of 154 unexposed railroad workers. Respiratory symptoms were less prevalent in the exposed group, and there was no difference in pulmonary function; but no adjustment was made for differences in smoking habits.

In a study of workers at four diesel bus garages in two cities, Gamble et al. (1987b) investigated relationships between tenure (as a surrogate for cumulative exposure) and respiratory symptoms, chest radiographs, and pulmonary function. The study population was also compared to an unexposed control group of workers with similar socioeconomic background.

After indirect adjustment for age, race, and smoking, the exposed workers showed an increased prevalence of cough, phlegm, and wheezing, but no association was found with tenure. Age- and height-adjusted pulmonary function was found to decline with duration of exposure, but was elevated on average, as compared to the control group.

The number of positive radiographs was too small to support any conclusions. The authors concluded that the exposed workers may have experienced some chronic respiratory effects.

Purdham et al. (1987) compared baseline pulmonary function and respiratory symptoms in 17 exposed stevedores to a control group of 11 port office workers. After adjustment for smoking, there was no statistically significant difference in self-reported respiratory symptoms between the two groups. However, after adjustment for smoking, age, and height, exposed workers showed lower baseline pulmonary function, consistent with an obstructive ventilatory defect, as compared to both the control group and the general metropolitan population.

In a recent review of these studies, Cohen and Higgins (1995) concluded that they did not provide strong or consistent evidence for chronic, nonmalignant respiratory effects associated with occupational exposure to diesel exhaust. These reviewers stated, however, that ''several studies are suggestive of such effects * * * particularly when viewed in the context of possible biases in study design and analysis.'' MSHA agrees that the studies are inconclusive but suggestive of possible effects.

III.2.c.i.B. Cancer. Because diesel exhaust has long been known to contain traces of carcinogenic compounds (e.g., benzene in the gaseous fraction and

benzopyrene and nitropyrene in the dpm fraction), a great deal of research has been conducted to determine if occupational exposure to diesel exhaust actually results in an increased risk of cancer. Evidence that exposure to dpm increases the risk of developing cancer comes from three kinds of studies: human studies, genotoxicological studies, and animal studies. MSHA places the most weight on evidence from the human epidemiological studies and views the genotoxicological and animal studies as lending support to the epidemiological evidence.

In the epidemiological studies, it is generally impossible to disassociate exposure to dpm from exposure to the gasses and vapors that form the remainder of whole diesel exhaust. However, the animal evidence shows no significant increase in the risk of lung cancer from exposure to the gaseous fraction alone (Heinrich et al., 1986; Iwai et al., 1986; Brightwell et al., 1986). Therefore, dpm, rather than the gaseous fraction of diesel exhaust, is assumed to be the agent associated with an excess risk of lung cancer.

III.2.c.i.B.i. Lung Cancer. Beginning in 1957, at least 43 epidemiological studies have been published examining relationships between diesel exhaust exposure and the prevalence of lung cancer. The most recent published reviews of these studies are by Mauderly (1992), Cohen and Higgins (1995), Stöber and Abel (1996), Morgan et al. (1997), and Dawson et al. (1998). In addition, in response to the ANPRM, several commenters provided MSHA with their own reviews. Two comprehensive statistical ''meta-analyses'' of the epidemiological literature are also available: Lipsett and Alexeeff (1998) and Bhatia et al. (1998). These meta-analyses, which analyze and combine results from the various epidemiological studies, both suggest a statistically significant increase of 30 to 40 percent in the risk of lung cancer, attributable to occupational dpm exposure. The studies themselves, along with MSHA's comments on each study, are summarized in Tables III–4 (24 cohort studies) and III–5 (19 case-control studies).[8] Presence or absence of an adjustment for smoking habits is highlighted, and adjustments for other potentially confounding factors are indicated when applicable.

Some degree of association between occupational dpm exposure and an excess risk of lung cancer was observed in 38 of the 43 studies reviewed by MSHA: 18 of the 19 case-control studies and 20 of the 24 cohort studies. However, the 38 studies reporting a positive association vary considerably in the strength of evidence they present. As shown in Tables III–4 and III–5, *statistically significant* results were reported in 24 of the 43 studies: 10 of the 18 positive case-control studies and 14 of the 20 positive cohort studies.[9] In six of the 20 cohort studies and nine of the 18 case-control studies showing a positive association, the association observed was not statistically significant.

Because workers tend to be healthier than non-workers, the incidence of disease found among workers exposed to a toxic substance may be lower than the rate prevailing in the general population, but higher than the rate occurring in an unexposed population of workers. This phenomenon, called the ''healthy worker effect,'' also applies when the rate observed among exposed workers is greater than that found in the general population. In this case, assuming a study is unbiased with respect to other factors such as smoking, comparison with the general population will tend to *underestimate* the excess risk of disease attributable to the substance being investigated. Several studies drew comparisons against the general population, including both workers and nonworkers, with no compensating adjustment for the healthy worker effect. Therefore, in these studies, the excess risk of lung cancer attributable to dpm exposure is likely to have been underestimated, thereby making it more difficult to obtain a statistically significant result.

Five of the 43 studies listed in Tables III–4 and III–5 are negative—i.e., a lower rate of lung cancer was found among exposed workers than in the control population used for comparison. None of these five results, however, were statistically significant. Four of the five were cohort studies that drew comparisons against the general population and did not take the healthy worker effect into account. The remaining negative study was a case-control study in which vehicle drivers and locomotive engineers were compared to clerical workers.

Two cohort studies (Waxweiler et al., 1973; Ahlman et al., 1991) were performed specifically on groups of miners, and one (Boffetta et al., 1988) addressed miners as a subgroup of a larger population. Although an elevated prevalence of lung cancer was found among miners in both the 1973 and 1991 studies, the results were not statistically significant. The 1988 study found, after adjusting for smoking patterns and other occupational exposures, an 18-percent increase in the lung cancer rate among all workers occupationally exposed to diesel exhaust and a 167-percent increase among miners (relative risk = 2.67). The latter result is statistically significant.

In addition, four case-control studies, all of which adjusted for smoking, found elevated rates of lung cancer associated with mining. The results for miners in three of these studies (Benhamou et al., 1988; Morabia et al., 1992; Siemiatycki et al., 1988) are given little weight because of potential confounding by occupational exposures to other carcinogens. The other study (Lerchen et al., 1987) showed a marginally significant result for underground non-uranium miners, but this was based on very few cases and the extent of diesel exposure among these miners was not reported. Although they do not pertain specifically to mining environments, other studies showing statistically significant results (most notably those by Garshick et al., 1987 and 1988) are based on far more data, contain better diesel exposure information, and are less susceptible to confounding by extraneous risk factors.

Since none of the existing human studies is perfect and many contain major deficiencies, it is not surprising that reported results differ in magnitude and statistical significance. Shortcomings identified in both positive and negative studies include: possible misclassification with respect to exposure; incomplete or questionable characterization of the exposed population; unknown or uncertain quantification of diesel exhaust exposure; incomplete, uncertain, or unavailable history of exposure to tobacco smoke and other carcinogens; and insufficient sample size, dpm exposure, or latency period (i.e., time since exposure) to detect a carcinogenic effect if one exists. Indeed, in their review of these studies, Stöber and Abel (1996) conclude that ''In this field * * *

[8] For simplicity, the epidemiological studies considered here are placed into two broad categories. A *cohort study* compares the health of persons having different exposures, diets, etc. A *case-control study* starts with two defined groups that differ in terms of their health and compares their exposure characteristics.

[9] A statistically significant result is a result unlikely to have arisen by chance in the group, or statistical *sample,* of persons being studie. An association arising by chance would have no predictive value for workers outside the sample. Failure to achieve statistical significance in an individual study can arise because of inherent limitations in the study, such as a small number of subjects in the sample or a short period of observation. Therefore, the lack of statistical significance in an individual study does not demonstrate that the results of that study were due merely to chance—only that the study (viewed in isolation) is inconclusive.

epidemiology faces its limits (Taubes, 1995) * * * Many of these studies were doomed to failure from the very beginning.''

Such problems, however, are not unique to epidemiological studies involving diesel exhaust but are common sources of uncertainty in virtually all epidemiological research involving cancer. Indeed, deficiencies such as exposure misclassification, small sample size, and short latency make it difficult to detect a relationship even when one exists. Therefore, the fact that 38 out of 43 studies showed any excess risk of lung cancer associated with dpm exposure may itself be a significant result, even if the evidence in most of those 38 studies is relatively weak.[10] The sheer number of studies showing such an association readily distinguishes this body of evidence from those criticized by Taubes (1995), where weak evidence is available from only a single study.

At the same time, MSHA recognizes that simply tabulating outcomes can sometimes be misleading, since there are generally a variety of outcomes that could render a study positive or negative and some studies use related data sets. Therefore, rather than limiting its assessment to such a tabulation, MSHA is basing its evaluation with respect to lung cancer largely on the two comprehensive meta-analyses (Lipsett and Alexeeff, 1998; Bhatia et al., 1998) described later, in the ''material impairments'' section of this risk assessment. In addition to restricting themselves to independent studies meeting certain minimal requirements, both meta-analyses investigated and rejected publication bias as an explanation for the generally positive results reported.

All of the studies showing negative or statistically insignificant positive associations were either based on relatively short observation or follow-up periods, lacked good information about dpm exposure, involved low duration or intensity of dpm exposure, or, because of inadequate sample size, lacked the statistical power to detect effects of the magnitude found in the ''positive'' studies. As stated by Boffetta et al. (1988, p. 404), studies failing to show a statistically significant association—

> * * * often had low power to detect any association, had insufficient latency periods, or compared incidence or mortality rates among workers to national rates only, resulting in possible biases caused by the 'healthy worker effect.'

Some respondents to the ANPRM argued that such methodological weaknesses may explain why not all of the studies showed a statistically significant association between dpm exposure and an increased prevalence of lung cancer. According to these commenters, if an epidemiological study shows a statistically significant result, this often occurs *in spite of* methodological weaknesses rather than because of them. Limitations such as potential exposure misclassification, inadequate latency, inadequate sample size, and insufficient duration of exposure all make it more difficult to obtain a statistically significant result when a real relationship exists.

On the other hand, Stöber and Abel (1996) argue, long with Morgan et al. (1997) and some commenters, that even in those epidemiological studies showing a statistically significant association, the magnitude of relative or excess risk observed is too small to demonstrate any causal link between dpm exposure and cancer. Their reasoning is that in these studies, errors in the collection or interpretation of smoking data can create a bias in the results larger than any potential contribution attributable to diesel particulate. They propose that studies failing to account for smoking habits should be disqualified from consideration, and that evidence of an association from the remaining studies should be discounted because of potential confounding due to erroneous, incomplete, or otherwise inadequate characterization of smoking histories.

MSHA concurs with Cohen and Higgins (1995), Lipsett and Alexeeff (1998), and Bhatia et al. (1998) in not accepting this view. MSHA does recognize that unknown exposures to tobacco smoke or other human carcinogens, such as asbestos, can distort the results of some lung cancer studies. MSHA also agrees that significant differences in the distribution of confounding factors, such as smoking history, between study and control groups can lead to misleading results. MSHA also recognizes, however, that it is not possible to design a human epidemiological study that perfectly controls for all potentially confounding factors. Some degree of informed subjective judgement is always required in evaluating the potential significance of unknown or uncontrolled factors.

Sixteen of the published epidemiological studies involving lung cancer did, in fact, control or adjust for exposure to tobacco smoke, and some of these also controlled or adjusted for exposure to asbestos and other carcinogenic substances (e.g., Garshick et al., 1987; Steenland et al., 1990; Boffetta et al., 1988). All but one of these 16 epidemiological studies reported some degree of excess risk associated with exposure to diesel particulate, with statistically significant results reported in seven. These results are less likely to be confounded than results from studies with no adjustment. In addition, several of the other studies drew comparisons against internal control groups or control groups likely to have similar smoking habits as the exposed groups (e.g., Garshick et al., 1988; Gustavsson et al., 1990; and Hansen, 1993). MSHA places more weight on these studies than on studies drawing comparisons against dissimilar groups with no controls or adjustments.

According to Stöber and Abel, the potential confounding effects of smoking are so strong that they could explain even statistically significant results observed in studies where smoking was explicitly taken into account. MSHA agrees that variable exposures to non-diesel lung carcinogens, including relatively small errors in smoking classification, could bias individual studies. However, the potential confounding effect of tobacco smoke and other carcinogens can cut in either direction. Spurious positive associations of dpm exposure with lung cancer would arise only if the group exposed to dpm had a greater exposure to these confounders than the unexposed control group used for comparison. If, on the contrary, the control group happened to be more exposed to confounders, then this would tend to make the association between dpm exposure and lung cancer appear negative. Therefore, although smoking effects could potentially distort the results of any single study, this effect could reasonably be expected to make only about half the studies that were explicitly adjusted for smoking come out positive. Smoking is unlikely to have been responsible for finding an excess prevalence of lung cancer in 15 out of 16 studies in which a smoking adjustment was applied. Based on a 2-tailed sign test, this possibility can be rejected at a confidence level greater than 99.9 percent.

Even in the 27 studies involving lung cancer for which no smoking adjustment was made, tobacco smoke and other carcinogens are important confounders only to the extent that the

[10] The high proportion of positive studies is statistically significant according to the 2-tailed sign test, which rejects, at a high confidence level, the null hypothesis that each study is equally likely to be positive or negative. Assuming that the studies are independent, and that there is no systematic bias in one direction or the other, the probability of 38 or more out of 43 studies being either positive or negative is less than one per million under the null hypothesis.

populations exposed and unexposed to diesel exhaust differed systematically with respect to these other exposures. Twenty-three of these studies, however, reported some degree of excess lung cancer risk associated with diesel exposure. This result could be attributed to non-diesel exposures only in the unlikely event that, in nearly all of these studies, diesel-exposed workers happened to be more highly exposed to these other carcinogens than the control groups of workers unexposed to diesel. All five studies not showing any association (Kaplan, 1959; DeCoufle, 1977; Waller, 1981; Edling, 1987; and Bender, 1989) may have failed to detect such a relationship because of too small a study group, lack of accurate exposure information, low duration or intensity of exposure, and/or insufficient latency or follow-up time.

It is also significant that the two most comprehensive, complete, and well-controlled studies available (Garshick et al., 1987 and 1988) both point in the direction of an association between dpm exposure and an excess risk of lung cancer. These studies took care to address potential confounding by tobacco smoke and asbestos exposures. In response to the ANPRM, a consultant to the National Coal Association who was critical of all other available studies acknowledged that these two:

> * * * have successfully controlled for severally [sic] potentially important confounding factors * * * Smoking represents so strong a potential confounding variable that its control must be nearly perfect if an observed association between cancer and diesel exhaust is * * * [inferred to be causal]. In this regard, two observations are relevant. First, both case-control [Garshick et al., 1987] and cohort [Garshick et al., 1988] study designs revealed consistent results. Second, an examination of smoking related causes of death other than lung cancer seemed to account for only a fraction of the association observed between diesel exposure and lung cancer. A high degree of success was apparently achieved in controlling for smoking as a potentially confounding variable. [Submission 87–0–10, Robert A. Michaels, RAM TRAC Corporation, prepared for National Coal Association].

Potential biases due to extraneous risk factors are unlikely to account for a significant part of the excess risk in all studies showing an association. Excess rates of lung cancer were associated with dpm exposure in all epidemiologic studies of sufficient size and scope to detect such an excess. Although it is possible, in any individual study, that the potentially confounding effects of differential exposure to tobacco smoke or other carcinogens could account for the observed elevation in risk otherwise attributable to diesel exposure, it is unlikely that such effects would give rise to positive associations in 38 out of 43 studies. As stated by Cohen and Higgins (1995):

> * * * elevations [of lung cancer] do not appear to be fully explicable by confounding due to cigarette smoking or other sources of bias. Therefore, at present, exposure to diesel exhaust provides the most reasonable explanation for these elevations. The association is most apparent in studies of occupational cohorts, in which assessment of exposure is better and more detailed analyses have been performed. The largest relative risks are often seen in the categories of most probable, most intense, or longest duration of exposure. In general population studies, in which exposure prevalence is low and misclassification of exposure poses a particularly serious potential bias in the direction of observing no effect of exposure, most studies indicate increased risk, albeit with considerable imprecision. [Cohen and Higgins (1995), p. 269].

III.2.c.i.B.ii. Bladder Cancer. With respect to cancers other than lung cancer, MSHA's review of the literature identified only bladder cancer as a possible candidate for a causal link to dpm. Cohen and Higgins (1995) identified and reviewed 14 epidemiological case-control studies containing information related to dpm exposure and bladder cancer. All but one of these studies found elevated risks of bladder cancer among workers in jobs frequently associated with dpm exposure. Findings were statistically significant in at least four of the studies (statistical significance was not evaluated in three).

These studies point quite consistently toward an excess risk of bladder cancer among truck or bus drivers, railroad workers, and vehicle mechanics. However, the four available cohort studies do not support a conclusion that exposure to dpm is responsible for the excess risk of bladder cancer associated with these occupations. Furthermore, most of the case-control studies did not distinguish between exposure to diesel-powered equipment and exposure to gasoline-powered equipment for workers having the same occupation. When such a distinction was drawn, there was no evidence that the prevalence of bladder cancer was higher for workers exposed to the diesel-powered equipment.

This, along with the lack of corroboration from existing cohort studies, suggests that the excessive rates of bladder cancer observed may be a consequence of factors other than dpm exposure that are also associated with these occupations. For example, truck and bus drivers are subjected to vibrations while driving and may tend to have different dietary and sleeping habits than the general population. For these reasons, MSHA does not find that any convincing evidence currently exists for a causal relationship between dpm exposure and bladder cancer.

III.2.c.ii. Studies Based on Exposures to Fine Particulate in Ambient Air.

Longitudinal studies examine responses at given locations to changes in conditions over time, whereas *cross-sectional studies* compare results from locations with different conditions at a given point in time. Prior to 1990, cross sectional studies were generally used to evaluate the relationship between mortality and long-term exposure to particulate matter, but unaddressed spatial confounders and other methodological problems inherent in such studies limited their usefulness (EPA, 1996).

Two recent prospective cohort studies provide better evidence of a link between excess mortality rates and exposure to fine particulate, although the uncertainties here are greater than with the short-term exposure studies conducted in single communities. The two studies are known as the Six Cities study (Dockery et al., 1993), and the American Cancer Society (ACS) study (Pope et al., 1995).[11] The first study followed about 8,000 adults in six U.S. cities over 14 years; the second looked at survival data for half a million adults in 151 U.S. cities for 7 years. After adjusting for potential confounders, including smoking habits, the studies considered differences in mortality rates between the most polluted and least polluted cities.

Both the Six Cities study and the ACS study found a significant association between increased concentration of $PM_{2.5}$ and total mortality.[12] The authors of the Six Cities Study concluded that the results suggest that exposures to fine particulate air pollution ''contributes to excess mortality in certain U.S. cities.'' The ACS study, which not only controlled for smoking habits and various occupational exposures, but also, to some extent, for passive exposure to tobacco smoke, found results qualitatively consistent with those of the Six Cities Study.[13] In the

[11] A third such study only looked at TSP, rather than fine particulate. It did not find a significant association between total mortality and TSP. It is known as the California Seventh Day Adventist study (Abbey et al., 1991).

[12] The Six Cities study also found such relationships at elevated levels of $PM_{15/10}$ and sulfates. The ACS study was designed to follow up on the fine particle result of the Six Cities study, but also looked at sulfates.

[13] The Six Cities study did not find a statistically significant increase in risk among non-smokers, suggesting that this group might not be as sensitive to adverse health effects from exposure to fine

ACS study, however, the estimated increase in mortality associated with a given increase in fine particulate exposure was lower, though still statistically significant. In both studies, the largest increase observed was for cardiopulmonary mortality. Both studies also showed an increased risk of lung cancer associated with increased exposure to fine particulate, but these results were not statistically significant.

The few studies on associations between chronic $PM_{2.5}$ exposure and morbidity in adults show effects that are difficult to separate from PM_{10} measures and measures of acid aerosols. The available studies, however, do show positive associations between particulate air pollution and adverse health effects for those with pre-existing respiratory or cardiovascular disease; and as mentioned earlier, there is a large body of evidence showing that respiratory diseases classified as COPD are significantly more prevalent among miners than in the general population. It also appears that PM exposure may exacerbate existing respiratory infections and asthma, increasing the risk of severe outcomes in individuals who have such conditions (EPA, 1996).

III.2.d. Mechanisms of Toxicity

As described in Part II, the particulate fraction of diesel exhaust is made up of aggregated soot particles. Each soot particle consists of an insoluble, elemental carbon core and an adsorbed, surface coating of relatively soluble organic compounds, such as polycyclic aromatic hydrocarbons (PAH's). When released into an atmosphere, the soot particles formed during combustion tend to aggregate into larger particles.

The literature on deposition of fine particles in the respiratory tract is reviewed in Green and Watson (1995) and U.S. EPA (1996). The mechanisms responsible for the broad range of potential particle-related health effects will vary depending on the site of deposition. Once deposited, the particles may be cleared from the lung, translocated into the interstitium, sequestered in the lymph nodes, metabolized, or be otherwise transformed by various mechanisms.

As suggested by Figure II–1 of this preamble, most of the aggregated particles making up dpm never get any larger than one micrometer in diameter. Particles this small are able to penetrate into the deepest regions of the lungs, called *alveoli*. In the alveoli, the particles can mix with and be dispersed by a substance called *surfactant*, which is secreted by cells lining the alveolar surfaces.

MSHA would welcome any additional information, not already covered in the surveys cited above, on fine particle deposition in the respiratory tract, especially as it might pertain to lung loading in miners exposed to a combination of diesel particulate and other dusts. Any such additional information will be placed into the public record and considered by MSHA before a final rule is adopted.

III.2.d.i. Effects Other than Cancer. A number of controlled animal studies have been undertaken to ascertain the toxic effects of exposure to diesel exhaust and its components. Watson and Green (1995) reviewed approximately 50 reports describing noncancerous effects in animals resulting from the inhalation of diesel exhaust. While most of the studies were conducted with rats or hamsters, some information was also available from studies conducted using cats, guinea pigs, and monkeys. The authors also correlated reported effects with different descriptors of dose. From their review of these studies, Watson and Green concluded that:

(a) Animals exposed to diesel exhaust exhibit a number of noncancerous pulmonary effects, including chronic inflammation, epithelial cell hyperplasia, metaplasia, alterations in connective tissue, pulmonary fibrosis, and compromised pulmonary function.

(b) Cumulative weekly exposure to diesel exhaust of 70 to 80 mg•hr/m^3 or greater are associated with the presence of chronic inflammation, epithelial cell proliferation, and depressed alveolar clearance in chronically exposed rats.

(c) The extrapolation of responses in animals to noncancer endpoints in humans is uncertain. Rats were the most sensitive animal species studied.

Subsequent to the review by Watson and Green, there have been a number of animal studies on allergic immune responses to dpm. Takano et al. (1997) investigated the effects of dpm injected into mice through an intratracheal tube and found manifestations of allergic asthma, including enhanced antigen-induced airway inflammation, increased local expression of cytokine proteins, and increased production of antigen-specific immunoglobulins. The authors concluded that the study demonstrated dpm's enhancing effects on allergic asthma and that the results suggest that dpm is ''implicated in the increasing prevalence of allergic asthma in recent years.'' Similarly, Ichinose et al. (1997) found that five different strains of mice injected intratracheally with dpm exhibited manifestations of allergic asthma, as expressed by enhanced airway inflammation, which were correlated with an increased production of antigen-specific immunoglobulin due to the dpm. The authors concluded that dpm enhances manifestations of allergic airway inflammation and that ''* * * the cause of individual differences in humans at the onset of allergic asthma may be related to differences in antigen-induced immune responses * * *.''

Several laboratory animal studies have been performed to ascertain whether the effects of diesel exhaust are attributable specifically to the particulate fraction. (Heinrich et al., 1986; Iwai et al., 1986; Brightwell et al., 1986). These studies compare the effects of chronic exposure to whole diesel exhaust with the effects of filtered exhaust containing no particles. The studies demonstrate that when the exhaust is sufficiently diluted to nullify the effects of gaseous irritants (NO_2 and SO_2), irritant vapors (aldehydes), CO, and other systemic toxicants, diesel particles are the prime etiologic agents of noncancer health effects. Exposure to dpm produced changes in the lung that were much more prominent than those evoked by the gaseous fraction alone. Marked differences in the effects of whole and filtered diesel exhaust were also evident from general toxicological indices, such as body weight, lung weight, and pulmonary histopathology. This provides strong evidence that the toxic component in diesel emissions producing the effects noted in other animal studies is due to the particulate fraction.

The mechanisms that may lead to adverse health effects in humans from inhaling fine particulates are not fully understood, but potential mechanisms that have been hypothesized for non-cancerous outcomes are summarized in Table III–6. A comprehensive review of the toxicity literature is provided in U.S. EPA (1996).

Deposition of particulates in the human respiratory tract could initiate events leading to increased airflow obstruction, impaired clearance, impaired host defenses, or increased epithelial permeability. Airflow obstruction could result from laryngeal constriction or bronchoconstriction secondary to stimulation of receptors in extrathoracic or intrathoracic airways. In addition to reflex airway narrowing, reflex or local stimulation of mucus secretion could lead to mucus hypersecretion and could eventually lead to mucus plugging in small airways.

Pulmonary changes that contribute to cardiovascular responses include a

particulate; however, the ACS study, with more statistical power, did find an association even for non-smokers.

variety of mechanisms that can lead to hypoxemia, including bronchoconstriction, apnea, impaired diffusion, and production of inflammatory mediators. Hypoxia can lead to cardiac arrhythmias and other cardiac electrophysiologic responses that, in turn, may lead to ventricular fibrillation and ultimately cardiac arrest. Furthermore, many respiratory receptors have direct cardiovascular effects. For example, stimulation of C-fibers leads to bradycardia and hypertension, and stimulation of laryngeal receptors can result in hypertension, cardiac arrhythmia, bradycardia, apnea, and even cardiac arrest. Nasal receptor or pulmonary J-receptor stimulation can lead to vagally mediated bradycardia and hypertension (Widdicombe, 1988).

In addition to possible acute toxicity of particles in the respiratory tract, chronic exposure to particles that deposit in the lung may induce inflammation. Inflammatory responses can lead to increased permeability and possibly diffusion abnormality. Furthermore, mediators released during an inflammatory response could cause release of factors in the clotting cascade that may lead to an increased risk of thrombus formation in the vascular system (Seaton, 1995). Persistent inflammation, or repeated cycles of acute lung injury and healing, can induce chronic lung injury. Retention of the particles may be associated with the initiation and/or progression of COPD.

III.2.d.ii. Lung Cancer.

III.2.d.ii.A. Genotoxicological Evidence. Many studies have shown that diesel soot, or its organic component, can increase the likelihood of genetic mutations during the biological process of cell division and replication. A survey of the applicable scientific literature is provided in Shirnamé-Moré (1995). What makes this body of research relevant to the risk of cancer is that mutations in critical genes can sometimes initiate, promote, or advance a process of carcinogenesis.

The determination of genotoxicity has frequently been made by treating diesel soot with organic solvents such as dichloromethane and dimethyl sulfoxide. The solvent removes the organic compounds from the carbon core. After the solvent evaporates, the mutagenic potential of the extracted organic material is tested by applying it to bacterial, mammalian, or human cells propagated in a laboratory culture. In general, the results of these studies have shown that various components of the organic material can induce mutations and chromosomal aberrations.

A critical issue is whether whole diesel particulate is mutagenic when dispersed by substances present in the lung. Since the laboratory procedure for extracting organic material with solvents bears little resemblance to the physiological environment of the lung, it is important to establish whether dpm as a whole is genotoxic, without solvent extraction. Early research indicated that this was not the case and, therefore, that the active genotoxic materials adhering to the carbon core of diesel particles might not be biologically damaging or even available to cells in the lung (Brooks et al., 1980; King et al., 1981; Siak et al., 1981). A number of more recent research papers, however, have shown that dpm, without solvent extraction, can cause DNA damage when the soot is dispersed in the pulmonary surfactant that coats the surface of the alveoli (Wallace et al., 1987; Keane et al., 1991; Gu et al., 1991; Gu et al., 1992). From these studies, NIOSH has concluded:

> * * * the solvent extract of diesel soot and the surfactant dispersion of diesel soot particles were found to be active in procaryotic cell and eukaryotic cell *in vitro* genotoxicity assays. The cited data indicate that respired diesel soot particles on the surface of the lung alveoli and respiratory bronchioles can be dispersed in the surfactant-rich aqueous phase lining the surfaces, and that genotoxic material associated with such dispersed soot particles is biologically available and genotoxically active. Therefore, this research demonstrates the biological availability of active genotoxic materials without organic solvent interaction. [Cover letter to NIOSH response to ANPRM.]

From this conclusion, it follows that dpm itself, and not only its organic extract, can cause genetic mutations when dispersed by a substance present in the lung.

The biological availability of the genotoxic components is also supported directly by studies showing genotoxic effects of exposure to whole dpm. The formation of DNA adducts is an important indicator of genotoxicity and potential carcinogenicity. If DNA adducts are not repaired, then a mutation or chromosomal aberration can occur during normal mitosis (i.e., cell replication). Hemminki et al. (1994) found that DNA adducts were significantly elevated in nonsmoking bus maintenance and truck terminal workers, as compared to a control group of hospital mechanics, with the highest adduct levels found among garage and forklift workers. Similarly, Nielsen et al. (1996) found that DNA adducts were significantly increased in bus garage workers and mechanics exposed to dpm as compared to a control group.

III.2.d.ii.B. Evidence from Animal Studies. Bond et al. (1990) investigated differences in peripheral lung DNA adduct formation among rats, hamsters, mice, and monkeys exposed to dpm at a concentration of 8100 $\mu g/m^3$ for 12 weeks. Mice and hamsters showed no increase of DNA adducts in their peripheral lung tissue, whereas rats and monkeys showed a 60 to 80% increase. The increased prevalence of lung DNA adducts in monkeys suggests that, with respect to DNA adduct formation, the human lungs' response to dpm inhalation may more closely resemble that of the rat than that of the hamster or mouse.

Mauderly (1992) and Busby and Newberne (1995) provide reviews of the scientific literature relating to excess lung cancers observed among laboratory animals chronically exposed to filtered and unfiltered diesel exhaust. The experimental data demonstrate that chronic exposure to whole diesel exhaust increases the risk of lung cancer in rats and that dpm is the causative agent. This carcinogenic effect has been confirmed in two strains of rats and in at least five laboratories. Experimental results for animal species other than the rat, however, are either inconclusive or, in the case of Syrian hamsters, suggestive of no carcinogenic effect. This is consistent with the observation, mentioned above, that lung DNA adduct formation is increased among exposed rats but not among exposed hamsters or mice.

The conflicting results for rats and hamsters indicate that the carcinogenic effects of dpm exposure may be species-dependent. Indeed, monkey lungs have been reported to respond quite differently than rat lungs to both diesel exhaust and coal dust (Nikula, 1997). Therefore, the results from rat experiments do not, by themselves, infer any excess risk due to dpm exposure for humans. The human epidemiological data, however, indicate that humans comprise a species that, like rats and unlike hamsters, suffer a carcinogenic response to dpm exposure. Therefore, MSHA considers the rat studies at least relevant to an evaluation of the risk for humans.

When dpm is inhaled, a number of adverse effects that may contribute to carcinogenesis are discernable by microscopic and biochemical analysis. For a comprehensive review of these effects, see Watson and Green (1995). In brief, these effects begin with phagocytosis, which is essentially an attack on the diesel particles by cells called alveolar macrophages. The macrophages engulf and ingest the diesel particles, subjecting them to detoxifying enzymes. Although this is a normal physiological response to the

inhalation of foreign substances, the process can produce various chemical byproducts injurious to normal cells. In attacking the diesel particles, the activated macrophages release chemical agents that attract neutrophils (a type of white blood cell that destroys microorganisms) and additional alveolar macrophages. As the lung burden of diesel particles increases, aggregations of particle-laden macrophages form in alveoli adjacent to terminal bronchioles, the number of Type II cells lining particle-laden alveoli increases, and particles lodge within alveolar and peribronchial tissues and associated lymph nodes. The neutrophils and macrophages release mediators of inflammation and oxygen radicals, which have been implicated in causing various forms of chromosomal damage, genetic mutations, and malignant transformation of cells (Weitzman and Gordon, 1990). Eventually, the particle-laden macrophages are functionally altered, resulting in decreased viability and impaired phagocytosis and clearance of particles. This series of events may result in pulmonary inflammatory, fibrotic, or emphysematous lesions that can ultimately develop into cancerous tumors.

Such reactions have also been observed in rats exposed to high concentrations of fine particles with no organic component (Mauderly et al., 1994; Heinrich et al., 1994 and 1995; Nikula et al., 1995). Rats exposed to titanium dioxide or pure carbon (''carbon-black'') particles, which are not considered to be genotoxic, developed lung cancers at about the same rate as rats exposed to whole diesel exhaust. Therefore, it appears that the toxicity of dpm, at least in some species, may result largely from a biochemical response to the particle itself rather than from specific effects of the adsorbed organic compounds.

Some researchers have interpreted the carbon-black and titanium dioxide studies as also suggesting that (1) the carcinogenic mechanism in rats depends on massive overloading of the lung and (2) that this may provide a mechanism of carcinogenesis specific to rats which does not occur in other rodents or in humans (Oberdörster, 1994; Watson and Valberg, 1996). Some commenters on the ANPRM cited the lack of any link between lung cancer and coal dust or carbon black exposure as evidence that carbon particles, by themselves, are not carcinogenic in humans. Coal mine dust, however, consists almost entirely of particles larger than those forming the carbon core of dpm or used in the carbon-black and titanium dioxide rat studies. Furthermore, although there have been eight studies [14] reporting no excess risk of lung cancer among coal miners (Liddell, 1973; Costello et al., 1974; Armstrong et al., 1979; Rooke et al., 1979; Ames et al., 1983; Atuhaire et al., 1985; Miller and Jacobsen, 1985; Kuempel et al., 1995), five studies have reported an elevated risk of lung cancer for those exposed to coal dust (Enterline, 1972; Rockette, 1977; Correa et al., 1984; Levin et al., 1988; Morfeld et al., 1997). The positive results in two of these studies (Enterline, 1972; Rockette, 1977) were statistically significant. Furthermore, excess lung cancers have been reported among carbon black production workers (Hodgson and Jones, 1985; Siemiatycki, 1991; Parent et al., 1996). MSHA is not aware of any evidence that a mechanism of carcinogenesis due to fine particle overload is inapplicable to humans. Studies carried out on rodents certainly do not provide such evidence.

The carbon-black and titanium dioxide studies indicate that lung cancers in rats exposed to dpm may be induced by a mechanism that does not require the bioavailability of genotoxic organic compounds adsorbed on the elemental carbon particles. These studies do not, however, prove that the only significant agent of carcinogenesis in rats exposed to diesel particulate is the non-soluble carbon core. Nor do the carbon-black studies prove that the only significant mechanism of carcinogenesis due to diesel particulate is lung overload. Due to the relatively high doses administered in the rat studies, it is conceivable that an overload phenomenon masks or parallels other potential routes to cancer. It may be that effects of the genotoxic organic compounds are merely masked or displaced by overloading in the rat studies. Gallagher et al. (1994) exposed different groups of rats to diesel exhaust, carbon black, or titanium dioxide and detected species of lung DNA adducts in the rats exposed to dpm that were not found in the controls or rats exposed to carbon black or titanium dioxide.

Particle overload may provide the dominant route to lung cancer at very high concentrations of fine particulate, while genotoxic mechanisms may provide the primary route under lower-level exposure conditions. In humans exposed over a working lifetime to doses insufficient to cause overload, carcinogenic mechanisms unrelated to overload may dominate, as indicated by the human epidemiological studies and the data on human DNA adducts cited above. Therefore, the carbon black results observed in the rat studies do not preclude the possibility that the organic component of dpm has important genotoxic effects in humans (Nauss et al., 1995).

Even if the genotoxic organic compounds in dpm were biologically unavailable and played no role in human carcinogenesis, this would not rule out the possibility of a genotoxic route to lung cancer (even for rats) due to the presence of dpm particles themselves. For example, as a byproduct of the biochemical response to the presence of dpm in the alveoli, free oxidant radicals may be released as macrophages attempt to digest the particles. There is evidence that dpm can both induce production of active oxygen agents and also depress the activity of naturally occurring antioxidant enzymes (Mori, 1996; Sagai, 1993). Oxidants can induce carcinogenesis either by reacting directly with DNA, or by stimulating cell replication, or both (Weitzman and Gordon, 1990). This would provide a mutagenic route to lung cancer with no threshold. Therefore, the carbon black and titanium dioxide studies cited above do not prove that dpm exposure has no incremental, genotoxic effects or that there is a threshold below which dpm exposure poses no risk of causing lung cancer.

It is noteworthy, however, that dpm exposure levels recorded in some mines have been almost as high as laboratory exposures administered to rats showing a clearly positive response. Intermittent, occupational exposure levels greater than about 500 $\mu g/m^3$ dpm may overwhelm the human lung clearance mechanism (Nauss et al., 1995). Therefore, concentrations at levels currently observed in some mines could be expected to cause overload in some humans, possibly inducing lung cancer by a mechanism similar to what occurs in rats. MSHA would like to receive additional scientific information on this issue, especially as it relates to lung loading in miners exposed to a combination of diesel particulate and other dusts.

As suggested above, such a mechanism would not necessarily be the only route to carcinogenesis in humans and, therefore, would not imply that dpm concentrations too low to

[14] The Agency has recently learned of another report, from the University of Newcastle, Australia, that found no elevated risk of lung cancer among coal miners. Although the Agency has not been able to acquire this report in time to include it in the present risk assessment, it will be reviewed and considered in the risk assessment prior to any final action. The Agency would also welcome information on any additional studies or reports on this issue of which it is not currently aware.

cause overload are safe for humans. Furthermore, a proportion of exposed individuals can always be expected to be more susceptible than normal. Therefore, at lower dpm concentrations, particle overload may still provide a route to lung cancer in susceptible humans. At even lower concentrations, other routes to carcinogenesis in humans may predominate, possibly involving genotoxic effects.

III.3. Characterization of Risk

Having reviewed the evidence of health effects associated with exposure to dpm, MSHA has evaluated that evidence to ascertain whether exposure levels currently existing in mines warrant regulatory action pursuant to the Mine Act. The criteria for this evaluation are established by the Mine Act and related court decisions. Section 101(a)(6)(A) provides that:

> The Secretary, in promulgating mandatory standards dealing with toxic materials or harmful physical agents under this subsection, shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

Based on court interpretations of similar language under the Occupational Safety and Health Act, there are three questions that need to be addressed: (1) whether health effects associated with dpm exposure constitute a ''material impairment'' to miner health or functional capacity; (2) whether exposed miners are at significant excess risk of incurring any of these material impairments; and (3) whether the proposed rule will substantially reduce such risks.

The criteria for evaluating the health effects evidence do not require scientific certainty. As noted by Justice Stevens in an important case on risk involving the Occupational Safety and Health Administration, the need to evaluate risk does not mean an agency is placed into a ''mathematical straightjacket.'' [*Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607, 100 S.Ct. 2844 (1980), hereinafter designated the ''Benzene'' case]. When regulating on the edge of scientific knowledge, certainty may not be possible; and—

> so long as they are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions in interpreting the data * * * risking error on the side of overprotection rather than underprotection. [Id. at 656].

The statutory criteria for evaluating the health evidence do not require MSHA to wait for absolute precision. In fact, MSHA is required to use the ''best *available* evidence.'' (Emphasis added).

III.3.a. *Material Impairments to Miner Health or Functional Capacity*

From its review of the literature cited in Part III.2, MSHA has tentatively concluded that underground miners exposed to current levels of dpm are at excess risk of incurring the following three kinds of material impairment: (i) sensory irritations and respiratory symptoms; (ii) death from cardiovascular, cardiopulmonary, or respiratory causes; and (iii) lung cancer. The basis for linking these with dpm exposure is summarized in the following three subsections.

III.3.a.i. Sensory Irritations and Respiratory Symptoms. Kahn et al. (1988), Battigelli (1965), Gamble et al. (1987a) and Rudell et al. (1996) identified a number of debilitating acute responses to diesel exhaust exposure: irritation of the eyes, nose and throat; headaches, nausea, and vomiting; chest tightness and wheeze. These symptoms were also reported by miners at the 1995 workshops. In addition, Ulfvarson et al. (1987, 1990) found evidence of reduced lung function in workers exposed to dpm for a single shift.

Although there is evidence that such symptoms subside within one to three days of no occupational exposure, a miner who must be exposed to dpm day after day in order to earn a living may not have time to recover from such effects. Hence, the opportunity for a so-called ''reversible'' health effect to reverse itself may not be present for many miners. Furthermore, effects such as stinging, itching and burning of the eyes, tearing, wheezing, and other types of sensory irritation can cause severe discomfort and can, in some cases, be seriously disabling. Also, workers experiencing sufficiently severe sensory irritations can be distracted as a result of their symptoms, thereby endangering other workers and increasing the risk of accidents. For these reasons, MSHA considers such irritations to constitute ''material impairments'' of health or functional capacity within the meaning of the Act, regardless of whether or not they are reversible. Further discussion of why MSHA believes reversible effects can constitute material impairments can be found earlier in this risk assessment, in the section entitled ''Relevance of Health Effects that are Reversible.''

The best available evidence also points to more severe respiratory consequences of exposure to dpm. Significant associations have been detected between acute environmental exposures to fine particulates and debilitating respiratory impairments in adults, as measured by lost work days, hospital admissions, and emergency room visits. Short-term exposures to fine particulates, or particulate air pollution in general, have been associated with significant increases in the risk of hospitalization for both pneumonia and COPD (EPA, 1996).

The risk of severe respiratory effects is exemplified by specific cases of persistent asthma linked to diesel exposure (Wade and Newman, 1993). There is considerable evidence for a causal connection between dpm exposure and increased manifestations of allergic asthma and other allergic respiratory diseases, coming from recent experiments on animals and human cells (Peterson and Saxon, 1996; Diaz-Sanchez, 1997; Takano et al., 1997; Ichinose et al., 1997). Such health outcomes are clearly ''material impairments'' of health or functional capacity within the meaning of the Act.

III.3.a.ii. Excess Risk of Death from Cardiovascular, Cardiopulmonary, or Respiratory Causes. The evidence from air pollution studies identifies death, largely from cardiovascular or respiratory causes, as an endpoint significantly associated with acute exposures to fine particulates. The weight of epidemiological evidence indicates that short-term ambient exposure to particulate air pollution contributes to an increased risk of daily mortality. Time-series analyses strongly suggest a positive effect on daily mortality across the entire range of ambient particulate pollution levels. Relative risk estimates for daily mortality in relation to daily ambient particulate concentration are consistently positive and statistically significant across a variety of statistical modeling approaches and methods of adjustment for effects of relevant covariates such as season, weather, and co-pollutants. After thoroughly reviewing this body of evidence, the U.S. Environmental Protection Agency (EPA) concluded:

> It is extremely unlikely that study designs not yet employed, covariates not yet identified, or statistical techniques not yet developed could wholly negate the large and consistent body of epidemiological evidence * * *.

There is also substantial evidence of a relationship between chronic exposure to fine particulates and an excess (age-adjusted) risk of mortality, especially from cardiopulmonary diseases. The Six Cities and ACS studies of ambient air particulates both found a significant association between chronic exposure to fine particles and excess mortality. In

both studies, after adjusting for smoking habits, a statistically significant excess risk of cardiopulmonary mortality was found in the city with the highest average concentration of fine particulate (i.e., $PM_{2.5}$) as compared to the city with the lowest. Both studies also found excess deaths due to lung cancer in the cities with the higher average level of $PM_{2.5}$, but these results were not statistically significant (EPA, 1996). The EPA concluded that—

> * * * the chronic exposure studies, taken together, suggest there may be increases in mortality in disease categories that are consistent with long-term exposure to airborne particles and that at least some fraction of these deaths reflect cumulative PM impacts above and beyond those exerted by acute exposure events* * * There tends to be an increasing correlation of long-term mortality with PM indicators as they become more reflective of fine particle levels (EPA, 1996).

Whether associated with acute or chronic exposures, the excess risk of death that has been linked to pollution of the air with fine particles like dpm is clearly a ''material impairment'' of health or functional capacity within the meaning of the Act.

III.3.a.iii. Lung Cancer. It is clear that lung cancer constitutes a ''material impairment'' of health or functional capacity within the meaning of the Act. Questions have been raised however, as to whether the evidence linking dpm exposure with an excess risk of lung cancer demonstrates a causal connection (Stöber and Abel, 1996; Watson and Valberg, 1996; Cox, 1997; Morgan et al., 1997; Silverman, 1998).

MSHA recognizes that no single one of the existing epidemiological studies, viewed in isolation, provides conclusive evidence of a causal connection between dpm exposure and an elevated risk of lung cancer in humans. Consistency and coherency of results, however, do provide such evidence. Although no epidemiological study is flawless, studies of both cohort and case-control design have quite consistently shown that chronic exposure to diesel exhaust, in a variety of occupational circumstances, is associated with an increased risk of lung cancer. With only rare exceptions, involving too few workers and/or observation periods too short to have a good chance of detecting excess cancer risk, the human studies have shown a greater risk of lung cancer among exposed workers than among comparable unexposed workers.

Lipsett and Alexeeff (1998) performed a comprehensive statistical meta-analysis of the epidemiological literature on lung cancer and dpm exposure. This analysis systematically combined the results of the studies summarized in Tables III–4 and III–5. Some studies were eliminated because they did not allow for a period of at least 10 years for the development of clinically detectable lung cancer. Others were eliminated because of bias resulting from incomplete ascertainment of lung cancer cases in cohort studies or because they examined the same cohort population as another study. One study was excluded because standard errors could not be calculated from the data presented. The remaining 30 studies were analyzed using both a fixed-effects and a random-effect analysis of variance (ANOVA) model. Sources of heterogeneity in results were investigated by subset analysis; using categorical variables to characterize each study's design; target population (general or industry-specific); occupational group; source of control or reference population; latency; duration of exposure; method of ascertaining occupation; location (North America or Europe); covariate adjustments (age, smoking, and/or asbestos exposure); and absence or presence of a clear healthy worker effect (as manifested by lower than expected all-cause mortality in the occupational population under study).

Sensitivity analyses were conducted to evaluate the sensitivity of results to inclusion criteria and to various assumptions used in the analysis. This included substitution of excluded ''redundant'' studies of same cohort population for the included studies and exclusion of studies involving questionable exposure to dpm. An influence analysis was also conducted to examine the effect of dropping one study at a time, to determine if any individual study had a disproportionate effect on the ANOVA. Potential effects of publication bias were also investigated. The authors concluded:

> The results of this meta-analysis indicate a consistent positive association between occupations involving diesel exhaust exposure and the development of lung cancer. Although substantial heterogeneity existed in the initial pooled analysis, stratification on several factors identified a relationship that persisted throughout various influence and sensitivity analyses * * *.
>
> This meta-analysis provides evidence consistent with the hypothesis that exposure to diesel exhaust is associated with an increased risk of lung cancer. The pooled estimates clearly reflect the existence of a positive relationship between diesel exhaust and lung cancer in a variety of diesel-exposed occupations, which is supported when the most important confounder, cigarette smoking, is measured and controlled. There is suggestive evidence of an exposure-response relationship in the smoking adjusted studies as well. Many of the subset analyses indicated the presence of substantial heterogeneity among the pooled estimates. Much of the heterogeneity observed, however, is due to the presence or absence of adjustment for smoking in the individual study risk estimates, to occupation-specific influences on exposure, to potential selection biases, and other aspects of study design.

A second, independent meta-analysis of epidemiological studies published in peer-reviewed journals was conducted by Bhatia et al. (1998).[15] In this analysis, studies were excluded if actual work with diesel equipment ''could not be confirmed or reliably inferred'' or if an inadequate latency period was allowed for cancer to develop, as indicated by less than 10 years from time of first exposure to end of follow-up. Studies of miners were also excluded, because of potential exposure to radon and silica. Likewise, studies were excluded if they exhibited selection bias or examined the same cohort population as a study published later. A total of 29 independent studies from 23 published sources were identified as meeting the inclusion criteria. After assigning each of these 29 studies a weight proportional to its estimated precision, pooled relative risks were calculated based on the following groups of studies: all 29 studies; all case-control studies; all cohort studies; cohort studies using internal reference populations; cohort studies making external comparisons; studies adjusted for smoking; studies not adjusted for smoking; and studies grouped by occupation (railroad workers, equipment operators, truck drivers, and bus workers). Elevated risks were shown for exposed workers overall and within every individual group of studies analyzed. A positive duration-response relationship was observed in those studies presenting results according to employment duration. The weighted, pooled estimates of relative risk were identical for case-control and cohort studies and nearly identical for studies with or without smoking adjustments. Based on their stratified analysis, the authors argued that—

> the heterogeneity in observed relative risk estimates may be explained by differences between studies in methods, in populations studied and comparison groups used, in latency intervals, in intensity and duration of

[15] To address potential publication bias, the authors identified several unpublished studies on truck drivers and noted that elevated risks for exposed workers observed in these studies were similar to those in the published studies utilized. Based on this and a ''funnel plot'' for the included studies, the authors concluded that there was no indication of publication bias.

exposure, and in the chemical and physical characteristics of diesel exhaust.

They concluded that the elevated risk of lung cancer observed among exposed workers was unlikely to be due to chance, that confounding from smoking is unlikely to explain all of the excess risk, and that ''this meta-analysis supports a causal association between increased risks for lung cancer and exposure to diesel exhaust.''

As discussed earlier in the section entitled ''Mechanisms of Toxicity,'' animal studies have confirmed that diesel exhaust can increase the risk of lung cancer in some species and shown that dpm (rather than the gaseous fraction of diesel exhaust) is the causal agent. MSHA, however, views results from animal studies as subordinate to the results obtained from human studies. Since the human studies show increased risk of lung cancer at dpm levels lower than what might be expected to cause overload, they provide evidence that overload may not be the only mechanism at work among humans. The fact that dpm has been proven to cause lung cancer in laboratory rats is of interest primarily in supporting the plausibility of a causal interpretation for relationships observed in the human studies.

Similarly, the genotoxicological evidence provides additional support for a causal interpretation of associations observed in the epidemiological studies. This evidence shows that dpm dispersed by alveolar surfactant can have mutagenic effects, thereby providing a genotoxic route to carcinogenesis independent of overloading the lung with particles. Chemical byproducts of phagocytosis may provide another genotoxic route. Inhalation of diesel emissions has been shown to cause DNA adduct formation in peripheral lung cells of rats and monkeys, and increased levels of human DNA adducts have been found in association with occupational exposures. Therefore, there is little basis for postulating that a threshold exists, demarcating overload, below which dpm would not be expected to induce lung cancers in humans.

Results from the epidemiological studies, the animal studies, and the genotoxicological studies are coherent and mutually reinforcing. After considering all these results, MSHA has concluded that the epidemiological studies, supported by the experimental data establishing the plausibility of a causal connection, provide strong evidence that chronic occupational dpm exposure increases the risk of lung cancer in humans.

III.3.b. Significance of the Risk of Material Impairment to Miners

The fact that there is substantial evidence that dpm exposure can materially impair miner health in several ways does not imply that miners will necessarily suffer such impairments. This section will consider the significance of the risk faced by miners exposed to dpm.

III.3.b.i. Definition of a Significant Risk. The benzene case, referred to earlier in this section, provides the starting point for MSHA's analysis of this issue. Soon after its enactment in 1970, OSHA adopted a ''consensus'' standard on exposure to benzene, as required and authorized by the OSH Act. The basic part of the standard was an average exposure limit of 10 parts per million over an 8-hour workday. The consensus standard had been established over time to deal with concerns about poisoning from this substance (448 U.S. 607, 617). Several years later, NIOSH recommended that OSHA alter the standard to take into account evidence suggesting that benzene was also a carcinogen. (*Id.,* at 619 *et seq.*). Although the ''evidence in the administrative record of adverse effects of benzene exposure at 10 ppm is sketchy at best,'' OSHA was operating under a policy that there was no safe exposure level to a carcinogen. (*Id.,* at 631). Once the evidence was adequate to reach a conclusion that a substance was a carcinogen, the policy required the agency to set the limit at the lowest level feasible for the industry. (*Id.,* at 613). Accordingly, the Agency proposed lowering the permissible exposure limit to 1 ppm.

The Supreme Court rejected this approach. Noting that the OSH Act requires ''safe or healthful employment,'' the court stated that—

> * * * 'safe' is not the equivalent of 'risk-free' * * * a workplace can hardly be considered 'unsafe' unless it threatens the workers with a significant risk of harm. Therefore, before he can promulgate any permanent health or safety standard, the Secretary is required to make a threshold finding that a place of employment is unsafe—in the sense that significant risks are present and can be eliminated or lessened by a change in practices. [Id., at 642, italics in original.]

The court went on to explain that it is the Agency that determines how to make such a threshold finding:

> First, the requirement that a 'significant' risk be identified is not a mathematical straitjacket. It is the Agency's responsibility to determine, in the first instance, what it considered to be a 'significant' risk. Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal, a reasonable person might well consider the risk significant and take appropriate steps to decrease or eliminate it. Although the Agency has no duty to calculate the exact probability of harm, it does have an obligation to find that a significant risk is present before it can characterize a place of employment as 'unsafe.' [*Id.,* at 655.]

The court noted that the Agency's ''* * * determination that a particular level of risk is 'significant' will be based largely on policy considerations.'' (*Id.,* note 62.)

III.3.b.ii. Evidence of Significant Risk at Current Exposure Levels. In evaluating the significance of the risks to miners, a key factor is the very high concentrations of diesel particulate to which a number of those miners are currently exposed—compared to ambient atmospheric levels in even the most polluted urban environments, and to workers in diesel-related occupations for which positive epidemiological results have been observed. Figure III–4 compared the range of median dpm exposures measured for mine workers at various mines to the range of geometric means (i.e., estimated medians) reported for other occupations, as well as to ambient environmental levels. Figure III–5 presents a similar comparison, based on the highest mean dpm level observed at any individual mine, the highest mean level reported for any occupational group other than mining, and the highest monthly mean concentration of dpm estimated for ambient air at any site in the Los Angeles basin.[16] As shown in Figure III–5, underground miners are currently exposed at mean levels up to 10 times higher than the highest mean exposure reported for other occupations, and up to 100 times higher than comparable environmental levels of diesel particulate.

[16] For comparability with occupational lifetime exposure levels, the environmental ambient air concentration has been multiplied by a factor of approximately 4.7. This factor reflects a 45-year occupational lifetime with 240 working days per year, as opposed to a 70-year environmental lifetime with 365-days per year, and assumes that air inhaled during a work shift comprises half the total air inhaled during a 24-hour day.

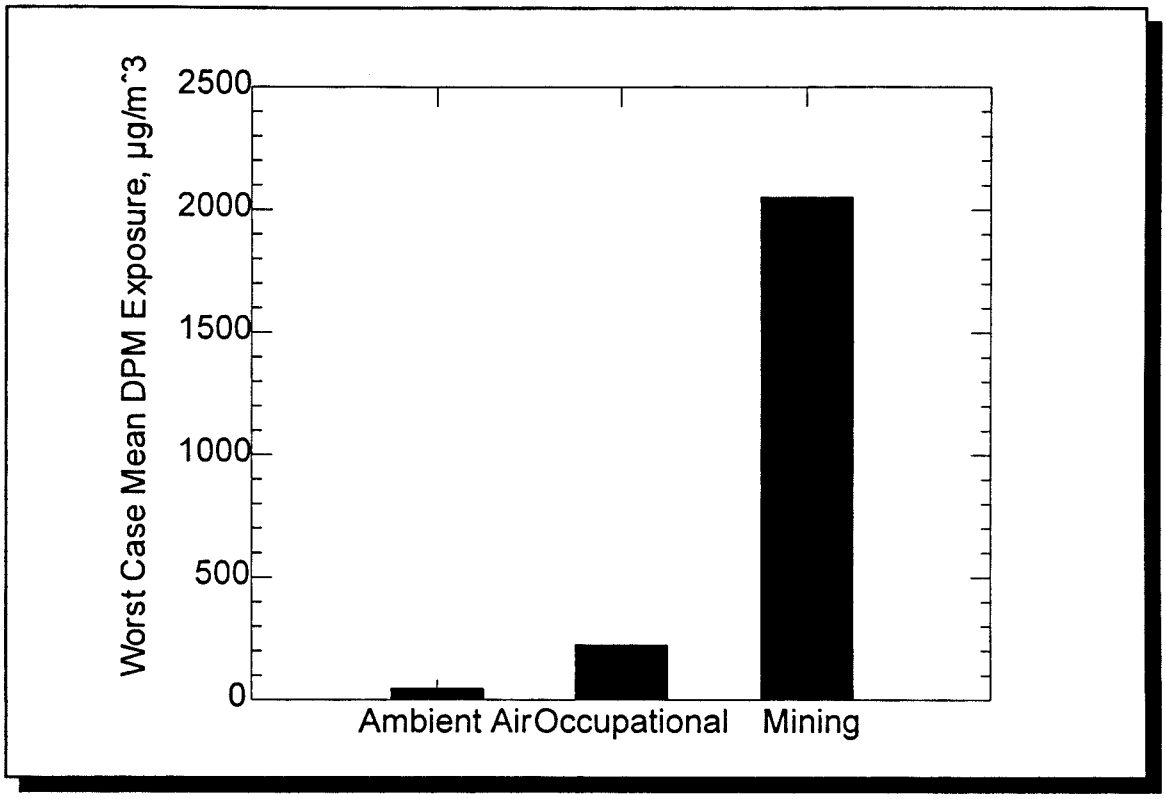

Figure III-5.--Worst case observed or reported mean diesel particulate exposure concentrations for urban ambient air, occupations other than mining, and mining. Worst case for mining is mean dpm measured within an underground mine. Worst case for occupations other than mining is mean respirable particulate matter, other than cigarette smoke, reported for railroad workers classified as hostlers (Woskie et al., 1988). Worst case for ambient air is mean estimated for peak months at most heavily polluted site in Los Angeles area (Cass and Gray, 1995), multiplied by 4.7 to adjust for comparability with occupational lifetime exposure levels.

Given the significantly increased mortality and other acute, adverse health effects associated with increments of 25 µg/m^3 in fine particulate concentration (Table III–3), the relative risk for some miners, especially those already suffering respiratory problems, appears to be extremely high. Acute responses to dpm exposures have been detected in studies of stevedores, whose exposure was likely to have been less than one-tenth the exposure of some miners on the job.

Both existing meta-analyses of human studies relating dpm exposure and lung cancer suggest that, on average, occupational exposure is responsible for a 30- to 40-percent increase in lung cancer risk across all industries studied (Lipsett and Alexeeff, 1998; Bhatia et al., 1998). Moreover, the epidemiological studies providing the evidence of this increased risk involved average exposure levels estimated to be far below levels to which some underground miners are currently exposed. Specifically, the elevated risk of lung cancer observed in the two most extensively studied industries—trucking (including dock workers) and railroads—was associated with average exposure levels estimated to be far below levels observed in underground mines. The highest average concentration of dpm reported for dock workers—the most highly exposed occupational group within the trucking industry—is about 55 µg/m^3 total elemental carbon at an individual dock (NIOSH, 1990). This translates, on average, to no more than about 110 µg/m^3 of dpm. Published measurements of dpm for railworkers have generally been less than 140 µg/m^3 (measured as respirable particulate matter other than cigarette smoke). The reported mean of 224 µg/m^3 for hostlers displayed in Figure III–5 represents only the worst case occupational subgroup (Woskie et al., 1988). Indeed, although MSHA views extrapolations from animal studies as subordinate to results obtained from human studies, it is noteworthy that dpm exposure levels recorded in some underground mines (Figures III–1 and III–2) have been well within the exposure range that produced tumors in rats (Nauss et al., 1995).

The significance of the lung cancer risk to exposed underground miners is also supported by a recent NIOSH report (Stayner et al., 1998), which summarizes a number of published quantitative risk assessments. These assessments are broadly divided into those based on human studies and those based on animal studies. Depending on the particular studies, assumptions, and methods of assessment used, estimates of the exact degree of risk vary widely even within each broad category. MSHA

recognizes that a conclusive assessment of the quantitative relationship between lung cancer risk and specific exposure levels is not possible at this time, given the limitations in currently available epidemiological data and questions about the applicability to humans of responses observed in rats. However, *all* of the very different approaches and methods published so far, as described in Stayner et al. 1998, have produced results indicating that levels of dpm exposure measured at some underground mines present an unacceptably high risk of lung cancer for miners—a risk significantly greater than the risk they would experience without the dpm exposure.

Quantitative risk estimates based on the human studies were generally higher than those based on analyses of the rat inhalation studies. As indicated by Tables 3 and 4 of Stayner et al. 1998, a working lifetime of exposure to dpm at 500 μg/m³ yields estimates of excess lung cancer risk ranging from about 1 to 200 excess cases of lung cancer per thousand workers based on the rat inhalation studies and from about 50 to 800 per 1000 based on the epidemiological assessments. Even the lowest of these estimates indicates a risk that is clearly significant under the quantitative rule of thumb established in the benzene case. [*Industrial Union* vs. *American Petroleum;* 448 U.S. 607, 100 S.Ct. 2844 (1980)].

Stayner et al. 1998 concluded their report by stating:

> The risk estimates derived from these different models vary by approximately three orders of magnitude, and there are substantial uncertainties surrounding each of these approaches. Nonetheless, the results from applying these methods are consistent in predicting relatively large risks of lung cancer for miners who have long-term exposures to high concentrations of DEP [i.e., dpm]. This is not surprising given the fact that miners may be exposed to DEP [dpm] concentrations that are similar to those that induced lung cancer in rats and mice, and substantially higher than the exposure concentrations in the positive epidemiologic studies of other worker populations.

The Agency is also aware that a number of other governmental and nongovernmental bodies have concluded that the risks of dpm are of sufficient significance that exposure should be limited:

(1) In 1988, after a thorough review of the literature, the National Institute for Occupational Safety and Health (NIOSH) recommended that whole diesel exhaust be regarded as a potential occupational carcinogen and controlled to the lowest feasible exposure level. The document did not contain a recommended exposure limit.

(2) In 1995, the American Conference of Governmental Industrial Hygienists placed on the Notice of Intended Changes in their Threshold Limit Values (TLV's) for Chemical Substances and Physical Agents and Biological Exposure Indices Handbook a recommended TLV of 150 μg/m³ for exposure to whole diesel particulate.

(3) The Federal Republic of Germany has determined that diesel exhaust has proven to be carcinogenic in animals and classified it as an A2 in their carcinogenic classification scheme. An A2 classification is assigned to those substances shown to be clearly carcinogenic only in animals but under conditions indicative of carcinogenic potential at the workplace. Based on that classification, technical exposure limits for dpm have been established, as described in part II of this preamble. These are the minimum limits thought to be feasible in Germany with current technology and serve as a guide for providing protective measures at the workplace.

(4) The Canada Centre for Mineral and Energy Technology (CANMET) currently has an interim recommendation of 1000 μg/m³ respirable combustible dust. The recommendation was made by an Ad hoc committee made up of mine operators, equipment manufacturers, mining inspectorates and research agencies. As discussed in part II of this preamble, the committee has presently established a goal of 500 μg/m³ as the recommended limit.

(5) Already noted in this preamble is the U.S. Environmental Protection Agency's recently enacted regulation of fine particulate matter, in light of the significantly increased health risks associated with environmental exposure to such particulates. In some of the areas studied, fine particulate is composed primarily of dpm; and significant mortality and morbidity effects were also noted in those areas.

(6) The California Environmental Protection Agency (CALEPA) has tentatively concluded that diesel exhaust appears to meet the definition of a toxic air contaminant (as stated in their Health and Safety Code, Section 39655). According to that section, a toxic air contaminant is an air pollutant which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. At the present time, this tentative conclusion is still subject to revision.

(7) The International Programme on Chemical Safety (IPCS), which is a joint venture of the World Health Organization, the International Labour Organisation, and the United Nations Environment Programme, has issued a health criteria document on diesel fuel and exhaust emissions (IPCS, 1996). This document states that the data support a conclusion that inhalation of diesel exhaust is of concern with respect to both neoplastic and non-neoplastic diseases. It also states that the particulate phase appears to have the greatest effect on health, and both the particle core and the associated organic materials have biological activity, although the gas-phase components cannot be disregarded.

Based on both the epidemiological and toxicological evidence, the IPCS criteria document concluded that diesel exhaust is ''probably carcinogenic to humans'' and recommended that ''in the occupational environment, good work practices should be encouraged, and adequate ventilation must be provided to prevent excessive exposure.'' Quantitative relationships between human lung cancer risk and dpm exposure were derived using a dosimetric model that accounted for differences between experimental animals and humans, lung deposition efficiency, lung particle clearance rates, lung surface area, ventilation, and elution rates of organic chemicals from the particle surface.

As the Supreme Court pointed out in the benzene case, the appropriate definition of significance also depends on policy considerations of the Agency involved. In the case of MSHA, those policy considerations include special attention to the history of the Mine Act. That history is intertwined with the toll to the mining community due to silicosis and coal miners' pneumoconiosis (''black lung''), along with billions of dollars in Federal expenditures.

At one of the 1995 workshops on diesel particulate cosponsored by MSHA, a miner noted:

> People, they get complacent with things like this. They begin to believe, well, the government has got so many regulations on so many things. If this stuff was really hurting us, they wouldn't allow it in our coal mines * * * (dpm Workshop; Beckley, WV, 1995).

Referring to some commenters' position that further scientific study was necessary before a limit on dpm exposure could be justified, another miner said:

> * * * if I understand the Mine Act, it requires MSHA to set the rules based on the best set of available evidence, not possible evidence * * * Is it going to take us 10 more years before we kill out, or are we going to do something now * * *? (dpm Workshop; Beckley, WV, 1995).

Concern with the risk of waiting for additional scientific evidence to support regulation of dpm was also expressed by another miner who testified:

> What are the consequences that the threshold limit values are too high and it's loss of human lives, sickness, whatever, compared to what are the consequences that the values are too low? I mean, you don't lose nothing if they're too low, maybe a little money. But * * * I got the indication that the diesel studies in rats could no way be compared to humans because their lungs are not the same * * * But * * * if we don't set the limits, if you remember probably last year when these reports come out how the government used human guinea pigs for radiation, shots, and all this, and aren't we doing the same thing by using coal miners as guinea pigs to set the value? (dpm Workshop; Beckley, WV, 1995).

III.3.c. Substantial Reduction of Risk by Proposed Rule

A review of the best available evidence indicates that reducing the very high exposures currently existing in underground mines can substantially reduce health risks to miners—and that greater reductions in exposure would result in even lower levels of risk. Although there are substantial uncertainties involved in converting 24-hour environmental exposures to 8-hour occupational exposures, Table III–3 suggests that reducing occupational dpm concentrations by as little as 75 μg/m³ (corresponding to a reduction of 25 μg/m³ in 24-hour ambient atmospheric concentration) could lead to significant reductions in the risk of various adverse acute responses, ranging from respiratory irritations to mortality. The Agency recognizes that a conclusive, quantitative dose-response relationship has not been established between dpm and lung cancer in humans. However, the epidemiological studies relating dpm exposure to excess lung cancer were conducted on populations whose average exposure is estimated to be less than 200 μg/m³ and less than one tenth of average exposures observed in some underground mines. Therefore, the best available evidence indicates that lifetime occupational exposure at levels currently existing in some underground mines presents a significant excess risk of lung cancer.

In the case of underground coal mines, calculations by the Agency indicate that the filtration required by the proposed rule would reduce dpm concentrations to below 200 μg/m³ in most underground coal mines.[17] The Agency recognizes that although health risks would be substantially reduced, the best available evidence indicates a significant risk of adverse health effects could remain. However, as explained in Part V of this preamble, MSHA has tentatively concluded that, because of both technology and cost considerations, the underground coal mining sector as a whole cannot feasibly reduce dpm concentrations further at this time.

Conclusions

MSHA has reviewed a considerable body of evidence to ascertain whether and to what level dpm should be controlled. It has evaluated the information in light of the legal requirements governing regulatory action under the Mine Act. Particular attention was paid to issues and questions raised by the mining community in response to the Agency's Advance Notice of Proposed Rulemaking and at workshops on dpm held in 1995. Based on its review of the record as a whole to date, the agency has tentatively determined that the best available evidence warrants the following conclusions:

1. The health effects associated with exposure to dpm can materially impair miner health or functional capacity. These material impairments include sensory irritations and respiratory symptoms; death from cardiovascular, cardiopulmonary, or respiratory causes; and lung cancer.
2. At exposure levels currently observed in underground mines, many miners are presently at significant risk of incurring these material impairments over a working lifetime.
3. The proposed rule for underground coal mines is justified because the reduction in dpm exposure levels that would result from implementation of the proposed rule would substantially reduce the significant health risks currently faced by underground miners exposed to dpm.

TABLE III–2.—STUDIES OF ACUTE HEALTH EFFECTS USING FILTER BASED OPTICAL INDICATORS OF FINE PARTICLES IN THE AMBIENT AIR

City	Study years	Indicator*	Reference
Acute Mortality			
London	1963–1972, winters	BS	Thurston et al., 1989.
	1965–1972, winters		Ito et al., 1993.
	1975–1987		Katsouyanni et al., 1990.
Athens	July, 1987	BS	Katsouyanni et al., 1993.
	1984–1988		Touloumi et al., 1994.
	1970–1979		Shumway et al., 1988.
Los Angeles	1970–1979	KM	Kinney and Ozkaynak, 1991.
Santa Clara	1980–1986, winters	COH	Fairley, 1990.
Increased Hospitalization			
Barcelona	1985–1989	BS	Sunyer et al., 1993.
Acute Change in Pulmonary Function			
Wageningen, Netherlands		BS	Hoek and Brunkreef, 1993.
Netherlands		BS	Roemer et al., 1993.

*BS (black smoke), KM (carbonaceous material), and COH (coefficient of haze) are optical measurements that are most directly related to elemental carbon concentrations, but only indirectly to mass. Site specific calibrations and/or comparisons of such optical measurements with gravimetric mass measurements in the same time and city are needed to make inferences about particle mass. However, all three of these indicators preferentially measure carbon particles found in the fine fraction of total airborne particulate matter. (EPA, 1996).

TABLE III–3.—STUDIES OF ACUTE HEALTH EFFECTS USING GRAVIMETRIC INDICATORS OF FINE PARTICLES IN THE AMBIENT AIR

	Indicator	RR(± CI)/25 μg/m³ PM increase	Mean PM levels (min/max)†
Acute Mortality			
Six Cities[A]			

[17] These calculations are discussed in detail in Part V, which reviews the extent to which the proposed rule meets the Agency's statutory obligation to attain the highest degree of health and safety protection feasible for a miner.

TABLE III–3.—STUDIES OF ACUTE HEALTH EFFECTS USING GRAVIMETRIC INDICATORS OF FINE PARTICLES IN THE AMBIENT AIR—Continued

	Indicator	RR(± CI)/25 μg/m³ PM increase	Mean PM levels (min/max)†
Portage, WI	$PM_{2.5}$	1.030 (0.993,1.071)	11.2 (±7.8)
Topeka, KS	$PM_{2.5}$	1.020 (0.951,1.092)	12.2 (±7.4)
Boston, MA	$PM_{2.5}$	1.056 (1.038,1.0711)	15.7 (±9.2)
St. Louis, MO	$PM_{2.5}$	1.028 (1.010,1.043)	18.7 (±10.5)
Kingston/Knoxville, TN	$PM_{2.5}$	1.035 (1.005,1.066)	20.8 (±9.6)
Steubenville, OH	$PM_{2.5}$	1.025 (0.998,1.053)	29.6 (±21.9)
Increased Hospitalization			
Ontario, CAN[B]	SO_4=	1.03 (1.02,1.04)	Min/Max = 3.1–8.2
Ontario, CAN[C]	SO_4=	1.03 (1.02,1.04)	Min/Max = 2.0–7.7
	O_3	1.03 (1.02,1.05)	
NYC/Buffalo, NY[D]	SO_4=	1.05 (1.01,1.10)	NR
Toronto, CAN[D]	H^+ (Nmol/m³)	1.16 (1.03,1.30)[1]	28.8 (NR/391)
	SO_4=	1.12 (1.00,1.24)	7.6 (NR, 48.7)
	$PM_{2.5}$	1.15 (1.02,1.78)	18.6 (NR, 66.0)
Increased Respiratory Symptoms			
Southern California[F]	SO_4=	1.48 (1.14,1.91)	R = 2–37
Six Cities[G]	$PM_{2.5}$	1.19 (1.01,1.42)[2]	18.0 (7.2,37)[3]
(Cough)	$PM_{2.5}$ Sulfur	1.23 (0.95,1.59)[2]	2.5 (3.1,61)[3]
	H^+	1.06 (0.87,1.29)[2]	18.1 (0.8,5.9)[3]
Six Cities[G]	$PM_{2.5}$	1.44 (1.15–1.82)[2]	18.0 (7.2,37)[3]
(Lower Resp. Symp.)	$PM_{2.5}$ Sulfur	1.82 (1.28–2.59)[2]	2.5 (0.8,5.9)[3]
	H^+	1.05 (0.25–1.30)[3]	18.1 (3.1,61)[3]
Denver, CO[P]	$PM_{2.5}$	0.0012 (0.0043)[3]	0.41–73
(Cough, adult asthmatics)	SO_4=	0.0042 (0.00035)[3]	0.12–12
	H^+	0.0076 (0.0038)[3]	2.0–41
Decreased Lung Function			
Uniontown, PA[E]	$PM_{2.5}$	PEFR 23.1 (−0.3,36.9) (per 25 μg/m³).	25/88 (NR/88)
Seattle, WA[Q]	$b_{ext.}$	FEV1 42 ml (12,73)	5/45
Asthmatics	calibrated by $PM_{2.5}$	FVC 45 ml (20,70)	

(EPA, 1996)
[A] Schwartz et al. (1996a).
[B] Burnett et al. (1994).
[C] Burnett et al. (1995).
[D] Thurston et al. (1992, 1994).
[E] Neas et al. (1995).
[F] Ostro et al. (1993).
[G] Schwartz et al. (1994).
[Q] Koenig et al. (1993).
[P] Ostro et al. (1991).
† Min/Max 24-h PM indicator level shown in parentheses unless otherwise noted as (±S.D.), 10 and 90 percentile (10,90).
* Change per 100 nmoles/m³.
** Change per 20 μg/m³ for $PM_{2.5}$; per 5 μg/m³ for $PM_{2.5}$ sulfur; per 25 nmoles/m³ for H^+.
*** 50th percentile value (10,90 percentile).
**** Coefficient and SE in parenthesis.

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Table III-4. Summary of published information from cohort studies on lung cancer and exposure to diesel exhaust.

Authors (Date)	Occupation	No. of Subjects	Follow-up period	Exposure Assessment	Smk Adj.	Findings[a]	Stat. Sig.[b]	Comments
Ahlberg et al. (1981)	Male truck drivers	35,883	1961-73	Occupation only		RR = 1.33 for drivers of "ordinary" trucks.	*	Risk relative to males employed in trades thought to have no exposure to "petroleum products or other chemicals." Comparison controlled for age and province of residence (Sweden). Based on comparison of smoking habits between truck drivers and general Stockholm population, authors concluded that excess rate of lung cancer could not be entirely attributed to smoking.
Ahlman et al. (1991)	Underground sulfide ore miners	597	1968-86	Job histories from personnel records. Measurements of alpha energy concentration from radon daughters at each mine worked.		RR = 1.45 overall. RR = 2.9 for 45-64 age group.		Age-adjusted relative risk compared to males living in same area of Finland. No excess observed among 338 surface workers at same mines, with similar smoking and alcohol consumption, based on questionnaire. Based on calculation of expected lung cancers due to radon, excess risk attributed by author partly to radon exposure and partly to diesel exhaust.
Balarajan & McDowall (1988)	Professional drivers	3,392	1950-84	Occupation only		SMR = 0.86 for taxi drivers. SMR = 1.42 for bus drivers. SMR = 1.59 for truck drivers.	*	Possibly higher rates of smoking among bus and truck drivers than among taxi drivers.
Bender et al. (1989)	Highway maintenance workers	4,849	1945-84	Occupation only		SMR = 0.69		No adjustment for healthy worker effect.

Boffetta et al. (1988)	Railroad Wrkr. Truck driver Heavy Eq. Op. Miner General Popula.	2,973 16,208 855 2,034 476,648	1982-84	Occupation and diesel exposure by questionnaire	✔	RR = 1.59 for railroad workers. RR = 1.24 for truck drivers. RR = 2.60 for heavy Eq. Op's. RR = 2.67 for miners. RR = 1.18 for subjects reporting diesel exposure compared to subjects reporting no diesel exposure.	* *	Overall RR adjusted for occupational exposures to asbestos, coal and stone dusts, coal tar & pitch, and gasoline exhaust (in addition to age and smoking). Possible biases due to volunteered participation and relatively high lung cancer rate among 98,026 subjects with unknown dpm exposure.
Dubrow & Wegman (1984)	Truck & tractor drivers	not reported	1971-73	Occupation only		sMOR = 1.73 based on 176 deaths.	*	Excess cancers observed over the entire respiratory system and upper alimentary tract.
Edling et al. (1987)	Bus workers	694	1951-83	Occupation only		SMR = 0.7 for overall cohort		Small size of cohort lacks statistical power to detect excess risk of lung cancer. No adjustment for healthy worker effect.
Garshick et al. (1988)	Railroad workers	55,407	1959-80	Job in 1959 & years of diesel exposure since 1959		RR = 1.20 for 1-4 yr. exposure. RR = 1.24 for 5-9 yr. exposure. RR = 1.32 for 10-14 yr. exposure. RR = 1.72 for ≥15 yr. exposure. Higher RR for each exposure group if shopworkers and hostlers are excluded. RR = 1.45 within highest-exposed age group (40-44).	* * * * *	Exposure groups based on exposure accumulated more than 4 yr prior to observation. Subjects with likely asbestos exposure excluded from cohort. Statistically significant results corroborated if 12,872 shopworkers and hostlers possibly exposed to asbestos are also excluded. Missing 12% of death certificates. Cigarette smoking judged to be uncorrelated with diesel exposure within cohort.
Guberan et al. (1992)	Professional drivers	1,726	1961-86	Occupation only		SMR = 1.50	*	Approx. 1/3 to 1/4 of cohort reported to be long-haul truck drivers. SMR based on regional lung cancer mortality rate.
Gustafsson et al. (1986)	Dock workers	6,071	1961-80	Occupation only		SMR = 1.32 (mortality). SMR = 1.68 (morbidity).	* *	

Gustavsson et al. (1990)	Bus garage workers	708	1952-86	Semi-quantitative based on job history & exposure intensity estimated for each job.		SMR = 1.22 for overall cohort. SMR = 1.27 for highest-exposed subgroup.		Lack of statistical significance may be attributed to small size of cohort.
Hansen (1993)	Truck drivers	14,225	1970-80	Occupation only		SMR = 1.60 for overall cohort. Some indication of increasing SMR with age (i.e., greater cumulative exposure).	*	Compared to unexposed control group of 38,301 laborers considered to "resemble the group of truck drivers in terms of work-related demands on physical strength and fitness, educational background, social class, and life style." Correction for estimated differences in smoking habits between cohort and control group reduces SMR from 1.60 to 1.52. Results judged "unlikely *** [to] have been seriously confounded by smoking habit differences."
Howe et al. (1983)	Railroad workers	43,826	1965-77	Jobs classified by diesel exposure		RR = 1.20 for "possibly exposed." RR = 1.35 for "probably exposed."	* *	Risk is relative to unexposed subgroup of cohort. Similar results obtained for coal dust exposure. Possible confounding with asbestos and coal dust.
Kaplan (1959)	Railroad workers	32000 (Approx.)	1953-58	Jobs classified by diesel exposure		SMR=0.88 for operationally exposed. SMR = 0.72 for somewhat exposed. SMR = 0.80 for rarely exposed.		No adjustment for healthy worker effect. Clerks (in rarely exposed group) found more likely to have had urban residence than occupationally exposed workers. No attempt to distinguish between diesel and coal-fired locomotives. Results may be attributable to short duration of exposure and/or inadequate follow-up time.
Leupker & Smith (1978)	Truck drivers	183,791	May-July, 1976	Occupation only		SMR = 1.21		Lack of statistical significance may be due to inadequate follow-up period.
Lindsay et al. (1993)	Truck drivers	not reported	1965-79	Occupation only		SMR = 1.15	*	
Menck & Henderson (1976)	Truck drivers	34,800 estimated	1968-73	Occupation only		SMR = 1.65	*	Number of subjects in cohort estimated from census data.

Raffle (1957)	Transport engineers	2,666 Est. from man-years at risk	1950-55	Occupation only		SMR = 1.42		SMR calculated by combining data presented for four quadrants of London.
Rafnsson & Gunnarsdottir (1991)	Truck drivers	868	1951-88	Occupation only		SMR = 2.14	*	No trend of increasing risk with increased duration of employment or increased follow-up time. Based on survey of smoking habits in cohort compared to general male population, and fact that there were fewer than expected deaths from respiratory disease, authors concluded that differences in smoking habits were unlikely to be enough to explain excess rate of lung cancer. However, not all trucks were diesel prior to 1951, and there is possible confounding by asbestos exposure.
Rushton et al. (1983)	Bus maintenance workers	8,480	5.9 yrs (mean)	Occupation only		SMR = 1.01 for overall cohort. SMR = 1.33 for "general hand" subgroup.	*	Short follow-up period. SMR based on comparison to national rates, with no adjustment for regional or socioeconomic differences, which could account for excess lung cancers observed among general hands.
Schenker et al. (1984)	Railroad workers	2,519	1967-79	Job histories, with exposure classified as unexposed, high, low, or undefined.		RR = 1.50 for low exposure subgroup. RR = 2.77 for high exposure subgroup.		Risk relative to unexposed subgroup. Jobs considered to have similar socioeconomic status. Differences in smoking calculated to be insufficient to explain findings. Possible confounding by asbestos exposure.
Waller (1981)	Bus workers	16,828 Est. from manyears at risk	1950-74	Occupation only		SMR = 0.79 for overall cohort.		Lung cancers occurring after retirement or resignation from London Transport Authority were not counted. No adjustment for healthy worker effect.
Waxweiler et al. (1973)	Potash miners	3,886	1941-67	Miners classified as underground or surface		SMR = 1.12 for surface miners. SMR = 1.08 for underground miners.		No adjustment for healthy worker effect. SMR based on national lung cancer mortality, which is about 1/3 higher than lung cancer mortality rate in New Mexico, where miners resided. A substantial percentage of the underground subgroup may have had little or no occupational exposure to diesel exhaust.

Wong et al. (1985)	Heavy equipment operators	34,156	1964-78	Job histories, latency, & years of union membership		SMR = 0.99 for overall cohort. SMR = 1.07 for ≥20 yr member. SMR = 1.12 for ≥20 yr. latency. SMR = 1.30 for 4,075 "normal" retirees.	*	Increasing trend in SMR with latency and (up to 15 yr) with duration of union membership. Statistically significant excess lung cancers for dozer operators with 15-19 yr union membership and ≥20 yr latency. No adjustment for healthy worker effect.

a RR = Relative Risk; SMR = Standardized Mortality Ratio. Values greater than 1.0 indicate excess prevalence of lung cancer associated with diesel exposure.

b An asterisk (*) indicates statistical significance based on 2-tailed test at confidence level of at least 95%.

Table III-5 — Summary of published information from case-control studies on lung cancer and exposure to diesel exhaust.

Authors (Date)	Cases	Controls	No. of Cases	No. of Controls	Exposure Assessment	Matching		Findings[a]	Stat. Sig.[b]	Comments
						Smk.	Additional			
Benhamou et al. (1988)	Histologically confirmed lung cancers	Non-tobacco related diseases	1,625	3,091	Occupational history by questionnaire.	✔	Sex, age at diagnosis, hospital, interviewer.	RR = 2.14 for miners RR = 1.42 for professional drivers.	* *	Mine type not reported. No evidence of an increase in risk with duration of exposure
Boffetta et al. (1990)	Hospitalized males with lung cancer	Hospitalized males with no tobacco related disease	2,584	5,099	Occupation classified by probability of diesel exposure	✔	Sex, age, hospital, year of interview.	OR = 0.88 for truck drivers. OR = 0.95 for probable exposure.		Adjusted for race, asbestos exposure, education.
			477	846	Occupational history & duration of diesel exposure by interview			OR = 1.21 for any self-reported diesel exposure. OR = 2.39 for than 30 yr of self-reported diesel exposure.		
Buiatti et al. (1985)	Histologically confirmed lung cancers	Patients at same hospital	376	892	Occupational history from interview	✔	Sex, age, admission date.	OR = 1.8 for taxi drivers.		
Coggon et al. (1984)	Lung cancer deaths of males under 40	Deaths from other causes in males under 40	598	1,180	Occupation from death certificate, classified as high, low, or no diesel exposure		Sex, death year, region, and birth year (approx.)	RR = 1.3 for all jobs with diesel exposure. RR=1.1 for jobs classified as high exposure.	*	Only most recent full-time occupation recorded on death certificate.

Damber & Larsson (1985)	Male patients with lung cancer	One living and one deceased without lung cancer	604	1,071	Job, with tenure, from mailed questionnaire	✔	Sex, death year, age, municipality	RR = 1.9 for non-smoking truck drivers aged <70 yr. RR = 4.5 for non-smoking truck drivers aged ≥70 yr.	*	Ex-smokers who did not smoke for at least last 10 years included with non-smokers.
DeCoufle et al. (1977)	Male patients with lung cancer	Non-neoplastic disease patients	Not reported	Not reported	Occupation only, from questionnaire	✔	Unmatched	RR = 0.92 for bus, taxi, and truck drivers. RR = 0.94 for locomotive engineers.		Selected occupation compared to clerical workers. Positive associations found before smoking adj.
Emmelin et al. (1993)	Deaths from primary lung cancer among dock workers	Dock workers without lung cancer	50	154	Semi-quantitative from work history & records of diesel fuel usage	✔	Date of birth, port, and survival to within 2 years of case's diagnosis of lung cancer	RR = 1.6 for "medium" duration of exposure. RR = 2.9 for "high" duration of exposure.		Increasing relative risk also observed using exposure estimates based on machine usage & diesel fuel consumption. Confounding from asbestos may be significant.
Garshick et al. (1987)	Deaths with primary lung cancer among railroad workers	Deaths from other than cancer, suicide, accidents, or unknown causes	1,256	2,385	Job history and tenure combined with current exposure levels measured for each job	✔	Date of birth and death	RR = 1.41 for 20+diesel-years in workers aged≤64 yr. RR = 0.91 for workers aged ≥65 yr.	*	Adjusted for asbestos exposure. Older workers had relatively short diesel exposure, or none.

Gustavsson et al. (1990)	Deaths from lung cancer among bus garage workers	Non-cases within cohort mortality study	20	120	Semi-quantitative based on job, tenure, & exposure class for each job		Born within two years of case.	RR = 1.34, 1.81, and 2.43 for increasing cumulative diesel exposure categories, relative to lowest exposure category.	*	Authors judged smoking habits to be similar for different exposure categories. RR did not increase with increasing asbestos exposure
Hall & Wynder (1984)	Hospitalized males with lung cancer	Hospitalized males with no tobacco-related diseases	502	502	Usual occupation by interview	✔	Age, race, hospital, and hospital room status	RR = 1.4 for jobs with diesel exposure.		Confounding with other occupational exposures possible.
Hayes et al. (1989)	Lung cancer deaths pooled from 3 studies	Various -- lung disease excluded	2,291	2,570	Occupational history by interview	✔	Sex, age, and either race or area of residence	OR = 1.5 for ≥10 yr truck driving. OR = 2.1 for ≥10 yr operating heavy equipment. OR = 1.7 for ≥10 yr bus driving.	*	OR adjusted for birth-year cohort and state of residence (FL, NJ, or LA), in addition to average cigarette use. Smaller OR for <10 yr in these jobs.
Lerchen et al. (1987)	New Mexico residents with lung cancer	Medicare recipients	506	771	Occupational history, industry, & self-reported exposure, by interview	✔	Sex, age, ethnicity	OR = 0.6 for ≥1 yr occupational exposure to diesel exhaust. OR = 2.1 for underground non-uranium mining.		Small number of cases and controls in diesel-exposed jobs. Possibly insufficient exposure duration. Not matched on date of birth or death.
Milne et al. (1983)	Lung cancer deaths	Deaths from any other cancer	925	6,565	Occupation from death certificate		None	OR = 3.5 for bus drivers. OR = 1.6 for truck drivers.	*	

Morabia et al. (1992)	Male lung cancer patients	Patients without lung cancer or other tobacco-related condition	1,793	3,228	Job, with coal and asbestos exposure durations, by interview	✔	Race, age, hospital, and smoking history	OR = 2.3 for miners. OR = 1.1 for bus drivers. OR = 1.0 for truck or tractor drivers.		Lung cancer reported to be associated with increasing duration of exposure to coal.
Pfluger and Minder (1994)	Professional drivers	Workers in occupational categories with no known excess lung cancer risk.	284	1,301	Occupation only, from death certificate		None.	OR = 1.48 for professional drivers.	*	Stratified by age. Indirectly adjusted for smoking, based on smoking-rate for occupation.
Siemiatycki et al. (1988)	Squamous cell lung cancer patients by type of lung cancer	Other cancer patients	359	1,523	Semi-quantitative, from Occupa. history by interview, & exposure class for each job	✔	None	OR = 1.2 for diesel exposure; OR = 2.8 for mining.		Stratified by age, socioeconomic status, ethnicity, and blue- vs. white-collar job history. Examination of files indicated that most miners "were exposed to diesel exhaust for short periods of time."
Steenland et al. (1990)	Deaths from lung CA among Teamsters	Deaths excluding LC, bladder cancer, and motor vehicle accidents	996	1,085	Occupational history and tenure from next-of-kin, supplemented by IH data	✔	None	OR = 1.27 for diesel truck drivers with 1-24 yr. tenure. OR = 1.26 for diesel truck drivers with 25-34 yr. tenure. OR = 1.89 for diesel truck drivers with ≥35 yr. tenure.	*	Years of tenure not necessarily all at main job (i.e., diesel truck driver). OR adjusted for asbestos exposure.

Swanson et al. (1993) See also Burns & Swanson (1991)	Detroit lung cancers	Colon or rectal cancer cases	5,935	3,956	Occupational history from interview	✔	None	OR = 1.4 for heavy truck drivers with 1-9 yr tenure. OR = 1.6 for heavy truck drivers with 10-19 yr tenure. OR = 2.4 for heavy truck drivers with ≥20 yr tenure. -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- - OR = 1.2 for railroad workers with 1-9 yr tenure. OR = 2.5 for railroad workers with ≥10 yr tenure. -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- OR = 5.03 for mining machine operators.	* * *	OR for truck drivers & RR workers is for white males, relative to corresponding group with <1 yr tenure, adjusted for age at diagnosis. Pattern of increasing risk with duration of employment also reported for black male railroad workers, based on fewer cases. OR for mining machine operators is for all males, adj. for race and age at diagnosis.
Williams et al. (1977)	Male lung cancer patients	Other male cancer patients	432	2,817	Main lifetime occupation from interview	✔	Sex	OR = 1.52 for male truck drivers.		Controlled for age, race, alcohol use, and socioeconomic status. Unexplained discrepancies in reported number of controls.

[a] RR = Relative Risk; OR = Odds Ratio. Values greater than 1.0 indicate excess prevalence of lung cancer associated with diesel exposure.
[b] An asterisk (*) indicates statistical significance based on 2-tailed test at confidence level of at least 95%.

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TABLE III–6.—HYPOTHESIZED MECHANISMS OF PARTICULATE TOXICITY [a]

Response	Description
Increased Airflow Obstruction	PM exposure may aggravate existing respiratory symptoms which feature airway obstruction. PM-induced airway narrowing or airway obstruction from increased mucous secretion may increase abnormal ventilation/perfusion ratios in the lung and create hypoxia. Hypoxia may lead to cardiac arrhythmias and other cardiac electrophysiologic responses that in turn may lead to ventricular fibrillation and ultimately cardiac arrest. For those experiencing airflow obstruction, increased airflow into non-obstructed areas of the lung may lead to increased particle deposition and subsequent deleterious effects on remaining lung tissue, further exacerbating existing disease processes. More frequent and severe symptoms may be present or more rapid loss of function.
Impaired Clearance	PM exposure may impair clearance by promoting hypersecretion of mucus which in turn results in plugging of airways. Alterations in clearance may also extend the time that particles or potentially harmful biogenic aerosols reside in the tracheobronchial region of the lung. Consequently alterations in clearance from either disturbance of the mucociliary escalator or of macrophage function may increase susceptibility to infection, produce an inflammatory response, or amplify the response to increased burdens of PM. Acid aerosols impair mucociliary clearance.
Altered Host Defense	Responses to an immunological challenge (e.g., infection), may enhance the subsequent response to inhalation of nonspecific material (e.g., PM). PM exposure may also act directly on macrophage function which may not only affect clearance of particles but also increase susceptibility and severity of infection by altering their immunological function. Therefore, depression or over-activation of the immune system, caused by exposure to PM, may be involved in the pathogenesis of lung disease. Decreased respiratory defense may result in increased risk of mortality from pneumonia and increased morbidity (e.g., infection).
Cardiovascular Perturbation	Pulmonary responses to PM exposure may include hypoxia, bronchoconstriction, apnea, impaired diffusion, and production of inflammatory mediators that can contribute to cardiovascular perturbation. Inhaled particles could act at the level of the pulmonary vasculature by increasing pulmonary vascular resistance and further increase ventilation/perfusion abnormalities and hypoxia. Generalized hypoxia could result in pulmonary hypertension and interstitial edema that would impose further workload on the heart. In addition, mediators released during an inflammatory response could cause release of factors in the clotting cascade that may lead to increased risk of thrombus formation in the vascular system. Finally, direct stimulation by PM of respiratory receptors found throughout the respiratory tract may have direct cardiovascular effects (e.g., bradycardia, hypertension, arrhythmia, apnea and cardiac arrest).
Epithelial Lining Changes	PM or its pathophysiological reaction products may act at the alveolar capillary membrane by increasing the diffusion distances across the respiratory membrane (by increasing its thickness) and causing abnormal ventilation/perfusion ratios. Inflammation caused by PM may increase ''leakiness'' in pulmonary capillaries leading eventually to increased fluid transudation and possibly to interstitial edema in susceptible individuals. PM induced changes in the surfactant layer leading to increased surface tension would have the same effect.
Inflammatory Response	Diseases which increase susceptibility to PM toxicity involve inflammatory response (e.g., asthma, COPD, and infection). PM may induce or enhance inflammatory responses in the lung which may lead to increased permeability, diffusion abnormality, or increased risk of thrombus formation in vascular system. Inflammation from PM exposure may also decrease phagocytosis by alveolar macrophages and therefore reduce particle clearance. (See discussions above for other inflammatory effects from PM exposure.)

[a] This table reproduces Table V–2 of the EPA staff paper. The citation in the staff paper indicates the table is derived from information in the EPA criteria document on particulate matter (p. 13–67 to 72; p. 11–179 to 185) and information in Appendix D of EPA staff paper.

IV. Discussion of Proposed Rule

This part of the preamble explains, section-by-section, the provisions of the proposed rule. As appropriate, this part references discussions in other parts of this preamble: in particular, the background discussions on measurement methods and controls in part II, and the feasibility discussions in part V.

The proposed rule would add a new subpart to 30 CFR part 72, Subpart D—Diesel Particulate Matter—Underground, and would also add two new sections (§§ 72.500 and 72.510). The proposal would also amend existing § 75.371 in 30 CFR part 75.

§ 72.500 Diesel Particulate Filtration Systems

Summary

The proposed rule would require the installation and maintenance of high-efficiency particulate filters on the most polluting types of diesel equipment in underground coal mines.

Proposed § 72.500(a) would require that beginning 18 months after the date the rule is promulgated, any piece of permissible diesel-powered equipment operated in an underground coal mine must be equipped with a system capable of removing, on average, at least 95% of the mass of the dpm emitted from the engine.

Paragraph (b) would require that beginning 30 months after the rule is promulgated, any nonpermissible piece of ''heavy duty'' diesel-powered equipment operated in an underground coal mine be equipped with a system capable of removing, on average, at least 95% of the mass of the dpm emitted from the engine. ''Heavy duty'' for this purpose is defined by existing § 75.1908(a).

Paragraph (c) would require that any exhaust aftertreatment device installed to reduce the emission of dpm be maintained in accordance with manufacturer specifications.

Paragraph (d) would set forth the Agency's requirements for determining whether a system is capable of removing, on average, at least 95% of diesel particulate matter by mass. It states that a filtration system would be tested by comparing the results of emission tests of an engine with and without the filtration system in place, using the test cycle specified in Table E–3 of 30 CFR 7.89, ''Tests to Determine

Particulate Index.'' The proposed rule would also require that the filtration system submitted for testing be representative of those actually intended for mining use.

Discussion of Alternatives

Alternative approaches for this sector considered by the Agency are discussed in detail in part V of this preamble concerning feasibility. MSHA's decision to propose an approach requiring a technology capable of reducing engine emissions by a specified amount was driven by several considerations.

First, the Agency is not confident that there is a measurement method for dpm that will provide accurate, consistent and verifiable results at lower concentration levels in underground coal mines. The available measurement methods for determining dpm concentrations in underground coal mines were carefully evaluated by the Agency, including field testing, before the Agency reached this conclusion. The problems are discussed in detail in part II of this preamble. The Agency is continuing to collect data and is consulting with NIOSH to resolve questions about the measurement of dpm in underground coal mines. If at some future time it can be established that a particular measurable component of dpm (e.g., the elemental carbon component of dpm) can be used to accurately quantify the level of dpm, the Agency would reevaluate the question of measurement at underground coal mines in that light.

Second, filtration systems for the diesel equipment used in this sector are available at a reasonable cost, and if properly maintained can provide generally consistent, highly effective elimination of dpm from underground mine atmospheres.

Finally, the Agency believes that alternative approaches that would require each combination of engine plus filtration system to meet a defined dpm emissions requirement might well provide inadequate protection. The statute requires the Agency to adopt the feasible approach that provides maximum protection.

Types of Equipment To Be Filtered

MSHA's field data on dpm emissions in underground coal mines is reviewed in part III of this preamble. The data indicates that it is currently the permissible equipment used for face haulage that contributes most to high dpm levels, but heavy-duty outby equipment can also generate significant dpm emissions.

Because of its statutory obligation to attain the highest degree of safety and health protection for miners, with feasibility a consideration, the Agency explored the implications of requiring all diesel-powered equipment to be filtered; but as discussed in part V of the preamble, the Agency has tentatively concluded that the high costs of filtering all light-duty outby equipment may not be feasible for this sector at this time.

However, MSHA welcomes information about light-duty equipment which may be making a significant contribution to dpm emissions in particular mines or particular situations, and MSHA may consider including in the final rule filtration requirements to address any such problems. The Agency would also welcome comment on whether it would be feasible for this sector to implement a requirement that any new light-duty equipment added to a mine's fleet be filtered. By way of a rough cost estimate, if turnover is only 10% a year, for example, the cost of such an approach would be only about a tenth of that for filtering all light-duty outby. To the extent there may be technological restraints on filtering light-duty equipment with 95% filters, the Agency would welcome comment on the feasibility of requiring that 60–90% filtration be used on some or all of the light-duty fleet. And the agency is interested in comments as to whether it is likely that, in response to the market for high-efficiency filters on other types of equipment, there will soon be developed high-efficiency ceramic filters suitable for light-duty equipment. MSHA welcomes comment on these and other approaches dealing with light-duty equipment in underground coal mines, and will continue to study this issue in light of the record.

Timeframe for Implementation

On permissible equipment, the filters can simply be installed directly on the tailpipes; accordingly, the rule would require these filters to be installed within 18 months. In the case of outby equipment, scrubbers and cooling system upgrades will need to be added to cool the exhaust before the filters are installed, or a dry technology system utilized. Accordingly, an additional year is provided for such equipment.

95% Effective

The proposed rule would define effectiveness of a filtration system in removing dpm mass by reference to a laboratory test, using an engine for the test representative of those to be actually used in mining. The test involves: (a) measuring the average dpm mass of the emissions from the engine (under steady state load conditions specified in Table E–3 of section 7.89 of title 30 of the Code of Federal Regulations) before the filtration system is added; (b) measuring again after the filtration system is added; and (c) determining the efficiency of the filtration system by comparing the results.

As discussed in the background materials in part II of this preamble (including MSHA's toolbox, reprinted as an Appendix at the end of this document), there are several systems presently on the market capable of achieving such reductions. Current permissible engines used in underground coal mines are equipped with power packages that protect the engine against fire and explosion hazards. Power packages are installed with either water scrubbers (wet systems) or with heat exchanger technology (dry systems). For both cases, paper filters have been installed on these systems. The paper filter can be used on permissible equipment due to the limitation of the exhaust gas temperature to below 302°F; above that temperature, the paper could catch fire and burn.

Information concerning the particulate removal capability of these filters has been well documented in field studies and laboratory tests. Overall, the paper filters, when attached to a dry system and when tested in the laboratory on an engine dynamometer using the test cycle specified in the proposed rule, achieve greater than 95% diesel particulate removal (Gautam, dpm Workshop; Beckley, WV, 1995). Field studies have indicated diesel particulate removal using the paper filters on wet systems up to 90% using a wet permissible system (BOM RI 9508).

Nonpermissible equipment can utilize such paper filters if the exhaust is cooled through the addition of heat exchangers or other devices. Dry technology can also be utilized.

As noted in part II, ceramic filters may in the future be capable of achieving reductions of at least 95% in dpm mass. MSHA would welcome information on the development of ceramic filters which can or will soon meet such capabilities. Ceramic filters can be used directly on hot emissions, and hence might be a particularly attractive alternative for nonpermissible equipment. But whether paper, ceramic or some other media, the same test would be utilized to determine particulate removal capabilities.

Maintenance

The proposed rule would require that any filtration system installed to reduce the emission of dpm be maintained in

accordance with manufacturer specifications (e.g., changing disposable filters at the proper interval), ensuring cooling devices added to nonpermissible equipment are maintained.

Enforcement

Since a concentration limit is not being established, the proposed rule does not require environmental monitoring of dpm concentrations by either operators or by MSHA specialists. Enforcement of the proposed underground coal requirements would be through observation by MSHA inspectors. Inspectors would observe whether an aftertreatment device that passed the effectiveness test is actually installed on each piece of equipment on which one is required, and whether diesel equipment was emitting black smoke during changes in acceleration or otherwise suggesting lack of required maintenance.

It should be noted that the training and qualifications of those who perform maintenance of diesel-powered equipment is governed by 30 CFR 75.1915, pursuant to MSHA's diesel equipment rule.

§ 72.510 Miner Health Training

Paragraph (a) of this section requires hazard awareness training of underground coal miners who can reasonably be expected to be exposed to dpm. Paragraph (b) includes provisions on records retention, access and transfer.

To ensure miners can better contribute to dpm reduction efforts, underground coal miners who can reasonably be expected to be exposed to diesel emissions must be annually trained about the hazards associated with that exposure and in the controls being used by the operator to limit dpm concentrations.

Proposed § 72.510(a) would require any underground coal miner ''who can reasonably be expected to be exposed to diesel emissions'' to be trained annually in: (a) the health risks associated with dpm exposure; (b) the methods used in the mine to control dpm concentrations; (c) identification of the personnel responsible for maintaining those controls; and (d) actions miners must take to ensure the controls operate as intended.

The purpose of the proposed requirement is to promote miner awareness. Exposure to diesel particulate is associated with a number of harmful effects as discussed in part III of this preamble, and the safe level is unknown. Miners who work in mines where they are exposed to this risk ought to be reminded of the hazard often enough to make them active and committed partners in implementing actions that will reduce that risk.

The training need only be provided to underground coal miners who can reasonably be expected to be exposed at the mine. The training is to be provided by operators; hence, it is to be without fee to the miner.

The rule places no constraints on the operator as to how to accomplish this training. MSHA believes that the required training can be provided at minimal cost and with minimal disruption. The proposal would not require any special qualifications for instructors, nor would it specify the hours of instruction.

Instruction could take place at safety meetings before the shift begins, devoting one of those meetings to the topic of dpm would be a very easy way to convey the necessary information. Simply providing miners with a copy of MSHA's ''toolbox,'' and reviewing how to use it in an individual mine, can cover several of the training requirements. One-on-one discussions that cover the required topics is another approach that can be used.

Operators could also choose to include a discussion on diesel emissions in their part 48 training, provided the plan is approved by MSHA. There is no existing requirement that part 48 training include a discussion of the hazards and control of diesel emissions. While mine operators are free to cover additional topics during the part 48 training sessions, the topics that must be covered during the required time frame may make it impracticable to cover other matters within the prescribed time limits. Where the time is available in mines using diesel-powered equipment, operators would be free to include the dpm instruction in their part 48 training plans. The Agency does not believe special language in the proposed rule is required to permit this action under part 48, but welcomes comment in this regard.

To assist mine operators with the proposed training requirement, it is MSHA's intent to develop an instruction outline that mine operators can use as a guide for training personnel. Instruction materials will be provided with the outline.

The proposal does not require the mine operator to separately certify the completion of the dpm training, but some evidence that the training took place would have to be produced upon request. A serial log with the employee's signature is an acceptable practice.

Proposed § 72.510(b)(1) would require that any log or record produced signifying that the training had taken place would be retained at the mine site for one year.

The records need to be where an inspector can view them during the course of an inspection, as the information in the records may determine how the inspection proceeds. But if the mine site has a fax machine or computer terminal, MSHA would permit the records to be maintained elsewhere so long as they are readily accessible. MSHA's approach in this regard is consistent with Office of Management and Budget Circular A–130.

Under proposed paragraph (b)(2) mine operators must promptly provide access to the training records upon request from an authorized representative of the Secretary of Labor, the Secretary of Health and Human Services, or from an authorized representative of miners. If an operator ceases to do business, all training records of employees are expected to be transferred to any successor operator. The successor operator will be expected to maintain those training records for the required one year period unless the successor operator has undertaken to retrain the employees.

Amendment to § 75.371 Ventilation Plan Modification

The proposed rule would amend existing § 75.371 to add one new requirement to an underground coal mine's ventilation control plan. The information is limited, but is critical to the control of dpm. The proposed added paragraph (qq) would require the ventilation plan to contain a list of the diesel-powered units used by the mine operator together with information about any unit's emission control or filtration system. Included in that information should be details relative to the efficiency of the system and the method(s) used to establish the efficiency of the system for removing dpm. Any amendments to a mine's ventilation plan must, of course, be accomplished pursuant to the requirements of 30 CFR 75.370.

General Effective Date

The proposed rule provides that unless otherwise specified, its provisions take effect 60 days after the date of promulgation of the final rule.

Some provisions of the proposed rule contain delayed effective dates that provide more time for technical assistance to mine operators. For example, the first filtration requirements

for underground coal mining equipment would be delayed for 18 months.

V. Adequacy of protection and feasibility of proposed rule

The Mine Act requires that in promulgating a standard, the Secretary, based on the best available evidence, shall attain the highest degree of health and safety protection for the miner with feasibility a consideration.

Overview

This part begins with a summary of the pertinent legal requirements, followed by a general profile of the economic health and prospects of the coal mining industry.

The discussion then turns to the rule being proposed by the Agency for underground coal mines. MSHA is proposing to require that mine operators utilize a particular technological approach to reduce the levels of dpm which result from the emissions generated by diesel equipment engines. No specific concentration limit for dpm would be established for the underground coal sector. Miner hazard awareness training would also be required by the proposal.

This part evaluates the proposed rule for underground coal mines to ascertain if, as required by the statute, it achieves the highest degree of protection for underground coal miners that it is feasible, both technologically and economically, for underground coal mine operators to provide.

Regulatory alternatives to the proposed rule are also reviewed in this regard, for example, establishing a dpm concentration limit for underground coal mines, with operator flexibility on choice of control technologies. After review and considerable study of these alternatives, the Agency has tentatively concluded that compliance with these alternatives discussed below are not technologically or economically feasible for underground coal mine operators at this time. MSHA has also tentatively concluded that the approach being proposed is both economically and technologically feasible for this sector.

Pertinent Legal Requirements

Section 101(a)(6)(A) of the

Federal Mine Safety and Health Act of 1977 (Mine Act) states that MSHA's promulgation of health standards must:

> * * * [A]dequately assure, on the basis of the best available evidence, that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

The Mine Act also specifies that the Secretary of Labor (Secretary), in promulgating mandatory standards pertaining to toxic materials or harmful physical agents, base such standards upon:

> * * * [R]esearch, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the miner, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the mandatory health or safety standard promulgated shall be expressed in terms of objective criteria and of the performance desired. [Section 101(a)(6)(A)].

Thus, the Mine Act requires that the Secretary, in promulgating a standard, based on the best available evidence, attain the highest degree of health and safety protection for the miner with feasibility a consideration.

In relation to feasibility, the legislative history of the Mine Act states that:

> * * * This section further provides that ''other considerations'' in the setting of health standards are ''the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.'' While feasibility of the standard may be taken into consideration with respect to engineering controls, this factor should have a substantially less significant role. Thus, the Secretary may appropriately consider the state of the engineering art in industry at the time the standard is promulgated. However, as the circuit courts of appeal have recognized, occupational safety and health statutes should be viewed as ''technology-forcing'' legislation, and a proposed health standard should not be rejected as infeasible when the necessary technology looms in today's horizon. *AFL–CIO* v. *Brennan*, 530 F.2d 109 (1975); *Society of the Plastics Industry* v. *OSHA*, 509 F.2d 1301, *cert. denied*, 427 U.S. 992 (1975).
>
> Similarly, information on the economic impact of a health standard which is provided to the Secretary of Labor at a hearing or during the public comment period, may be given weight by the Secretary. In adopting the language of [this section], the Committee wishes to emphasize that it rejects the view that cost benefit ratios alone may be the basis for depriving miners of the health protection which the law was intended to insure. S. Rep. No. 95–181, 95th Cong., 1st Sess. 21 (1977).

Court decisions have clarified the meaning of feasibility. The Supreme Court, in *American Textile Manufacturers' Institute* v. *Donovan* (OSHA Cotton Dust), 452 U.S. 490, 101 S.Ct. 2478 (1981), defined the word ''feasible'' as ''capable of being done, executed, or effected.'' The Court stated that a standard would not be considered economically feasible if an entire industry's competitive structure was threatened. According to the Court, the appropriate inquiry into a standard's economic feasibility is whether the standard is capable of being achieved.

Courts do not expect hard and precise predictions from agencies regarding feasibility. Congress intended for the ''arbitrary and capricious standard'' to be applied in judicial review of MSHA rulemaking (S.Rep. No. 95–181, at 21.) Under this standard, MSHA need only base its predictions on reasonable inferences drawn from the existing facts. MSHA is required to produce reasonable assessment of the likely range of costs that a new standard will have on an industry. The agency must also show that a reasonable probability exists that the typical firm in an industry will be able to develop and install controls that will meet the standard. See, *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402, 91 S.Ct. 814 (1971); *Baltimore Gas & Electric Co.* v. *NRDC*, 462 U.S. 87 103 S.Ct. 2246, (1983); *Motor Vehicle Manufacturers Assn.* v. *State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 103 S.Ct. 2856 (1983); *International Ladies' Garment Workers' Union* v. *Donovan*, 722 F.2d 795, 232 U.S. App. D.C. 309 (1983), *cert. denied*, 469 U.S. 820 (1984); *Bowen* v. *American Hospital Assn.*, 476 U.S. 610, 106 S.Ct. 2101 (1986).

In developing a health standard, MSHA must also show that modern technology has at least conceived some industrial strategies or devices that are likely to be capable of meeting the standard, and which industry is generally capable of adopting. *United Steelworkers of America* v. *Marshall*, 647 F.2d 1189, 1272 (1980). If only the most technologically advanced companies in an industry are capable of meeting the standard, then that would be sufficient demonstration of feasibility (this would be true even if only some of the operations met the standard for some of the time). *American Iron and Steel Institute* v. *OSHA*, 577 F.2d 825 (3d Cir. 1978); see also, *Industrial Union Department, AFL–CIO* v. *Hodgson*, 499 F.2d 467 (1974).

Industry Profile

The industry profile provides background information describing the structure and economic characteristics of the coal mining industry. This information was considered by MSHA as appropriate in reaching tentative conclusions about the economic feasibility of various regulatory alternatives. MSHA welcomes the

submission of additional economic information about the coal mining industry, and about underground coal mining in particular, that will help it make final determinations about the economic feasibility of the proposed rule.

This profile provides data on the number of mines, their size, the number of employees in each segment, as well as selected market characteristics. This profile does not provide information about the use of diesel engines in the industry; information in that regard was provided in the first section of part II of this preamble.

Although this particular rulemaking does not apply to the surface coal sector, information about surface coal mines is provided here in order to give context for the discussions on underground mining.

Overall Mining Industry

MSHA divides the mining industry into two major segments based on commodity, the coal mining industry and the metal and nonmetal (M&NM) mining industry. These major industry segments are further divided based on type of operation (underground mines, surface mines, and independent mills, plants, shops, and yards). MSHA maintains its own data on mine type, size, and employment. MSHA also collects data on the number of contractors and contractor employees by major industry segment.

With respect to mine size, the mining community has traditionally regarded a ''small'' mine as being one with less than 20 miners. This has been a useful dividing line for a number of purposes, including rulemaking, because the nature of the safety and health issues facing such entities tends to be different than for larger mines. MSHA recognizes, however, that the definition of ''small entity'' used by the Small Business Administration in the mining sector is different—500 employees or less. In order to accommodate both perspectives when analyzing the impact of this proposed rule on the mining industry, MSHA has prepared its Preliminary Regulatory Economic Analysis (PREA) in such a way as to focus on the special impacts of both size categories—those with less than 20 employees, and those with less than 500 employees (basically all mines). In this profile, however, the term ''small mine'' refers to one with less than 20 miners.

Table V–1 presents the number of small and large coal mines and the corresponding number of miners, excluding contractors, by major industry segment and mine type. Table V–2 presents MSHA data on the numbers of independent contractors and the corresponding numbers of employees by major industry segment and the size of the operation based on employment.

TABLE V–1.—DISTRIBUTION OF OPERATIONS AND EMPLOYMENT (EXCLUDING CONTRACTORS) BY MINE TYPE, COMMODITY, AND SIZE

Mine type	Small (<20 EES)		Large (≥20 EES)		Total	
	Number of mines	Number of miners	Number of mines	Number of miners	Number of mines	Number of miners
Coal:						
Underground	426	4,371	545	46,206	971	50,577
Surface	776	4,705	370	28,314	1,146	33,019
Shp/Yrd/Mll/Plnt	399	2,538	128	5,010	527	7,548
Office workers	.....	657	.....	4,500	.....	5,157
Total coal mines	1,601	12,271	1,043	84,030	2,644	96,301

Source: U.S. Department of Labor, Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, based on preliminary 1996 MIS data (quarter 1–quarter 4, 1996). MSHA estimates assume that office workers are distributed between large and small operations the same as non-office workers.

TABLE V–2.—DISTRIBUTION OF CONTRACTORS (CONTR) AND CONTRACTOR EMPLOYEES (MINERS) BY MAJOR INDUSTRY SEGMENT AND SIZE OF OPERATION

Contractors	Small (<20)		Large (≥20)		Total	
	No. contr	No. miners	No. contr	No. miners	No. contr	No. miners
Coal:						
Other than office	3,606	13,954	297	13,792	3,903	27,746
Office workers	.....	1,034	.....	1,022	.....	2,056
Total coal	3,606	14,988	297	14,814	3,903	29,802

Source: U.S. Department of Labor, Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, based on preliminary 1996 MIS data (quarter 1—quarter 4, 1996). MSHA estimates assume that office workers are distributed between large and small contractors the same as non-office workers.

MSHA separates the U.S. coal mining industry into two major commodity groups, bituminous and anthracite. The bituminous group includes the mining of subbituminous coal and lignite. Bituminous operations represent over 93% of the coal mining operations, employ over 98% of the coal miners, and account for over 99% of the coal production. About 60% of the bituminous operations are small; whereas, about 90% of the anthracite operations are small.

Underground bituminous mines are more mechanized than anthracite mines in that most, if not all, underground anthracite mines still hand-load. Over 70% of the underground bituminous mines use continuous mining and longwall mining methods. The remaining use drills, cutters, and scoops. As noted in the first section of part II of this preamble, although underground coal mines generally use electrical powered equipment, a growing number of underground coal

mines use diesel-powered equipment. (See Table II–1).

Surface mining methods include drilling, blasting, and hauling and are similar for all commodity types. Most surface mines use front-end loaders, bulldozers, shovels, or trucks for coal haulage. A few still use rail haulage. Although some coal may be crushed to facilitate cleaning or mixing, coal processing usually involves cleaning, sizing, and grading. As noted in section 1 of part II of this preamble, diesel power is used extensively in surface mines for all these operations.

Preliminary data for 1996 (MSHA/DMIS, Coal, CM–441, 1996) indicate that there are about 2,650 active coal mines of which 1,600 are small mines (about 60% of the total) and 1,050 are large mines (about 40% of the total). These data indicate employment at coal mines to be about 96,300 of which 12,275 (13% of the total) worked at small mines and 84,025 (87% of the total) worked at large mines. (*Ibid.*). MSHA estimates that the average employment is 8 miners at small coal mines and 81 miners at large coal mines.

The U.S. Department of Energy, Energy Information Administration, reported that the U.S. coal industry produced a record 1.06 billion tons of coal in 1996 with a value of approximately $20 billion. Of the several different types of coal commodities, bituminous and subbituminous coal account for 91% of all coal production (about 940 million tons). The remainder of U.S. coal production is lignite (86 million tons) and anthracite (4 million tons). Although anthracite offers superior burning qualities, it contributes only a small and diminishing share of total coal production. Less than 0.4% of U.S. coal production in 1996 was anthracite (DOE/EIA, 1997, p. 209).

Mines east of the Mississippi account for about 53% of the current U.S. coal production. For the period 1949 through 1996, coal production east of the Mississippi River fluctuated from a low of 395 million tons in 1954 to 630 million tons in 1990. During this same period, however, coal production west of the Mississippi increased each year from a low of 20 million tons in 1959 to a record 505 million tons in 1996. (*Ibid.*). The growth in western coal is due in part to environmental concerns that led to increased demand for low-sulfur coal, which is concentrated in the West. In addition, surface mining which is more prevalent in the West has increased in productivity due to the technological developments of oversized power shovels and draglines.

The 1996 estimate of the average value of coal at the point of production is about $19 per ton for bituminous coal and lignite. (*Ibid.*, at 221). MSHA chose to use $19 per ton as the value for all coal production because anthracite contributes such a small amount to total production that the higher value per ton of anthracite does not greatly impact the total value. The total value of coal production in 1996 was approximately $20 billion of which about $0.9 billion was produced by small mines and $19.1 billion was produced by large mines.

Coal is used for several purposes including the production of electricity. The predominant consumer of U.S. coal is the electric utility industry which used 898 million tons of coal in 1996 or 84% of the coal produced. Other coal consumers include coke plants (31 million tons), residential and commercial consumption (6 million tons), and miscellaneous other industrial uses (71 million tons). This last category includes the use of coal products in the manufacturing of other products, such as plastics, dyes, drugs, explosives, solvents, refrigerants, and fertilizers. (*Ibid.*, at 205).

The U.S. coal industry enjoys a fairly constant domestic demand due to electric utility usage of coal. MSHA does not expect a substantial change in coal demand by utilities in the near future because of the high conversion costs of changing a fuel source in the electric utility industry. Energy experts predict that coal will continue to be the dominant fuel source of choice for power plants built in the future.

Adequacy of Miner Protection Provided by the Proposed Rule for Underground Coal Mines

In evaluating the protection provided by the proposed rule, it should be remembered that MSHA has measured dpm concentrations in production areas and haulageways of underground coal mines as high as $3{,}650_{DPM}$ μg/m^3 with a mean concentration of 644_{DPM} μg/m^3. See Table III–1 and Figure III–1 in part III of this preamble. As discussed in detail in part III of the preamble, these concentrations place underground coal miners at significant risk of material impairment of their health, and the evidence supports the proposition that reducing the exposure reduces the risk. Therefore, to address this risk, the Agency is proposing to develop requirements which reduce these concentrations as much as is both technologically and economically feasible for this sector as a whole.

The proposed rule would require the installation of high-efficiency filters on all permissible and heavy-duty outby diesel-powered equipment in underground coal mines. Operators would have 18 months to install these filters on permissible diesel equipment, and an additional 12 months to do the same for heavy-duty nonpermissible diesel equipment (as defined by 30 CFR 75.1908(a)).

As an example of what filtration can achieve, take the case of a single-section mine with three Ramcars (94hp, indirect injection) and a section airflow of 45,000 cfm. MSHA measured concentrations of dpm in this mine at 610_{DPM} μg/m^3. Of this amount, 25_{DPM} μg/m^3 was coming from the intake to the section, and the remaining 585_{DPM} μg/m^3 was emitted by the engines. Reducing the engine emissions by 95% through the use of aftertreatment filters would reduce the dpm emitted to 29_{DPM} μg/m^3. With an intake amount of 25_{DPM} μg/m^3, the ambient concentration would be about 54_{DPM} μg/m^3. Similarly, dramatic results can be achieved in almost any situation if the filters achieve in practice the predicted reduction in particulate matter; and as the coal fleet turns over, in accordance with the existing diesel equipment rule, to the exclusive use of approved engines, the combination of that change and the use of 95% filters should keep ambient dpm concentrations at much lower levels than at present.

There are some reasons for caution. MSHA's experience with the high-efficiency filters is limited. While they are capable in laboratory tests of achieving a 95% reduction in dpm mass, and this has been confirmed in some field tests, the Agency has not tested them under a variety of actual mining conditions. As discussed in part IV, determination of the efficiency of any filter media is greatly dependent upon the test used to determine efficiency or collection capacity. Therefore, actual performance may be different in the field due to individual mining conditions (e.g., ventilation changes), changes of the equipment due to maintenance, and the type of engine used.

Two factors that come into play are the ventilation rate and the ambient dpm intake into the section. If ventilation levels drop below the nameplate requirements for gaseous emissions, or if many pieces of equipment throughout the mine create a high ambient level of dpm, implementation of the proposed rule may not bring concentrations down as effectively as suggested in the prior example. On the other hand, if the ventilation rate is maintained at a higher level, the engine emissions would be better diluted and the ambient

concentration could offset any decrease in filter efficiency under actual mining conditions.

Table V–3 summarizes information from a series of simulations designed to illustrate these variables. The simulations were performed using the tool discussed in the Appendix to this part (MSHA's ''Estimator'') for a mine section with a 94 horsepower engine, with a 0.3 gm/hp-hr dpm emission rate and a nameplate airflow, 5500 cfm. The engine was operated during an eight hour shift. The estimator was used to calculate the values. The same results would be obtained for multiple pieces of equipment provided that the nameplate airflow is additive for each piece of equipment.

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Table V-3: Section DPM Concentrations for Various Airflow Rates, Afterfilter Efficiencies and Intake DPM Concentrations.

Airflow	Intake DPM ($\mu g/m^3$)	Resulting Section DPM Concentration ($\mu g/m^3$)		
		85 Percent	90 Percent	95 Percent
		After-filter	After-filter	After-filter
1.0 x Nameplate Airflow	0	452	302	151
2.0 x Nameplate Airflow	0	226	151	75
3.0 x Nameplate Airflow	0	151	101	50
4.0 x Nameplate Airflow	0	113	75	38
1.0 x Nameplate Airflow	25	477	327	176
2.0 x Nameplate Airflow	25	251	176	100
3.0 x Nameplate Airflow	25	176	126	75
4.0 x Nameplate Airflow	25	138	100	63
1.0 x Nameplate Airflow	50	502	352	201
2.0 x Nameplate Airflow	50	276	201	125
3.0 x Nameplate Airflow	50	201	151	100
4.0 x Nameplate Airflow	50	163	125	88
1.0 x Nameplate Airflow	75	527	377	226
2.0 x Nameplate Airflow	75	301	226	150
3.0 x Nameplate Airflow	75	226	176	125
4.0 x Nameplate Airflow	75	188	150	113

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In Table V–3, the intake dpm (second column) increases after every fourth row. Within each group of four rows, the ventilation (first column) increases from one row to the next. The last 3 columns display the ambient dpm concentration with a particular filter efficiency. The first four rows represent a situation where there is no intake dpm. If the mine is ventilated with four times the nameplate airflow (row 4), the ambient dpm concentration using a filter operating at 95% (last column) is reduced to 38_{DPM} μg/m³. If the filter in this situation only works in practice at 85% efficiency in removing dpm, the ambient dpm concentration is only reduced to 113_{DPM} μg/m³. And if the ventilation is reduced to the nameplate airflow (first column) and the filter is only 85% efficient, the ambient dpm climbs to 452_{DPM} μg/m³. The last four rows display the parallel situation but with an ambient intake concentration to the section of 75_{DPM} μg/m³. In this situation, depending on ventilation and filter effectiveness, the ambient dpm concentration ranges from 113_{DPM} to 527_{DPM} μg/m³.

In the example discussed above—a single section mine with three 94 hp Ramcars—the airflow of 45,000 cfm represents three times the current nameplate requirements. If this airflow were reduced to the current nameplate requirements, the ambient dpm would have been 1620_{DPM} μg/m³, and would have been reduced by 95% effective filters to 105_{DPM} μg/m³.

It should be remembered that the proposed rule does not require the filtration of light-duty equipment; hence, mines with significant light duty equipment will have this exhaust as an ''intake'' in such calculations. Also, many underground coal mines may use more than the nameplate ventilation to lower methane concentrations at the face.

Based on its experience as to the general effects of mining conditions on the expected efficiency of equipment, and on ventilation rates, MSHA believes that the proposed rule for this sector will substantially reduce the concentrations of dpm to which underground coal miners are exposed. But in order to ensure that the maximum protection feasible is being provided, the Agency has considered some alternatives.

(1) Establish a Concentration Limit in Coal

Under such an approach, a diesel particulate concentration limit would be phased in and operators could select any combination of controls that keep ambient dpm concentrations below the limit.

After careful analysis, the agency has determined that it is not yet ready to conclude that it is technologically feasible to establish a dpm concentration limit for underground coal mines. The problem, as discussed in part IV, is that significant questions remain as to whether there is a sampling and analytical system that can provide consistent and accurate measurements of dpm in areas of underground coal mines where there is a heavy concentration of coal dust. The Agency is continuing to work on the technical issues involved, and should it determine that these technological problems have been resolved, it will notify the mining community and proceed accordingly.

(2) Alternatives to 95% Filters on Permissible and Heavy-duty Equipment

In part IV of this preamble, the agency outlines some approaches that might be considered as alternatives to the requirement in the proposal that *all* permissible and heavy-duty equipment must have a 95% aftertreatment filter installed and properly maintained.

The first alternative would in essence provide some credit in filter selection to those operators who use engines that significantly reduce ambient mine dpm concentration. Under this approach, the engine and aftertreatment filter would be bench tested as a unit; and if the emissions from the unit are below a certain level (e.g., 120_{DPM} μg/m³, using 50% of the name plate ventilation, the emissions limit applicable under Pennsylvania law), the package would be acceptable without regard to the efficiency of just the filter component. The second option would also provide credit in filter selection for extra ventilation used in an underground coal mine. If the bench test of the combined engine and filter package was conducted at the name plate ventilation, a mine's use of more than that level of ventilation would be factored into the calculation of what package would be acceptable.

One practical effect of these approaches would be to permit some operators to save the costs of installing heat exchangers or other exhaust-cooling devices on nonpermissible heavy-duty equipment. Such devices are necessary in order for this equipment to be fitted with paper filters—and at the moment, these are the only filters on the market capable of providing 95% and more filtration capability. (It is not out of the realm of possibility that once a market develops for 95% filters, makers of ceramic filters will develop models that reach this level of efficiency—hence obviating the need for the heat exchangers or other exhaust cooling technology on the outby equipment; information or comment on this point would be welcome).

It is not clear to the Agency, however, that it would be appropriate, under the statute, to take such an approach. With the proper equipment to cool the exhaust, a 95% paper filter can be installed on any piece of heavy-duty equipment in coal mines—and of course directly on any permissible piece of equipment. And, as indicated herein, the Agency is tentatively concluding that such an approach is economically feasible as well. Installing a 95% efficient filter on an engine lowers the dpm concentration in the mine more than would installing a less efficient filter. Hence for engines which, with a 95% filter, can reduce emissions below 120_{DPM} μg/m³ (or whatever emissions limit is set), the alternative approach would seem to provide miners with less protection.

In some cases, however, use of such an alternative approach could actually result in a reduction of mine dpm—by forcing out certain older, high-polluting engines. It is not clear to MSHA that 95% filtration of the engines used on the majority of permissible machines in underground coal mines can meet an emissions limit of 120_{DPM} μg/m³ using MSHA's name plate ventilation. The engines involved just produce too much diesel particulate. Accordingly, adopting a rule with an emissions limit of 120_{DPM} μg/m³ would in effect require these existing permissible engines to be replaced with cleaner engines. Of course, it follows that such a rule would be more costly than the one proposed, because it would require the 95% filters plus the replacement of these engines.

The second alternative (emissions limit plus credit for ventilation) appears to be less protective in all cases. To provide mines who need extra ventilation for other reasons (e.g., to keep methane in check) with a credit for this fact in determining the required filter efficiency would not reduce dpm concentrations as much as simply requiring a 95% filter.

The Agency welcomes comments on these approaches and information that will help it assess them in light of the requirements of the Mine Act.

MSHA recognizes that a specification standard does not allow for the use of future alternative technologies that might provide the same or enhanced protection at the same or lower cost. MSHA welcomes comment as to whether and how the proposed rule can be modified to enhance its flexibility in this regard.

(3) Accelerate the Time-Frame for Installation of Filters on Underground Coal Equipment

This approach would not change the level of protection ultimately provided to miners when the proposed rule is fully implemented. But it would ensure miners are protected more quickly, and therefore, needs to be considered.

Under the first phase of the proposed rule, 95% effective filters are required on all permissible equipment after 18 months. This equipment constitutes only about 19% of the 2,950 pieces of diesel-powered equipment estimated to be present in underground coal mines; but because of where and how it is used (production areas), it produces extensive amounts of particulate matter.

Cutting the 18 month time-frame does not appear to be practicable for the industry. Eighteen months to obtain and install a relatively new technology is a reasonable time. Time is needed for operators to familiarize themselves with this technology. Also, mine personnel have to be trained in how to maintain control devices in working order.

The second stage of the proposal requires the installation of 95% filters on heavy-duty nonpermissible equipment after 30 months—a year after the permissible equipment must be filtered. Again, speeding up this timeframe may not be practicable. If paper filters indeed have to be used, this equipment would need to be first equipped with water scrubbers, heat exchangers or other systems to cool the exhaust before the filtration can be installed, or dry technology installed. Providing another year also allows additional time for possible perfection of ceramic filtration, with the potential cost savings associated with that approach, or other improvements in filtration that could better protect miners. MSHA believes that providing the industry an extra year to phase in controls for the heavy-duty outby equipment is reasonable.

(4) Require High Efficiency Filters on Any Diesel Equipment in Underground Coal Mines

The proposed rule does not apply to approximately 65% of the equipment in the fleet—light-duty outby. While this equipment does not pollute as heavily as the equipment being covered by MSHA's proposal, it does contribute to the total particulate concentration in underground coal mines. And, as noted above, the Agency at this time lacks confidence in a measurement system that can detect localized concentrations even in outby areas. Accordingly, MSHA has considered the possibility of requiring filtration for such equipment.

The Commonwealth of Pennsylvania has recently adopted legislation for universal high-efficiency filtration based on an agreement in the mining community of that state. The Pennsylvania law requires the use of 95% efficiency filters on all diesel-powered equipment introduced in the future into underground coal mines in that state (in addition to other requirements). Since, however, the State did not allow the use of diesel-powered equipment in underground coal mines prior to enactment of this legislation, in practice the new law achieves a goal of universal filtration.

The Agency decided to consider what it would take to bring the rest of the industry up to the standard established under the Pennsylvania agreement of universal high-efficiency filtration. MSHA has calculated that such a requirement would cost the underground coal industry an additional $17 million a year. This would increase by 70% the costs per operator for the underground coal mining industry. This added cost raises questions because for those mines with permissible and heavy-duty equipment, filtering that equipment can achieve significant reductions in existing dpm concentrations. Given the economic profile of the coal sector, MSHA has tentatively concluded that such a requirement may not be feasible for the underground coal sector at this time.

MSHA welcomes information about light-duty equipment which may be making a particular significant contribution to dpm emissions in particular mines or particular situations, and which is likely to continue to do so after full implementation of the approval requirements of the diesel equipment rule. MSHA will consider including in the final rule filtration requirements that may be necessary to address any such identified problem. The Agency would also welcome comment on whether it would be feasible for this sector to implement a requirement that any new light-duty equipment added to a mine's fleet be filtered. By way of a rough cost estimate, if turnover is only 10% a year, for example, the cost of such an approach would be only about a tenth of that for filtering all light-duty outby. To the extent there may be technological restraints on filtering light-duty equipment with 95% filters, the Agency would welcome comment on the feasibility of requiring that 60–90% filtration be used on some or all of the light-duty fleet. And the agency is interested in comments as to whether it is likely that, in response to the market for high-efficiency filters on other types of equipment, there will soon develop high-efficiency ceramic filters suitable for light-duty equipment. MSHA welcomes comment on these and other approaches to dealing with light-duty equipment in underground coal mines, and will continue to study this issue in light of the record.

(5) Requiring Certain Engines to Meet Defined Particulate Emission Standards

As discussed in part II of this preamble, the Mine Safety and Health Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines recommended the establishment of a particulate index (PI), and MSHA did so in its diesel equipment rule. Under that rule, the PI establishes the amount of air required to dilute the dpm produced by an engine (as determined during its approval test under subpart E of part 7) to 1000 $\mu g/m^3$. In the preamble of the diesel equipment rule, MSHA explicitly deferred until this rulemaking the question of whether to require engines used in mining environments to meet a particular PI. It noted that mine operators and machine manufacturers would find it useful to consider the engine PI in selecting and purchasing decisions.

Since the publication of the PI is a relatively new requirement, the agency does not believe it has enough information at this time to evaluate the feasibility of a requirement that certain engines must meet a particular PI to be used in underground coal mines. Presumably, coupling such a requirement with a requirement for a 95% filter would provide more protection to miners than requiring only the 95% filter; but without information about what is technologically available for any type of engines, the Agency would have difficulty in selecting the PI to require.

MSHA solicits comments on whether it should limit the PI or the PI per horsepower of engines used in underground coal mines.

Feasibility of proposed rule for underground coal mining sector. The Agency has carefully considered both the technological and economic feasibility of the proposed rule for the underground coal mining sector as a whole.

The technology exists to implement the proposed rule's requirements for 95% filtration of permissible and ''heavy-duty'' equipment. As widely recognized now by the mining community (see, e.g., MSHA's ''Toolbox''), there are disposable paper

filters available for permissible coal mine equipment equipped with water scrubbers that meet the proposed rule's requirements for efficiency. In addition, a dry technology (known as the DST®) of very high efficiency is also available for this type of equipment. Based on its long experience with diesel-powered outby equipment, the Agency is also confident that the disposable paper filters can be used on this equipment too—once the equipment is equipped with water scrubbers, heat exchangers, or other systems to first cool the exhaust enough so the paper filters will not burn. The dry technology used on permissible equipment can also work on the outby equipment. MSHA understands that filtration systems that meet the efficiency requirements in the proposed rule, and which are specifically designed to fit on outby equipment are under development; additional information in this regard would be welcome.

The total costs for the proposed rule for underground coal mines are about $10 million per year beyond the $10.3 million per year costs this sector is already absorbing to implement the requirements of MSHA's recent diesel equipment rule. The costs per dieselized mine are expected to be about $58,000 a year (the diesel equipment rule costs per dieselized mine are about $59,000 a year). The proposed rule provides adequate time for equipment purchase, installation, and training. MSHA has calculated that the costs of the proposed rule amount to less than one-half of one percent of the revenues of the underground coal mining sector at this time. (The methodology for this calculation is discussed in part V of the Agency's PREA). After reviewing the economic profile of that sector, and taking into account the cost of implementing the related diesel equipment rule, MSHA has concluded that the proposed rule is economically feasible for this sector as a whole.

Conclusion: Underground Coal Mines

Based on the best evidence available to it at this time, the Agency has concluded that the proposed rule for the underground coal sector meets the statutory requirement that it attain the highest degree of health and safety protection for the miners in that sector, with feasibility a consideration.

Appendix to Part V: Diesel Emission Control Estimator

As noted in the text of this part, MSHA has developed a model that can help it estimate the impact on dpm concentrations of various control variables. The model also permits the estimation of actual dpm concentrations based upon equipment specifications. This model, or simulator, is called the ''Diesel Emission Control Estimator'' (or the ''Estimator'').

The model is capable only of simulating conditions in production or other confined areas of an underground mine. Air flow distribution makes modeling of larger areas more complex. The Estimator can be used in any type of underground mine.

While the calculations involved in this model can be done by hand, use of a computer spreadsheet system facilitates prompt comparison of the results of alternative combinations of controls. Changing a particular entry instantly changes all dependent outputs. Accordingly, MSHA developed the Estimator as a spreadsheet format. It can be used in any standard spreadsheet program.

A paper discussing this model has been presented and published as an SME Preprint (98–146) in March 1998 at the Society for Mining and Exploration Annual Meeting. It was demonstrated at a workshop at the Sixth International Mine Ventilation Congress, Pittsburgh, Pa., in June 1997. The Agency is making available to the mining community the software and instructions necessary to enable it to perform simulations for specific mining situations. Copies may be obtained by contacting: Dust Division, MSHA, Pittsburgh Safety and Health Technology Center, Cochrans Mill Road, P.O. Box 18233, Pittsburgh, Pa. 15236. The Agency welcomes comments on the proposed rule that include information obtained by using the Estimator. The Agency also welcomes comments on the model itself, and suggestions for improvements.

Determining the Current DPM Concentration

The Estimator was designed to provide an indication of what dpm concentration will remain in a production area once a particular combination of controls is applied. Its baseline is the current dpm concentration, which of course reflects actual equipment and work practices.

If the actual ambient dpm concentration is known, this information provides the best baseline for determining the outcome from applying control technologies. Any method that can reliably determine ambient dpm concentrations under the conditions involved can be utilized. A description of various methods available to the mining community is described in part II of the preamble.

If the exact dpm concentration is not known, estimates can be obtained in several ways. One way is to take a percentage of the respirable dust concentration in the area. Studies have shown that dpm can range from 50–90% of the respirable dust concentration, depending on the specific operation, the size distribution of the dust and the level of controls in place. Another method is simply to choose a value of 644 for an underground coal mine, or 830 for an underground metal or nonmetal mine. These values correspond to the average mean concentration which MSHA sampling to date has measured in such underground mines. Or, depending upon mine conditions, some other value from the range of mean mine concentrations displayed in part III of this preamble might be an appropriate baseline—for example, an average similar to that of mine sections like the one for which controls are required.

Moreover, the Estimator has been designed to automatically compute another estimate of current ambient dpm concentration, and to provide outputs using this estimate even when the actual ambient dpm concentration is available and used in the model. This is done by using emissions data for the engines involved—specific manufacturer emissions data where available, or an average using the known range of emissions for each type of engine being used.

As with other estimates of current ambient dpm concentration, using engine data to derive this baseline measure does not produce the same results as actual dpm measurements. The Agency's experience is that the use of published engine emissions rates provides a good estimate of dpm exposures when the engines involved are used under heavy duty cycle conditions; for light duty cycle equipment, the published emission rates will generally overestimate the ambient particulate exposures. Also, such an approach assumes that the average ambient concentration derived is representative of the workplace where miners actually work or travel.

Columns

An example of a full spreadsheet from the Estimator is displayed as Figure V–5. The example here involves the application of various controls in an underground metal and nonmetal mine. As illustrated in the discussion in this part, the Estimator can be used equally well to ascertain what happens to dpm concentrations in an underground coal mine when the high-efficiency filters required by the proposed rule are used

under various ventilation and section dpm intake conditions. Underground coal mine operators who are interested in ascertaining what impact it might have on dpm concentrations in their mines if the proposed rule permitted the use of alternative controls, or required the use of additional controls (e.g. filters on light duty equipment), can use the Estimator for this purpose as well.

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Figure V-5. Example of Estimator Spreadsheet Results for a Section of an Underground Metal and Nonmetal Mine.

			Work Place Diesel Emissions Control Estimator						
				Mine Name:	Underground Metal and Nonmetal Mine				
						Column A		Column B	
1. MEASURED OR ESTIMATED IN MINE DP EXPOSURE (ug/m3)						330	ug/m3	---	
2. VEHICLE EMISSION DATA									
EMISSIONS OUTPUT (gm/hp-hr)									
VEHICLE 1		INDIRECT INJECTION 0.3-0.5 gm/hp-hr			FEL	0.1	gm/hp-hr	0.1	gm/hp-hr
VEHICLE 2		OLD DIRECT INJECTION 0.5-0.9 gm/hp-hr			Truck 1	0.2	gm/hp-hr	0.2	gm/hp-hr
VEHICLE 3		NEW DIRECT INJECTION 0.1-0.4 gm/hp-hr			Truck2	0.1	gm/hp-hr	0.1	gm/hp-hr
VEHICLE 4						0.0		0.0	gm/hp-hr
VEHICLE OPERATING TIME (hours)									
VEHICLE 1					FEL	9	hours	9	hours
VEHICLE 2					Truck 1	9	hours	9	hours
VEHICLE 3					Truck2	9	hours	9	hours
VEHICLE 4						0		0	hours
VEHICLE HORSEPOWER (hp)									
VEHICLE 1					FEL	315	hp	315	hp
VEHICLE 2					Truck 1	250	hp	250	hp
VEHICLE 3					Truck2	330	hp	330	hp
VEHICLE 4						0	hp	0	hp
SHIFT DURATION (hours)						10	hours	10	hours
AVERAGE TOTAL SHIFT PARTICULATE OUTPUT (gm)						0.09	gm/hp-hr	0.12	gm/hp-hr
3. MINE VENTILATION DATA									
FULL SHIFT INTAKE DIESEL PARTICULATE CONCENTRATION						50	ug/m3	50	ug/m3
SECTION AIR QUANTITY						155000	cfm	155000	cfm
AIRFLOW PER HORSEPOWER						173	cfm/hp	173	cfm/hp
4. CALCULATED SWA DP CONCENTRATION WITHOUT CONTROLS						---		551	ug/m3
5. ADJUSTMENTS FOR EMISSION CONTROL TECHNOLOGY									
ADJUSTED SECTION AIR QUANTITY						155000	cfm	155000	cfm
VENTILATION FACTOR (INITIAL CFM/FINAL CFM)						1.00		1.00	
AIRFLOW PER HORSEPOWER						173	cfm/hp	173	cfm/hp
OXIDATION CATALYTIC CONVERTER REDUCTION (%)									
VEHICLE 1						0	%	20	%

VEHICLE 2	IF USED ENTER 0-20%.				0	%	20	%
VEHICLE 3					0	%	0	%
VEHICLE 4					0	%	0	%
NEW ENGINE EMISSION RATE (gm/hp-hr)								
VEHICLE 1					0.1	gm/hp-hr	0.1	gm/hp-hr
VEHICLE 2	ENTER NEW ENGINE EMISSION (gm/hp-hr).				0.2	gm/hp-hr	0.2	gm/hp-hr
VEHICLE 3					0.1	gm/hp-hr	0.1	gm/hp-hr
VEHICLE 4					0.0	gm/hp-hr	0.0	gm/hp-hr
AFTER FILTER OR CAB EFFICIENCY (%)								
VEHICLE 1				Cabs	60	%	60	%
VEHICLE 2	USE 65-95% FOR AFTERFILTERS.				60	%	60	%
VEHICLE 3	USE 50-80% FOR CABS.				60	%	60	%
VEHICLE 4					0	%	0	%
6. ESTIMATED FULL SHIFT DP CONCENTRATION					162	ug/m3	184	ug/m3

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A full spreadsheet from the Estimator has two columns, labeled A and B. Column A displays information on computations where the baseline is the measured ambient dpm concentration, or whose baselines are estimated as a percentage of respirable dust or by using the mean concentration for the sector. Column B displays information on computations in which the baseline itself was derived from engine emission information entered into the Estimator.

Sections. The Estimator spreadsheet is divided into 6 sections. Sections 1 through 4 contain information on the baseline situation in the mine section. Section 5 contains information on proposed new controls, and Section 6 displays the dpm concentration expected to remain after the application of those new controls. Table V–4 summarizes the information in each section of the Estimator.

TABLE V–4.—INFORMATION NEEDED FOR OR PROVIDED BY EACH SECTION OF THE ESTIMATOR MODEL

Spreadsheet section	Input/output	Mine information
SECTION 1	INPUT	MEASURED DP LEVEL, μg/m³.
SECTION 2	INPUT	ENGINE EMISSIONS, gm/hp-hr. ENGINE HORSEPOWER, hp. OPERATION TIMES, hr. SHIFT DURATION, hr.
SECTION 3	INPUT	SECTION AIRFLOW, cfm. INTAKE DP LEVEL, μg/m³.
SECTION 4	OUTPUT	CURRENT DP LEVEL, μg/m³.
SECTION 5	INPUT	DP CONTROLS: AIRFLOW, cfm. OXID. CAT. CONVERTER, percent. ENGINE EMISSIONS, gm/hp-hr. AFTER-FILTERS, percent. CABS, percent.
SECTION 6	OUTPUT	PROJECTED DP LEVEL, μg/m³.

Section 1. This is the place to enter data on baseline dpm concentrations if obtained by actual measurement or estimate based on respirable dust concentration or mean concentration in the mining sector. Measurements should be entered in terms of whole diesel particulate matter for consistency with engine information. Information need not be entered in this section, in which case only engine-emission derived estimates will be produced by the Estimator (in Column B).

Sections 2 and 3. Section 2 is the place to enter data about the existing engines and engine use, and section 3 is the place to enter data about current ventilation practices. This information is used in two ways. First, the Estimator uses this information to derive an estimated baseline dpm concentration (for column B). Second, by comparing this information with that in section 5 on proposed controls that would change engines, engine use, or ventilation practices, the Estimator calculates the improvement in dpm that would result.

The first information entered in section 2 is the dpm emission rate (in gm/hp-hr) for each vehicle. The Estimator in its current form provides room to enter appropriate identification information for up to four vehicles. However, when multiple engines of the same type are used, the spreadsheet can be simplified and the number of entries conserved by combining the horsepower of these engines. For example, two 97 hp, 0.5 gm/hp-hr engines can be entered as a single 194 hp, 0.5 gm/hp-hr engine. However, if the estimate is to involve

the use of different controls for each engine, the data for each engine must be entered separately. In order to account for the duty cycle, the engine operating time for each piece of equipment must then be entered in section 2, along with the length of the shift.

The last item in section 2, the ''average total shift particulate output'' in grams, is calculated by the Estimator based on the measured concentration entered in section 1 (for column A, or the engine emission rates for column B), the intake concentration, engine horsepower, engine operating time, and airflow. For column A, the average total shift diesel particulate output is calculated from the formula:

E(a) = (DPM(m) -I) x (Q(I) / 35200) / [Sum (Hp(I) x To(I))]

Where:

E(a) = Average engine output, gm/hp-hr
DPM(m) = Measured concentration of diesel particulate, $\mu g/m^3$
Q(I) = Initial section ventilation, cfm
I = Intake concentration, $\mu g/m^3$
Hp(I) = Individual engine Horsepower, hp
To(I) = Individual engine operating times, hours

For column B, the average total shift diesel particulate output is calculated from the formula:

E(a) = [Sum (E(I) x Hp(I) x To(I))] / [Sum (Hp(I))] / Ts

Where:

E(a) = Average engine output, gm/hp-hr
E(I) = Individual engine emission rates, gm/hp-hr
Hp(I) = Individual engine Horsepower, hp
To(I) = Individual engine operating times, hours
Ts = Shift length, hours

The ''average total shift particulate'' provides useful information in determining what types of controls would be most useful. If the average output is less than 0.3, controls such as cabs and afterfilters would have a large impact on dpm. If the average output is greater than 0.3, new engines would have a large impact on dpm.

There are two data elements concerning existing ventilation in the section that must be entered into section 3 of the Estimator: the full shift intake dpm concentration, the section air quantity. The former can be measured, or an estimate can be used. Based upon MSHA measurements to date, an estimate of between 25 and 100 micrograms of dpm per cubic meter would account for the dpm contribution coming into the section from the rest of the mine.

The last item in section 3, the airflow per horsepower, is calculated by the Estimator from the information entered on these two items in sections 2 and 3, as an indication of ventilation system performance. If the value is less than 125 cfm/hp, consideration should be given to increasing the airflow. If the value is greater than 200 cfm/hp, primary consideration would focus on controls other than increased airflow.

Section 4. Section 4 only displays information in Column B. Using the individual engine emissions, horsepower, operating time, section airflow, intake DPM and shift length, the Estimator calculates a presumed dpm concentration. The presumed dpm concentration is calculated by the formula:

DPM(a) = {[[Sum (E(I) x Hp(I) x To(I))] x 35,300 / Q(I)]+I} x [Ts / 8]

Where:

35,300 is a metric conversion factor
DPM(a) = Shift weighted average concentration of diesel particulate, $\mu g/m^3$.
E(I) = Individual engine emission rates, gm/hp-hr
Hp(I) = Individual engine Horsepower, hp
To(I) = Operating time hours
Ts = Shift length, hours
Q(I) = Initial section ventilation, cfm
I = Intake concentration, $\mu g/m^3$.

Section 5. Information about any combination of controls likely to be used to reduce dpm emissions in underground mines—changes in airflow, the addition of oxygen catalytic converters, the use of an engine that has a lower dpm emission rate, and the addition of either a cab or aftertreatment filter—is entered into Section 5. Information is entered here, however, only if it involves a change to the baseline conditions entered into Sections 2 and 3. Entries are cumulative.

The first possible control would be to increase the system air quantity. The minimum airflow should be either the summation of the Particulate Index (PI) for all heavy duty engines in the area of the mine, or 200 cfm/hp. The spreadsheet displays the ratio between the air quantity in section 5 and that in section 3, and the airflow per horsepower.

The second possible control would be to add an oxidation catalytic converter to one or more engines if not initially present. When such converters are used, a dpm reduction of up to 20 percent can be obtained (as noted in MSHA's toolbox, reprinted as an Appendix to the end of this document. The third possible control would be to change one or more engines to newer models to reduce emissions. As noted in part II of this preamble, clean engine technology has emissions as low as 0.1 and 0.2 gm/hp-hr.

Finally, each piece of equipment could be equipped with either a cab and an aftertreatment filter. But since MSHA considers it unlikely an operator would use both controls, the Estimator is designed to assume that no more than one of these two possible controls would be used on a particular engine. Ceramic aftertreatment filters that can reduce emissions by 65–80% are currently on the market; MSHA is soliciting information about the potential for future improvements in ceramic filtration efficiency. Paper filters can remove up to 95% or more of dpm, but these can only be used on equipment whose exhaust is appropriately cooled to avoid igniting the paper (i.e., permissible coal equipment, or other equipment equipped with a water scrubber or other cooling device). Air conditioned cabs can reduce the exposure of the equipment operator by anywhere from 50–80%. (See part II, section 6, for information on filters and cabs). But while the Estimator will produce an estimate of the full shift dpm concentration that includes the effects of using such cabs, it should be remembered that such an estimate is only directly relevant to equipment operators. Thus, cabs are a viable control for sections where the miners are all equipment operators, but they will not impact the dpm concentrations to which other miners are exposed.

Section 6. The Estimator displays in this section an estimated full shift dpm concentration. If a measured baseline dpm concentration was entered in section 1, this information will be displayed in column A. Column B displays an estimate based on the engine emissions data.

Here is how the computations are performed.

The effect of control application is calculated in Section 6, Column A from the following formula:

DPM(c) = {Sum [(To(I) / Ts) x 1000 x [(E(a) / 60) x Hp(I) x (35300 /Q(I)) x (Q(I) / Q(f)) x (1-R(o)) x (1-R(f)) x (1-R(e))]} + I

Where:

DPM(c) = Diesel particulate concentration after control application/ $\mu g/m^3$,
E(a) = Average engine emission rate, gm/hp-hr,
Hp(I) = Individual engine Horsepower, hp.
To(I) = Operating time hours,
I = Intake DPM concentration, $\mu g/m^3$,
Q(I) = Initial section ventilation, cfm,

Q(f) = Final section ventilation, cfm,
R(o) = Efficiency of oxidation catalytic converter, decimal
R(f) = Efficiency of after filters or cab, decimal,
R(e) = Reduction for new engine technology, decimal, and
R(e) = (Ei—Ef) / Ei

Where:

R(e) = Reduction for new engine technology, decimal,
E(i) = Initial engine emission rates, gm/hp-hr,
E(f) = New engine emission rates, gm/hp-hr,

The effect of control application is calculated in Section 6, Column B from the following formula:

DPM(c) = {Sum[(E(I) x Hp(I) x To(I)) x (35,300 / Q(I)) x (1-R(o)) x (1-R(f)) x (1-R(e))] x [Q(I) / Q(f)]}+I

Where:

DPM(c) = Diesel particulate concentration after control application/ $\mu g/m^3$,
E(I) = Individual engine emission rates, gm/hp-hr,
Hp(I) = Individual engine Horsepower, hp,
To(I) = Operating time hours,
I = Intake DPM concentration, $\mu g/m^3$,
Q(I) = Initial section ventilation, cfm,
Q(f) = Final section ventilation, cfm,
R(o) = Efficiency of oxidation catalytic converter, decimal,
R(f) = Efficiency of after filters or cab, decimal,
R(e) = Reduction for new engine technology, decimal, and
R(e) = (Ei—Ef) / Ei

Where:

R(e) = Reduction for new engine technology, decimal,
(i) = Initial engine emission rates, gm/hp-hr,
E(f) = New engine emission rates, gm/hp-hr.

VI. Impact Analyses

This part of the preamble reviews several impact analyses which the Agency is required to provide in connection with proposed rulemaking. The full text of these analyses can be found in the Agency's PREA.

(A) Costs and Benefits: Executive Order 12866

In accordance with Executive Order 12866, MSHA has prepared a Preliminary Regulatory Economic Analysis (PREA) of the estimated costs and benefits associated with the proposed rule for the underground coal sector.

The key conclusions of the PREA are summarized, together with cost tables, in part I of this preamble (see Question and Answer 5). The complete PREA is part of the record of this rulemaking, and is available from MSHA.

The Agency considers this rulemaking ''significant'' under section 3(f) of Executive Order 12866, and has so designated the rule in its semiannual regulatory agenda (RIN 1219–AA74). However, based upon the PREA, MSHA has determined that the proposed rule does not constitute an ''economically significant'' regulatory action pursuant to section 3(f)(1) of Executive Order 12866.

(B) Regulatory Flexibility Certification

Introduction

Pursuant to the Regulatory Flexibility Act of 1980, MSHA has analyzed the impact of this rule upon small businesses. Further, MSHA has made a preliminary determination with respect to whether or not it can certify that this proposal will not have a significant economic impact on a substantial number of small entities. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, MSHA must include in the proposal a factual basis for this certification. If the proposed rule does have a significant economic impact on a substantial number of small entities, then the Agency must develop an initial regulatory flexibility analysis.

Based upon MSHA's analysis, the Agency has determined that the proposed rule will not have a significant economic impact on a substantial number of small underground coal mine operators, and has so certified to the Small Business Administration (SBA). MSHA specifically solicits comments on the cost data and assumptions concerning the regulatory flexibility certification statement for underground coal mine operators.

To facilitate public participation in the rulemaking process, MSHA will mail a copy of the proposed rule and this preamble to every underground coal mine operator. In addition, the regulatory flexibility certification, including its factual basis, is reprinted here.

Definition of Small Mine

Under SBREFA, in analyzing the impact of a proposed rule on small entities, MSHA must use the SBA definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not taken such an action, and hence is required to use the SBA definition.

The SBA defines a small mining entity as an establishment with 500 employees or less (13 CFR 121.201). MSHA's use of the 500 or less employees includes all employees (miners and office workers). Almost all mines (including underground coal mines) fall into this category and hence, can be viewed as sharing the special regulatory concerns which the RFA was designed to address. That is why MSHA has, for example, committed to providing to all underground coal mine operators a copy of a compliance guide explaining provisions of this rule.

The Agency is concerned, however, that looking only at the impacts of the proposed rule on all the mines in this sector does not provide the Agency with a very complete picture on which to make decisions. Traditionally, the Agency has also looked at the impacts of its proposed rules on what the mining community refers to as ''small mines''—those with fewer than 20 miners. The way these small mines perform mining operations is generally recognized as being different from the way other mines operate, which has led to special attention by the Agency and the mining community.

This analysis complies with the legal requirements of the RFA for an analysis of the impacts on ''small entities'' while continuing MSHA's traditional look at ''small mines''. In concluding that it can certify that the proposed rule has no significant economic impact on a substantial number of small entities in the underground coal sector, the Agency determined that this is the case both for underground coal mines with 500 or fewer miners and for underground coal mines with 20 or fewer miners.

The Underground Coal Mines: Factual Basis for Certification

The Agency's analysis of impacts on ''small entities'' and ''small mines'' begins with a ''screening'' analysis. The screening compares the estimated compliance costs of the proposed rule for small mine operators in each affected sector to the estimated revenues for that sector. When estimated compliance costs are less than 1 percent of estimated revenues, (at both of the size categories considered), the Agency believes it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs approach or exceed 1 percent of revenues, it tends to indicate that further analysis may be warranted. The Agency welcomes comment on its approach in this regard.

Derivation of Costs and Revenues for Screening Analysis

In the case of this proposed rule, because the compliance costs must be absorbed by underground coal mines only, the agency focused its attention exclusively on the relationship between costs and revenues for underground coal mines, rather than looking at the coal sector as a whole.

The compliance costs for this analysis are presented earlier along with an explanation of how they were derived. In deriving compliance costs, there were areas where different assumptions had to be made for small mines in order to account for the fact that the mining operations of small mines are not the same as those of large mines. For example, assumptions used to derive compliance costs concerning: the number of production shifts per mine, and the number of days the mine operates on an annual basis were different depending on whether the mine was classified as either a large or small mining operation. In determining revenues for underground coal mines, MSHA multiplied underground coal production data (in tons) for underground coal mines in specific size categories (reported to MSHA quarterly) by $19 per ton (the average rounded price per ton). The Agency welcomes comment on alternative data sources that can help it more accurately estimate revenues for the final rule.

Results of Screening Analysis

With respect to underground coal mine operators, as can be seen in Table VI–1, when the definition of a small mine operator is fewer than 20 employees, then estimated average per year costs of the proposed rule are $8,000 per small mine operator and estimated costs as a percentage of revenues are 0.04 percent for small mine operators. When the definition of a small mine operator is fewer than 500 employees, then estimated average per year costs of the proposed rule are $57,650 per small mine operator and estimated costs as a percentage of revenues are 0.13 percent for small mine operators.

In both cases, the impact of the proposed costs is less than 1 percent of revenues, well below the level suggesting that the proposed rule might have a significant impact on a substantial number of small entities. Accordingly, MSHA has certified that there is no such impact for small entities that mine underground coal.

TABLE VI–1.—UNDERGROUND COAL MINES

	Estimated costs (thous.)	Estimated revenue (million)	Estimated cost per mine	Costs as % of revenue
Small <20	$120	$287	$8,000	0.04
Small <500	9,624	7,359	57,650	0.13

As required under the law, MSHA is complying with its obligation to consult with the Chief Counsel for Advocacy on this proposed rule, and on the Agency's certification of no significant economic impact in underground coal. Consistent with agency practice, notes of any meetings with the Chief Counsel's office on this rule, or any written communications, will be placed in the rulemaking record. The Agency will continue to consult with the Chief Counsel's office as the rulemaking process proceeds.

(C) Unfunded Mandates Reform Act of 1995

MSHA has determined that, for purposes of section 202 of the Unfunded Mandates Reform Act of 1995, this proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Moreover, the Agency has determined that for purposes of section 203 of that Act, this proposed rule does not significantly or uniquely affect small governments.

The Unfunded Mandates Reform Act was enacted in 1995. While much of the Act is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments, the Act also includes requirements to assist Federal agencies to make this same determination with respect to regulatory actions.

Based on the analysis in the Agency's preliminary Regulatory Economic Statement, the compliance costs of this proposed rule for the underground coal mining industry are about $10 million per year. Accordingly, there is no need for further analysis under section 202 of the Unfunded Mandates Reform Act.

MSHA has concluded that small governmental entities are not significantly or uniquely impacted by the proposed regulation. The proposed rule affects only underground coal mines, and MSHA is not aware of any state, local or tribal government ownership interest in underground coal mines. MSHA seeks comments of any state, local, and tribal government which believes that they may be affected by this rulemaking.

(D) Paperwork Reduction Act of 1995 (PRA)

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA95). Tables VI–1 and VI–2 show the estimated annual reporting burden hours associated with each proposed information collection requirement. These burden hour estimates are an approximation of the average time expected to be necessary for a collection of information, and are based on the information currently available to MSHA. Included in the estimates are the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

MSHA invites comments on: (1) Whether any proposed collection of information presented here (and further detailed in the Agency's PREA) is necessary for proper performance of MSHA's functions, including whether the information will have practical utility; (2) the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Submission

The Agency has submitted a copy of this proposed rule to OMB for its review and approval of these information

collections. Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs, OMB New Executive Office Bldg., 725 17th St. NW., Rm. 10235, Washington, DC 20503, Attn: Desk Officer for MSHA. Submit written comments on the information collection not later than April 7, 1998.

The Agency's complete paperwork submission is contained in the PREA, and includes the estimated costs and assumptions for each proposed paperwork requirement (these costs are also included in the Agency's cost and benefit analyses for the proposed rule). A copy of the PREA is available from the Agency. These paperwork requirements have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1995. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

Description of Respondents

Those required to provide the information are mine operators and diesel equipment manufacturers.

Description

The proposed rule would result in additional burden hours associated with: the additional training that will be required for diesel equipment operators under § 75.1915; the additional changes required to be included in the mine ventilation plans under §§ 75.370 and 75.371; the new training requirements in proposed § 72.510; and the additional burden hours for equipment manufacturers under part 36 in connection with the approval of filtration systems that would be required by this rule.

Tables VI–2 and VI–3 summarize the burden hours for mine operators and manufacturers by section.

TABLE VI–2.—UNDERGROUND COAL MINES BURDEN HOURS

Detail	Large	Small	Total
75.370	93	9	102
75.371	158	8	166
75.1915	12	1	13
72.510	347	5	352
Total	610	23	633

TABLE VI–3.—DIESEL EQUIPMENT MANUFACTURERS BURDEN HOURS

Detail	Total
Part 36	520
Total	520

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List of Subjects

30 CFR Part 72

Coal, Health standards, Mine safety and health, Underground mines, Diesel particulate matter.

30 CFR Part 75

Mine safety and health, Underground coal mines, Ventilation.

Dated: March 31, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

It is proposed to amend Chapter I of Title 30 of the Code of Federal Regulations as follows:

PART 72—[AMENDED]

1. The authority citation for Part 72 continues to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957, 961.

2. Part 72 is amended by adding Subpart D to read as follows:

Subpart D—Diesel Particulate Matter—Underground

72.500 Diesel particulate filtration systems.
72.510 Miner health training.

Subpart D—Diesel Particulate Matter—Underground

§ 72.500 Diesel particulate filtration systems.

(a) As of [insert the date 18 months after the date of publication of the final rule], any piece of permissible diesel-powered equipment operated in an underground coal mine shall be equipped with a system capable of removing, on average, at least 95% of diesel particulate matter by mass.

(b) As of [insert the date 30 months after the date of publication of the final rule], any nonpermissible piece of heavy duty diesel-powered equipment (as defined by § 75.1908(a) of this title) operated in an underground coal mine shall be equipped with a system capable of removing, on average, at least 95% of diesel particulate matter by mass.

(c) The systems required by this section shall be maintained in accordance with manufacturer specifications.

(d) In determining, for the purposes of this section, whether a filtration system is capable of removing, on average, at least 95% of diesel particulate matter by mass, emission tests shall be performed to compare the mass of diesel particulate matter emitted from an engine with and without the filtration system in place. Such tests shall be performed using the test cycle specified in Table E–3 of § 7.89 of this title. The filtration system tested shall be representative of the system intended to be used in mining.

§ 72.510 Miner health training.

(a) All miners at a mine covered by this subpart who can reasonably be expected to be exposed to diesel emissions on that property shall be trained annually in—

(1) The health risks associated with exposure to diesel particulate matter;

(2) The methods used in the mine to control diesel particulate matter concentrations;

(3) Identification of the personnel responsible for maintaining those controls; and

(4) Actions miners must take to ensure the controls operate as intended.

(b)(1) An operator shall retain at the mine site a record that the training required by this section has been provided for one year after completion of the training. Such record may be retained elsewhere if the record is immediately accessible from the mine site by electronic transmission.

(2) Upon request from an authorized representative of the Secretary of Labor, the Secretary of Health and Human Services, or from the authorized representative of miners, mine operators shall promptly provide access to any such training record. Whenever an operator ceases to do business, that operator shall transfer such records, or a copy thereof, to any successor operator who shall receive these records and maintain them for the required period.

PART 75—[AMENDED]

3. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

4. Section 75.371 is amended by adding paragraph (qq) to read as follows:

75.371 Mine ventilation plans; contents.

* * * * *

(qq) A list of diesel-powered units used by the mine operator together with information about any unit's emission control or filtration system.

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Appendix to Preamble—Background Discussion MSHA's Toolbox

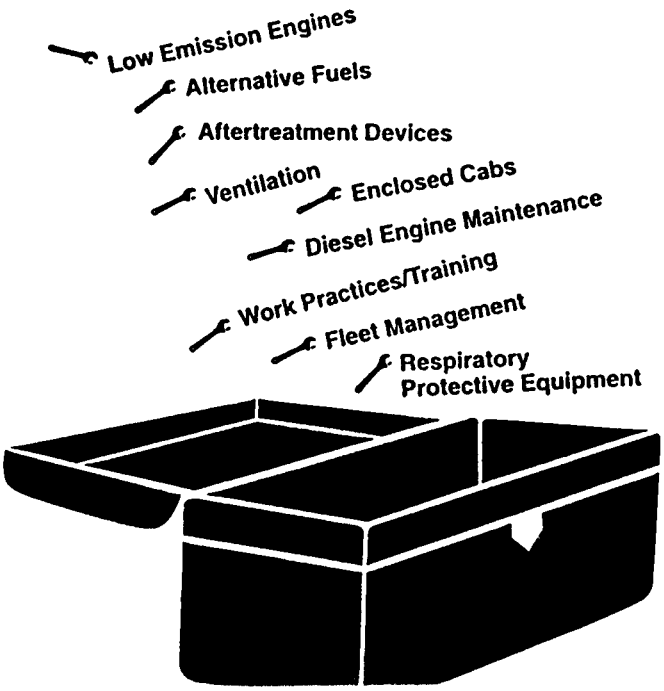
Note: This appendix will not appear in the Code of Federal Regulations. It is provided here as a guide.

Practical Ways to Reduce Exposure to Diesel Exhaust in Mining– A Toolbox

U.S. Department of Labor
Alexis M. Herman, Secretary

Mine Safety and Health Administration
J. Davitt McAteer, Assistant Secretary

Andrea M. Hricko, Deputy Assistant



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ACKNOWLEDGEMENTS

The Mine Safety and Health Administration (MSHA) held a series of workshops in the fall of 1995 to obtain input from the mining community on ways of reducing miners' exposure to diesel particulate matter from the exhaust of diesel engines.

MSHA thanks those who attended the workshops and willingly shared their ideas on practical ways to reduce exposure to diesel emissions in mining. These practical ideas have been utilized in producing this "Toolbox." A key objective of the toolbox is to facilitate the exchange of practical information on ways to reduce miner exposure to diesel exhaust emissions.

Thanks are also extended to former U.S. Bureau of Mines scientists, from whose diesel-related publications the text of this handbook draws, and to Robert Waytulonis, Associate Director of the University of Minnesota's Center for Diesel Research.

Credit is given to the following MSHA staff for their efforts in organizing the Diesel Exhaust Workshops, their role in selecting pertinent quotations from the workshop transcripts, and in contributing to or reviewing this manual: Kathy Alejandro, Janet Bertinuson, Teresa Carruthers, Jerry Collier, James Custer, George Dvorznak, Guy Fain, Ron Ford, Don Gibson, Hal Glassman, Jerry Lemon, Pamela King, James Kirk, Jon Kogut, Cheryl McGill, William McKinney, Ed Miller, Charlotte Richardson, Bryan Sargeant, Erik Sherer, Pete Turcic, and Sandra Wesdock. Thanks also to Liz Fitch and Mike Doyle for their help in reviewing early drafts, to Todd Taubert for help with the section on lugging, to Reggie McBee and Bria Culp for editorial support, to Anne Masters for graphic design support, and to Bill West for internet conversions.
A special "thank you" to the mechanics, miners and other members of the mining community in Kentucky who took the time to review a draft of this publication for MSHA: Oscar Lucas, Ed Topping, Steward Stidham, William Peace, Bill Fields, Thurman Halcomb, West Sheffield, Robert Hoskins, Ronnie Stubblefield, Tracy Begley, and Ray Slusher.

In addition, MSHA thanks other segments of the mining industry that provided comments for consideration in the Toolbox.

Andrea Hricko, Deputy Assistant Secretary of MSHA, provided guidance in organizing the Diesel Workshops and worked closely with Winthrop Watts of the University of Minnesota, and Thomas Tomb, Chief of MSHA's Dust Division, as well as with Robert Haney and George Saseen of MSHA's Office of Technical Support, in creating this "Toolbox." Thanks to Peter Galvin for consolidating the final draft while on detail to MSHA from the Office of the Solicitor and to Keith Gaskill for shepherding the "Toolbox" through to publication.

Special thanks to Winthrop F. Watts, Jr., Ph.D., of the University of Minnesota, Center for Diesel Research, for conceptualizing the "Toolbox" and for writing the first drafts of this manual under contract to the Mine Safety and Health Administration.

HOW TO USE THIS PUBLICATION

Who should use this publication?

If your mine uses diesel-powered equipment, or is contemplating its use, you will find this Toolbox to be a useful guide. So too will those who help mine operators select or maintain mining equipment. The Toolbox can be read cover-to-cover as a basic reference, or used as a troubleshooting guide by diesel equipment operators and mechanics. Some knowledge of engines is assumed, although a glossary is provided.

Is this only of interest to underground mines?

No. While some sections are of special interest only to underground mines (e.g., ventilation), most of this publication is of value to surface mines as well.

Is the Toolbox useful in any type of mining?

Yes. The ideas and concepts are just as relevant in metal and nonmetal mines as they are in coal mines, and many of the controls described are available to operators in both sectors.

How can I find what I need quickly?

The Table of Contents on the first page of this handbook can be used to quickly locate a topic of interest. Technical terms or materials are discussed or referenced in appendices.

If I follow the recommendations in the Toolbox, will I be in compliance with MSHA requirements?

This publication is NOT a guide to applicable Federal or State regulations on the use of diesel engines, or the measurement or control of their emissions on mining property. Selection of an approach from the toolbox must be made in light of the need to comply with such requirements. Appendix D references some of the requirements which should be consulted. Please contact your local MSHA office if you have any questions about applicable requirements.

As of the date of this Toolbox printing, MSHA is making final decisions on proposing some additional regulations about diesel emissions. These proposed new rules would help the mining community address the risks created by miner exposure to diesel particulate matter—the very small particles that are part of the diesel exhaust. The Agency expects to publish these proposed rules for comment early in 1998. While the requirements that will ultimately be implemented, and the schedule of implementation, are of course uncertain at this time, MSHA encourages the mining community not to wait to protect miners' health. MSHA is confident that whatever the final requirements may be, the mining community will find this Toolbox information of significant value.

Does MSHA want my input on this subject?

MSHA welcomes your suggestions on how to improve future editions of this Toolbox, and information on your experiences in reducing exposure to diesel emissions. Please direct any comments to: Chief, Pittsburgh Safety and Health Technology Center, Cochrans Mill Road, P.O. Box 18233, Pittsburgh, Pa. 15236. You may also fax them to 412-892-6928, or e-mail them to chiefpshtc @msha.gov.

Special Note on Regulations Involving the Use of Diesel-powered Equipment in Underground Coal Mines

On April 25, 1997, certain key provisions of MSHA's final rule on the use of diesel-powered equipment in underground coal mines went into effect. Other provisions of that rule will go into effect over the next three years. Some of these regulations require the implementation of particular strategies recommended in this Toolbox.

Since the mining community is still becoming familiar with these requirements, some of them are noted in the text at appropriate places, using italics. MSHA hopes this will serve as a useful reminder for underground coal mine operators, without being distracting to the remainder of the mining community.

A compliance guide for the new underground coal mine diesel regulations, in the form of Questions and Answers, has been prepared by MSHA, and is being widely circulated. While this Toolbox is not a substitute for the compliance guide or a copy of the regulations, neither are the compliance guide or the regulations a substitute for this Toolbox—all three documents will be useful for underground coal mine operators and miners.

INTRODUCTION

The Problem

Diesel engines are widely used in mining operations because of their high power output and mobility. Many mine operators prefer diesel-powered machines because they are more powerful than most battery-powered equipment and can be used without electrical trailing cables which can restrict equipment mobility. Underground coal and metal and nonmetal mines currently use approximately 10,000 diesel machines and about 35 percent of these are used for heavy-duty mining production applications. The use of diesel equipment in mining is on the rise, as described by speakers at a series of Workshops on Controlling Diesel Emissions sponsored by MSHA in the fall of 1995:

"In 1985, we had a total mine horsepower of 6,851 horsepower. Today, in 1995, our horsepower has risen to 14,885 horsepower in the mine."

—David Music,
Akzo Nobel Salt's Cleveland Mine

"...Today we have over a hundred pieces of diesel equipment, large and small, anywhere from a Bobcat to large section scoops, generators, welders, compressors, trucks that are used on open highways, and diesel trucks."

—Forrest Addison,
UTAH Coal Miner (UMWA)

The estimated distribution of diesel equip-ment in mining is shown in Table 1. An estimated 30,000 miners work at underground mines using such equipment and approximately 200,000 miners work at surface operations using such equipment.

Table 1. Estimated Distribution of Diesel Equipment

	Mines Using Diesel Engines			
	Underground		Surface	
Type	#Mines	#Engines	#Mines	#Engines
Coal	180	2,950	1,700	22,00
Metal and Nonmetal	250	7,800	10,500	97,000
Totals	430	10,750	12,000	119,000

There is a downside, however, to the use of diesel equipment, especially in the underground mining environment. The problem is the potential acute and long-term health effects of exposure to various constituents of diesel exhaust, which consists of noxious gases and very small particles.

The gases in diesel emissions include carbon monoxide, carbon dioxide, oxides of nitrogen, sulfur dioxide, aromatic hydrocarbons, aldehydes and others. MSHA sets limits on miner exposure to a number of these gases. These limits are specified in Title 30 CFR § 75.322 and § 71.700 for underground and surface coal mines and § 57.5001 and § 56.5001 for underground and surface metal and nonmetal mines.

The particles in diesel emissions are known as "diesel particulate" (DP), or "diesel particulate matter" (DPM). Diesel particulate matter is small enough to be inhaled and retained in the lungs. The particles have hundreds of chemicals from the exhaust adsorbed (attached) onto their surfaces.

The mining community is very familiar with the specific hazards long associated with other particulates of respirable dimensions–like coal mine dust and dust that contains silica. A recent body of evidence, based on studies of air pollution, suggests that exposure to smaller particles (including those present in diesel exhaust) is likewise associated with increased rates of death and disease. Specific evidence has also been accumulating that exposure to high levels of DPM can increase the risk of cancer. In 1988, the National Institute for Occupational Safety and Health recommended that whole diesel exhaust be regarded as a "potential occupational carcinogen," and that reductions in workplace exposure be implemented to reduce cancer risks. In 1989, the International Agency for Research on Cancer declared that "diesel engine exhaust is probably carcinogenic to humans." In 1995, the American Conference of Governmental Industrial Hygienists (ACGIH) added DPM to its "Notice of Intended Changes" for 1995-96, recommending a threshold limit value (TLV®) for a conventional 8-hour work day of 150 micrograms per cubic meter (150 $\mu g/m^3$).

Note on Diesel Particulate Matter Measurements:Microgram v. Milligram

In this Toolbox, measurements of DPM are expressed in micrograms (μg) per cubic meter of air. A microgram is one millionth of a gram. However, in many references, you may see the DPM measurements expressed as milligrams (mg) per cubic meter of air. A milligram is one thousandth of a gram.

1 $\mu g/m^3$=1 milligram per cubic meter of air
1 $\mu g/m^3$=1 microgram per cubic meter of air

1 milligram=1,000 micrograms. So if you want to convert from milligrams to micrograms, multiply by 1000–or move the decimal point three places to the right.

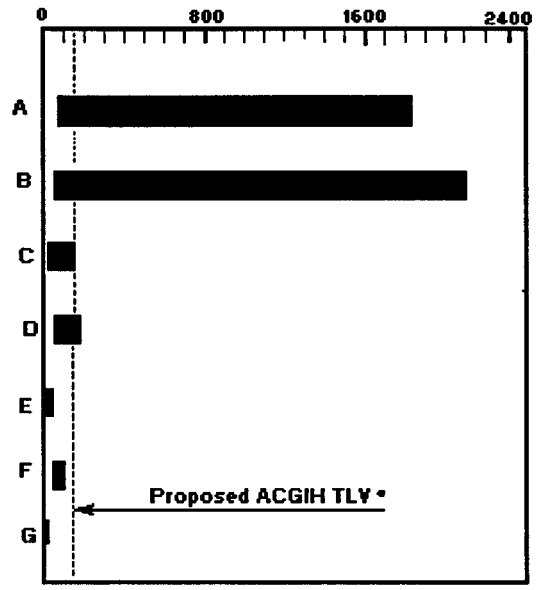
For example, 0.15 mg/m^3=150 $\mu g/m^3$.

Many non-mining workplaces where diesel equipment is used have levels of DPM well below the recommended ACGIH TLV®.In contrast, studies conducted by various scientific researchers demonstrate that exposures to DPM in mining environments can be significantly higher than exposures in the ambient air or in other workplaces.

Figure 1 provides a rough visual picture of the range of DPM exposures of miners, as compared with the range of exposures of other groups of workers who routinely work with diesel-powered equipment. As can be readily seen, the range of exposures in mining environments are significantly higher than in other environments.

Figure 1. Diesel Particulate Exposures in Several Industry Segments

Range of Average DPM Exposures, $\mu g/m^3$.



A=Underground Metal and Nonmetal Mine
B=Underground Coal Miners
C=Surface Miners
D=Railroad Workers
E=Truck Drivers
F=Dock Workers
G=Ambient Air (Urban)

Table 2 provides additional detail about the levels of exposure in U.S. mines. The higher concentrations in underground mines are typically found in the haulageways and face areas where numerous pieces of diesel equipment are operating, or where insufficient air is available to ventilate the operation. In surface mines, the higher concentrations are typically associated with truck drivers and front-end loader operators.

Table 2. Measured Full-Shift Diesel Particulate Matter Exposure in U.S. Mines

Type	Range of exposure, mg/m^3	Mean exposure, mg/m^3
Surface	9-380	88
Underground Coal	0-3,650	644
Underground Metal and Nonmetal	10-5,570	830

In 1988, MSHA's Advisory Committee on Diesel-Powered Equipment in Underground Coal Mines recognized a number of risks related to the use of diesel-powered equipment in such mines, including the potential risks of exposing miners to diesel emissions. The Committee made recommendations to address its concerns.

Since that time, MSHA has taken several actions relative to diesel exhaust. In 1989, MSHA proposed "air quality" regulations which would, among other things, set stricter limits on some diesel exhaust gases. These regulations remain under review. In 1996, after notice and comment, MSHA issued final regulations for the use of diesel-powered equipment in underground coal mines. These rules will go into effect over a 3-year period. And in response to a specific recommendation of the Advisory Committee that, "The Secretary (of Labor) should set in motion a mechanism whereby a diesel particulate standard can be set...", MSHA is developing a proposed rule toward that end.

There are some cases where alternative power sources (e.g., electricity or batteries) may be the solution. But when diesel engines are used, the mining community needs to understand the potential health risks they present and take steps to reduce the hazards.

"...We're very dependent on diesel engines. At the same time, air quality in the mine is very important to IMC. We realized a long time ago that it affects both miner health and morale, and for us morale and productivity go hand in hand. So beginning in the 1970s we consciously undertook a program of improving our air quality...."

—Scott Vail, Ph.D.,
IMC Global Carlsbad Mine

"…Of all the health issues that we're dealing with in the mining industry, this issue is at the top of the list...As I travel across this country, I hear more about exposure to diesel exhaust than any other single issue in the mining industry."

—Joe Main,
United Mine Workers of America

Addressing the Problem:

The Experience of the Mining Community

In 1995, MSHA established an internal working group to explore measures to reduce miners' exposure to DPM. This group organized a series of workshops to solicit input from the mining community. The workshops were designed to discuss the potential health risks to miners from exposure to DPM, ways to measure and limit DPM in mine environments, and regulatory or other approaches to ensure a healthful work environment. These workshops provided a useful forum to exchange views and concerns about limiting diesel exhaust exposure. More than 500 members of the mining community attended these workshops, providing evidence that reducing miners' exposure to diesel exhaust emissions, especially in underground mines, is a high priority for the mining industry.

The experience of the mining community appears to support several conclusions:

- The levels of exposure to DPM in mines depend upon engine exhaust emissions, the use of exhaust aftertreatment and its efficiency and, particularly in underground mines, ventilation rate and system design.
- Engine emissions are governed by engine design, work practices, duty cycle, fuel quality and maintenance. Reducing engine emissions will decrease the amount of DPM that needs to be controlled by other means and will reduce the exposure of miners.
- There is no single emission control strategy that is a panacea for the entire mining community.
- Diesel engine maintenance is the cornerstone of a diesel emission control program.

A major objective of this publication is to facilitate the exchange of practical information within the mining community on ways to reduce miners' exposure to diesel exhaust emissions. The Toolbox focuses on currently available methods of control as opposed to methods in the research and development stages. Each of the various technologies presented in the Toolbox will assist in reducing or monitoring worker exposure.

Where possible, the Toolbox quotes specific examples of methods tested or used by the mining industry to reduce exposure to diesel emissions. These quotations are taken directly from public transcripts of the 1995 MSHA workshops, and were selected to provide a representative sample of views expressed. All quotations are offset from the main text in bold lettering. The Toolbox also draws extensively from diesel-related publications prepared by former U.S. Bureau of Mines scientists. Please note that key words and phrases are highlighted in **bold** type for easy reference. **[ ]** brackets are used to insert explanations not found in the original quotation, "..." are used to indicate that words were removed to make the quote shorter.

MSHA hopes that the mining community will benefit from the exchange of this practical information and will take steps to reduce miners' exposure to diesel emissions, utilizing the variety of techniques described in this publication and other methods as they are developed. The Agency encourages an ongoing exchange of information on strategies to further reduce exposure to diesel emissions and to protect the health of miners.

The quotations cited in this publication do not necessarily represent the views and/or policies of MSHA, nor of the organizations or companies at which the speakers work (or worked). MSHA recognizes that some affiliations have changed since the workshops. Names and affiliations at the time of the workshop are used. Finally, reference to specific manufacturers and/or products does not imply endorsement by MSHA or the U.S. Government.

The Reason for a "Toolbox" Approach

This publication introduces a "toolbox" approach to reducing miners' exposure to diesel exhaust emissions. A toolbox offers a choice of tools, each with a specific purpose. One tool after another may be used to find a solution to a problem or several tools may be tried at the same time.

Reducing exposure to diesel emissions lends itself to a toolbox approach because no single method or approach to reducing exposure may be suitable for every situation. Examples of the "toolbox" approach to reducing exposure to diesel emissions in a mine were described at the 1995 MSHA workshops:

"Since the mid-1980s Homestake has initiated a number of work steps and tests to control the diesel emission components, and these are engine alternatives, maintenance, exhaust aftertreatments, fuels, dilution ventilation and engine type....To summarize our experiences with diesel particulate matter, we've had good luck with respirators, maintenance and fuels. We've had mixed results with diesel particulate filters and with airflows. And results are still pending on engine type. We are going to continue working in all of these areas."

—John Marks,
Homestake Mining Company

"At Galatia a three-point approach is used to ensure safe and healthy diesel operating conditions. First, the mine is designed to provide vast volumes of air to all the active workings... Second, a well-conceived maintenance program strives to maintain optimum engine performance and thereby control diesel exhaust emissions. The maintenance program consists of regularly scheduled replacements of fluids and filters, operating performance evaluations and additional weekly permissibility inspections, a regularly scheduled emissions test...and...a training program to educate maintenance personnel in the engine operating recommendations and requirements. The third point in our approach is the use of control technology...All permissible vehicles...at Galatia use a wet scrubber for initial particulate reduction. Additionally, 10 Ramcars that are normally assigned to production units have been retrofitted with the pleated paper diesel particulate filter. Additional vehicles are being retrofitted during equipment rebuilds."

—Keith Roberts,

Kerr McGee's Galatia Mine

"...Ventilation is an important control.... Through clean-burning diesel engines, low sulfur fuels, and effective aftertreatment technology, we can reduce emissions at the engine."

—Jeff Duncan,
United Mine Workers of America

The Toolbox is divided into nine sections—

- use of low emission engines
- use of low sulfur fuel, fuel additives and alternative fuels
- use of aftertreatment devices
- use of ventilation
- use of enclosed cabs
- diesel engine maintenance
- work practices and training
- fleet management
- respiratory protective equipment

Each section covers specific methods that are being used to reduce emissions or exposure. Use of these methods will be determined by the specific circumstances found at each mine.

"There is no single control that is a panacea for all the emission problems. Due to differences in the mine design and the mine geology, the equipment types and sizes, and their duty cycles...different types of controls are used."

—Robert Waytulonis,
Center for Diesel Research,
University of Minnesota

"Because of the interrelationship of the various control technologies on workers' exposures, mine operators often use a combination of controls....These may include ventilation...reducing

engine emissions or utilizing aftertreatment devices."

—Robert Haney,
Mine Safety and Health Administration

The Toolbox

Low Emission Engines

Low emission engines are produced by engine manufacturers to meet increasingly stringent Environmental Protection Agency (EPA) regulations. Mine operators can benefit from discussing the condition of their diesel fleet with diesel manufacturers prior to ordering new diesel engines. Moreover, benefits can be gained by replacing older model engines that require more maintenance with newer engines. In addition, lower emissions and greater machine availability (i.e., the machine does not break down as often) are normally achieved with a newer type engine.

Low-emission engines typically operate at high fuel injection pressures which provide more efficient and complete combustion of fuel. These engines are frequently turbocharged to optimize power, performance, and emissions. After-cooling (cooling intake air that is compressed and heated by the turbocharger prior to induction into the combustion chamber) is used to reduce oxides of nitrogen (NO_x). Electronic engine control is another technological improvement, which optimizes the fuel-to-air ratio resulting in lower emissions.

As a result of EPA regulations in 1988, "on-highway" heavy duty diesel engine emissions have been significantly reduced. Emissions standards have driven particulate emissions levels for such engines from 0.6 grams per horsepower-hour (g/hp-h) in 1988 to less than 0.1 g/hp-h in 1994, and oxides of nitrogen emissions from 10.7 g/hp-h in 1985 to 5.0 g/hp-h in 1991. The EPA regulations provide a schedule for continued improvement. Pursuant to an agreement with the engine industry, the EPA has also proposed a new round of emission reductions in highway engines to begin with models produced in 2004.

In 1996, the EPA established emission regulations for almost all land-based non-road ("off-highway") diesels, such as construction equipment. These regulations specify emission levels that non-road engines must meet depending on the horsepower of the engine. Currently, the regulations affect only non-road engines from 175-750 horsepower. For this category, the 1996 standard reduces particulate emissions from as high as 1.0 g/hp-h to 0.4 g/hp-h and oxides of nitrogen emissions to below 6.9 g/hp-h. The rule phases in limits for other horsepower engines. Modern engines developed for non-road use are expected to provide the mining industry with a greater choice of low emission engines for use underground. It should be noted that diesel engines used in underground coal mines are primarily indirect injection engines (pre-chamber), which in some cases could meet certain EPA non-road requirements. In September 1997, pursuant to an agreement with the engine industry, the EPA proposed a new round of emission reductions in non-road engines to begin with models produced in 1999.

Engines that have been approved or certified by agencies such as MSHA, EPA or the state of California generally have lower emissions. Larger on-highway type engines built after 1988 and non-road engines built after 1996 have been designed to produce lower emissions to meet the stringent on-highway emission standards discussed above. For engines approved under Part 7, subpart E for underground mining applications, MSHA determines a particulate index (PI). The PI indicates the quantity of ventilation air required to dilute particulate emissions from a specific engine operated over a test cycle to a concentration of 1 milligram (1000 micrograms) per cubic meter of air. Mine operators and machine manufacturers of mining equipment can use the PI in

selecting and purchasing engines. The lower the PI number, the lower the particulate emissions for the same horsepower engine. Mine operators may also use the PI to roughly estimate each engine's contribution to the mine's levels of total respirable dust in coal mines or the levels of diesel particulate in metal/nonmetal mines. In underground coal mines, all engines must be Msha-approved engines by November 25, 1999.

"...Diesel engines continue to become cleaner; there will be more emission legislation out there in the future.... Diesel engine fuel efficiency has improved at the same time; power density has continued to climb; diesel engine life has steadily increased."

—Peter Woon,
Cummins Engine

"In over the road truck engines, there has been about a 90 percent reduction in just going to cleaner engine technologies, and these are results that apply to well-maintained, new engines..."

—David Hofeldt, Ph.D.,
University of Minnesota

"Now, this class of engines [modern, low emission engines] has high horsepower, typically from 250 hp up to 500 hp, so they are not suitable for all types of mining equipment.... They have the advantage of producing 80-90 percent less particulate than the conventional naturally-aspirated prechamber engines. They consume on the order of 25 percent less fuel. In the case of the Cat 3306 swirl, it's a drop-in replacement for some of the older 3306 technology."

—Robert Waytulonis,
Center for Diesel Research,
University of Minnesota

"[Start] with buying a clean engine as opposed to some of these polluting engines that dump out all kinds of NO_x's and carbon monoxide. Buy the cleaner engines..."

—Joe Main,
United Mine Workers of America

"We felt that the problems we had with filters...were so severe and caused so many problems that it was a lot better to clean up the source, and so we got cleaner engines. We are using one manufacturer's engine. We're getting another—in fact, we're getting one of the new...Detroit Diesel engines with electronic controls just for that reason in the next machine we buy.... Utilization of highway-type diesel engines in our replacement engine program is providing us cleaner burning, reliable engines at a lower cost than the regular mining-type engines and a post-combustion device..."

—Ray Ellington,
Morton Salt

USE OF LOW SULFUR FUEL, FUEL ADDITIVES AND ALTERNATE FUELS

In general, emissions can vary from engine to engine and across different engine load conditions, even though all engines are operated using the same basic type of fuel and fuel additive package. Variations occur because the details of the combustion process differ with engine design and methods used to control fuel to the engine as well as with the duty cycle of the engine. Therefore, the following comments on fuel composition and additives should be viewed as generally applicable to an average diesel engine operated over a range of duty cycles.

The quality of the **diesel fuel** influences emissions. Sulfur content, cetane number, aromatic content, density, viscosity, and volatility are interrelated fuel properties which can influence emissions. Sulfur content can have a significant effect on diesel particulate matter emissions. In addition, it affects sulfur oxide (SO_x) emissions, all forms of which are toxic. Moreover, SO_x emissions can poison catalytic converters, and the continued use of high sulfur fuel will contribute to increased piston ring and/or cylinder liner wear.

Cetane number affects all regulated pollutants, and fuel aromatic content affects DPM and nitrogen oxides (NO_x). Therefore, it is important to provide fuel distributors with specific fuel specifications and recommended property limits when purchasing diesel fuel. Table 3 lists recommended property limits for diesel fuel. However, some of the property limits listed may not be commercially available in all areas at this time.

Table 3. Recommended Property Limits for Diesel Fuel

Property	Limit
Cetane number	>48
Aromatic Content	<20%
90% distillation temperature	<600° F
Sulfur content	<0.05% by mass

Use of **low sulfur diesel fuel** (< 0.05 percent sulfur) reduces the sulfate fraction of DPM emissions, reduces objectionable odors associated with diesel use, and allows oxidation catalysts to perform properly. Another benefit from the use of low sulfur fuel is reduced engine wear and maintenance costs. Fuel sulfur content is particularly important when the fuel is used in low emission diesel engines. Low sulfur diesel fuel is available nationwide due to EPA regulations. *As*

of April 25, 1997, diesel-powered equipment in underground coal mines must use low-sulfur fuel.

"...There is an ASTM-975-93 specification [on low sulfur fuel] from the EPA. All you have to do is to specify that fuel on your purchase order, and this is the fuel they have to deliver. You just have to insist on it."

—Norbert Paas,
Paas Technology

"...Homestake used a straight No. 2 diesel fuel with up to 0.5 percent fuel sulfur until 1991 when we switched to a premier No. 2 with 0.12 percent fuel sulfur. Since about the start of 1995 we've gone to the 0.05 percent No. 2."

—John Marks,
Homestake Mining Company

"For fuel we use a low sulfur diesel fuel that typically averages 0.041 percent sulfur and a cetane number of 54."

—Bill Olsen,
Mountain Coal Company,
West Elk Mine

The cetane number of U.S. diesel fuel can range between 40 and 57. Increased cetane number and volatility, (as measured by a fuel's distillation temperature characteristics) reduces both hydrocarbon emissions and the tendency to produce white smoke, which occurs when an engine is either cold or under low load. White smoke is mostly water vapor, unburned fuel and a small portion of lube oil. Fuel with a cetane number greater than 48 and a seasonably adjusted cloud point reduces cold-start hydrocarbon emissions, odor, noise, irritant and fuel system wax separation problems.

"...Cetane number is very important—needed for good starting, good combustion and for emission performance of engine.... When cetane number is improved, either by cetane additive or base fuel composition...so that cetane number is improved from 45 to 55, there's a dramatic reduction in hydrocarbons...and...in carbon monoxide...and more than 10 percent reduction in particulates"

—Kashmir Virk,
Texaco, Inc.

Typical No. 2 diesel fuel in the U.S. has an aromatic hydrocarbon content of 20 to 40 percent. Reducing the aromatic hydrocarbon content and the 90 percent distillation temperature

of the fuel reduces the soluble organic fraction of DPM and NO_x emissions.

A variety of **fuel additives** are available to reduce emissions. For example, cetane improvers increase the cetane number of the fuel, which may reduce emissions and improve starting. Oxygenated additives increase the availability of oxygen needed to oxidize hydrocarbons in the fuel. Detergents are used primarily to keep the fuel injectors clean. Dispersants or surfactants prevent the formation of thicker compounds that can form deposits on the fuel injectors or plug filters. Lubricity additives are similar to corrosion inhibitors and are frequently added to fuel by petroleum producers. There are also stability additives which prevent the fuel from breaking down when it is stored for long periods of time. Only additives registered by the EPA are recommended for use, to ensure that no harmful agents are introduced into the mine environment. *As of April 25, 1997, only diesel fuel additives that have been registered by the epa may be used in diesel-powered equipment in underground coal mines.*

"...There's a variety of different types of compounds you can add that contain oxygen. Typical diesel fuel doesn't have much oxygen.... [When significant quantities of oxygenates are added to fuel, the oxygen content of the fuel is increased], ...You end up seeing...reductions in particulate emissions, hydrocarbon emissions and CO..., and NO_x levels may increase or decrease slightly depending on the engine and load cycle."

—David Hofeldt, Ph.D.,
University of Minnesota

"We took a very serious look at metal additives...for on-highway trucks.... We–Caterpillar–and the industry decided not to go that way...[One] concern was [that] these chemicals may actually cause health effects in their own rights..."

—John Amdall,
Caterpillar

"...Detergent-type additives in the fuel primarily prevent coking or fouling [partial plugging] of the injectors. And if you don't use a detergent additive, pretty much all your emissions go up over time... [However] just using a detergent is not going to make up for an engine that's wearing out or isn't properly adjusted or maintained. ...Metals as a group reduce the visible smoke output. ...The problem with metal additives is they show up on the particulate. Metals don't burn up. ...Metals are known to have some biological effects just like diesel particulates would. So I would not recommend that you [use] any of the metal additives for reducing [diesel particulates]."

—David Hofeldt, Ph.D.,
University of Minnesota

Another promising control technology is **alternative fuel**, especially biodiesel fuels made from methyl esters derived from soybeans, although these are not readily available on the market. This type of fuel contains about 10 percent oxygen, has a high cetane number, and a much higher flash point.

These properties improve combustion, starting, performance and safety characteristics of the fuel. To maximize the reductions in exhaust emissions, it is recommended that biodiesel fuels be used with a diesel oxidation catalyst. EPA has certified a biodiesel brand known as Envirodiesel®, which is being used in combination with diesel oxidation catalyst by urban bus transit operators.

"The Bureau of Mines demonstrated that the combination of methyl soyate fuel and modern diesel exhaust catalyst is a passive control scheme that is very effective.... [In tests conducted at the Homestake Gold Mine], a Wagner load-haul-dump was operated using a 100 percent methyl soyate fuel and a modern catalyst. Compared to baseline emissions, a 70 percent reduction in the ambient levels of [diesel] particulate matter was achieved...."

—Robert Waytulonis,
Center for Diesel Research,
University of Minnesota

"...Homestake cooperated with the [former]Bureau of Mines to successfully evaluate a soy methyl ester [biodiesel] fuel...miner acceptance was good, and the leftover [biodiesel] fuel was quickly used by our miners."

—John Marks,
Homestake Mining Company

USE OF AFTERTREATMENT DEVICES

Water scrubbers are basically a safety device used on "permissible" equipment in underground mines. Water scrubbers perform three functions: cool exhaust gases to safe temperatures, arrest sparks and arrest flames.

The exhaust airflow from a diesel engine passes through water, making direct contact with the water. This direct contact with the water cools the air and quenches flames and sparks. Although not intended as an emission control device, scrubbers have been shown to remove about 30 percent of DPM from an engine's exhaust stream. Moreover, because water scrubbers cool the exhaust gases, they enable the equipment to be fitted with high efficiency paper filters that reduce DPM. Water scrubbers have no signifcant effect on gaseous emissions.

"The water scrubber...is not an emission control, it's a safety control, but incidentally, it will remove 20 to 30 percent of the particulate.... They require frequent maintenance."

—Robert Waytulonis,
Center for Diesel Research,
University of Minnesota

"Water scrubbers are not a pollution control, they are a fire control system..., but scrubbers create condensation in the air and increase mine air humidity...and with several pieces of diesel equipment using water scrubbers [on a section], the increased heat effect because of the humidity is a significant concern...."

—Joe Main,
United Mine Workers of America

The **exhaust location** can make a big difference in the concentration of pollution to which equipment operators and nearby miners are exposed. The location should be such that exhaust is directed away from the vehicle operator. The exhaust gas can be directed across the radiator, thus providing immediate dispersal by the radiator fan, or an exhaust extender can be used to **redirect the exhaust away** from the operator or nearby miners. These workers can be exposed to significant concentrations of diesel exhaust constituents before they can be diluted, even at surface mines. **Exhaust dilutors** can also be used in vented headings and tunnels.

"Wouldn't it be nice if we could take that exhaust and put it somewhere else on the vehicle, so then, at the very least, the Ramcar operator is not subject to his own vehicle's emissions?"

—Jan Mutmansky, Ph.D.,
Pennsylvania State University

Exhaust filtration devices capture DPM from the exhaust before it enters the mine atmosphere. Filters used to capture particulate or other exhaust constituents are called **after-treatment devices**.The most commonly used exhaust filtration devices are: **disposable diesel exhaust paper filters and catalyzed or uncatalyzed diesel particulate ceramic filters**.

Particulate control systems using these components typically have removal efficiencies ranging between 50 and 95 percent; that is, they remove 50 to 95 percent of the particulate. It is important to note that an aftertreatment device that is 90 percent efficient is twice as effective for removing DPM as an 80 percent efficient device: only10 percent instead of 20 percent of the particulate would remain in the exhaust.

The **disposable diesel exhaust filter** is similar to the intake air filter used on over-the-road haulage vehicles. It is placed downstream of a water scrubber or a water jacketed heat exchanger, capturing DPM from the exhaust stream. The filter is discarded after being loaded with DPM. Some states such as Pennsylvania require the loaded filters to be bagged and brought to the surface for disposal.

Tests of the disposable diesel exhaust paper filters at two underground coal mines resulted in up to 95 percent reduction in DPM. Utilization of different filtration media and careful application of these

filters combined with cleaning and reuse can extend the life of the filters. When used with a water scrubber, proper maintenance of the water level is necessary to eliminate the risk of hot exhaust gases igniting the filter.

"...Disposable paper filters are installed on the Ramcars such that the exhaust first passes through the water scrubber, then through a water trap or baffle system to prevent water droplets from being carried by the exhaust stream to the filter, and then finally through the low-temperature paper filter. There's an exhaust temperature shutdown installed in front of the paper filter to prevent the exhaust gases from reaching 212o F, which is the maximum safe operating temperature of the filter. There's a back pressure gauge mounted in the operator's cab to help them know when the filters need to be changed out."

—Bill Olsen,
Mountain Coal Company,
West Elk Mine

"Today, the best strategy to use on a diesel Ramcar is to use the changeable paper filters that many mining companies are currently using."

—Jan Mutmansky, Ph.D.,
Pennsylvania State University

"...the Ramcar operators quickly accepted the filters and wanted them installed on all the face equipment. We have since installed the disposable diesel exhaust filters on our Wagner 25xs, Teletrams and Petitto Mule.... ...We typically get about six hours off the Ramcar and Petitto Mules. On our Wagner systems we average approximately four hours of service life...."

—Bill Olsen,
Mountain Coal Company,
West Elk Mine

"...In our experience, the lifetime of the filters has varied anywhere from 8 hours to 32 hours–provided that the engine on which the filter is installed is tuned properly so that it is not putting out too much soot. [The actual time between filter changes will vary depending upon the vehicle and engine's state-of-maintenance, duty cycle and other parameters.]"

—Bob Waytulonis,
Center for Diesel Research,
University of Minnesota

Catalyzed or uncatalyzed ceramic diesel particulate filters currently available can reduce DPM emissions from 60 to 90 percent. Exhaust passes through the ceramic or metallic diesel particulate filter which traps the particulate matter. As exhaust continues to pass through the filter, filtering

continues, and the filter slowly becomes clogged with DPM. Clogging increases the exhaust back pressure which can lead to engine damage unless the exhaust back pressure is lowered by cleaning the filter.

Vehicles which have sufficiently high exhaust temperature (at least 325oC, 25 percent of the time) can automatically clean the filter using a process called autoregeneration or self-cleaning. During autoregeneration the high exhaust temperature causes the trapped DPM to ignite and burn, thus reducing the exhaust back pressure on the engine and allowing more DPM to be trapped. For other vehicles, regeneration can be assisted by the application of a catalyst to the filter, which lowers the regeneration temperature, or by the use of on- or off-board regeneration systems.

"There are approximately 1,000 diesel particulate filters presently [being used] on mining vehicles throughout the world."

—Dale McKinnon,
Manufacturers of Emission Control Association

"In 1989 Homestake initiated a test on ceramic wall flow diesel particulate filters. Eight units were tested on a Cat 3306, different loaders from three different suppliers. One failed right away and was replaced by the supplier. Five lasted on the average about 2,000 hours, and two went over 3,000 hours. Miner acceptance was good when the filters were working properly."

—John Marks,
Homestake Mining Company

Although ceramic diesel particulate filters are useful, they may present problems for some users.

"...Number one, while ceramic filters give good results early in their life cycle, they have a relatively short life, are very expensive and unreliable. Number two, other post-combustion devices are not readily available for the larger horsepower production equipment we are currently using. When evaluated for lower horsepower support equipment, they appear to be very costly with no proven reliability..."

—Ray Ellington,
Morton Salt

Oxidation catalytic converters (OCCs) are used to reduce the quantity of carbon monoxide and hydrocarbons (including harmful aldehydes) in diesel exhaust. Oxidation catalytic converters also decrease the soluble organic fraction of DPM as well as gas phase hydrocarbons, which can reduce DPM emissions by up to 50 percent. The soluble organic fraction of the DPM exhaust contains known carcinogenic compounds such as benzo(a)pyrene and other polycyclic aromatic hydrocarbons.

Use of low sulfur fuel (<0.05 percent sulfur) with OCCs is critical because air quality is harmed

when fuel containing moderate or high sulfur (>0.1 percent) is used. An OCC oxidizes sulfur dioxide to form sulfates which increase particulate emissions. OCCs can also oxidize nitric oxide to more harmful nitrogen dioxide. Modern catalysts are formulated to minimize the production of sulfate particulate matter and nitrogen dioxide, provided they are used with high quality low sulfur fuel.

The OCC should be located as close as possible to the exhaust manifold to ensure maximum exhaust gas temperature. The catalyst formulation and its operating temperature are critical factors in converter performance. The temperatures required for 50 percent conversion of carbon monoxide and hydrocarbons are typically about 370oF and 500oF , respectively. As higher exhaust gas temperatures are attained, conversion efficiency increases. The use of high sulfur fuel reduces the life of catalytic converters. New catalyst technology and the availability of low sulfur fuel make the use of OCCs on underground mine vehicles an attractive tool for reducing diesel particulate emissions.

"There are also over 10,000 oxidation catalysts that have been put into the mining industry over the years. ...Sulfation is key in particulate control; you don't want a catalyst to cause any oxidation of the sulfur. I remem-ber once I was in India, and there was a complaint that they put a catalyst on and they were saying it caused smoke. And it did, a lot of smoke. I took a fuel sample and the fuel had 2.2 percent sulfur in it, not 0.25 percent. ...Engine, fuel and aftertreatment control technology must work together."

—Dale McKinnon,
Manufacturers of Emission Control Association

"The Homestake Mine has had extensive experience with oxidation catalysts.... We have always had them on our diesel units. And I know there's been a controversy on whether they might improve the work environment or harm it, but with low sulfur fuel I don't think there's any doubt they are a benefit. They oxidize the CO to CO_2, and they burn off some of the unburned hydrocarbons and some of the components of diesel exhaust. We like them. The [modern] catalytic purifiers, to my knowledge, limit the NO-to-NO_2 conversion, and with the low sulfur fuel you don't get the sulfates coming out. So we think we're better off with them."

—John Marks,
Homestake Mining Company

Dry system technology. An alternative to water scrubbers for meeting the exhaust gas cooling, spark arresting, and flame arresting requirements is the Dry System Technology (DST®). With this technology, the exhaust gas does not come into direct contact with cooling water, but is indirectly cooled by a water-cooled heat exchanger such as a tube and shell heat exchanger. This cooling process does not involve the evaporation of water. Spark and flame arrest are provided by mechanical means.

The DST® also includes a water-jacketed oxidation catalytic converter and a disposable diesel

exhaust filter to reduce diesel emissions. The oxidation catalytic converter is located upstream of the water-cooled heat exchanger. Exhaust then passes through the water-jacketed heat exchanger, a paper filter and a flame arrestor. This system reduces diesel particulate by 95 to 98 percent. The DST® includes a complete set of diagnostic gauges to monitor system performance. The DST® has been approved by MSHA under 30 CFR Part 36. It can be used in coal or gassy metal and nonmetal mines where permissible equipment is required. In addition, the heat exchanger technology could be applied to nonpermissible engines in order to cool the exhaust gases so that disposable diesel exhaust filters (paper filters) could be used to reduce particulates.

"This system [the DST®], I think, represents, from everything that I've seen, the state-of-art of the industry...the best technology on the market today.... This gives us the ability for the first time in a long time to change direction and try to solve problems [with exposure to diesel exhaust]."

—Joe Main,
United Mine Workers of America

The DST® has been tried on a number of vehicles retrofitted to use it. "...It was a welding truck, at Shoshone. It was put in November, 1992. That's coming up pretty close to three years. Has operated very successfully; have had no problems. There's a 913 scoop; that's at Twenty-Mile since January, 1994.... We retrofitted a 25X Wagner shield hauler...."

—Norbert Paas,
Paas Technology

USE OF VENTILATION

Today the primary means used to reduce exposure to diesel exhaust pollutants underground **is to dilute exhaust pollutants** with fresh air from the mine's ventilation system. The concentration of pollutants is inversely proportional to changes in ventilation air quantity; that is, as the air quantity increases the pollutant concentrations decrease. The mine ventilation system can work in conjunction with the other methods of contaminant control such as maintenance, exhaust treatment, etc. Any control system must then be supplemented with checks to ensure that all aspects are working as designed. One way to check the control system is to conduct periodic sampling of diesel contaminants to detect changes in the system.

Mine ventilation systems where diesel engines are operated generally supply between 100 and 200 cubic feet of air per minute per brake horsepower (cfm/bhp). This air quantity is normally sufficient to dilute gaseous emissions from the diesel equipment to applicable standards for those

gases. However, MSHA's experience in underground mines has shown that with these air quantities, DPM levels will still range between 200 μg/m3 and 1,800 μg/m3. As a general reference, about 35,300 cfm of air are required to dilute one gram per minute of DPM to 1,000 $\mu g/m^3$. Therefore, to significantly cause a reduction of DPM concentrations in underground mines through ventilation, it may be necessary to supply air quantities above those currently being used.

There are special ventilation requirements when diesels are used in underground coal mines. When a single piece of diesel equipment is operated, the nameplate airflow must be provided as a minimum airflow requirement. For each individual piece of diesel equipment operating in a coal mine, the approval plate air quantity must be maintained in any working place where the equipment operates, at the section loading point, and in outby entries where the equipment operates. The MSHA regulations also allow the District Manager to add areas where the approval plate air quantity may be required, such as fueling locations. When multiple pieces of diesel equipment are operated, the minimum section airflow is the sum of the nameplate airflows for the individual pieces of equipment. This requirement was developed to reduce the gaseous diesel emissions. However, not all equipment is operated on a continuous basis and some equipment, such as transportation and supply vehicles, may be excluded from this calculation. (Prior to the 1996 diesel powered equipment rule, a 100-75-50 percent guideline was used to establish minimum section air quantity requirements.) Any excluded equipment must be approved by the District Manager and listed in the ventilation plan for the mine. The intent here is to allow for the exclusion of equipment that does not significantly add to the miners' exposure level. These air quantities must be maintained in the last open crosscut of working sections, the intake to longwall sections, and the intake to pillar lines. The multiple unit quantity also applies to the areas where mechanized mining equipment is being installed or removed. Quantities other than the multiple unit formula can be approved by the MSHA District Manager if samples show that such reduced quantity will not result in overexposures.

"...Ventilation can take care, in my opinion, of most diesel equipment in the main haulageway, even in the sub-mains. However, when you approach the face area, you don't have that velocity and that quantity of air; then the control of engine exhaust may be necessary depending on the size of the engine and the concentration."

—Pramod Thakur, Ph.D.,
Consol, Inc.

Metal and nonmetal mines can be ventilated in a variety of ways. In single level mines, working areas are generally ventilated in series. The exhaust of one area becomes the intake for the next area. Multilevel mines may have a separate air split to each level or to several levels. Separation between intake and exhaust air courses is essential to prevent leakage or loss of fresh air. Auxiliary and booster fans should be installed throughout the mine to optimize distribution of

workplace airflow.

Changing a mine's ventilation system to reduce pollutant exposure is frequently expensive and may require a long time to implement. Simple changes can include repairing an individual brattice or reducing leaks in an entire brattice line. However, significant improvements in air quality often are achieved only by complex changes such as redesigning the entire mining system to reduce airflow leakage, modifying the main fan installation, or adding a new air shaft.

"The mine ventilation system must be designed to provide and distribute sufficient airflow to areas of the mine where diesel equipment is being used. Typical ventilation rates in metal and nonmetal mines range from 75 to 200 cfm per brake horsepower in use. In coal mines the name plate airflow has been used to determine plan airflow requirements."

—Robert Haney,
Mine Safety and
Health Administration

"Ventilation continues to be an important method of controlling diesel particulate matter concentrations, and our studies have shown that significant reductions can be achieved by changing the ventilation around in the section."

—Jan Mutmansky, Ph.D.,
Pennsylvania State University

"Ventilation still remains the vanguard against diesel emissions. Toward the end of 1992 we reduced overall airflows to cut costs as part of a mine optimization process, and this summer we returned to those airflows. We currently have a mine migration of about 115 cfm/bhp. We designed with the 100 percent rule. We don't use 100 percent, 75 and 50 percent thereafter, although that's the way it sometimes works out. We try and keep all of our diesels on parallel splits as much as possible."

—John Marks,
Homestake Mining Company

"All permissible diesel face equipment is ventilated according to MSHA-required nameplate values. These are usually required to make in excess of 18,000 cfm in the last open break and 40,000 cfm on the section. In normal operation these values are 35,000 cfm in the last open break and 45,000 cfm on the section."

—Chris Pritchard,
Tg Soda Ash Incorporated

"Looking a little closer at ventilation, in one of our larger panels, typically at any one time you'll see three Ramcars at 139 horsepower operating, a roof bolter, a powder wagon and

roughly two service vehicles...for more or less a total horsepower of...610. With an air volume of 100,000 cfm, we have an effective air-to-horsepower ratio in an operating panel of 164 cfm. If you look at the entire mine, installed horsepower, the air-to-horsepower ratio is about 95 cfm. New Mexico has a standard of 75 cfm, so we're somewhat better than that."

—Scott Vail, Ph.D.,
IMC Global Carlsbad Mine

"We control air flow in the mine using air doors and air walls. ...We will shotcrete or gunite some areas to prevent leakage. We build airwalls throughout the mine using waste rock and used conveyor belt. The rock is piled up half to two-thirds of the way to the back and conveyor belt is cut into strips and pinned to the back overlapping by about six inches. This produces a very efficient air wall in the mine."

—Regina Henry,
Dravo Lime Company

"Our stoppings consist of brattice cloth or waste salt piled to within 10 feet of the roof and brattice cloth. We have auxiliary fans located throughout the mine that mix the gases as they come off the sections. Our main intake ventilates all of the sections in B-bed, then returns to the production shaft. Right now our C-bed is on its own split of air, and we continue to keep it that way. Several years ago when our fans were old and running at a maximum capacity, we decided...to see what we needed to do to build a better ventilation system. We conducted several pressure and air quality surveys, and the results were put into a computer simulation model. From this model, we found out that we definitely needed new fans.... We also decided that when we were developing C-bed, that we did not want to continue with the way we were currently ventilating the mine. In other words, we did not want to have one single split ventilating all the sections. So at that time we sat down and we worked out a way to ventilate each section on its own separate split, which is what most coal mines do. We feel that this will give us a better air quality ... and it will help clear the air out faster."

—David Music,
Akzo Nobel Salt's Cleveland Mine

"...We believe mine design and ventilation is an important...control. The fact of the matter is, though, that... mine ventilation is not a stand alone system [for reducing exposure to diesel emissions].... "Even coupled with the water scrubber exhaust cooling systems that have become the industry standard, we haven't reduced particulate exposure to [what we would consider] an acceptable level...."

—Jeff Duncan,
United Mine Workers of America

USE OF ENCLOSED CABS

Properly designed and maintained environmentally conditioned cabs can reduce equipment operators' exposure to diesel emissions. Cabs should be pressurized and use high-efficiency particulate air (HEPA) filters. Many surface mines are currently using properly designed environmentally conditioned cabs and some efforts are being made to use enclosed cabs on underground mining equipment. The same principles apply to the use of underground booths designed to protect miners.

Question:
"I recently completed a study of a surface coal mine, and they were using pressurized cabs to minimize exposures.... Has this been given some thought in your design [of Ramcars] at Jeffrey?...."

—Robert Wheeler,
Consultant

Response:
"We may be getting very close to that, because just recently we produced the first Ramcar-type of vehicle ever with a cab, with some climate controls. ...One of the problems with exposure in underground mines is not the operator of the machine. Because of the close confines, it's the people around the equipment and, of course, the pressurized cab does not affect them at all."

—John Smith,
Jeffrey Mining Products

DIESEL ENGINE MAINTENANCE

Engine maintenance is an important part of a mine's overall strategy for reducing workers' exposure to diesel emissions. Without proper maintenance, diesel engines will perform poorly, thus reducing the effectiveness of all other emission control strategies.

"It has been definitively proven, that when engine maintenance is neglected [especially if it involves regulating the fuel and air handling systems of engines] the particulate, and carbon monoxide, and hydrocarbons, all skyrocket."

—Robert Waytulonis,

Center for Diesel Research,
University of Minnesota

"...We had a lack of maintenance on these pieces of diesel equipment. They were running the equipment until they broke down, and they would fix them, and they would run them again until they broke down..."

—Glen Pierson,
Alabama Coal Miner (UMWA)

"We're having problems with respect to maintenance of diesels. We're having problems with untuned diesels. When we go to do longwall moves, we're working in an environment where the blue smoke is so heavy sometimes you can't see. We don't have a good maintenance system. We don't have a good inspection system."

—Joe Main,
United Mine Workers of America

A good preventive maintenance program will maintain near-original performance of an engine, and maximize vehicle productivity and engine life, while keeping exhaust emissions down. Engine maintenance activities which should be performed by mine maintenance personnel include maintenance of the following systems: air intake, cooling, lubrication, fuel injection and exhaust. These systems must be maintained according to manufacturer's specifications and on a regularly scheduled basis to keep the system operating efficiently. Measuring tailpipe CO emissions while the engine is under load provides a good indication when maintenance is required. However, daily checks of engine oil level, coolant, fuel and air filters, water tank, exhaust piping and gauges should be made. *There are very specific requirements for maintenance of diesel equipment in underground coal mines; some are noted below.*

The air intake system removes airborne particles before they enter the engine and cause abrasion of internal engine surfaces. Intake air filters should be replaced when the pressure drop indicator exceeds the manufacturers' specifications, usually 20 to 25 inches of water.
As of November 25, 1997, for diesel-powered equipment used in underground coal mines, intake air filters must be replaced or serviced when the intake air pressure device so indicates, or when the engine manufacturer's maximum allowable air pressure drop level is exceeded.

"...Maintenance is extremely critical.... It takes two days to screw up the engine in the mine if you're running it without an air cleaner or a clogged air cleaner or if a cleaner was replaced by the wrong cartridge element that allows for some air to bypass the fuel filter."

—Jamie Sauerteig,
Deutz Corporation

"One of the most simplest things in maintenance is the intake air cleaner or filter. You could have emission increases by as much as 300 or 400 percent just having a clogged intake air cleaner."

—Norbert Paas,
Paas Technology

"Maintenance: intake air and exhaust systems are checked at least once each day during their operation. Inspections are completed on a weekly basis. Inspections are done by competent persons assigned by the company to perform that work, and inspections are completed in a well-ventilated area. Results of these daily and weekly inspections are kept in a permanent record book."

—Steve Biby,
Old Ben Coal Company

The **cooling system** directly affects engine emissions by preventing scuffed cylinder walls and pistons, cracked heads, and burned valves. Liquid-cooled engines need to be kept free of mineral deposits and rust to ensure effective heat transfer. Mine water is generally high in minerals and salts, rendering it unfit for use in the cooling system. A 50 percent antifreeze and distilled water solution is optimal. Cooling fans, ducts and cowlings must also be maintained to ensure adequate cooling.

Air-cooled engines discharge heat via cooling fins, and liquid-cooled engines rely on radiators. Be sure to keep cooling fins and radiators undamaged and free of oil and dust to ensure proper heat transfer. Adjust or replace slipping fan and pump belts to ensure proper air and coolant flow, thus avoiding excessive heat buildup.

The **fuel injection system** can be damaged by contaminated fuel. To prevent this damage, fuel filters should be regularly replaced and fuel tanks should be periodically drained and cleaned. To avoid contamination, fuel should be properly handled, dispensed and the number of fuel transfer points minimized. Fuel tanks should be kept as full as possible to prevent condensation of water in the tank. Water should not be allowed to condense in fuel storage tanks. Water can be removed by the installation of fuel-water separators at the outlet of the surface storage tank, on the pump side of portable fuel trailers and on all engines. Water-absorbing additives may also be used.

The fuel pump and governor should be set to the engine manufacturer's or MSHA's specifications prior to running the engine at the mine. In addition, the mine elevation must also be considered in the final adjustment of the fuel injection pump. Air density decreases with an increase in elevation; therefore the fuel-air ratio will change as elevation increases, thus causing an adverse effect on the engine emissions. If the engine is operated at elevations above 1,000 feet, the fuel rate should be reduced as specified by MSHA or the engine manufacturer. Turbocharged engines are an exception to this rule due to excess quantities of air available from the turbocharger. MSHA or the engine manufacturer specifies the maximum operating elevation of a turbocharged diesel. Above this elevation, engine derating is necessary.

Caution should be observed in trying to increase the power output of engines: following manufacturer specifications can avoid significant increases in pollution. Minor increases in power that can be produced by adjusting the fuel-air ratio can also produce significant increases in particulate emissions. Similarly, too much advance or retardation of the fuel injection timing can

have deleterious effects on NO_x, hydrocarbon, or particulate matter emissions.
The locks and seals on the fuel pump and governor must not be tampered with or removed. Faulty adjustment can result in overfueling and engine damage. Overfueling can increase emissions, especially black smoke, carbon monoxide, and particulates.

[Engines used at high elevation must be properly sized to ensure adequate power.] "Due to our elevation of approximately 7,000 feet, the 150-hp engines are derated to approximately 115 hp. Unfortunately, horsepower at the wheels on the Ramcars is down to about 90 hp."

—Bill Olsen,
Mountain Coal Company,
West Elk Mine

"...The first thing to do to reduce particulate emissions is to get the fuel injector pumps and the fuel injectors properly adjusted so they do not overfuel the engine. That will bring the particulate emissions down faster and more effectively than anything else.... It will also lower hydrocarbon and carbon monoxide emissions...."

—David Hofeldt, Ph.D.,
University of Minnesota

Failure to maintain the **lubrication system** can lead to significantly increased particulate emissions, and eventually to catastrophic engine failure. Excessive heat lowers the viscosity of engine oil and results in lost lubricity and accelerated engine wear. The quality of the lubrication oil is also important and contamination must be avoided. Worn valve guides and piston rings allow lube oil to leak into the combustion chamber and cause white and/or blue-black smoke, and the creation of significant particulate concentrations. System failures are often caused by a component failure, such as seized bearings, lubricant breakdown, lubricant contamination or engine overheating. To prevent these failures it is important to regularly replace oil filters, maintain crankcase lubricant at recommended levels and to maintain the engine's cooling system.

"...Any engine, regardless of whether it has mechanical controls or a sophisticated engine with electronic controls, if the engines have not been maintained, if they're burning oil, you will get plenty of blue smoke of all kinds.... I think we tend to confuse blue and black smoke sometimes. ...But generally, a blue exhaust gas will indicate oil consumption, typically a low load operation, high oil consumption. Black smoke is more related to overfueling. In other words, we're talking about full-load overfueling of the engine, high temperature. It's basically the opposite of blue smoke."

—Jamie Sauerteig,
Deutz Corporation

The **exhaust system** must be periodically inspected and maintained to avoid the buildup of

excessive exhaust back pressure and to ensure safe operation of the engine. Back pressure increases may result from a partially plugged water scrubber, flame trap, OCC, or filter or a dented exhaust pipe. Increased back pressure causes increased emissions and reduced performance. Back pressure should not exceed 27 to 40 inches of water or manufacturers' specification.

The tanks of water scrubbers used on permissible equipment must be filled and the float valves must be operational to meet MSHA safety requirements. Proper maintenance also ensures safe operation of the disposable diesel exhaust filters located downstream of the scrubbers.

"Water scrubbers are prone to mechanical failures, prone to maintenance problems. You can lose water, and you can have a filter catching fire...."

—Mridul Gautam, Ph.D.,
West Virginia University

Because a diesel engine operates over a wide range of duty cycles, the most accurate way to assess the content of exhaust emissions during actual mining conditions is to **take tailpipe samples while the engine is under load.** *As of November 25, 1997, weekly tests for CO in the undiluted exhaust are required for certain types of diesel-powered equipment in underground coal mines.*

A gas monitor can be used to measure the carbon monoxide level in the raw exhaust. A large increase in the carbon monoxide concentration is an indication that the engine has a maintenance problem that needs to be addressed. An increase in the carbon monoxide concentration is also a good indication that the diesel particulate concentration and observable smoke levels are increasing. Regular testing of an engine will provide information on the need for maintenance.

Engine emissions during mining operations cannot be accurately evaluated at idle conditions. On certain types of mine vehicles, such as load-haul-dumps (LHDs) and scoops, a repeatable loaded condition can be readily placed on the engine. On clutched vehicles this may not be possible.

Question:
"At our mines, we've got a multi-gas testing system hooked up through...our mine monitor system, and from what I understand, unless you test these vehicles under load, it's more or less useless; is this correct?"

—Morris Ivie,
Alabama Coal Miner (UMWA)

Response:
"Well, [yes]...just about."

—Mridul Gautam, Ph.D.,
West Virginia University

"...By tuning the engines on the dynamometer and making sure that we get the rated performance, the amount of smoke is greatly reduced, essentially eliminated."

—Scott Vail, Ph.D.,
IMC Global Carlsbad Mine

Diesel engine maintenance is the cornerstone of a diesel emission control program. Proper maintenance includes **compliance with manufacturers' recommended maintenance schedules, maintenance of accurate records and the use of proper maintenance procedures.** Inadequate maintenance, improper adjustments, wear, and other factors will cause changes in diesel exhaust emission rates. *As of November 25, 1997, diesel engines in underground coal mines must be maintained in compliance with the conditions of the MSHA approval, and examined weekly in accordance with approved checklists and manufacturer maintenance manuals.*

"...To control DPM, we've got a good strong preventative maintenance program. We bring equipment in on a regular basis on the 50, 250 and 1,000-hour intervals and do the recommended filter checks and changes as recommended by the manufacturer."

—Denny Alderman,
Turris Coal Company

"...I just want to stress the importance of a good maintenance program... We have a very good maintenance program in that it's preventive maintenance as well as, you know, when problems arise on the job, we just get it fixed."

—William Cranford,
UMWA Safety Committeeman

"The mine currently uses about 115 pieces of diesel equipment.... Although the mine has been slowly downsizing over the past five years, the number of diesel mechanics has increased, and we do this because we've upgraded our preventative maintenance. We seldom see a smoking diesel underground anymore, although once in a while, of course, we get one."

—John Marks,
Homestake Mining Company

"...A well-conceived maintenance program strives to maintain optimum engine performance and thereby control diesel exhaust emissions. The maintenance program consists of regularly scheduled replacements of fluids and filters, operating performance evaluations and additional weekly permissibility inspections,...and a training program to educate maintenance personnel in the engine operating recommendations and requirements."

—Keith Roberts,
Kerr McGee's Galatia Mine

"There's a whole section in the MSHA advisory standards on diesel maintenance almost from A to Z. It could be almost verbatim from manufacturers' manuals themselves.... They've been laying in front of mine operators' faces for 15-16 years now. Some of them [mine operators] adhere to them religiously. Others have never even seen the standards, either voluntary or mandatory, have never even opened that section of the book."

—Harry Tuggle,
United Steelworkers of America

It is worth emphasizing that if repairs and adjustments to diesel engines are to be done properly, the personnel performing such tasks must be **properly trained**. *Operators of underground coal mines where diesel-powered equipment is used, are required, as of November 25, 1997, to establish programs to ensure that persons who perform maintenance, tests, examinations and repairs on diesel-powered equipment are qualified.*

"I think the mechanics need to be trained so they understand exactly what causes the emissions."

—Norbert Paas,
Paas Technology

"It's also fundamental that the mechanics have proper and modern tools at their disposal and be trained in how to use them."

—Robert Waytulonis,
Center for Diesel Research,
University of Minnesota

WORK PRACTICES AND TRAINING

Work practices and training can have a significant effect on diesel exhaust emissions.

Care must be taken to avoid contaminating diesel fuel and lubricating oils during transfer. Fuel contamination can result from transfers taking place in a dusty and damp environment or by using the same transfer pump for different fluids. Fuel contamination will increase emissions.

Operators should avoid lugging the engine to low RPM. Lugging an engine is applying an increasing load (torque) against the engine, while the engine's fuel rack is at the maximum position, causing a decrease in the engine's RPM. An example of lugging is when a LHD operator drives the bucket into a muck pile with the accelerator to the floor and continues to work the engine causing the engine's RPM to decrease. If the engine operator continues to work the engine to a point where the engine's RPM are low but the torque demand on the engine is high, the engine may eventually stall. However, as the engine's RPM decreases and the engine torque increases, the engine's ability to efficiently burn fuel decreases causing the engine to produce

excessive carbon monoxide and particulate emissions. For naturally aspirated engines and older turbocharged engines, an engine operating at a lower RPM and high load produces higher exhaust emissions than an engine operating at higher RPM and lower load. To avoid this situation, the vehicle operator should maintain higher engine RPM while performing the work. This might mean picking up a smaller load or carrying less material or shifting to a lower gear. The result will be a reduction in engine exhaust emissions.

Operators should avoid idling the engine. Idling wastes fuel, increases emissions and may overcool the engine. Overcooling results in incomplete combustion, higher emissions and may lead to varnish and sludge formation. Unburned fuel washing down cylinder walls removes the protective film of lubricating oil and results in accelerated wear. The fuel dilutes the lubricating oil resulting in reduced lubricity. Engines should be shut down and not idled except as required in normal mining operations. *As of April 25, 1997, idling of diesel-powered equipment, except as required in normal mining operations, is prohibited in underground coal mines.*

Operators of diesel-powered equipment must be trained on the operation of the equipment, in routine inspection and maintenance activities, and to promptly report any evidence of problems. For instance, operators should carry spare intake air filters, so that clogged filters can be changed as needed. *As of November 25, 1997, operators of mobile diesel-powered equipment in underground coal mines must conduct a visual examination of the equipment before placing the equipment in operation.*

"Our operators all undergo a six-week training period underground on a training panel learning to efficiently and safely operate the equipment before we turn them loose in a production panel. A big part of that is awareness and reporting. They get on equipment, the power drops off or it's smoky, they know they're supposed to report it, and we do something about it. If air volume's dropping off, it's probably because the ventilation crew hasn't kept with the panel. It's reported, we address it. So we stay on top of things."

—Scott Vail, Ph.D.,
IMC Global Carlsbad Mine

"We need education, education, education of the people who operate the equipment, of the people who maintain the equipment...and of the people that inspect the equipment for the enforcement agencies. A complete education process should start tomorrow."

—Joe Main,
United Mine Workers of America

"Equipment operation–my key thing is operators' training–to make the operator aware of exactly what a diesel machine is, what to look for, give them the ability to diagnose problems on the machine so that when he sees something, he can make a decision—should I call a mechanic in or not? Very important in the program. And a walk-around inspection?—It takes less than five minutes."

—Norbert Paas,
Paas Technology

Operators and maintenance personnel should read and be familiar with the manuals covering the machines they operate and maintain. Besides specifying how a machine is to be operated and maintained, these manuals provide useful information on servicing methods and intervals.

FLEET MANAGEMENT

Diesel fleet management includes setting policies for operator and mechanic training, diesel usage, engine replacement and determining the types, numbers and horsepower of diesel engines used underground. Establishing such policies, and purchasing the needed equipment, is usually the role of upper mine management. Several participants at the MSHA workshops stressed that these management activities could play an important role in reducing diesel emissions. They suggested that mine management must actively support operator and mechanic training and ensure that adequate shop facilities are available to maintain the diesel fleet.

"...We have service areas that advance with the panels underground because we're so spread out, and our main rebuild shop is also underground...."

—Scott Vail, Ph.D.,
IMC Global Carlsbad Mine

RESPIRATORY PROTECTIVE EQUIPMENT

While it should NOT be used as the primary method of control, **use of respiratory protective equipment** can help to reduce miner exposure to DPM until better controls can be implemented.

It is generally accepted industrial hygiene practice to eliminate or minimize hazards before resorting to personal protective equipment. As indicated by the quotations in this Toolbox, various mines are taking a variety of approaches to minimize DPM emissions and to reduce DPM concentrations in mine atmospheres. However, using the correct respiratory protective equipment in areas of the mine which are difficult to ventilate and are currently subject to high concentrations

of diesel pollutants can help to protect miner health.

"Now, even before mechanization, slusher operators at Homestake wore half-face respirators as protection against the silica dust. Loader operators also are required to wear them. And with the organic mist and fume cartridges and filter pads, we figure that's removing 99 percent of any diesel particulate matter in the air."

—John Marks,
Homestake Mining Company

MEASURING THE CONCENTRATION OF DIESEL PARTICULATE MATTER IN MINES

Monitoring DPM concentrations is the ideal way for a mine to track and evaluate its progress in implementing a DPM control program. Various methods for measurement are described in Appendix C of this publication.

"...The ultimate measure...is what the air quality is in the workplace, and I think that's an issue that we need to also consider. Just having cfm blowing through a place really doesn't give you the true picture.... I want to be able to do the measurement on an ongoing basis...."

—Dan Steinhoff,
ASARCO

"The Bureau of Mines, MSHA, NIOSH and others have been working with sampling technology that's been done in a prototype phase strictly within government control. We need to take that technology and get it out in the field so people can evaluate what their own exposures are and evaluate how they might reduce those exposures."

—Mark Ellis,
U.S. Borax Inc.

Mine operators who would like assistance in measuring or evaluating DPM exposures may request help from MSHA's Office of Technical Support by contacting the MSHA District Manager in their area. Assistance may also be obtained through the NIOSH Health Hazard Evaluation Program by calling 1-800-35NIOSH.

A DOZEN WAYS TO REDUCE EXPOSURE TO DIESEL PARTICULATE MATTER

1. **Use low emission engines.** Older engines should be replaced with modern, low emission engines whenever possible, and new diesel equipment should be powered by low emission

engines.

2. **Use low sulfur fuel.** Low sulfur fuel extends engine life, reduces emissions and allows catalyzed emission control devices to perform properly.

3. **Use** appropriate **exhaust aftertreatment devices** such as filters and oxidation catalysts, and environmentally conditioned, enclosed cabs, where possible.

4. **No ventilation, no operation.** If ventilation in an underground mine is interrupted for any reason, all diesel equipment should be shut down.

5. **Train miners properly.** Miners must learn to recognize hazards, and to correctly operate and maintain diesel equipment. Designated maintenance personnel should be specially trained in diesel repair.

6. **Read operation and maintenance manuals.** Deviation from maintenance and operation schedules and procedures will increase emissions.

7. **Beware of black smoke.** Black smoke from a diesel engine is a result of improper fuel to air ratio. Black smoke indicates that engine maintenance is needed.

8. **No unnecessary idling.** Idling wastes fuel, increases emissions, and may overcool the engine resulting in increased wear.

9. **Keep it clean.** Dirt and dust are detrimental to engines. Periodic maintenance of the intake air system is required for peak engine performance. The air cleaner must be changed to avoid an intake air restriction that will increase emissions.

10. **Keep it cool.** Engine overheating is a frequent cause of premature engine failures. Ensure that the lubrication oil is the correct viscosity and kept at the recommended levels, and that heat exchangers are clean and undamaged.

11. **Do not operate the engine at high load and low speed** (lugging), as this increases emissions. Operators should shift gears to operate the engine at higher speed to lessen the engine load.

12. **No overpowering.** The fuel injection pump governor must be set according to manufacturer's specifications or MSHA requirements. Tampering with the fuel system to boost power must be avoided.

APPENDICES

Appendix A: Recommended Additional Reading

1. Background

Health Effects Institute. Diesel Exhaust: A Critical Analysis of Emissions, Exposure and Health Effects. April 1995.
(For a copy contact the Health Effects Institute, 955 Massachusetts Avenue, Cambridge, MA 02139, or by calling 617-876-6700.)

Mine Safety and Health Administration, report of the Advisory Committee on Diesel-Powered Equipment in Underground Coal Mines, 1988. (For a copy, available at cost, contact: MSHA, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Va. 22203-1984, or call 703-235-1910.)

2. Controls

Mine Safety and Health Administration, transcripts of three workshops on Diesel Particulate control methods, Fall 1995.
(For a copy, on paper or disk, available at cost, contact: MSHA, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Va. 22203-1984, or call 703-235-1910.)
U.S. Bureau of Mines. *Diesels In Underground Mines: Measurement and Control of Particulate Emissions.* IC 9324, 1992. 132 pages.
(To receive a copy contact Robert Waytulonis, University of Minnesota Center for Diesel Research, Department of Mechanical Engineering, 125 ME, 111 Church Street, S.E., Minneapolis, MN 55455 or call 612-725-0760, x4760.)

Waytulonis, R. W. Diesel Exhaust Control, Chapter 11.5. *SME Mining Engineering Handbook*, 2nd Ed. v. 1. H. L. Hartman, ed., 1992, pp. 1040-1051.

3. Measurement techniques

Cantrell, B. K., Williams, K. L., Watts, W. F, and Jankowski, R. A., "Mine Aerosol Measurement", Chapter 27 in *Aerosol Measurement: Principles, Techniques, and Applications*, ed. K. Willeke, and P. A. Baron. Van Nostrand, 1993, pp. 591-611.

Cantrell, B. K., and Watts W. F., "Occupational exposures to diesel exhaust aerosol,"

Littleton, CO, Proceedings of the SMME Annual Meeting and Exhibit, Phoenix, AZ, March 11-14, 1996. Preprint No. 96-126.

Gangal, M.J., Ebersol, J., Vallieres, J., and Dainty, D., "Laboratory Study of Current (1990/91) SOOT/RCD Sampling Methodology for the Mine Environment," Mining Research Laboratories, Canada Centre for Mineral and Energy Technology, MRL 91-000510, Ottawa, Canada, 1990.

Gangal, M.J., and Dainty, E.D., "Ambient Measurement of Diesel Particulate Matter and Respirable Combustible Dust in Canadian Mines," *Proceeding of VIth U.S. Mine Ventilation Symposium*, Salt Lake City, Utah, 1993.

Haney, R.A., Saseen, G.P., and Waytulonis, R.,W., "An Overview of Diesel Particulate Exposures and Control Technology in the U.S. Mining Industry," Proceedings of the 2nd International Conference on the Health of Miners, Pittsburgh, PA., November, 1995.

Haney, R.A., and Fields, K.G., "Diesel Particulate Exposures in the Mining Industry," MINE Expo International '96, Las Vegas, NV, September 10, 1996.

McCartney T.C. and Cantrell B.K., "A Cost-Effective Personal Diesel Exhaust Aerosol Sampler," Bureau of Mines IC 9324, pp. 24-30, 1992.

Appendix B: Glossary of Terms

Aftercooling Cooling intake air prior to induction into the combustion chamber to increase power and reduce the emission of oxides of nitrogen.

Aftertreatment devices Devices such as filters which remove constituents of diesel exhaust as they leave the equipment.

Approval plate quantity Quantity of ventilating air given in cubic feet per minute (cfm) that will dilute the concentrations of gaseous exhaust contaminants from a single diesel engine to specified limits for CO_2, CO, NO and NO_2. This is sometimes called the nameplate air quantity.

Aromatic content Hydrocarbons in diesel fuel are numerous but generally fall into three families: paraffins, naphthenes and aromatics. Reducing fuel aromatic content will reduce hydrocarbons in the exhaust and the soluable organic portion of DPM.

Autoregeneration Self-cleaning of a filter by an engine which has high enough exhaust temperatures to oxidize the diesel particulate matter captured on the filter. See "regeneration" below.

Cetane number A number that describes the ignitability of diesel fuel. Fuels with high cetane numbers have low self-ignition temperatures. Fuels with low cetane numbers cause engine roughness.

Cloud point The highest temperature at which the first trace of paraffin visibly separates in the liquid fuel.

Diesel particulate matter (DPM) Small particles of matter in diesel exhaust, which can be collected on filters. The terms "diesel particulate", or "DP", mean the same thing.

Elemental carbon Elemental carbon is sometimes used as a surrogate measure for DPM. It is composed of graphitic carbon, as opposed to organic carbon, and usually accounts for 40 to 60 percent of the DPM by mass.

Exhaust back pressure Buildup of pressure against the engine created by the resistance of the exhaust flow passing through the exhaust system components.

Fuel-to-air ratio The ratio of the amount of fuel to the amount of air introduced into the diesel combustion chamber.

g/hp-h (Gram per horsepower-hour) The hourly mass of a contaminant in diesel engine exhaust emissions divided by the engine horsepower.

Impactor Device used to separate particles by size.

Nameplate quantity See approval plate quantity.

Organic carbon Non-graphitic soluble organic carbon material associated with DPM.

Oxygenates Fuel additives which contain a substantial fraction of oxygen by weight, e.g. ethanol, methanol, and methyl soyate.

Permissible Equipment on which safety components and temperature controls have been added to prevent the ignition of methane or coal dust so that it can be safely used in areas of an underground mine where methane is likely to accumulate.

Regeneration Process of oxidizing DPM collected on a diesel exhaust particulate filter to remove it. This process cleans the filter and reduces back pressure to acceptable limits.

Respirable combustible dust (RCD) Method of measuring DPM using a combustion process.

Threshold limit value (TLV®) Time-weighted average concentration (established by the American Conference for Governmental Industrial Hygienists) for a conventional 8-hour workday and a 40-hour workweek, to which nearly all workers may be repeatedly exposed, day after day,

without adverse effect.

Total Carbon Refers to the sum of the elemental and organic carbon associated with the diesel particulate matter and accounts for about 80-85 percent of the DPM mass.

Turbocharge Process of increasing the mass of intake air by pressurization to the engine which allows more fuel to be burned and results in increasing the engine's power output.

Volatility Measure of the ability of a fuel to vaporize.

Wax separation Separation of the paraffinic portion of diesel fuel from the other components which occurs at low temperature. It can cause fuel flow problems.

Appendix C:
Methods of Measuring Diesel Particulate Matter (DPM)

DPM is comprised of solid elemental carbon particles, with adsorbed and condensed hydrocarbons and sulfates. The particles are arranged in chain aggregates that have a mass median diameter of about 0.2 micrometers. Several methods are available for determining DPM concentrations in the environment. They include:

• Measuring the mass (gravimetrically) of the submicrometer portion of the respirable fraction of the aerosol.

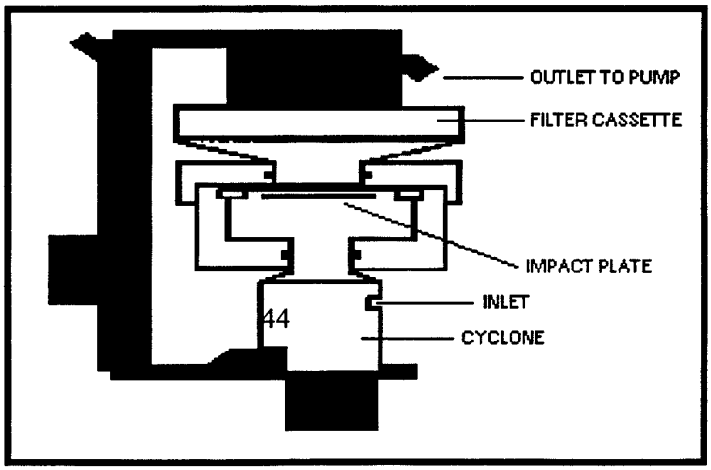
• Measuring the concentration (chemically) of the elemental and organic carbon fractions (total carbon) of either the submicrometer portion of the respirable dust aerosol or of the total respirable dust aerosol.

• Measuring the mass (gravimetrically) of the combustible fraction of the respirable aerosol (often referred to as the RCD method).

Measuring the mass of the submicrometer portion of the respirable dust sample is the most common method currently being used to determine the DPM concentration in coal mines. This method takes advantage of the facts that DPM in coal mines is generally less than 0.8 mm in size and that other mineral dust collected in a respirable dust sample is generally greater than 0.8 mm in size.

Figure 2 shows a schematic of a sampling device that can be used to collect the submicrometer fraction of the respirable dust aerosol. The sampling device is similar to the standard respirable dust sampling device, which consists of a 10 mm nylon cyclone and a sample collection filter. However, the sampling device has been modified to incorporate an inertial impactor that separates particles greater than 0.8 μm in size from the aerosol sample. Particles greater than 0.8 μm are collected on an impaction plate. The submicrometer fraction (particles less than 0.8 μm in size) is collected on the filter. Depending on the type of filter used to collect the submicrometer fraction, the collected sample can be analyzed gravi metrically to determine the DPM concentration or chemically to determine the total carbon (elemental and organic) concentration of the submicrometer particulate.

Figure 2. Personal Sampler Adapted for Submicron Sampling



For gravimetric analysis, the sample should be collected on a preweighed 5.0 μm pore size, vinyl Metricel® filter. If the submicrometer mass of the sample collected is less than 0.3 mg the DPM should be determined using chemical analysis. For the chemical analysis a preconditioned (heated in air at 400oC for 1 hour) quartz fiber-filter should be used. The total carbon content of samples collected on quartz-fiber filters can be determined using NIOSH's Analytical Method 5040.
For metal and nonmetal mining operations, samples should generally be collected without the impactor because as much as 30 percent of the DPM in such mines may be greater than 0.8 μm.

About 80-85 percent of the dpm mass is total carbon (elemental and organic).

The RCD method is applicable to certain metal and nonmetal mining operations. For the RCD method, the aerosol sample is usually collected using a typical respirable dust sampler. To measure the concentration of DPM, the respirable sample is collected on a preweighed, 0.8 μm pore size, silver membrane filter. The filter is preconditioned by heating at 400oC in an oven. After sample collection, the filter is first weighed to determine respirable dust mass and then is heated at 400oC in an oven to burn off the carbonaceous material. The sample is then reweighed. The loss in sample mass resulting from the heating represents the DPM.

The RCD method should be used with caution when a hydrated mineral dust (e.g., gypsum or trona) or a carbonaceous material other than DPM collects on the filter. Such materials are chemically altered by the heating process and produce erroneous results unless properly accounted for. Also, the potential for metal oxide formation exists, which will bias the results.

All of these methods have been used to determine the concentration of DPM in underground mines. Studies in metal and nonmetal mines of these methods have shown that DPM concentrations determined from gravimetric analysis of the submicrometer fraction of the respirable dust aerosol are approximately the same as those determined using the RCD method. Studies have also shown that in metal and nonmetal mines, total carbon concentration determined from the submicrometer fraction of the respirable aerosol is nearly equivalent to the concentration determined from the gravimetric analysis of the submicrometer fraction of the respirable aerosol. This may not be true for samples collected in mines containing other types of submicrometer combustible materials.

For further information on the appropriate use of these methods contact MSHA.

APPENDIX D:
REFERENCES TO RELEVANT REGULATIONS

MSHA-Title 30, Code of Federal Regulations
Underground coal, diesel-powered equipment regulations-published in the Federal Register on October 25, 1996, Vol. 61, Number 208, pp. 55412-55534. The Toolbox makes reference to the following requirements:

approved engines required *75.1907*

approval criteria Parts *7 & 36, revised*

low sulfur fuel *75.1901(a)*

fuel additives *75.1901(c)*

maintenance of air filters *75.1914(d)*

weekly CO testing
of tailpipe emissions *75.1914(g)*

compliance with manufacturer specifications
75.1909(a)(1), 75.1914(f)(1)

maintenance personnel qualifications *75.1915*

idling restrictions *75.1916(d)*

visual exam by equipment operator *75.1914(e)*

Limitations applicable to certain diesel exhaust gases:

underground coal *75.321, 75.322*

surface coal *71.700*

underground metal/nonmetal *57.5001*

surface metal/nonmetal *56.5001*

EPA standards for new diesel engines-Title 40, Code of Federal Regulations:

1988 "on-highway" engine standards
40 CFR 86.088-11

1996 "non-road" engine standards
40 CFR 89.112-96

Pennsylvania state standards for use of diesel-powered equipment in deep coal mines:

Pennsylvania Act 182 of 1996, December 19, 1996. This Act adds a new article to the Bituminous Coal Mine Act, "Article II-A, Diesel-Powered Equipment." It took effect on February 17, 1997. For information, contact the Pennsylvania Bureau of Deep Mine Safety, 412-439-7469, or fax at 412-439-7324.

[FR Doc. 98–8756 Filed 4–8–98; 8:45 am]
BILLING CODE 4510–43–C

federal register

Thursday
April 9, 1998

Part III

Department of Education

Comprehensive Local Reform Assistance; Notice Inviting Applications From Local Educational Agencies (LEAs) in Montana and Oklahoma for New Awards With Fiscal Year (FY) 1997 and 1998 Goals 2000 Funds

DEPARTMENT OF EDUCATION

[CFDA No.: 84.317]

Comprehensive Local Reform Assistance; Notice Inviting Applications From Local Educational Agencies (LEAs) in Montana and Oklahoma for New Awards With Fiscal Year (FY) 1997 and 1998 Goals 2000 Funds

AGENCY: Department of Education.

Note To Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application requirements, and instructions needed to apply for a grant under these competitions.

Purpose of Program: To assist local educational agencies (LEAs) in the development and implementation of comprehensive local improvement plans directed at enabling all children to reach challenging academic standards.

Eligible Applicants: LEAs in Oklahoma and Montana are eligible to apply for grants. The Secretary is especially interested in receiving applications from consortia of LEAs in each State.

LEAs or consortia of LEAs in Oklahoma and Montana that have previously received FY 1995 and 1996 Goals 2000 funds are eligible to apply for funds under this competition. However, in order that other needy districts may benefit from Goals 2000 support, the Secretary is particularly interested in receiving applications from LEAs or consortia that have not previously received Goals 2000 funding.

Note: This competition, authorized by section 304(e) of the Goals 2000: Educate America Act, is only for LEAs in Oklahoma and Montana. LEAs in other States apply to their respective State educational agency (SEA) for funds under Title III of Goals 2000.

Deadline for Transmittal of Applications: May 27, 1998.

Deadline for Intergovernmental Review: July 27, 1998.

Available Funds: For LEAs in Montana: $2,039,546 from the FY 1997 allotment and $1,907,714 from the FY 1998 allotment; for LEAs in Oklahoma: $5,808,148 from the FY 1997 allotment and $5,549,703 from the FY 1998 allotment.

In accordance with section 402 of the Department of Education Organization Act, 20 U.S.C. 3462, the Secretary may use up to one percent of the funds from each State's allotment to pay the expenses and fees for non-Federal experts necessary to review the applications submitted in response to this notice.

In the event that there are an insufficient number of funded applications to use all of either State's allotment, the Secretary may reallot the remaining funds consistent with the Act.

The Secretary does not intend to conduct competitions for FY 1998 funds. Instead, pursuant to 34 CFR 75.253, the Secretary intends to make continuation awards from the FY 1998 allotments to each grantee that has made substantial progress toward meeting the objectives in its approved application.

Project Period: Up to 24 months.

Estimated Range of Awards: $20,000–$200,000 annually.

The sizes of the awards requested should be governed by the size of the LEA or consortium and the scope of the proposed project. The Secretary will consider each applicant's request and the needs of all successful applicants in determining the amount of each grant award. The Department of Education is not bound by the estimates in this notice.

In their applications, LEAs are encouraged to seek funds for a two-year period. Oklahoma LEAs are encouraged to seek a second-year amount that is 4.5 percent less than their first-year award request; Montana LEAs are encouraged to seek a second-year amount that is 6.5 percent less than their first-year request. By doing so, the budget requests will align with the funding available for each State from the State's respective FY 1997 and 1998 allotments.

Estimated Average Size of FY 1997 and 1998 Awards: $80,000 annually.

Estimated Numbers of Awards: 70 in Oklahoma; 25 in Montana.

Note: Consistent with Section 309(c) of the Goals 2000 Act, the Secretary will award at least 50 percent of each State's available allotment to LEAs that have a greater percentage or number of disadvantaged children than the statewide average percentages or numbers for all LEAs in each respective State. The Department will waive this provision if it does not receive a sufficient number of applications from such districts.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 75 (Direct Grant Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

GEPA Section 427 Requirements: In preparing applications, LEAs should pay particular attention to the requirements in section 427 of the General Education Provisions Act (GEPA), as detailed later in this notice. Applicants must address the requirements in section 427 in order to receive funding under this competition. Section 427 requires each applicant to describe the steps it proposes to take to address one or more barriers (i.e., gender, race, national origin, color, disability, or age) that can impede equitable access to, or participation in, the program. A restatement of compliance with civil rights requirements is not sufficient to meet the GEPA section 427 requirements.

SUPPLEMENTARY INFORMATION:

Background

Section 304(e) of the Goals 2000: Educate America Act (Pub. L. 103–227) (20 U.S.C. 5801 *et seq.*) (the Act) authorizes the Secretary to award direct grants to LEAs in States that were not participating in Goals 2000 as of October 20, 1995, if the applicable SEA approves the LEAs' participation in the program. Oklahoma and Montana were not participating in Goals 2000 as of that date and the Oklahoma and Montana SEAs have approved LEA participation in this direct grant program.

The Secretary has determined that grants awarded under Section 304(e) will be used to support the development and implementation of comprehensive local improvement plans designed to help all children reach challenging academic standards. In particular, the Secretary encourages LEAs to address in their applications how their reform strategies might include enhanced preservice teacher education and professional development activities of educators that are directly connected to challenging standards.

Applicants that have already developed comprehensive improvement plans may propose activities funded through the grant that are aligned with and carry out parts of this plan. In order to best meet the selection criteria, LEAs should use funds awarded under this notice to build upon comprehensive reform strategies that have already been

initiated with federal and other resources.

Application Requirements

The authorizing statute—section 304(e) of the Act—permits the Secretary to fund LEA applications that are consistent with the provisions of Goals 2000. Grants under this competition will support the development and implementation of comprehensive local improvement plans to help all students reach challenging academic standards. Local improvement plans that are developed or implemented with funds awarded under section 304(e) must be consistent with the requirements in sections 309(a)(3)(B) through (E) of the Act. Adapted to this direct grant program, these requirements specify that local plans—

(1) Describe a process of broad-based community participation in the development, implementation, and evaluation of the local improvement plan;

(2) Address districtwide education improvement, directed at enabling all students to meet the State content standards and State student performance standards, including specific goals and benchmarks; reflect the priority of the State improvement plan (if there is a comprehensive State improvement plan); and include a strategy for—

(a) Improving teaching and learning, through such strategies as enhanced professional development and preservice education activities aligned to the standards;

(b) Improving governance, management, and accountability for performance; and

(c) Generating, maintaining, and strengthening parental and community involvement;

(3) Promote the flexibility of local schools in developing plans that address the particular needs of their school and community and are consistent with the local improvement plan; and

(4) Describe how the LEA will encourage and assist schools to develop and implement comprehensive school improvement plans that focus on helping all students reach State content standards and student performance standards.

An LEA that applies for funds under this program should indicate whether funds are being requested to (a) develop and implement a plan in accordance with the requirements of sections 309(a)(3)(B) through (E) of the Act; or (b) implement an existing comprehensive improvement plan that meets the requirements of sections 309(a)(3)(B) through (E) of the Act. (An applicant that received FY 1995 and 1996 funding under the previous competition must have completed the development of a plan that meets the stated requirements in order to be eligible for funding under this competition.)

An LEA seeking funds to both develop and implement a comprehensive plan must demonstrate evidence of a clear process that will result in a plan that meets the stated plan requirements. This evidence may include a description of how stakeholders will be involved in plan development and specific steps and timelines for developing the plan. Successful applicants will only be eligible to receive FY 1998 continuation funding if they have completed development of a plan that meets the plan requirements stated above.

An LEA that has already developed a comprehensive improvement plan may seek FY 1997 and 1998 funds to implement the plan. The applicant must demonstrate that its existing plan meets the plan requirements listed above. The applicant may do this, for example, by providing a description of how its plan addresses these requirements and the progress the applicant has made in implementing its plan. In addition, the applicant may demonstrate the comprehensiveness of the plan by providing evidence that the plan is coordinated with other LEA plans that, collectively, provide a framework for how federal and other funds are used to achieve the goals and objectives of the district.

An applicant should clearly explain the strategies that will be funded under this award and how these strategies are aligned with the comprehensive plan.

The Secretary recommends that applicants reserve in their budgets approximately $2,000 each year for activities that will be designed by the Secretary, in conjunction with grantees, to facilitate the sharing among grantees of information on successful comprehensive reform strategies.

Selection Criteria

The Secretary will use the following selection criteria and factors from 34 CFR 75.210 to evaluate applications under this competition.

The maximum score for all of the criteria is 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion. The criteria and factors are as follows:

(1) *Need for the project.* (20 points) (a) The Secretary considers the need for the proposed project.

(b) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project will provide services to or otherwise address the needs of students at risk of educational failure.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(2) *Quality of the project design.* (33 points) (a) The Secretary considers the quality of the design of the proposed project.

(b) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(ii) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(iii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(iv) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(3) *Quality of project services.* (15 points) (a) The Secretary considers the quality of the services to be provided by the proposed project.

(b) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(c) In addition, the Secretary considers the following factors:

(i) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(ii) The extent to which the services to be provided by the proposed project are focused on those with greatest needs.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(4) *Quality of project personnel.* (5 points) (a) The Secretary considers the

quality of the personnel who will carry out the proposed project.

(b) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(c) In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel.

(5) *Adequacy of resources.* (5 points) (a) The Secretary considers the adequacy of resources for the proposed project.

(b) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(iii) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(6) *Quality of the management plan.* (7 points) (a) The Secretary considers the quality of the management plan for the proposed project.

(b) In considering the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iii) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(7) *Quality of the project evaluation.* (15 points) (a) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(b) In determining the quality of the evaluation, the Secretary considers the extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State processes and on State, areawide, regional, and local coordination for review of proposed Federal financial assistance.

Neither Oklahoma nor Montana has adopted State intergovernmental review processes. Therefore, State, areawide, regional, and local entities may submit comments directly to the Department.

Any comments submitted pursuant to the Executive Order must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.317, U.S. Department of Education, Room 6300, 600 Independence Avenue, S.W., Washington, D.C. 20202.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall —

(1) Mail the original and three copies of the application on or before the deadline date to: U. S. Department of Education, Application Control Center, Attention: (CFDA # 84.317), Washington, D.C. 20202–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.317), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark.

Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted (CFDA# 84.317).

Application Instructions and Forms

The appendix to this application is divided into three parts, plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 524A) and instructions. (NOTE: In addition to completing these forms, the applicant should provide a brief description of the use of funds in each budget category. The budget narrative should describe how the budget will support the project proposed in the application narrative in an effective and cost-efficient manner.)

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B). Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

(**Note:** ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions.

GEPA Section 427 Notice to All Applicants.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Cindy Cisneros (contact for Oklahoma applicants) or Jay McClain (contact for Montana applicants), U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Room 4000, Washington, D.C. 20202–2110, Telephone: (202) 401–0039, FAX: (202) 205–0303. These contacts may also be reached via e-mail at cindy__cisneros@ed.gov or jay__mcclain@ed.gov. 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.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://ww.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet at http://www.ed.gov. However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: Section 304(e) of the Goals 2000: Educate America Act, 20 U.S.C. 5884(b).

Dated: April 3, 1998.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*: _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

INSTRUCTIONS FOR PART III: APPLICATION NARRATIVE

Before preparing the Application Narrative an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should--

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application package, including--

(a) A description of the activities and services for which assistance is sought;

(b) A comprehensive statement of how the applicant will plan and implement a statewide family literacy initiative in accordance with section 1202(c) of the ESEA; and

(c) An assurance that the plan will be developed in consultation with the listed State, local, and other institutions, organizations, and agencies that will form the consortium and carry out the plan.

4. Include, in the application budget, a description of the non-Federal contributions that the State will make, in an amount not less than the Federal funds awarded under the grant, for the costs to be incurred by the consortium in carrying out the grant activities. (Funds awarded under these grants may not be used for indirect costs either as a direct charge or as part of the matching requirement.)

5. Provide the following in response to the attached "Notice to all Applicants": (1) a reference to the portion of the application in which information appears as to how the applicant is addressing steps to promote equitable access and participation, or (2) a separate statement that contains that information.

6. For any applicant <u>other</u> than the State educational agency, include a copy of the signed set of assurances specified in section 14306(a) of the ESEA (20 USC 8856(a)) that the applicant has filed with its SEA and that is applicable to this application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 20 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. The Department has found that successful applications for similar programs generally meet this page limit.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1810-0594 (expiration date: 9/30/98). The time required to complete this information collection is estimated to average 30 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Goals 2000, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Room 4000, Washington D.C. 20202-4651.

NOTICE TO ALL APPLICANTS

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and

succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801-0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant,' " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*	
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable*:	
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $	
10. a. **Name and Address of Lobbying Entity Registrant** *(if individual, last name, first name, MI):*	b. **Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*	
~~11. **Amount of Payment** *(check all that apply):*~~ ~~$ _____ ☐ actual ☐ planned~~	~~13. **Type of Payment** *(Check all that apply):*~~ ~~☐ a. retainer~~ ~~☐ b. one-time fee~~ ~~☐ c. commission~~ ~~☐ d. contingent fee~~ ~~☐ e. deferred~~ ~~☐ f. other; specify: _____~~	
~~12. **Form of Payment** *(check all that apply):*~~ ~~☐ a. cash~~ ~~☐ b. in-kind; specify: nature _____ value _____~~		
~~14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**~~ ~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~		
~~15. **Continuation Sheet(s) SF-LLL attached:** ☐ Yes ☐ No~~		
16. **Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.**	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:**	
~~**Federal Use Only**~~	**Authorized for Local Reproduction** **Standard Form - LLL**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

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federal register

Thursday
April 9, 1998

Part IV

Department of Housing and Urban Development

24 CFR Part 206

Home Equity Conversion Mortgage Insurance; Right of First Refusal Permitted for Condominium Associations; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 206

[Docket No. FR–4267–I–01]

RIN 2502–AG93

Home Equity Conversion Mortgage Insurance; Right of First Refusal Permitted for Condominium Associations

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule removes, for the Home Equity Conversion Mortgage (HECM) insurance program only, the current restriction on FHA mortgage insurance for a dwelling unit in a condominium project where the condominium association has a right of first refusal to purchase units that are offered for sale. As a result of this change, some condominium units in projects may be approved for the HECM program.

DATES: Effective Date: May 11, 1998.
Comment Due Date: June 8, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Director, Office of Insured Single Family Housing, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (voice) (202) 708–3046. (This is not a toll-free number.) Hearing-impaired or speech-impaired individuals may access the voice telephone listed by calling the Federal Information Relay Service during working hours at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

This interim rule addresses a difficult area that has been the subject of prior FHA rulemaking and involves balancing competing policies. These policies relate to the extent to which property subject to an FHA-insured mortgage must be freely transferable without restrictions. The interim rule makes one limited refinement to current FHA policies.

FHA published a final rule on September 17, 1996 (61 FR 49033) to add 24 CFR 206.45(e)[1]. It generally bars Home Equity Conversion Mortgage (HECM) insurance for a home that is not freely marketable, with the exception of restrictions on conveyance that are permitted for other FHA programs by 24 CFR 203.41 (for property other than condominium units) or 24 CFR 234.66 (for condominium units.) The FHA policy permits certain restrictions that facilitate affordable housing programs, and a limited number of other restrictions, such as a limitation of housing to elderly residents when consistent with the Fair Housing Act and State and local non-discrimination laws.

The FHA policy was codified, for programs other than the HECM program, as a regulation in 1993 (new 24 CFR 203.41 and 234.66 were added) to incorporate administrative policies on permissible restrictions on conveyance that FHA developed in the preceding decades (58 FR 42649, August 11, 1993 (final rule) and 56 FR 58762, November 21, 1991 (proposed rule)).

One provision of the regulation generally prohibited mortgage insurance on property for which another party held a right of first refusal, in part because such a right could make more difficult an expeditious sale at fair market value by a mortgagor in financial distress. A delay in the sale of a property, or inability to sell at a price that would cover the mortgage debt, could result in a mortgage default entitling the mortgagee to foreclose and claim insurance benefits from HUD. Similarly, rights of first refusal and other restrictions on conveyance can increase the difficulty to FHA in marketing an acquired property expeditiously at fair market value, thereby increasing FHA's holding costs and decreasing its ultimate recovery. FHA's policies on rights of first refusal and other restrictions on conveyance also recognized the potential that the right could be improperly used for discriminatory purposes. The 1991 proposed rule would have permitted only rights of first refusal that would be exercised in the context of an affordable housing program by a public body or an eligible non-profit organization (or an assignee who would occupy the property) within a reasonable time after the event permitting exercise of the right (i.e., a bona fide purchase offer by another person) occurred. Also, the right had to permanently terminate if mortgage assignment to HUD, foreclosure, or a deed in lieu of foreclosure took place.

In response to a public comment stating that this exception was too narrow, the 1993 final rule added a sentence that authorized HUD to approve an individual or organization who was not a public body or eligible non-profit organization to hold a right of first refusal under the same conditions. As explained in the rule preamble, this change was to accommodate ''unusual situations,'' such as employer homebuyer assistance to low- or moderate-income employees in areas with little or no affordable housing, when the employer would want to be able to continue to limit the homeownership to employees needing assistance. HUD stated (58 FR 42647):

> This provision is not intended to permit condominium associations to have rights of first refusal, and HUD approval should not be requested for rights held by a condominium association, or rights held by others if a condominium is not involved in an affordable housing program.

FHA has long been aware that condominium organizational documents frequently grant to the condominium association a right of first refusal to purchase the unit of a condominium unit owner who offers a unit for sale, and that prohibiting FHA insurance in such cases can exclude some of the condominium market (particularly existing projects not originally conceived as attracting a market likely to use FHA programs). From 1981 until 1993, when 24 CFR 234.66 took effect, FHA administrative policy permitted rights of first refusal for existing condominium projects that otherwise were acceptable for FHA mortgage insurance. HUD pointed this out in its rule preamble (56 FR 58764) but clearly indicated that it proposed to reverse this policy except for the ''grandfathering'' under § 234.66 of condominium projects already approved by HUD.

When the proposal to change policy was published for public comment in 1991, the HECM program was operating at a very low volume. Any special concerns that might be relevant to the program if 24 CFR 203.41 and 234.66 were to be applied to the HECM program were not taken into consideration because the 1993 rule did not apply at all to the HECM program. Although no rule barred HECM mortgage insurance in condominiums

[1] A typographical error in the final rule, which has been corrected, designated the new provision as § 203.47(e). The proposed rule had correctly indicated that the new provision would be § 203.45(e).

with rights of first refusal, it was barred as a practical matter because § 206.51 of the HECM program regulations restricted the HECM program to condominium projects approved by FHA and FHA did not approve any projects solely for the HECM program.

HUD proposed in 1996 to formally apply to the HECM program the general policies regarding restrictions on conveyance (see 61 FR 21918, May 10, 1996). HUD stated in the rule preamble:

> While HUD does not have the same concerns about restrictions on conveyance for the HECM program as for other single family programs, because a HECM by its nature is not assumable, HUD is concerned that any property acquired by the mortgagee or HUD through foreclosure or deed-in-lieu of foreclosure needs to be readily marketable without restrictions to a wide potential market. HUD has identified one area of special impact of this policy on the HECM program for which it specifically seeks comment. The rule would prevent use of the HECM program for a unit in a condominium if the condominium project possesses a right of first refusal (unless the condominium project received written approval from HUD prior to September 10, 1993). HUD believes there may be a number of successful condominiums existing prior to that date that did not obtain FHA approval, have condominium associations with rights of first refusal, and have current unit owners that would be prospective applicants for a HECM. A recent proposed amendment of § 206.51 [adopted in final form on May 29, 1996, 61 FR 26984] would permit HECMs on some individual units in a condominium project that have not received HUD approval but such units would also be affected by the proposed change to § 206.45. HUD therefore also seeks comment on whether, if the proposed amendment to § 206.51 is adopted, HUD should insure a HECM on a unit in a condominium project that does not meet usual HUD policy regarding rights of first refusal. (61 FR 21921)

No public comments were received that generally opposed the application of § 234.66 in its entirety, but one commenter did—in the context of discussing extension of the HECM program to cooperatives—oppose applying the restriction against rights of first refusal to condominiums in the HECM program. As stated at 61 FR 49031:

> *Comment:* * * * If HUD expands the HECM regulations to include housing cooperatives, the regulations should also be changed to allow HUD to insure a HECM on a unit in a condominium or housing cooperative project even if the project does not meet usual HUD policy regarding ''rights of first refusal.'' In both a condominium and a housing cooperative, rights of first refusal are a necessary safeguard for the project. In addition, it is an industry-wide accepted practice that protects the investment of these homeowners as well as the mortgage holder. Rights of first refusal do not prevent the unit from being widely marketable without restrictions to a wide potential market. Rather, it should be viewed as enhancing the value of the unit as well as providing a necessary protection for future purchasers.
>
> *Response:* The single family insurance program for cooperatives is inactive. Cooperative units, therefore, are not eligible for the HECM program. * * *

HUD received no other comments indicating that the proposed rule would cause any specific problems and the proposed rule was adopted without change in this regard. The final rule and preamble did not address the commenter's remarks on the value of rights of first refusal for condominiums in the HECM program, except through silence and failure to make any change in the final rule to permit rights of first refusal.

Reason for Change

This rulemaking will allow an eligible owner of a condominium unit to obtain a HECM when a right of first refusal would have otherwise precluded the elderly homeowner from obtaining HECM financing.

It has come to FHA's attention that in several recent instances an elderly homeowner living in a condominium has attempted to obtain a HECM loan but was precluded from doing so because the condominium association held a right of first refusal. As discussed above, FHA has previously considered the HECM program separately from other FHA single family programs with regard to the application of general policies against restrictions on conveyance, and expressed specific concern about the application of the ban on rights of first refusal held by condominium associations.

In addition to the concerns expressed above, it is unlikely that many HECM applicants are living in condominiums that were established with the intent of qualifying the units for traditional FHA mortgage insurance. FHA programs are typically used to help finance the purchase of condominium units for first-time homebuyers and others who are unable to afford the larger downpayment required for other mortgage alternatives. Particularly in the case of a condominium project specifically designed for occupancy by the elderly, a condominium developer or person who converted a rental building to condominium ownership would have been unlikely to have avoided providing a right of first refusal for the condominium association if that was a common practice in the area, as frequently is the case. Thus, the FHA policy regarding rights of first refusal by condominium associations can have a disproportionately adverse effect, although unintentional, when applied to the HECM program.

HUD is again seeking public comment on whether, on balance, it is preferable to accept these risks rather than to deny access to the HECM program to a substantial proportion of elderly owners of condominium units. Because FHA has previously sought public comment on this issue and received no comment supporting the restriction of rights of first refusals for condominiums in the HECM program but did receive an opposing comment, and because there have been actual instances recently identified in which mortgage insurance has been unavailable under current policy but which could have been acceptable to HUD, HUD considers it appropriate to refine its policy on an interim basis pending consideration of any further public comments on the subject. This is a minor change to the basic and continuing HUD policy that restrictions on conveyance for all FHA single family programs, including the HECM program, should be severely limited, and condominium rights of first refusal should ordinarily be covered by those limitations.

Condominium associations are not permitted to exercise their rights of first refusal to engage in discriminatory practices when an elderly homeowner, or the homeowner's heirs, dispose of the property. The Department will use all of its enforcement authority at its disposal if discriminatory practices occur as a result of the exercise of a right of first refusal.

Effect of Change

Section 206.51 of the HECM program regulations requires that the condominium project be acceptable to HUD (other than spot loans meeting the requirements of § 234.26(i)), but it does not mandate project approval standards identical to those used in the basic FHA program for mortgage insurance on condominium units under section 234(c) of the National Housing Act (§ 234.26). To date, HUD administrative policy has been to permit HECMs (other than spot loans) only for condominium units in projects that were accepted for the section 234(c) program. As a result of this rule change, some condominium projects may be approved for the HECM program but not for the section 234(c) program. HUD will issue appropriate administrative instructions concerning the lists of FHA-approved condominiums.

The rule change also affects HECM spot loans. They will now be permitted in projects that have not received FHA

approval, subject to the general rules limiting spot loans, if no restrictions on conveyance barred by § 203.41 apply to the unit other than a right of first refusal for the condominium association.

Other Matters

Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect before it receives and completes consideration of public comments, because the public was previously afforded an opportunity to comment on the precise issue involved in this interim rule, and the only relevant comment supported the position adopted in this interim rule. In addition, the Department now has specific examples regarding the adverse effect of the current rule on potential mortgagors under the HECM program which it lacked when evaluating the previous rulemaking. After the previous rulemaking, the potential adverse effect of the policy in the current rule was expanded due to adoption of the ''spot loan'' procedure which opened up the HECM program to condominiums that are not eligible for project approval under the section 234(c) program. This increased the adverse effect of the Department's previous handling of the issue and is additional information that causes the Department to consider its rulemaking and adjust the result in a minor but specific manner.

This interim rule should have no adverse effect on those who had the opportunity to comment in previous rulemaking. It will, however, immediately benefit others by expanding the available means through which mortgagees and mortgagors can obtain the benefits of FHA mortgage insurance for a HECM on a dwelling in a condominium unit. In the interest of obtaining the fullest participation possible in determining the proper means of administering the HECM program, the Department again invites public comment on the policy presented in interim rule. The comments received within the 60-day comment period will be considered during development of a final rule that ultimately will supersede this interim rule.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in doing so certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. This rule removes the current restriction on FHA mortgage insurance for a dwelling unit in a condominium project where the condominium association has a right of first refusal to purchase units that are offered for sale. Small entities are specifically invited, however, to comment on whether this rule will significantly affect them, and persons are invited to submit comments according to the instructions in the **DATES** and **COMMENTS** sections in the preamble of this interim rule.

Environmental Finding

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 7th Street S.W., Washington, D.C. 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this interim rule will not have 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. No programmatic or policy changes will result from this interim rule that would affect the relationship between the Federal government and State and local governments.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This interim rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog

The Catalog of Federal Domestic Assistance number for the Home Equity Conversion Mortgage Program is 14.183.

List of Subjects in Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 206 is amended as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

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

Authority: 12 U.S.C. 1715b, 1715z–20; 42 U.S.C. 3535(d).

2. Section 206.45(e) is revised to read as follows:

§ 206.45 Eligible properties.

* * * * *

(e) *Restrictions on conveyance.* The property must be freely marketable. Conveyance of the property may only be restricted as permitted under 24 CFR 203.41 or 24 CFR 234.66 and this part, except that a right of first refusal to purchase a unit in a condominium project is permitted if the right is held by the condominium association for the project.

Dated: February 20, 1998.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 98–9419 Filed 4–8–98; 8:45 am]

BILLING CODE 4210–27–P

federal register

Thursday
April 9, 1998

Part V

Environmental Protection Agency

Forty-First Report of the TSCA Interagency Testing Committee; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–41049; FRL–5773–5]

Forty-First Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The TSCA Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Forty-First Report to the Administrator of the EPA on November 28, 1997. In the Forty-First Report, which is included with this notice, the ITC revised the TSCA section 4(e) *Priority Testing List* by recommending 29 alkylphenol ethoxylates, alkylphenols, and polyalkylphenols and removing 6 alkylphenols, 10 diaryl ethers, and 3 siloxanes.

There are no designated or recommended with intent-to-designate chemicals or chemical groups in the Forty-First Report. EPA invites interested persons to submit written comments on the Report.

DATES: Written comments must be received on or before May 11, 1998.

ADDRESSES: Each comment must bear the docket control number OPPTS–41048. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit IV of this notice. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received the TSCA Interagency Testing Committee's Forty-First Report to the Administrator.

I. Background

TSCA (Pub. L. 94–469, 90 Stat. 2003 *et seq.* (15 U.S.C. 260l *et seq.*)) authorizes the Administrator of the EPA to promulgate regulations under section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the Administrator of the EPA for priority testing consideration. Section 4(e) directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

II. The ITC Forty-First Report

The most recent revisions to the *Priority Testing List* are included in the ITC's Forty-First Report. The Report was received by the EPA Administrator on November 28, 1997, and is included in this notice. Twenty-nine alkylphenol ethoxylates, alkylphenols, and polyalkylphenols are being recommended because:

1. TSCA production and importation volumes are reported in the multimillion pound range.
2. Releases to the environment can occur from wastewater treatment and agricultural uses.
3. Alkylphenol ethoxylates can degrade to alkylphenols, which can persist in the environment and be highly toxic to aquatic organisms.
4. Exposure to alkylphenols and alkylphenol ethoxylates may affect endocrine and other important human and animal system functions. Alkylphenol ethoxylates, alkylphenols, and polyalkylphenols are being recommended to determine if there are unpublished studies that contain data to meet the needs of the U.S. Government organizations represented on the ITC and to complete the list of alkylphenols and alkylphenol ethoxylates that were recommended in the ITC's 37th Report (61 FR 4188, February 2, 1996)(FRL–4991–6), and 39th Report (62 FR 8578, February 25, 1997)(FRL–5580–9).

III. Status of the Priority Testing List

The current TSCA section 4(e) *Priority Testing List* contains 11 chemical groups; of these, 4 chemical groups were designated for testing.

IV. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket control number OPPTS–41048 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–41048. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Authority: 15 U.S.C. 2603.

Dated: April 1, 1998.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Administrator, U.S. Environmental Protection Agency

Summary

This is the 41st Report of the TSCA Interagency Testing Committee (ITC) to the Administrator of the U.S. Environmental Protection Agency (EPA). In this Report, the ITC is revising its TSCA section 4(e) *Priority Testing List* by recommending 29 alkylphenols,

alkylphenol ethoxylates, and polyalkylphenols and removing 6 alkylphenols, 3 siloxanes, and 10 diaryl ethers. The revised TSCA section 4(e) *Priority Testing List* follows as Table 1.

Table 1.—The TSCA Section 4(e) *Priority Testing List* (November 1997)[1]

Report	Date	Chemical/Group	Action
26	May 1990	8 Isocyanates	Recommended with intent-to-designate
27	November 1990	62 Aldehydes	Recommended with intent-to-designate
28	May 1991	Chemicals with low confidence Reference Dose (RfD). Acetone Thiophenol	Designated
30	May 1992	5 Siloxanes	Recommended
31	January 1993	24 Chemicals with insufficient dermal absorption rate data.	Designated
32	May 1993	32 Chemicals with insufficient dermal absorption rate data.	Designated
35	November 1994	24 Chemicals with insufficient dermal absorption rate data.	Designated
36	May 1995	9 High Production Volume Chemicals (HPVCs).	Recommended
37	November 1995	22 Alkylphenols and alkylphenol ethoxylates	Recommended
39	November 1996	23 Nonylphenol ethoxylates[2]	Recommended
41	November 1997	29 Alkylphenols, alkylphenol ethoxylates, and polyalkyphenols[2].	Recommended

[1]The list of discrete chemicals currently on the *Priority Testing List* is available from the Executive Director of the ITC.
[2]Data requested under the ITC's Voluntary Information Submissions Policy described in this Report.

I. Background

The TSCA ITC was established by section 4(e) of the Toxic Substances Control Act (TSCA) ''to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule for testing under section 4(a).... At least every six months..., the Committee shall make such revisions in the *Priority Testing List* as it determines to be necessary and to transmit them to the Administrator together with the Committee's reasons for the revisions'' (Pub. L. 94–469, 90 Stat. 2003 *et seq*., 15 U.S.C. 2601 *et seq*.). The ITC recommends chemical substances for information reporting, screening, and testing to meet the data needs of its member U.S. Government organizations. Since its creation in 1976, the ITC has submitted 40 semi-annual (May and November) Reports to the EPA Administrator transmitting the *Priority Testing List* and its revisions. ITC Reports are published in the **Federal Register**; they are available from http://www.epa.gov/fedrgstr or the ITC. The ITC meets monthly and produces its revisions of the *Priority Testing List* with the help of staff and technical contract support provided by EPA. ITC members and support personnel are listed at the end of this Report.

II. TSCA Section 8 Reporting

A. TSCA Section 8 Rules

Following receipt of the ITC's Report and addition of chemicals to the *Priority Testing List*, the EPA's Office of Pollution Prevention and Toxics (OPPT) promulgates TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) and TSCA section 8(d) Health and Safety Data (HaSD) rules for new chemicals added to the *Priority Testing List*. These rules require producers and importers of chemicals recommended by the ITC to submit production and exposure reports under TSCA section 8(a) and producers, importers, and processors of chemicals recommended by the ITC to submit unpublished health and safety studies under TSCA section 8(d). These TSCA section 8(a) reports and section 8(d) studies must be submitted to EPA within 60 days of the rules' effective date. TSCA section 8(a) reports and 8(d) submissions are indexed in databases maintained by the ITC and the EPA, respectively.

B. ITC's Use of TSCA Section 8 Data

To determine if revisions to the *Priority Testing List* are necessary, the ITC reviews the TSCA section 8(a) and 8(d) information and other available data on chemicals and chemical groups (e.g., TSCA section 4(a) and 4(d) studies, TSCA section 8(c) submissions, TSCA section 8(e) ''substantial risk'' notices, ''For Your Information'' (FYI) submissions to EPA, unpublished data submitted to U.S. Government organizations represented on the ITC, and published papers). Revisions can include changing recommendations to designations, modifying recommendations, or removing chemicals from the *Priority Testing List*.

C. Policy Promoting More Efficient Use of TSCA Section 8 Resources

In its 40th Report (62 FR 30580, June 4, 1997)(FRL–5718–3), the ITC proposed a policy promoting more efficient use of TSCA section 8(d) resources. The ITC received comments on its policy from the Chemical Manufacturers Association (CMA) (Ref. 2, Russell, 1997). In response to these comments, the ITC has revised the policy, now referred to as the ITC's Voluntary Information Submissions Policy (VISP).

Under the VISP, the ITC will now:

1. Request specific information necessary to meet information needs of U.S. Government organizations represented on the ITC (e.g., specific health and ecological effects data, use information, etc.).

2. List studies that the ITC is not requesting (e.g., studies on waste streams).

3. Provide an opportunity for producers, importers, processors, and users of chemicals recommended by the ITC or a consortium representing those producers, importers, processors, and users to notify the ITC Executive Director in writing (by e-mail or letter) that studies will be provided voluntarily to the ITC as ITC FYI submissions. This

notification must be received within 30 days of the date the ITC Report is published in the **Federal Register**.

4. Ask those producers, importers, processors, and users of chemicals who notify the ITC (see Unit II.C.3. of this Report) to provide the EPA with an electronic list (table) of studies within 60 days of the date the ITC Report is published in the **Federal Register** and ITC FYI submissions within 90 days of the date the ITC Report is published in the **Federal Register**. The electronic table should contain columns for the Chemical Abstracts Service (CAS) Registry number, chemical name, study date, study title, Document Control Number (DCN), and a column indicating whether the study will be submitted on disk as a WordPerfect 6.1 file or as a hard copy. The EPA will add DCNs to the table and send it back to the submitter and to the ITC Executive Director. In addition, the EPA will send to each submitter of the electronic table, adhesive labels containing DCNs. These labels should be affixed to the first page of each ITC FYI study submitted as a hard copy, not a document containing multiple studies, or the first page of an ITC FYI study printed from an electronic copy (only a hard copy of the first page of each electronic study should be submitted).

5. Encourage producers, importers, processors, and users who submit an electronic table of studies to submit the TSCA electronic cover sheet (including an abstract) for each study to the EPA within 90 days of the date the ITC Report is published in the **Federal Register**. The TSCA electronic cover sheet is available from http://www.epa.gov/opptintr/itc. The DCN should be recorded on each TSCA electronic cover sheet. CBI must not be recorded on the TSCA electronic cover sheet and must not be sent by e-mail. Individual TSCA electronic cover sheets must be sent by e-mail to oppt.ncic@epamail.epa.gov. The EPA will send each final TSCA electronic cover sheet to the ITC Executive Director. Multiple TSCA electronic cover sheets (one for each study) can be sent on 3 ½ disks or a CD ROM; the disks or CD ROM should be mailed to the Document Processing Center (7407), ET–G–099, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. For those producers, importers, processors, and users who submit a TSCA electronic cover sheet for each study, the ITC will extend the deadline for providing ITC FYI submissions to 120 days from the date the ITC Report is published in the **Federal Register**.

6. Request that two hard copies of each ITC FYI study (or preferably one disk or CD ROM containing each study as a WordPerfect 6.1 file) should be mailed to the Document Processing Center (7407), ET–G–099, Attn: FYI Coordinator, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. It is not necessary to submit cover letters for each ITC FYI study because:

a. A TSCA electronic cover sheet bearing a DCN would have been submitted for each ITC FYI study.

b. The first page of the ITC FYI study would bear the adhesive label containing the pre-assigned DCN. EPA will provide the ITC Executive Director with an electronic (preferable) or hard copy of each ITC FYI study.

III. ITC's Dialogue Group Activities During This Reporting Period (May 1997 to November 1997)

A. Alkylphenols and Alkylphenol Ethoxylates

The ITC-CMA Alkylphenols and Ethoxylates Dialogue Group was formed by the ITC's Alkylphenols and Ethoxylates Subcommittee and the CMA's Alkylphenols and Ethoxylates Panel. The Dialogue Group was established in March 1996 to facilitate the ITC's retrieval of information on uses, exposures, and health and ecological effects of alkylphenols and alkylphenol ethoxylates and the CMA's understanding of data needed by the U.S. Government organizations represented on the ITC. Since the establishment of this Dialogue Group, numerous activities have occurred (see the ITC's 38th Report (61 FR 39832, July 30, 1996)(FRL–5379–2), 39th Report (62 FR 8578, February 25, 1997)(FRL–5580–9), and 40th Report. During this reporting period, the Dialogue Group met to discuss:

1. Results of a qualitative survey of Panel member companies regarding production or importation of alkylphenols, alkylphenol ethoxylates, and polyalkylphenols.

2. TSCA section 8(d) studies submitted for alkyphenols and alkyphenol ethoxylates recommended in the 37th Report (FRL–4991–6) (61 FR 4188, February 2, 1996).

3. Data needs of U.S. Government organizations represented on the ITC.

4. Ongoing and planned studies sponsored by the Panel.

5. Development of Structure Activity Relationships (SARs).

6. Voluntary testing processes that might be used to provide needed data.

In its survey of member companies, the Panel identified 29 alkylphenols, alkylphenol ethoxylates, and polyalkylphenols out of 74 remaining on the *Priority Testing List* that were produced, imported, or used in 1995, but recommended that the results of this informal survey should not be viewed as representative of the entire industry. The Dialogue Group acknowledged that about 500 TSCA section 8(d) studies were submitted in equal numbers by Panel member companies and non-Panel member companies for the alkylphenols and alkylphenol ethoxylates recommended in the 37th Report. Most of those studies provided data on acute toxicity, dermal irritation, or eye irritation of mixtures containing alkylphenols and alkylphenol ethoxylates.

The ITC members proposed studies to address the data needs for alkylphenols and alkylphenol ethoxylates (see Unit IV.A.1.d. of this Report). The Panel described planned studies that may meet some of the data needs listed in Unit IV.A.1.d. of this Report. Development of SARs, voluntary testing and uses of alkylphenols and alkylphenol ethoxylates will be discussed in more detail in future Dialogue Group meetings. The Dialogue Group acknowledged that during the past 10 years, the Panel has sponsored many studies to evaluate the safety of alkylphenols and alkylphenol ethoxylates.

B. Isocyanates

The ITC-CMA Isocyanates Dialogue Group was formed by the ITC's Isocyanates Subcommittee and CMA's Diisocyanates Panel. The Dialogue Group was established in November 1996 to facilitate the ITC's retrieval of information on uses, exposures, and health effects of isocyanates and the CMA's understanding of data needed by the U.S. Government organizations represented on the ITC. Since the establishment of this Dialogue Group, numerous activities have occurred (see the ITC's 38th, 39th, and 40th Reports). This Dialogue Group continues to discuss production, commercial uses, and health and safety data for 8 of 43 isocyanates that were recommended in the ITC's 26th Report (55 FR 23050, June 5, 1990).

C. Siloxanes

The ITC-Silicones Environmental Health and Safety Council (SEHSC) Dialogue Group was formed by the ITC's Siloxanes Subcommittee and SEHSC. This Dialogue Group was established in March 1993 to facilitate the ITC's retrieval of information on uses, exposures, and health effects of siloxanes and the SEHSC's

understanding of data needed by the U.S. Government organizations represented on the ITC. Since the establishment of this Dialogue Group, numerous activities have occurred (see the ITC's 37th, 38th, 39th, and 40th Reports). During this reporting period, the Dialogue Group met to discuss ongoing reproductive effects, biochemical toxicology, pharmacokinetic, metabolism, and immunology studies of siloxanes sponsored by SEHSC member companies. The studies sponsored by these companies are being conducted on 5 of 56 siloxanes that were recommended in the ITC's 30th Report (57 FR 30608, July 9, 1992).

IV. Revisions to the TSCA Section 4(e) Priority Testing List

Revisions to the TSCA section 4(e) *Priority Testing List* are summarized in Table 2.

Table 2.—Revisions to the TSCA Section 4(e) *Priority Testing List*

CAS No.	Chemical name	Action	Date
	Alkylphenols and Alkylphenol Ethoxylates	Recommended	November 1997
	C_5 Alkylphenols	do	do
136–81–2	Phenol, 2-pentyl-	do	do
3279–27–4	Phenol, 2-(1,1-dimethylpropyl)-	do	do
25735–67–5	Phenol, 4-sec-pentyl-	do	do
26401–74–1	Phenol, 2-sec-pentyl-	do	do
	C_6 Alkylphenols	do	do
2446–69–7	Phenol, 4-hexyl-	do	do
	C_7 Alkylphenols	do	do
1987–50–4	Phenol, 4-heptyl-	do	do
72624–02–3	Phenol, heptyl derivs.	do	do
84605–25–4	Phenol, 1-methylhexyl derivs.	do	do
	C_8 Alkylphenols	do	do
140–66–9	Phenol, 4-(1,1,3,3-tetramethylbutyl)-	do	do
71902–25–5	Phenol, octenylated	do	do
	C_9 Alkylphenols	do	do
68081–86–7	Phenol, nonyl derivs.	do	do
91672–41–2	Phenol, 2-nonyl-, branched	do	do
	C_{10} Alkylphenols	do	do
27157–66–0	Phenol, decyl-	do	do
	C_{12} Alkylphenols	do	do
74499–35–7	Phenol, (tetrapropenyl) derivs.	do	do
	C_{14} Alkylphenols	do	do
70682–80–3	Phenol, tetradecyl-	do	do
	C_{16} Alkylphenols	do	do
2589–78–8	Phenol, 4-hexadecyl-	do	do
25401–86–9	Phenol, 2-hexadecyl-	do	do
	C_{18}–C_{30} Alkylphenols	do	do
68784–24–7	Phenol, C_{18}–C_{30}–alkyl derivs.	do	do
	Monosubstituted Polyalkylphenols	do	do
68954–70–1	Phenol, polyethylene derivs.	do	do
68891–67–8	Phenol, polypropene derivs.	do	do
68908–55–4	Phenol, polybutene derivs.	do	do
112375–88–9	Phenol, polyisobutylene derivs.	do	do
112375–89–0	Phenol, poly(2,4,4-trimethylpentene) derivs.	do	do
	C_8 Alkylphenol Ethoxylates	do	do
9004–87–9	Poly(oxy-1,2-ethanediyl), α-(isooctylphenyl)-ω-hydroxy-	do	do
9063–89–2	Poly(oxy-1,2-ethanediyl), α-(octylphenyl)-ω-hydroxy-	do	do
	C_{12} Alkylphenol Ethoxylates	do	do
9014–92–0	Poly(oxy-1,2-ethanediyl), α-(dodecylphenyl)-ω-hydroxy-	do	do
26401–47–8	Poly(oxy-1,2-ethanediyl), α-(4-dodecylphenyl)-ω-hydroxy-	do	do
	C_{13} Alkylphenol Ethoxylates	do	do
61723–87–3	Poly(oxy-1,2-ethanediyl), α-(tridecylphenyl)-ω-hydroxy-	do	do
	C_{16} Alkylphenol Ethoxylates	do	do
59911–95–4	Poly(oxy-1,2-ethanediyl), α-(4-hexadecylphenyl)-ω-hydroxy-	do	do
	Alkylphenols	Removed	do
1322–69–6	(1,1,3,3-Tetramethylbutyl)phenol (mixed isomers)	do	do
29932–96–5	(1,1,3,3-Tetramethylbutyl)phenol (mixed isomers)	do	do

Table 2.—Revisions to the TSCA Section 4(e) *Priority Testing List*—Continued

CAS No.	Chemical name	Action	Date
30105–54–5	(1,1,3,3-Tetramethylbutyl)phenol (mixed isomers)	do	do
62744–41–6	(1,1,3,3-Tetramethylbutyl)phenol (mixed isomers)	do	do
1300–16–9	Nonylphenol (mixed isomers)	do	do
1331–57–3	Dodecylphenol (mixed isomers)	do	do
	Diaryl Ethers	do	do
101–84–8	1,1'-Oxybisbenzene	do	do
3586–14–9	1-Methyl-3-phenoxybenzene	do	do
13826–35–2	3-Phenoxybenzenemethanol	do	do
28299–41–4	1,1'-Oxybis[methylbenzene]	do	do
28984–89–6	Phenoxy-1,1'-biphenyl	do	do
42874–96–4	2-Chloro-1-(3-methylphenoxy)-4-(trifluoromethyl)benzene	do	do
50594–77–9	3-[2-Chloro-4-(trifluoromethyl)phenoxy] phenol, acetate	do	do
51632–16–7	1-(Bromomethyl)-3-phenoxybenzene	do	do
63734–62–3	3-[2-Chloro-4-(trifluoromethyl)phenoxy]benzoic acid	do	do
72252–48–3	3-[2-Chloro-4-(trifluoromethyl)phenoxy] benzoic acid, potassium salt	do	do
	Siloxanes	do	do
107–51–7	Octamethyltrisiloxane (L_3)	do	do
141-62–8	Decamethyltetrasiloxane (L_4)	do	do
141–63–9	Dodecamethylpentasiloxane (L_5)	do	do

A. Chemicals Added to the Priority Testing List

1. *Alkylphenols, alkylphenol ethoxylates, and polyalkylphenols*—a. *Recommendation*. Add 29 alkylphenols, alkylphenol ethoxylates, and polyalkylphenols to the *Priority Testing List* to obtain information to meet U.S. Government data needs.

b. *Rationale for recommendation*. Twenty-nine alkylphenols, alkylphenol ethoxylates, and polyalkylphenols are being recommended because:

i. TSCA production and importation volumes are reported in the multi-million pound range.

ii. Releases to the environment can occur from wastewater treatment and agricultural uses.

iii. Alkylphenol ethoxylates can degrade to alkylphenols, which can persist in the environment and be highly toxic to aquatic organisms.

iv. Exposure to alkylphenols and alkylphenol ethoxylates may affect endocrine and other important human and animal system functions. Alkylphenols, alkylphenol ethoxylates, and polyalkylphenols are being recommended to determine if there are unpublished studies that contain data to meet the needs of the U.S. Government organizations represented on the ITC and to complete the list of alkylphenols and alkylphenol ethoxylates that were recommended in the ITC's 37th and 39th Reports.

c. *Supporting information*. As noted in the 37th, 38th, and 39th Reports, ITC used its Substructure-based Computerized Chemical Selection Expert System (SuCCSES) to identify the alkylphenols and alkylphenol ethoxylates that were added to the *Priority Testing List*. Following the SAR rationale for adding alkylphenols and alkylphenol ethoxylates to the *Priority Testing List* that was described in the 37th Report, only 29 alkylphenols, alkylphenol ethoxylates, and polyalkylphenols with a single-alkyl chain in either the para or ortho position are being added to the *Priority Testing List* in this Report. One of the alkylphenols being added to the *Priority Testing List* (4-(1,1,3,3-tetramethylbutyl)phenol, CAS No. 140–66–9) was added to the *Priority Testing List* in the ITC's 11th Report (47 FR 54626, December 3, 1982) and removed from the *Priority Testing List* in the 13th Report (48 FR 55674, December 14, 1983) because the producers conducted chemical fate and aquatic toxicity testing. It is being added to the *Priority Testing List* at this time to obtain information to meet other U.S. Government data needs.

d. *Implementation of ITC's VISP promoting more efficient use of TSCA section 8(d) resources*. The ITC is implementing its VISP (to promote more efficient use of TSCA section 8(d) resources) for 23 nonylphenol ethoxylates recommended in its 39th Report and the 29 alkylphenols, alkylphenol ethoxylates, and polyalkylphenols added to the *Priority Testing List* in this Report.

Under its VISP, the ITC requests:

1. Specific information to meet data needs of U.S. Government organizations represented on the ITC:

a. Fish and amphibian multigeneration reproductive effects data.

b. Avian acute toxicity data (oral feeding and egg exposure studies).

c. Avain reproductive effects data.

d. Fish and wildlife field data.

e. Bioaccumulation or bioavailability data.

f. Health effects data, including absorption, toxicokinetics, systemic toxicity, endocrine disruption, reproductive effects, and carcinogenicity data.

g. SARs to estimate effects or degradation.

Data needs 1a–1e and 1g are also applicable to the alkylphenols and alkylphenol ethoxylates recommended in the 37th Report for which the ITC has reviewed unpublished studies submitted under TSCA section 8(d) and determined that they do not meet U.S. Government data needs listed in Unit IV.A.1.d.1.a.-g. of this Report.

2. No submissions on the following:

a. Any data on non-isomeric mixtures containing <**90**% of the recommended alkylphenols, alkylphenol ethoxylates, or polyalkylphenols, *Exception*: Absorption data.

b. Dermal irritation data.

c. Eye irritation data.

d. Corrosivity data.

e. Data on waste streams.

3. The EPA to revoke the TSCA section 8(a) PAIR and TSCA section 8(d) HaSD rules for the ITC's 38th Report for which EPA published a stay on December 11, 1996 (61 FR 65186)(FRL–5577–6) (Ref. 1, Fung, 1997). In its 39th Report, the ITC eliminated the use of alternate CAS numbers for nonylphenol ethoxylates recommended in the 38th Report.

4. The EPA not to promulgate TSCA section 8(d) HaSD rules for the

nonylphenol ethoxylates recommended in the ITC's 39th Report and the alkylphenols, alkylphenol ethoxylates, and polyalkylphenols added to the *Priority Testing List* in this 41st Report (Ref. 1, Fung, 1997).

5. Producers, importers, processors, and users of alkylphenols, alkylphenol ethoxylates, and polyalkylphenols recommended by the ITC in its 37th, 39th, and 41st Reports or a consortium representing those producers, importers, processors, and users to follow the generic procedures listed in Unit II.C.3–6 of this Report.

6. The EPA to promulgate (upon receipt of a letter from the ITC Chair) a TSCA section 8(d) HaSD rule for the alkylphenols and alkylphenol ethoxylates recommended in the 39th and 41st Reports. The ITC will submit this letter if there is no notification of intent to submit studies or if studies voluntarily submitted are insufficient to satisfy data needs.

As noted in Unit III.A. of this Report, the ITC has reviewed reports and studies submitted in response to the PAIR and HaSD rules promulgated for alkylphenols and alkylphenol ethoxylates recommended in the 37th Report. Based on its review, the ITC recognizes that there are many non-CMA Panel member companies that produce, import, process, or use alkylphenols and alkylphenol ethoxylates. The ITC encourages all companies to submit studies following the procedures described in the VISP.

B. Chemicals Removed From the Priority Testing List

1. *Alkylphenols and Alkylphenol Ethoxylates*. The ITC is removing six alkylphenols from the *Priority Testing List* that were recommended in the 37th Report. The rationales for these removals are listed in Table 3.

Table 3.— Alkylphenols Being Removed From the *Priority Testing List*

CAS No.	Chemical name	Rationale
1322–69–6	(1,1,3,3-Tetramethylbutyl)phenol(mixed isomers)	Already represented by (1,1,3,3-tetramethylbutyl)phenol (mixed isomers) (CAS No. 27193–28–8) and no data submitted in response to TSCA section 8(a) PAIR rule (61 FR 7421, February 28, 1996)(FRL–4996–9) .
29932–96–5	(1,1,3,3-Tetramethylbutyl)phenol (mixed isomers)	do
30105–54–5	(1,1,3,3-Tetramethylbutyl)phenol (mixed isomers)	do
62744–41–6	(1,1,3,3-Tetramethylbutyl)phenol (mixed isomers)	do
1300–16–9	Nonylphenol (mixed isomers)	Already represented by nonylphenol (mixed isomers) (CAS No. 25154–52–3) and no data submitted in response to TSCA section 8(a) PAIR rule (61 FR 7421, February 28, 1996).
1331–57–3	Dodecylphenol (mixed isomers)	Already represented by dodecylphenol (mixed isomers) (CAS No. 27193–86–8) and no data submitted in response to TSCA section 8(a) PAIR rule (61 FR 7421, February 28, 1996).

2. *Diaryl ethers*—a. *Rationale for removal*. The ITC is removing 10 diaryl ethers from the *Priority Testing List* (Table 2) because:

i. There are no current U.S. Government data needs.

ii. Routine uses are not likely to result in environmental releases or exposures to workers, consumers, or the general population.

iii. There is information to predict water solubilities, vapor pressures, atmospheric, and aquatic half lives, rodent acute toxicities, irritancy potential, aquatic toxicity, and binding to estrogen receptor(s).

b. *Supporting information*. In its 29th Report (56 FR 67424, December 30, 1991), the ITC recommended a group of 14 alkyl, bromo, chloro, and hydroxymethyl diaryl ethers for physical chemical properties, biodegradation rate, health effects, and ecological effects screening tests. The 14 diaryl ethers were selected from 261 aryl ethers (55 diaryl ethers) by using SuCCSES. The 14 were selected because of their potential to intercalate with DNA (56 FR 67424, December 30, 1991). SuCCSES is used by the ITC to identify chemicals with shared substructures and associated health or ecological effects (Ref. 4, Walker, 1991; Ref. 5, Walker, 1995). The ITC removed 4 of the previously recommended diaryl ethers from the *Priority Testing List* in its 35th Report (59 FR 67596, December 29, 1994).

The ITC reviewed all the PAIR reports and all the TSCA section 8(d) studies and concluded that the 10 remaining diaryl ethers were likely to be used as intermediates or starting materials, but not as end products. The ITC estimated that these diaryl ethers should:

1. Be metabolized through ortho or para hydroxylation.

2. Have water solubilities ≤20 milligram/liter (mg)/(L).

3. Have vapor pressures $\leq 2 \times 10^{-2}$ millimeter Mercury (mm)(Hg) @ 25 °C.

4. Have atmospheric-half lives <1 day.

5. Have aquatic-half lives <1 week.

6. Have low-binding affinity for estrogen receptor(s).

To analyze existing data, the ITC organized the 10 remaining diaryl ethers into 2 SuCCSES categories:

1. Non-fluoromethyl diaryl ethers.

2. Trifluoromethyl diaryl ethers.

Based on available data, the ITC estimated that non-fluoromethyl diaryl ethers (alkyl, aryl, bromo, diaryl ether, and hydroxymethyl diaryl ethers) would have rodent oral LD_{50} values >2 gram/kilogram (g)/(kg) and that most would be mild irritants, be negative in an Ames assay, have low-oncogenicity potential, and have LC_{50} values <1 mg/L for aquatic organisms. The ITC recognized that 1-methyl-3-phenoxybenzene could have marginal oncogenicity potential based on a positive Ames assay and that 1-(bromomethyl)-3-phenoxybenzene could have moderate oncogenicity potential based on its structural relationship to benzyl chloride, a known alkylating agent.

During its review of data for these chemicals, the ITC used SuCCSES to identify three additional non-fluoromethyl alkyl diaryl ethers:

1. Phenoxytetrapropylene benzene (mixture of isomers) (CAS No. 68938–96–5).

2. Decylphenoxybenzene (mixture of isomers) (CAS No. 69834–17–9).

3. 1,1'-Oxybis-benzene, tetrapropylene derivatives (mixture of isomers) (CAS No. 119345–02–7). At the present time, ITC is deferring these chemicals based on the data reviewed for other diaryl alkyl ethers.

Based on available data, the ITC estimated that trifluoromethyl diaryl ethers would have rodent oral LD_{50} values >1 g/kg and that most would be mild irritants, be negative in an Ames assay, have low-moderate oncogenicity potential and have LC_{50} values >1 mg/L for aquatic organisms. The ITC recognized that the trifluoromethyl diaryl ethers are structurally similar to diaryl ether herbicides except they lack a nitro group (Acifluorfen®, Fomesafen®, Lactofen®, and Oxyfluorfen®) or a branched carboxylic acid group (Verdict®). The ITC is aware of the possibility that the trifluoromethyl diaryl ether moiety may play a possible receptor-mediated role in oncogenicity.

3. *Silicone chemicals*—a. *Rationale for removal.* The ITC is removing octamethyltrisiloxane (L_3, CAS No. 107–51–7), decamethyltetrasiloxane (L_4, CAS No. 141–62–8), and dodecamethylpentasiloxane (L_5, CAS No. 141–63–9) from the *Priority Testing List* because:

i. Annual production and importation volumes are less than 1 million pounds.

ii. Routine uses are not likely to result in substantial environmental releases or human exposurures.

b. *Supporting information.* Fifty-six siloxanes were recommended for health effects testing in the ITC's 30th Report (57 FR 30608, July 9, 1992) to meet the data needs of the U.S. Government organizations represented on the ITC. After this recommendation, the ITC's Siloxanes Subcommittee and the Silicones Environmental Health and Safety Council (SEHSC) established a Dialogue Group to develop a TSCA Test Submissions database (TSCATS)-compatible computer file of physical and chemical properties, health effects and use data, and to develop health effects data to meet the needs of the U.S. Government organizations represented on the ITC. The ITC-SEHSC computer file has been used by other organizations and serves as the prototype TSCA section 8 database for the EPA's TSCA Electronic Commerce Workgroup. The ITC accepted a letter of commitment (LOC) from the SEHSC to discuss ongoing and planned siloxanes testing that is being conducted to meet the data needs described in the ITC's 30th Report (Ref. 3, SEHSC, 1996). The testing (on the 5 siloxanes remaining on the *Priority Testing List*) is being conducted voluntarily as part of an April 9, 1996, Memorandum of Understanding (MOU) between EPA and the Dow Corning Corporation; the MOU describes a model Product Stewardship program. The LOC provides the ITC and SEHSC member companies the opportunity to discuss protocols, planned and ongoing studies, and to meet as often as necessary with Dow Corning Corporation and the SEHSC until the testing program has been completed.

As a result of continuing discussions, the ITC removed 43 of the previously recommended siloxanes chemicals from the *Priority Testing List* in its 37th Report and five siloxanes from the *Priority Testing List* in its 39th Report. The ITC is removing three linear siloxanes (L_3, L_4, and L_5) from the *Priority Testing List* in this Report (Table 2). L_3, L_4, and L_5 have annual production and import volumes less than 1 million pounds and are used primarily for industrial and/or commercial applications such as solvent cleaning, carriers, water displacement, and polyurethane foam blowing that are not likely to result in substantial environmental releases or human exposures.

The five siloxanes remaining on the *Priority Testing List* are shown in Table 4.

Table 4.—Siloxanes Remaining on the *Priority Testing List*

CAS No.	Chemical name
	Cyclic Siloxanes
556–67–2 ...	Octamethylcyclotetrasiloxane (D_4)
541–02–6 ...	Decamethylcyclopentasiloxane (D_5)
540–97–6 ...	Dodecamethylcyclohexasiloxane (D_6)
	Linear Siloxanes
107–46–0 ...	Hexamethyldisiloxane (L_2)
	Polymers
63148–62–9	Dimethyl silicones and siloxanes

V. References

1. Fung, V.A. September 15, 1997, letter from Dr. Victor A. Fung, ITC Chairperson to the Honorable Carol M. Brown, Administrator, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC.

2. Russell, S. July 7, 1997, E-mail from Steven Russell, Esq. to Dr. John D. Walker. ''Comments of the Chemical Manufacturers Association on the 40th Report of the TSCA Interagency Testing Committee before the U.S. Environmental Protection Agency.''.

3. SEHSC. July 26, 1996, Letter of Commitment from Bill Smock, Executive Director, SEHSC, 1767 Business Center Drive, Suite 302, Reston, VA to John Walker, Executive Director, ITC, U.S. Environmental Protection Agency (7401), 401 M St., SW., Washington, DC.

4. Walker, J.D. Chemical selection by the TSCA Interagency Testing Committee: Use of computerized substructure searching to identify chemical groups for health effects, chemical fate and ecological effects testing. The Science of the Total Environment 109/110:691–700 (1991).

5. Walker, J.D. Estimation Methods Used by the TSCA Interagency Testing Committee to Prioritize Chemicals for Testing: Exposure and Biological Effects Scoring and Structure Activity Relationships. Toxicology Modeling 1:123–141 (1995).

VI. TSCA Interagency Testing Committee

Statutory Organizations and Their Representatives

Council on Environmental Quality
Brad Campbell, Member
Douglas Sanders, Alternate

Department of Commerce
Edward White, Member

Environmental Protection Agency
Paul Campanella, Member
David R. Williams, Alternate

National Cancer Institute
Victor Fung, Member, Chair
Harry Seifried, Alternate

National Institute of Environmental Health Sciences
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